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RETURN TO:  
City Clerk Donna McAllister  
City of Des Plaines  
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Des Plaines, IL 60016

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OFFICIAL BUSINESS FOR  
CITY OF DES PLAINES  
CITY CLERK

R - 13 - DATE: January 16, 1992

A RESOLUTION AUTHORIZING THE CITY OF DES PLAINES TO ENTER INTO A REDEVELOPMENT AGREEMENT WITH RIVER OAKS PARTNERS- \$3.00  
T#2222 TRAN 6799 01/30/92 11:51:00  
#6687 = E \*--92-061138  
COOK COUNTY RECORDER

WHEREAS, the City of Des Plaines ("CITY") has undertaken a program for the reconstruction and redevelopment of an area known as the City of Des Plaines Tax Increment Redevelopment Area (the "Redevelopment Area"), in Des Plaines, Illinois; and

WHEREAS, the City intends to construct certain public improvements which are set forth in the Redevelopment Agreement ("Agreement") and is part of the Redevelopment Area; and

WHEREAS, River Oaks Partners ("Developer") desires to purchase from the City certain property which is the subject of the Agreement and is part of the Redevelopment Area in order to construct a congregate living facility; and

WHEREAS, it is in the vital and best interests of the City and the health, safety, morals and welfare of its residents to redevelop the Redevelopment Area as contemplated by the Agreement; and

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WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations and corporations in any manner;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: That the Mayor of the City of Des Plaines be and is hereby authorized and directed to execute the "Redevelopment Agreement Between the City of Des Plaines and River Oaks Partners", a copy, which is in substantially final form, is attached hereto as Exhibit "A" and shall be made a part hereof upon completion of the final documents. Said execution shall take place upon the finalization of and attachment to the Redevelopment Agreement of certain exhibits as said exhibits are set forth in Section 1.2 of said Agreement.

SECTION 2: That upon the execution of the Agreement by all parties, that the City Clerk be and is hereby authorized and

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directed to file a certified copy of this Resolution with the Recorder of Deeds of Cook County, Illinois, together with an executed copy of said Agreement or an executed memorandum thereof.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this 1 day of July, 1991.

APPROVED this 6 day of December, 1991.

VOTE: AYES 8 NAYS 0 ABSENT 0

Michael Alford  
MAYOR

ATTEST:

Donna J. O'Connell  
CITY CLERK

Published in pamphlet form this  
6 day of December, 1991.

Donna J. O'Connell  
CITY CLERK

Approved as to form:

Judith N. Kolman  
Judith N. Kolman, City Attorney

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3 0 1 1 3 : EXHIBIT "A"

R-13-91

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REDEVELOPMENT AGREEMENT BETWEEN

THE CITY OF DES PLAINES

AND

RIVER OAKS PARTNERS

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## REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF DES PLAINES AND RIVER OAKS PARTNERS

This Agreement (the "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 1991, by and between the CITY OF DES PLAINES, Cook County, Illinois, as a Home Rule Municipal Corporation, having its offices at 1420 Miner/Northwest Highway, Des Plaines, Illinois 60016-4498 (the "City"), and RIVER OAKS PARTNERS, an Illinois Partnership, having its principal office at 2800 West Higgins Road, Suite 600, Hoffman Estates, IL 60195 (the "Developer"), and collectively referred to herein as the "Parties."

WITNESSETH:

### ARTICLE I

#### GENERAL RECITALS AND INITIAL AGREEMENTS, EXHIBITS AND DEFINITIONS

##### Section 1.1 General Recitals and Initial Agreements.

(a) The City represents the following to Developer:

(1) The City has undertaken a program for the reconstruction and redevelopment of a redevelopment area known as the City of Des Plaines Tax Increment Redevelopment Area, in Des Plaines, Illinois (the "Redevelopment Area") pursuant to The City of Des Plaines' Official Comprehensive Plan of 1971 (the "Comprehensive Plan"), the City of Des Plaines Zoning Ordinance of 1960 (as amended), (the "Zoning Ordinance"), adopted by the Corporate Authorities of the City (the "Council") on June 20, 1960, the Tax Increment Allocation Redevelopment Act, Ill. Rev. Stat. Ch. 24, Sec. 11-74.4 et seq., as amended, (the "Act") and the home rule authority of the City.

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(2) A public hearing was held by the City on May 28, 1985, regarding the City of Des Plaines Downtown Tax Increment Redevelopment Area, Redevelopment Plan and Project and the designation of a Redevelopment Project Area as identified in said plan (the "Original Redevelopment Area"). On July 15, 1985, the City Council adopted ordinances as required by the Act to implement Tax Increment Financing for the Original Redevelopment Area.

(3) On July 15, 1985, the City Council authorized the issuance of \$2,500,000 tax increment bonds which provided funds for certain property acquisition and site clearance within the Original Redevelopment Area.

(4) A public hearing was held by the City on November 17, 1986 and November 24, 1986, regarding the City of Des Plaines Amended Tax Increment Redevelopment Area, Amended Redevelopment Plan and Project and the designation of an Amended Redevelopment Project Area as identified in said Plan (the "Amended Redevelopment Area"). On December 15, 1986, the City Council adopted ordinances as required by the Act to implement Tax Increment Financing for the Amended Redevelopment Area.

(5) On December 15, 1986, the City Council adopted an ordinance as required by the Act to enable the Amended Redevelopment Area to be eligible for certain sales tax increments as set forth in Section 11-27.4-8a(1) of the Act.

(6) On June 1, 1987, the City Council adopted an ordinance approving an amendment to the Amended Redevelopment Area

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(the "Further Amended Redevelopment Area"), which amendment merely clarified external boundaries of the Amended Redevelopment Area.

(7) All of the property which is the subject of this Agreement was and is included in the Original Redevelopment Area, the Amended Redevelopment Area, and the Further Amended Redevelopment Area. Therefore, for purposes of this Agreement, the term "Redevelopment Area" and "Redevelopment Plan and Project" shall include all amendments implemented by the City Council through the date of this Agreement.

(8) The City is entering into this Agreement in reliance upon the availability of "Net State Sales Tax Increment" as such term is defined in and authorized pursuant to the Act.

(9) The City believes the redevelopment of the Redevelopment Area as contemplated by this Agreement is in the vital and best interests of the City and the health, safety, morals and welfare of its residents and has been adopted and is in accordance with the public purposes and provisions of all applicable federal, state and local laws and ordinances.

(b) Developer submitted a proposal to the City for developing a portion of the Redevelopment Area in accordance with the Redevelopment Plan. The proposed development contemplates the construction of a congregate retirement living facility consisting of 258 units and a 170 vehicle parking structure as more fully described herein ("Project").

(c) On December 18, 1989, and as extended from time to time, with the approval of the Council, the City and Developer

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executed a Memorandum of Understanding setting forth, inter alia, the proposal of Developer for the construction and operation of the Project. In pursuance of the Memorandum of Understanding and subject to the adoption of the City of a resolution approving this Agreement, the City and Developer are entering into this Agreement for the sale and redevelopment of certain land and the implementation of the Project.

(d) On December 18, 1989, the Council passed and adopted Zoning Ordinance Z-18-89 (89-5-PUD-R) and on April 1, 1991, passed and adopted Zoning Ordinance Z-4-91 (91-1-PUD), an amendment to Ordinance Z-18-89, thereby approving the contemplated planned unit development for the City-Owned Parcels to be sold to Developer.

Section 1.2 Identification of Exhibits. Attached hereto are the following documents which, by this reference, are incorporated into and hereby made an integral part of this Agreement and shall not be altered, changed or amended without the written consent of the parties hereto.

(a) Exhibit A shall be a map of the Redevelopment Area as defined in Section 1.1(a)(7) above.

(b) Exhibit B is the Site Plan of the Prime Project with the following sites or facilities identified separately thereon, to wit: a 10-story building located on approximately a 2.93 acre site located at 800 South Des Plaines/River Road, and a 2-1/2 story parking structure.

(c) Exhibit C ("Deed") being the City's Quit Claim Deed to a nominee to the City-Owned Parcels at the Prime Project.

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(d) Exhibit D shall be the "Estimate of Prime Group Tax Increment Des Plaines Downtown TIF, dated June 7, 1991, prepared by Kane, McKenna and Associates, Inc.

(e) Exhibit E shall be Zoning Ordinances Z-18-89 and Z-4-91, and as amended from time to time. Any such amendments will be attached to this Agreement as amended Exhibit E.

(f) Exhibit F shall be the Developer Revenue Bond as prepared by Bond Counsel for the City and as more fully described in Section 2.3.

(g) Exhibit G shall be the "ALTA" survey as defined in Section 1.3(v).

(h) Exhibit H shall be the "Sophisticated Investor's Letter" as prepared by Kane, McKenna and Associates.

(i) Exhibit I shall be a currently dated Title Commitment as more fully described in Section 3.2.

(j) Exhibit J shall be a "List of Permitted Exceptions" as more fully described in Section 1.3(q).

(k) Appendix I - shall be the Analysis of the Incremental Tax Revenues as defined in Section 1.3(b).

(l) Appendix II - shall be Developer's TIF Eligible Costs as set forth in Section 7.4.

Section 1.3 Definitions. For the purposes of this Agreement, the following terms shall have the respective meanings indicated:

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(a) "Act" shall mean the "Tax Increment Allocation Redevelopment Act," Illinois Revised Statutes, Ch. 24, Sec 11-74.4 et seq., as amended.

(b) "Analysis of Incremental Tax Revenues", attached as Appendix I, shall mean the Analysis of the Incremental Tax Revenues Projected for the Downtown Tax Increment Finance District, Des Plaines, Illinois, that has been prepared in connection with this Project by Kane, McKenna and Associates, Inc.

(c) "Bond Counsel" shall mean Katten, Muchin & Zavis, 525 West Monroe Street, Suite 1600, Chicago, Illinois 60606, 312/902-5200, or such other counsel as may be appointed from time to time by the City Council.

(d) "Bonds" shall mean Tax Increment Finance Bonds issued by the City pursuant to Section 11-74.4-7 of the Act for the purpose of achieving the objectives set forth in the City's Redevelopment Plan and Project.

(e) "Certificate of Occupancy" shall have the meaning set forth in Section 6.5.

(f) "Closing Date" or "Closing" shall be no later than the first business day coinciding with or following the 30th day following satisfaction of all conditions contained in Sections 3.4, 3.6(a) and 3.7.

(g) "Code" shall mean the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder from time to time.

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(h) "Control" (including correlated meanings such as the terms "controlling," "controlled by," and "under common control with") as used with respect to any entity, shall mean the possession, directly or indirectly of the power to direct or cause the direction of the management decisions and policies of such entity, whether through the ownership of voting securities, beneficial interests or by contract or otherwise.

(i) "Counsel for City" shall mean the City Attorney of Des Plaines.

(j) "Counsel for Developer" shall mean Charles Hug, Carlson & Hug, 135 South LaSalle Street, Chicago, Illinois 60603, 312/726-1567 and Samuel J. Polsky, Polsky & Riordan, 1216 North LaSalle Street, Chicago, Illinois 60610, 312/642-1455.

(k) "Deed" shall mean a quit claim deed of the City conveying to Developer (or Developer's nominee) or a designee permitted hereunder and to be controlled and named by Developer, good and merchantable title in fee simple to the City-Owned Parcels at the Prime Project Site, free of all liens, claims, charges and encumbrances other than "Permitted Exceptions," substantially in the form of Exhibit C attached hereto. The Deed shall contain, inter alia, a reservation of a permanent easement appurtenant to and for the benefit of the Bank of Chicago ("Bank") which lies immediately east of and adjacent to the City-Owned Parcels, for the purpose of vehicle ingress and egress to and from the Bank parking lot at the rear of the Bank property. Said easement shall be on parcel 105.

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(l) "Developer" shall mean River Oaks Partners and its successors and assigns as permitted pursuant to Article VIII hereof.

(m) "Developer Revenue Bonds" shall mean the bonds described in Section 2.3.

(n) "Disposition" (including the correlated meaning "dispose") shall mean any direct or indirect total or partial sale, assignment, conveyance, transfer, distribution to shareholders, partners or beneficial owners of any person or other disposition by private sale, public offering or by enforcement of any pledge or by gifts, bequest or under the laws of descent and distribution or for value or otherwise whether direct or indirect, voluntary or involuntary, or by operation of law.

(o) "Improvements" shall refer collectively to improvements, structures or facilities at any time after the date hereof made to the Project.

(p) "Legal Requirements" shall mean all laws, statutes, codes, acts, ordinances, orders, judgment decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of any and all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen and unforeseen, ordinary and extraordinary, which now or any time hereafter may be applicable to the Project or any part thereof.

(q) "Permitted Exceptions" shall mean (i) this Agreement, to the extent set forth in the Deed; (ii) permitted

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exceptions as set forth in Exhibit J; (iii) general taxes which are not yet due and payable prior to the closing date; (iv) the City's building and zoning ordinances, laws and regulations; (v) drainage districts and assessments or charges, if any; (vi) acts done or suffered by or judgments against Developer or any person claiming by, through or under it; and (vii) the access easement referred to in Section 1.3(k) above. To the extent that the City does not have knowledge of any Defects in Title not set forth in the Title Commitment, Developer's only remedy after its acceptance of the Title Commitment shall be against the Title Company.

(r) "Person" shall mean any natural person, firm, partnership, corporation or any other entity whatsoever.

(s) "Personal Property" shall mean any tangible property owned and used by Developer in connection with and located upon the Project Site not subject to any security interests or title retention agreement of a third party.

(t) "Project" shall mean the improvements described in Section 5.1.

(u) "Redevelopment Plan and Project" shall have the meaning as set forth in Section 1.1(a)(7).

(v) "Survey" shall mean an "ALTA" survey dated after the date hereof certified by a licensed surveyor as having been made in compliance with Illinois Land Survey Standards certified to the Title Company and to Developer, respectively, containing inter alia, the exact dimensions of the City-Owned Parcels, the existing

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utilities, known easements and topography, to the extent feasible because of existing buildings and other structures.

(w) "Title Company" shall mean such title insurance company selected by the City, with the consent of Developer, not to be unreasonably withheld, for issuance of owner's title insurance policy required by or in connection with this Agreement.

(x) "TIF" shall mean the system of financing municipal redevelopment projects authorized by the Act.

(y) "TIF Eligible Costs" shall have the meaning as set forth in the Redevelopment Plan.

(z) "Unavoidable Delays" shall mean, in respect to either party's obligation regarding either demolition, site or off-site improvements, or construction, any delay caused by damage or destruction by fire or other casualty whether similar or dissimilar, acts of the Federal, County or State Government, or of the City (other than as contemplated by this Agreement), strikes, embargoes, shortages of material, unusually adverse weather conditions, or other like or unlike events or conditions beyond the reasonable control of such party and without its fault or negligence.

ARTICLE II

SALE TO DEVELOPER

Section 2.1. The Sale of the Site Commonly Known as the "City-Owned Parcels". Subject to all the terms, conditions and contingencies of this Agreement, the City agrees to sell and Developer agrees to purchase from the City, the City-Owned Parcels

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for a purchase price of \$431,889.00, ("Purchase Price"), in cash, a cashier's check, certified check or wire transfer, at the Closing.

Section 2.2. Flow of TIF Fund Concept. The City and Developer hereby agree to the flow of funds set forth in the Analysis of Incremental Tax Revenues. Developer will pay the Purchase Price for the City-Owned Parcels as well as for all other Redevelopment Project costs. Developer shall be paid by the City for advancing all funds necessary to pay such costs, subject to TIF eligibility, up to \$1,061,889.00 plus interest thereon, by means of the Developer Revenue Bonds. This figure is based on \$431,889.00, the Purchase Price of the City-Owned Parcels, and \$630,000.00, which covers certain other TIF eligible costs. Subject to the priorities stated in the Analysis of Incremental Tax Revenues and such ordinances of the City as authorize the issuance of the Bonds (which shall not be inconsistent with the provisions of this Agreement), the City hereby agrees to pledge the Incremental Tax Revenues (as defined in the Analysis of Incremental Tax Revenues) to the payment of the Developer Revenue Bonds. The flow of funds outlined in the Analysis of Incremental Tax Revenues shall be followed by the City and Developer as further articulated in Exhibit F.

Section 2.3. The Developer Revenue Bonds.

(a) The Developer Revenue Bonds shall be issued pursuant to appropriate ordinances to be adopted by the City Council prior to Closing. Such ordinances are to be drafted by Bond Counsel and

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Bond Counsel shall render a legal opinion with respect to the legal and binding nature of said Bonds. The terms of the Developer Revenue Bonds shall include, inter alia, the following:

- (1) The Developer Revenue Bonds shall be issued to provide solely for the payment of or reimbursement for certain TIF Eligible Costs as set forth in the Act;
- (2) The Developer Revenue Bonds shall be payable solely from the "Developer Reimbursement Account" (as defined in the Analysis of Incremental Tax Revenue) and shall bear interest at 10% per annum from the date of execution of the bonds as set forth above until the earlier of maturity or redemption thereof, if the Bonds are deemed to be taxable by Bond Counsel for the City. If Bond Counsel determines that the Bonds are tax-exempt, the rate of interest shall be 7-1/2%.
- (3) The City shall have the right to redeem all or any portion of the Developer Revenue Bonds at any time upon thirty (30) days notice to the holders thereof in any manner deemed prudent by the City;
- (4) The maturity of the Developer Revenue Bonds shall be June 1, 2008;

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(5) The insufficiency of TIF revenues to pay amounts due under the Developer Revenue Bonds in any given year shall not constitute a default on the Developer Revenue Bonds, but such past due amounts shall be a continuing obligation of the TIF fund and shall continue to earn interest on a simple interest basis at the above stated rate, provided that all such obligations for payment shall cease as of June 1, 2008, and any unpaid obligation as of that date shall be extinguished;

(6) The Developer Revenue Bonds shall not be assignable or transferable, without (a) the prior written consent of the City or (b) the delivery to the City of a "Sophisticated Investor's Letter," in substantially the form set forth in Exhibit H, prior to said assignment or transfer. This Section 2.3(a)(6) shall not be applicable if said assignment or transfer is to an affiliate of Developer; and

(7) Any amounts paid into the Developer Reimbursement Account shall not be available for reallocation to any other account.

(b) It is not expected that interest on the Developer Revenue Bonds will be exempt from federal or state income taxes.

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In connection with such matters, the City shall rely upon the opinion of Bond Counsel.

(c) The City will incur certain costs with respect to the issuance of the Developer Revenue Bonds. Such costs will be borne by the City which may reimburse itself from the Administrative line of the Analysis of Incremental Tax Revenues.

(d) Developer acknowledges that the City intends to issue certain First Lien Tax Increment Revenue Bonds which may or may not be secured by the City's general obligation ("First Lien Bond"), and other developer revenue bonds to another developer in connection with the redevelopment project commonly referred to as the "Mall Parking Lot Site" (formally known as the "Otis Company Project") and that such revenue bonds ("Mall Parking Lot Revenue Bonds") shall be issued pursuant to terms essentially the same as contained in the Developer Revenue Bond, Exhibit F to this Agreement.

(e) The City and Developer agree that under certain conditions it is in the best interests of both parties that the City enter into other redevelopment projects in the future ("Future Development") with such developer(s) as the City may choose ("Future Developer") and in this respect the City may issue developer revenue bonds to a Future Developer (the "Future Developer Revenue Bonds") in connection with a Future Redevelopment. In order to facilitate such Future Redevelopment, Developer and the City agree that the City may use funds generated by the Downtown Tax Increment Redevelopment Project to reimburse

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Future Developer for its TIF Eligible Costs. The City and Developer also agree that such Future Redevelopment should not impair payment of the Developer Revenue Bonds. Therefore, any Future Developer Bond shall only be reimbursed or paid on a parity basis with the Developer Revenue Bond. The City agrees that the total of First Lien Bonds, Developer Revenue Bonds and Future Developer Revenue Bonds shall not exceed \$20,000,000.00. Prior to issuing any Future Developer Revenue Bonds, the City will require a showing of 1.25 times annual debt service coverage on a pro-forma basis, as certified by an independently recognized financial advisor or auditor chosen by the City.

(f) To the extent there are insufficient funds in any given year, after scheduled payment of principal and interest on any First Lien Bond, to provide for the payments of principal or interest on the Developer Revenue Bonds, the Mall Parking Lot Revenue Bonds and the Future Developer Revenue Bonds, Developer, the Mall Parking Lot Site Developer and any Future Developer shall receive an amount determined by dividing the respective amount of the Developer Revenue Bonds, the Mall Parking Lot Revenue Bonds or the Future Developer Revenue Bonds, as the case may be, by the total amount of the Developer Revenue Bonds, the Mall Parking Lot Revenue Bonds and the Future Developer Revenue Bonds and multiplying the quotient by the amount of the funds available.

## ARTICLE III

### CONVEYANCING, TITLE CLEARANCE PROCEDURES AND OTHER CLOSING AGREEMENTS

#### Section 3.1. Environmental and Soil Testing.



(a) Subject to the representations, warranties and agreements contained in this Section 3.1(a), the City-Owned Parcels shall be conveyed to Developer with no warranties, expressed or implied by the City as to the conditions of the soil, its geology or topography or the presence of known or unknown faults, or subsurface conditions. However, notwithstanding the above statement, to the City's best knowledge, the City-Owned Parcels have never been used as a dump site for the storage (whether permanent or temporary) of any Hazardous Material (as hereinafter defined) and none of the improvements have been constructed with the use of asbestos or other Hazardous Material. For purposes of this Agreement "Hazardous Materials" means and includes any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, and any other hazardous, toxic or dangerous waste, substance or material.

(b) It shall be the sole responsibility of Developer at Developer's expense, to investigate and determine the soil conditions for the Project to be constructed. If the soil conditions are not in all respects entirely suitable for the use or uses for which the Project Site will be developed, then it is the

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sole responsibility and obligation of Developer to take such action as may be necessary to place the soil conditions of the property in a condition entirely suitable for its development. In the foregoing connection, within fifteen (15) days from the date of this Agreement (the "soil test period") Developer shall have the right to satisfy itself as to the soil condition of the Project Site;

(c) The City shall permit representatives of Developer to have reasonable access to any part or all of the City-Owned Parcels for the sole purpose of making environmental and soil tests, borings, and related developmental studies; provided, however, it is expressly agreed by Developer that: (1) any such access and tests shall be done in a manner which shall not unduly interrupt or interfere with the business and use or occupation of any Person still entitled to the possession, use or occupation of any portion of the City-Owned Parcels until such time as complete possession thereof is delivered to Developer in accordance with the provisions hereof; and (2) at all times Developer shall, and is hereby deemed to have covenanted and agreed to, indemnify, defend and hold harmless the City and its employees and agents from and against any and all claims, losses, injuries, liabilities and costs or expenses whatsoever (including, without limitation thereby, court costs and reasonable attorneys' fees) arising out of or resulting in any way from such access or tests (including, without limitation thereby, said tests, boring and developmental studies). Developer shall be fully responsible and liable for any and all

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damage to property or injury or death to any person occasioned or resulting from such access, activities and tests of Developer. Additionally, prior to any entry to the City-Owned Parcels by Developer, or any such test, Developer shall furnish City with a certificate of insurance for Comprehensive General Public Liability Insurance as will protect the City and Developer and their respective agents and employees from and against any and all claims and damages for personal injuries or death or for damages to any property of the City or of the public which may arise out of or result from any such entry or tests of Developer, in, on or over the City-Owned Parcels and whether said entry, work or activities be by Developer or its contractors or subcontractors or by anyone directly or indirectly employed by any of them. The amounts or limits of such insurance shall be not less than One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, personal injury or death or property damage with respect to any single occurrence. All policies of insurance shall provide that the City be given at least twenty (20) days' written notice prior to any material change, modification or cancellation of any such policy.

(d) In all events, Developer agrees to furnish the City with true and accurate copies of every report and data received in connection with any of the tests and studies conducted by or for it.

Section 3.2. Delivery of Survey and Title Commitment.

(a) Prior to the execution of this Agreement, the City shall deliver to Developer, or its representative(s):

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(1) The "ALTA" Survey; and

(2) At the City's expense, but to be reimbursed to the City from the "Administrative Services" line item of the Analysis of Incremental Tax Revenues (except as otherwise provided), a currently dated title commitment ("Title Commitment") covering the City-Owned Parcels, showing title in the City and showing Developer of its nominee as proposed insured(s). The title insurance to be issued on the Title Commitment shall be that form known as the ALTA Form of "extended coverage" Owner's Title Insurance Policy Form B1970 ("Owner's Policy") issued by the Title Company and eliminating all Schedule B General Exceptions (excepted as below provided) showing (i) good and marketable title to the City-Owned Parcels in Developer subject only to Permitted Exceptions (except as otherwise provided below) as defined in Section 1.3(q).

(b) The Owner's Policy shall be required prior to Closing. The Title Commitment and the Owner's Policy furnished in connection therewith shall be conclusive evidence of title as shown therein.

### Section 3.3. Clearance of Title or Survey Defects.

(a) If the Title Commitment or Survey so required to be furnished by the City discloses any objections or defects in title, City procedures, or survey (collectively for convenience called "Defects in Title") other than the Permitted Exceptions set forth in Section 1.3(q) above, the City shall, upon tendering same to Developer within the time above required, have thirty (30) days

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from the date which such Title Commitment or Survey bears in which to remove or insure over or otherwise remedy or cure such Defects in Title ("cure") and to furnish such required Title Commitment or Survey and eventual Owner's Policy showing said Defects in Title cured.

(b) If such Defects in Title are not cured within the aforesaid thirty (30) days, or if the City is unwilling or unable to cure the same for any reason (and if no additional time is granted or mutually agreed upon), subject to the provisions of Section 3.3(c) below, Developer may terminate this Agreement without liability to either party, or may, at its election, take title to the City-Owned Parcels as such title then is (with right to deduct from the purchase price for the City-Owned Parcels, the value of liens or encumbrances of a definite or ascertainable amount) upon giving to the City notice of such election and tendering performance on Developer's part. If Developer does not provide said notice of election and take title within fifteen (15) days after written notice to Developer of City's inability to cure any such Defects in Title, this Agreement, without further action by either party, shall terminate without liability to either party. In the event the subject transaction closes, title exceptions or defects appearing on the Title Commitment and Survey, if and to the extent approved by Developer or so cured by the City shall constitute Permitted Exceptions.

(c) Notwithstanding anything in Section 1.3(q) above or elsewhere in this Agreement to the contrary or inconsistent, the

parties expressly agree that the City's obligation to clear title to the City-Owned Parcels and Developer's rights of approval or acceptance of title to the City-Owned Parcels are expressly subject to the following:

(1) The City shall use its best efforts to clear or insure over Defects in Title and/or to obtain full extended coverage title insurance for the City-Owned Parcels and shall be required to expend up to, but no more than \$50,000.00 to accomplish such clearance or premiums required therefor. If such Defects in Title are not cured, or matters are not insured over by said extended coverage by the City under this Section 3.3(c)(1) or are not otherwise reasonably acceptable to Developer within the time period and manner described in Section 3.3(b), above (or within the time described in Section 3.3(d), below), and this Agreement is thereby canceled by either party, such failure to clear title shall not be deemed a default of the City. However, once the condition of title to the City-Owned Parcels has been accepted under the provisions of Section 3.3(b) or Section 3.3(c), the failure of the City to cure any Defects in Title subsequently appearing on or prior to the Closing Date and not arising from or caused by acts done or suffered by or judgments against Developer or any person claiming by, through or under it, shall be deemed a default of the City.

(2) Developer will be required to accept title to the City-Owned Parcels subject to encroachments and other questions of survey, and rights-of-way and ingress and access easements and

roads and the like, provided Developer is assured by the Title Company that all such Defects in Title shall be waived or insured over at the City's sole cost and expense as set forth in Section 3.3(c)(1), by the Title Company by reason of the construction work to be performed under this Agreement and/or because of the merger of the title to the various parcels in the City-Owned Parcels in a single owner, i.e., in Developer or Developer's nominee. Additionally, the City, as required by the Subdivision Ordinance, Zoning Ordinance or any other applicable ordinances or Legal Requirements, may subject the City-Owned Parcels to a resubdivision and any conveyances or easement grants hereunder shall reflect changes in the legal descriptions of the Site hereunder necessitated by such resubdivision.

(d) Notwithstanding anything hereinabove to the contrary, the City agrees that promptly after the execution and delivery of this Agreement, it will commence procedures and inquiries reasonably necessary to determine whether the Defects in Title can be promptly cured, insured over or waived by the Title Company or otherwise made acceptable to both parties pursuant to arrangements mutually satisfactory to both parties which satisfaction shall not be unreasonably withheld by either party. The parties and their respective counsel and representatives agree to cooperate, each with the other, in this endeavor, however, the City shall not be required to expend any amount not otherwise contemplated herein (other than the aforesaid commitment of the City to expend up to \$50,000.00 as set forth in Section 3.3(c)(1)

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above). Furthermore, notwithstanding the time limits and periods expressed in the foregoing sections of this Article III, if it appears that unacceptable Defects in Title cannot be cured to the mutual satisfaction of the parties within sixty (60) days after the date of this Agreement, then the parties need not await the issuance of additional Title Commitment(s) or Survey(s) to comply with the time limits otherwise specified in Section 3.3(b) above, but either party on written notice to the other, given within fifteen (15) days after written notice to Developer of the City's inability to cure any such Defects in Title, may cancel this Agreement without further rights against or liability to the other.

Section 3.4. Escrow and Other Closing Procedures. The Closing shall be in escrow. At the election of either party made at least twenty (20) days prior to the initial or any extended Closing Date, delivery of the Deed and any other documents or monies to be delivered and exchanged shall be made through a deed and money escrow at the office of the Title Company in accordance with the usual provisions of such form of escrow agreement then in use by such Title Company, modified to conform to the provisions hereof ("Escrow"). The cost of said Escrow shall be borne equally by the City and Developer. At or in connection with the closing hereof or at the creation of the Escrow (if any) or at any time up to and including the Closing Date, but under such arrangements mutually agreed upon as shall not extend the Closing Date, the following, inter alia, shall be delivered respectively to the City

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and/or Developer, directly, or through such Escrow or such covenants as shall be made by Developer, as applicable:

(a) The Deed to the City-Owned Parcels, provided, however, that without thereby releasing itself from any obligations hereunder, Developer may, upon written notice to the City given not later than twenty (20) days before the Closing Date, elect to take title to the City-Owned Parcels in an Illinois land trust or other designated Controlled Person so long as permitted hereunder. Such conveyance of title, in addition to the conditions subsequent provided in Article IV below and all other conditions, restrictions and agreements set forth herein, be subject to all Permitted Exceptions, except as otherwise provided herein.

(b) Completed Real Estate Transfer Tax Declarations or Exemption Statements executed by the parties or their representatives in form required by the Real Estate Transfer Tax Acts of the State of Illinois, the City of Des Plaines, and the County of Cook, Illinois.

(c) The Title Commitment for, and eventual delivery of, the Owner's Policy and final policy will be free of all ownership rights of prior titleholders.

(d) ALTA Statements and such other documents are reasonably required for the issuance of the Owner's Policy.

(e) Developer covenants that the City-Owned Parcels are subject to a repurchase by the City upon the happening of certain events specified in Sections 4.2 and 9.3. Said covenant shall run with the land, but shall terminate in accordance with

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Section 4.2. City agrees to give Developer appropriate certification that this Section has been complied with in the event that said covenant terminates.

(f) The customary opinion of the City's Counsel regarding, inter alia, the City's corporate power and authority, compliance with Legal Requirements, validity of this Agreement, authority of the City to adopt the Agreement under all applicable laws and that the instrument of transfer of title has been duly authorized, executed and delivered and is effective to vest title to the City-Owned Parcels to Developer or its nominee.

(g) Upon the respective demand of the parties, the other will execute and deliver, or cause the execution and delivery, to the one making the demand or the Escrow Agent of such documents as may be reasonable necessary to consummate the sale of the City-Owned Parcels and the agreements of this Agreement.

The City shall pay for all title searches through the date of the first current Title Commitment and as necessary to show title in the City, and a second "later date" Title Commitment to be obtained within a reasonable time prior to the Closing Date which second Title Commitment must comply with the conditions of Section 3.3. Thereafter Developer shall pay for the cost of any subsequent title searches, including any later date search covering the recording of the Deed and any title searches otherwise involving or requested by Developer.

The parties agree that this Agreement or a memorandum thereof shall be recorded at the joint cost of the parties. Any

costs incurred by the City under this Section 3.4 may be reimbursed to the City from the "Administrative Services" line item of the Analysis of Incremental Tax Revenues.

Section 3.5. Prorations and Payment of Real Estate Taxes. All special assessments whether due before or after Closing and that portion of the current general real estate taxes, if any, and drainage district assessments, if any, due on or before the Closing Date on the City-Owned Parcels shall be the responsibility of the City and the City shall either arrange to pay same as and when due or otherwise cause the waiver thereof; conversely, that portion of the general real estate taxes and drainage district assessments or installments thereof on the City-Owned Parcels for the year of Closing allocable to the period beyond the Closing Date shall be the responsibility of and be paid in full by Developer.

Section 3.6. Conditions Precedent to Developer's Obligation to Close.

(a) The following are express conditions to Developer's obligation to proceed with construction and development of the Project and to purchase the City-Owned Parcels:

(1) Approval by the Developer of all matters relating to the environmental and soil conditions of the City-Owned Parcels as provided in Section 3.1 above;

(2) Approval by Developer of all title and Survey matters relating to the City-Owned Parcels as provided in Section 3.3 above;

(3) Issuance of the Developer Revenue Bonds and a legal opinion by Bond Counsel of the legality of said Bonds pursuant to Section 2.3(a);

(4) Delivery of title to the City-Owned Parcels to Developer in the manner provided in this Article III.

(5) Execution of a construction contract by Developer.

(b) In addition to any other conditions or restrictions hereof, it is expressly agreed that the following is a condition precedent to Developer's obligation to proceed with the development of the Project:

(1) Issuance of the City's demolition and building permits required for the construction and development of the Project, provided, however, that the City's obligation to deliver such permits is conditioned upon Developer's submission of all documents required for said permits pursuant to the City's Zoning Ordinance, Subdivision Ordinance, Building Code and Ordinance and any other relevant code or ordinance and the conformance thereof with all applicable Legal Requirements and the prompt and timely application by Developer to the various appropriate City agencies, commissions or departments in order to obtain necessary approvals of the required documents. In this connection, City agrees to use its best efforts to respond with reasonable promptness to all of Developer's applications for approval of documents to be approved and to otherwise reasonably assist Developer in obtaining all of such commission approvals within the time constrictions of this

Agreement and within the purview and applicability of all Legal Requirements.

Section 3.7. Conditions Precedent to the City's Obligation to Close. In addition to any other conditions or restrictions hereof, the submission by Developer of all pertinent documents as referred to in Section 3.6(a) above, and a letter jointly signed by the City and Developer acknowledging that the City-Owned Parcels are now privately owned and subject to taxation and submitted to the Cook County Assessor's Office and the Cook County Clerk's Office.

ARTICLE IV

ADDITIONAL CONDITIONS OF CONVEYANCE AND RESTRICTIONS UPON USE OF THE CITY-OWNED PARCELS

Developer agrees for itself and each Person who is a permitted successor in interest in or to any part of the City-Owned Parcels (the Deed shall also contain or refer to such covenants on the part of Developer for itself and such Person(s)) that the conveyance and title described in Article III above shall, in addition to all other Permitted Exceptions, conditions and restrictions described herein or in any Exhibit hereto, be subject to the following covenants and agreements which shall run with the land:

Section 4.1. Certain Conditions of Conveyance.

(a) Developer and such Person shall:

(1) Devote the City-Owned Parcels only to those uses specified in the Planned Unit Development ("PUD") Zoning Ordinance passed and adopted by the City Council on December 19,

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1989, Zoning Ordinance Z-18-89 (89-5-PUD-R) and the PUD Zoning Ordinance Z-4-91 (91-1-PUD) passed and adopted on April 1, 1991, or such other PUD zoning ordinance passed and adopted by the City Council, the Redevelopment Plan and as described in this Agreement

(2) Not discriminate in violation of any applicable federal, state or local laws, ordinances or regulations upon the basis of race, color, religion, sex or national origin in the sale, lease or rental, or in the use or occupancy of the Property or any Improvements created or to be erected thereon or on any part thereof.

(3) Diligently prosecute the construction of the Improvements as provided herein and the redevelopment of the Property through the construction of the Improvements thereon and payment therefor as provided herein and that such construction shall, in any event, be begun and completed in the period of time specified in Section 6.1 hereof subject to Unavoidable Delays, and no changes shall be made in the Improvements provided herein after completion of the construction thereof, which would not be in conformity with Zoning Ordinances Z-18-89 and Z-4-91 and as such may be amended from time to time, the Redevelopment Plan and Project or this Agreement or constitute a major change in said Improvements or in the utilization of the Property except with the written approval of the City.

(4) The City and Developer agree that at such time as it may be conveyed to Developer, the City-Owned Parcels shall be assessed for general real estate taxes in the manner provided for

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under the Illinois Revised Statutes, as they may be amended from time to time. This provision shall not be deemed to prevent Developer from appealing or challenging assessed valuations of the City-Owned Parcels; provided, however, that so long as any Bonds are outstanding Developer and its successors and assigns shall first notify the City in writing of its intention to appeal or challenge any such assessed valuations and shall conform to the provisions set forth below:

(A) Developer shall not have the right to appeal any Notice of Equalized Assessed Valuation ("E.A.V.") or the resulting Real Estate Taxes imposed on the Project Site if such taxes for any given year until tax levy year 2007 (payable in 2008) are less than or equal to the amount of tax increment projected to be generated by the Project. Said tax increment projections are those set forth in Exhibit D. Developer may appeal any E.A.V. in a given year that is more than the estimated E.A.V. for that year as set forth in Exhibit D; however, Developer shall notify the City in writing on its intention to appeal for any given Tax Year.

(B) Developer covenants to pay the real estate taxes imposed on the Project Site in a timely manner; real estate taxes for any given year not paid in a timely manner shall be considered a violation of this Agreement.

(b) It is further agreed that: (1) the covenants provided in Sections 4.1(a)(1)(4) above shall remain in effect, from the date of the Deed until the earlier to occur of June 1, 2008 or payment in full or extinguishment of the Bonds as provided

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for; and (2) the covenants provided in Section 4.1 above shall be binding on Developer and its successors and assigns and every successor in interest to the Property or any part thereof, and each party in possession or occupancy, respectively, only for such periods as Developer or such successor or party shall have title to, or an interest in, or possession or occupancy of, the Property, or a portion thereof. Upon the earlier to occur of June 1, 2008, or payment in full or extinguishment of the Bonds, as provided for, Developer shall no longer be restricted in its ability to seek a reduction in the assessed valuation of, or amount of real estate taxes payable for, the Project site.

Section 4.2. Condition Subsequent: Repurchase.

Prior to the conveyance of the City-Owned Parcels to Developer, in the event Developer fails to remedy or abrogate any default, failure, violation or other action or inaction under this Article IV within the period and manner specified in Section 10.1 of this Agreement, the City, at its option, may terminate this Agreement. After issuance of a building permit to Developer, the City shall not have the right to terminate Developer's rights in or cause a repurchase of the City-Owned Parcels. In the event Developer fails to obtain a building permit within five (5) years after the date of conveyance or fails to initiate construction within the expiration date of the building permit if said expiration date occurs after the said five (5) years, then the City, at its option, may terminate this Agreement and cause a repurchase of the City-Owned Parcels. The City will repurchase

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said Parcels at the appraised value of the Parcels. Said appraisal shall be performed by an independent appraiser agreed to by the City and Developer. Upon the issuance of a building permit by the City or initiation of construction by Developer within the aforementioned time periods provided in this Section 4.2, there shall no longer exist a right of repurchase of the City-Owned Parcels to the City.

The Developer may send notice to the City ("Developer Notice") that it is unable to proceed with the proposed Project within the five (5) year period required hereunder due to unforeseen circumstances, i.e., toxic waste, acts of god, war. The City shall have ninety (90) days after receipt of the Developer Notice to repurchase the City-Owned Parcels in accordance with this Section. If the City elects not to repurchase the City-Owned Parcels within the said ninety (90) day period, Developer shall have the right to sell the City-Owned Parcels to a third party without consent by the City.

Without limiting any of the foregoing, the City and its successors and assigns shall be deemed beneficiaries of the covenants provided in this Article IV, both in its own right and for the purpose of protecting the interest of the community and other parties, whether public or private, in whose favor and for whose benefit such covenants shall be deemed provided. Such covenants shall (and at the option of the City, the Deed shall expressly state) run in favor of the City for the entire period during which each covenant shall be in force and effect without

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regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which the covenant relates. The City's sole remedy if any of the covenants or provisions contained herein are breached shall be the right to stop payment on the Developer Revenue Bonds. As to any violations of codes, ordinances, rules and regulations of the City and any federal or state regulation not covered herein the City shall have the right to exercise all rights or remedies and maintain actions or suits at law and equity or other proper proceedings to remedy and/or prosecute any such violation.

## ARTICLE V

### DEVELOPER'S OBLIGATIONS, REQUIRED DOCUMENTS, EQUITY CAPITAL AND FINANCING COMMITMENTS

Section 5.1. Description of Improvements. Because redevelopment of the entire Parcel Site is a part of a larger redevelopment area and plan, which, in part, is to be implemented through the use of the provisions of the Act and further because failure of the Developer to construct the improvements will prevent the City from fully implementing the Redevelopment Plan, Developer agrees with the City that it shall construct and develop on the Parcel Site the Improvements as set forth in Zoning Ordinances Z-18-89, Z-4-91, and any amendments thereto, attached hereto and made a part of this Agreement as Exhibit E.

From time to time, upon the reasonable requests of the City, where feasible and when available, Developer will furnish the City with documents containing occupancy information and any other

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documents relating to marketing brochures and basic information relative to the financing and marketing of the units.

Developer shall use its best efforts to include in all the leases for the Retail Shopping Area a provision that the lessees shall file with the City the ST-1 monthly sales tax forms, or any appropriate successor forms, that are filed by retailers with the State of Illinois.

Section 5.2. Required Documents. The construction and development of the Project shall be subject to and governed by all relevant City Codes, including, but not limited to the Subdivision Ordinance, Zoning Ordinance, Building Code and Ordinance and Ordinances Nos. Z-18-89 and Z-4-91, and as amended from time to time. In this regard, all documents required under the provisions of said codes and ordinances for the issuance of a demolition permit and building permit shall be submitted by Developer to the City under the time constraints imposed by said codes and ordinances.

Section 5.3. Evidence of Equity Capital and Financing Commitments.

(a) Upon initiation of construction of the Project, Developer shall submit certified project income and expense projections prepared by Developer. The projections shall also include a sources and uses of funds statement that is based upon certified construction cost estimates prepared by Architect or a general contractor.

(b) Developer has submitted to the City evidence in the form of Developer's bond documents that Developer has all of the equity capital and firm loan commitments ("Equity Capital and Financing Commitments") for the financing necessary to start and to fully complete construction of all Improvements to be constructed by Developer at its sole cost and expense. Said bond documents will be satisfactory evidence to the City if on or prior to Closing Developer delivers a certificate stating that there are no barriers or constraints to the access of bond funds or equity funds which would have the effect of preventing the full construction of the Project. The City shall have no right of approval whatsoever over the Equity Capital and Financial Commitments.

Throughout the entire period of construction, the City will be entitled to receive, at reasonable intervals, from Developer, progress reports and advice as to the status of construction and payment of the costs of construction and other documents reasonably satisfactory to the City that the aforescribed Equity Capital and Financing Commitments are, in fact, available to complete construction of all Improvements on the Project.

Section 5.4. Approval Procedure.

(a) All of the required documents referred to in Section 5.2 above, with respect to the redevelopment of the Project Site and the construction of all Improvements thereon shall take account of, and be in conformity with, Exhibit B, this Agreement and all

applicable federal, state and local laws, ordinances, rules, regulations and Legal Requirements.

(b) The City (for purposes hereof "City" shall mean the appropriate department head or his duly appointed designee, commission, board or City Council as per the appropriate code or ordinance, unless otherwise indicated), shall have the right to approve all of the documents submitted for approval pursuant to Section 5.2.

The City shall, if each of the documents to be approved are promptly submitted seriatim within the time schedule provided in the appropriate code or ordinance and within any extended time therein provided, complete its review of each of said documents within the time schedule provided in said code or ordinance, of their respective submission, or if no time schedule is indicated for approval by the City, within a reasonable time of submission. All approvals of said documents shall follow the procedures as set forth in the appropriate code or ordinance under which each respective document is required and submitted for approval by the City.

Section 5.5. Changes in Documents to be Approved. If Developer desires to make any change in any document to be approved after its respective approval by the City, Developer shall follow the procedures set forth for amending said document under the appropriate code or ordinance. Developer shall adhere to all time schedules set forth in the appropriate code and ordinance for review and approval of said change. The City shall approve or deny

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said change within the time schedules provided, or, if there is no time period within which said approval or denial is to be given, within a reasonable time of submission of said change.

ARTICLE VI

CONSTRUCTION AND COMPLETION

Section 6.1. Time for Commencement and Completion of Construction of Improvements.

(a) Developer agrees for itself, its permitted successors and assigns, and every permitted successor in interest to the Property, or any part thereof (collectively the "Developer"), that subject to Unavoidable Delays, Developer shall promptly commence and diligently prosecute to full completion the redevelopment of the Prime Project Site through the construction of all the Improvements thereon, and that such construction shall, in any event (but subject to Unavoidable Delays) commence as soon as possible after the Closing Date and shall be substantially completed within eighteen (18) months after the Closing Date, subject to Unavoidable Delays. Developer is expected to lease such facility to the extent of 90% occupancy within twenty-four (24) months after completion and is expected to maintain such occupancy during the term of this Agreement. If occupancy falls, Prime shall not apply to Cook County or any other governmental body for a reduction in E.A.V. based upon such decline in occupancy unless the E.A.V. in any given year is more than the estimated E.A.V. for that year as set forth in Exhibit D.

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(b) In the event of Unavoidable Delays, the date for commencement and/or date for substantial and final completion shall be correspondingly set back by the same number of days involved in the period of Unavoidable Delays.

(c) The term "substantially completed" or "substantial completion" for purposes hereof shall mean that all of the Improvements have been so completed that they are finished and/or ready for the beneficial use and occupancy of Developer, and/or lessees under the residential leases or commercial leases. Substantial completion need not include any immaterial incomplete items or so-called minor "punch-list" items provided all of same do not affect the reasonable habitation and use of the Improvements and any such uncompleted items shall be fully completed within a reasonable time after the aforesaid original completion date, but not to exceed ninety (90) days thereafter (subject to Unavoidable Delays). Substantial completion and final completion also need not include any "tenant's finish" items which relate solely to the finish requirements of tenants of the commercial facilities, provided all of such tenant's finish is completed within the time provided by any construction lender or permanent lender and as the leasing progresses with respect to the applicable portions of the commercial facilities area.

(d) To the extent that the construction and completion of the Project is delayed that it results in the reduction of the TIF revenue expected to be generated, the Developer Revenue Bond shall be reduced accordingly. The City's sole remedy if

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construction and completion is delayed beyond the expected completion date is the reduction in the amount of the Developer Revenue Bond.

Section 6.2. Manner of Construction of Improvements.

(a) Developer agrees that the construction of the Improvements on the Project Site shall be in accordance with the documents submitted pursuant to Section 5.2 for approval by the City.

(b) Developer agrees that the construction of the Improvements on the Project Site shall be pursuant to the provisions of all applicable federal, state, and local laws, ordinances, rules, regulations and Legal Requirements.

(c) Developer's construction contract and all subcontracts for the construction of the Improvements shall provide that all contractors and subcontractors furnish contractor's and subcontractor's affidavits in the form provided by state statutes and that waivers of lien from all persons who have performed work and labor, furnished services, or supplied equipment, materials or supplies in connection with the construction of the Improvements be required for all interim and final payments made.

In any event, Developer agrees that it will provide for the payment and/or discharge and/or bonding over of all liens, costs, expenses and liabilities arising out of or in any way connected with the construction of the Improvements and will keep the Property free and clear of any and all liens, encumbrances and



claims in any way arising out of the construction of the Improvements thereon.

Section 6.3. Progress Reports. Subsequent to the Closing Date and until construction of the Improvements has been completed, Developer shall make private reports when milestone dates are achieved or upon special request by the City in such detail and at such times as may be reasonably requested by the City, as to the actual progress of Developer with respect to such construction.

Section 6.4. Rights of Access to the Property.

(a) The City reserves for itself and any public utility company, as may be appropriate, the right of ingress to and egress from the Project Site at all reasonable times for the purposes of reconstructing, maintaining or servicing the public utilities, if any, located within the boundary lines of said Site, provided, however, that any such entry shall, at all times, be conducted in a reasonable manner and without any undue interruption or interference with the construction and business activities of Developer. The foregoing right shall be exercised during the period of construction only if actually necessary at that time for the above-described purposes.

(b) Developer shall not construct any Permanent Improvements over or within the boundary lines of any existing easement for public utilities described in Section 1.3 (q) above and accepted by Developer under Section 3.2 above, unless the location of any said Improvement is previously approved by the City

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and any applicable utility company. The City agrees to cooperate with Developer in an attempt to obtain permission from any public or private agency or company to construct any permanent improvements over easements if and to the extent required by Developer and necessary for better implementation of the Project.

(c) After the Closing Date, Developer shall permit duly designated representatives of the City access to the City-Owned Parcels conveyed to Developer and to other areas of the Project in possession of Developer for construction purposes, at all reasonable times as the City deems necessary for purposes of this Agreement including, but not limited to, inspection of all work being performed in connection with the construction of Improvements. No compensation shall be payable nor shall any charge be made in any manner by anyone for the access provided in this Section 6.4.

Section 6.5. Certificate of Occupancy.

(a) The City will furnish Developer with a Certificate of Occupancy for the Improvements promptly after completion and acceptance of the Improvements by the City pursuant to the terms and requirements of the Building Code and Ordinance. The Certificate of Occupancy by the City shall be (and it shall be so provided in the Certificate of Occupancy) a conclusive determination of satisfaction of the agreements and covenants in this Agreement solely with respect to the obligations of Developer to construct the particular Improvements mentioned in such Certificate and not as to any other provisions of this Agreement.

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Such certification shall not constitute evidence that Developer has complied with any applicable provisions of federal, state and local laws, ordinances and regulations. Any such Certificate and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Improvements, or any part thereof.

(b) The Certificate of Occupancy provided for in Section 6.5(a) above shall be in such form as will enable it to be recorded in the office of the Recorder of Deeds, Cook County, Illinois. Developer shall pay all costs for so recording said Certificate.

## ARTICLE VII

### ADDITIONAL COVENANTS OF CITY AND DEVELOPER

#### Section 7.1. Utilities.

(a) The City, without expense to Developer, except as set forth herein and in conjunction with construction of the Improvements or at such other time or times as Developer and the City may agree in writing, shall secure or cause to be provided or secured the installation or relocation of such sewers, drains and water lines in the public rights of way adjacent to the Project Site of such size, capacity and serviceability necessary to meet the requirements of the Project and to enable Developer to connect to said utility lines from the Project Site (the "Intradevelopment Utility Lines"). Based upon the estimates of the anticipated progress of construction furnished by Developer to the City, the City agrees to coordinate its installation or relocation of the

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Intradevelopment Utility Lines so that all of same will be available to Developer as and when required during the progress of Developer's construction of the Improvements.

(b) The costs of installing and extending the Intradevelopment Utility Lines to the Improvements and from the Property lines to the utility lines and public rights-of-way and of complying with any of the applicable building and zoning ordinances relating to utilities, including, without limitation thereby, the Storm Water Detention Regulations and Requirements of the City shall be borne by Developer.

(c)

(1) The Prairie Avenue public improvements will be paid by the Developer with reimbursement by the City for portions of said improvements. The Prairie Avenue improvements shall mean the improvements specified on the plans submitted by Developer for approval by the City prepared by the firm of Gewalt-Hamilton Associates, Inc. Developer will design and bid said Prairie Avenue public improvements; however, all plans and specifications must be approved by the City prior to acceptance of said improvements by the City. Said improvements will include reconstruction of Prairie Avenue with curb and gutter from Pearson Street to River Road and construction of a water main. These improvements will be constructed by Developer with reimbursement by the City for its sections with proper documentation, including, but not limited to, waivers of lien from all persons who have performed work and labor, furnished services, or supplied equipment, materials or supplies in

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connection with the construction of said improvements, within thirty (30) days of receipt of said documentation. Developer shall pay for all design and construction engineering costs, fifty (50) percent of the water main (the City shall pay fifty (50) percent) and all street related costs fronting the Project site. The City shall reimburse Developer for all street construction costs for the remaining frontage.

(2) To the extent that the Project generates over \$1,061,889.00 present value of the TIF projections, Prime shall be reimbursed up to 50% of its expenditure for the Prairie Avenue public improvements only. Such reimbursement shall occur by the execution of an additional Developer Revenue Bond, which shall have the same rate and terms as the existing Developer Revenue Bonds. Developer may use any of the \$630,000.00 for this expense; however, Developer shall not receive any moneys above the \$630,000.00 unless the above condition is met.

(d) The City shall impose on Developer such fees to tap into any and all utility lines as are set forth in the City Code, Subdivision Ordinance and/or Building Code and Ordinance. Developer shall also be subject to any and all permit, inspection and other fees as required by City ordinances, rules and regulations, as and when due.

Section 7.2. Permits; Easements. Within fifteen (15) days after receipt of a written request from Developer, the City will join (if required) in any and all applications for permits, licenses or other authorizations required by any governmental or

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other body having jurisdiction in connection with work Developer is to perform hereunder and will also join in any grants for easements for electric, telephone, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary for the use and operation of the Project. However, Developer will be subject to any and all permit, inspection, connection, or other fees as required by City ordinances, rules and regulations, as and when due.

Section 7.3. Waiver of Claims and Joining Petitions by Developer. Developer hereby agrees to waive, as the proposed purchaser of the City-Owned Parcels and after the Closing Date, as the owner of the City-Owned Parcels (but only until construction of the Improvements are completed) any and all claims to awards of damages, if any, to compensate for the closing, vacation, change or grade of any street, alley or other public right-of-way within or fronting or abutting on, or adjacent to, the Property, which, pursuant to any Section hereof, may be closed or vacated, or the grade of which may be changed and shall, upon the request of the City, subscribe to and join with, the City in any petition or proceeding required for such vacation, dedication, change of grade and execute any waiver or other document in respect thereof, provided such waiver or joinder shall not be required or effective if it shall cause a material adverse effect upon the Project contemplated hereunder.

Section 7.4. Reimbursement for TIF Eligible Costs.  
Developer shall be reimbursed up to a maximum of \$1,061,889.00

through the Developer Revenue Bonds, as set forth in Section 2.3, for the following expenses which have been determined to be TIF eligible costs as provided for in the Act and as provided for in the Redevelopment Plan and Project: (a) The Purchase Price of the City-Owned Parcels; (b) All professional fees, studies, surveys, title and other similar charges incurred by Developer in connection with the development of the Project Site; and (c) All costs incurred by Developer, if any, in constructing the Project public improvements. All other costs incurred or advanced by Developer in furtherance of the Project shall be reimbursed, provided, and to the extent that they are deemed to constitute TIF Eligible Costs as provided for in the Act and the Redevelopment Plan and Project. Additionally, Developer shall be reimbursed up to 50% of its expenditure for the Prairie Avenue public improvements if the requirements set forth in Section 7.1(c)(2) are met. Developer shall submit to the City a list of TIF Eligible Costs as agreed to between Developer and City and said list shall become a part of this Agreement, and attached hereto as Appendix II.

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ARTICLE VIII

PROHIBITIONS AGAINST ASSIGNMENT  
AND TRANSFERS OF THE CITY-OWNED PARCELS

Section 8.1. Representations as to Redevelopment.

Developer represents and agrees for itself, and its permitted successors and assigns, that its purchase of the City-Owned Parcels and its other undertakings pursuant to this Agreement are, and will be, used solely for the purpose of redevelopment of

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the City-Owned Parcels and not for speculation in land holding. Developer further recognizes that, in view of:

(a) the importance of the redevelopment of the Project Site to the general welfare of the community;

(b) the public aids and commitments that have been made available by law and by the City for the purpose of making such redevelopment possible;

(c) the fact that any direct or indirect transfer of a controlling partnership or joint venture interest in Developer or of any other act or transaction involving or resulting in a significant change in the ownership of the identity of the parties in control of Developer or the degree thereof, is for practical purposes a transfer or disposition of the ownership in the City-Owned Parcels then directly or beneficially owned by Developer; and thus, the qualifications and identity of Developer and its present partners or venturers are of particular concern to the community and the City. Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement and in doing so, is further willing to accept and rely on the obligations of Developer (and its present partners or venturers) for the faithful performance of all undertakings, security and faithful performance of all undertakings, security and covenants hereby by it to be performed without requiring in addition a security bond or similar undertaking for such performance of all undertakings and covenants contained in the Agreement.

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Section 8.2. Prohibition Against Transfer of the Property Prior to Completion of Improvements. For the reasons described in Section 8.1, but subject to the provisions of Section 8.3, Developer agrees for itself, its permitted successors and assigns, and every permitted successor in interest to the Property, or any part thereof, or any interest therein, that prior to the issuance of a Certificate of Occupancy for the Improvements:

(a) Developer has not made or created, and will not, make or create, or suffer to be made or created, any Disposition of the Property, in any mode or form, which would result in a change in control, or, in the case of a joint venture or limited partnership, a change in the general partner, without the prior written approval of the City, which approval of the City may not be unreasonably withheld or delayed. Such approval may include a determination by the City of whether or not any such proposed change would affect the tax increment revenues the City expects to receive from the Project. However, Developer shall be able to enter into a joint venture agreement or partnership agreement so long as Developer remains a general partner and is primarily liable under the terms of this Agreement.

(b) The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such written approval pursuant to Subsection (a) of this Section 8.2, that:

(1) Any proposed purchaser, assignee or other transferee, and every successor in interest to the Property, or any

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part thereof, or any interest therein, shall have the qualifications and financial responsibility, as reasonably determined by the City, to be necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer. In this regard, at the City's request, Developer or its successor in interest to the Property, or any part thereof, will provide ongoing information regarding the ownership entity.

(2) Any proposed purchaser, assignee or other transferee, and every successor in interest to the Property or any part thereof, or any interest therein, by a written instrument satisfactory to the City and in such form as will enable it to be recorded in the Office of the Recorder of Deeds, Cook County, Illinois, shall have for itself and its successors and assigns, for the benefit of the City, expressly assumed all of the obligations of Developer for the Improvements under this Agreement and shall have agreed to be subject to all the conditions and restrictions to which Developer is subject; provided that the fact that any purchaser, assignee or other transferee, or any other successor in interest to the Property, or any part thereof, or any interest therein, did not assume such obligations or so agree, shall not, unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City, relieve or except such transferee or successor of, or from, such obligations, conditions, or restrictions, or deprive or limit the City of any rights, remedies or controls provided in or resulting from this Agreement with respect to the Property or any part thereof or the

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construction of the Improvements thereon. It is the intent of this Section, together with all other provisions of this Agreement that, to the fullest extent permitted by law and equity and excepting only to the extent otherwise specifically provided in this Agreement, no Disposition or transfer of or change with respect to ownership in the Property, or any part thereof, or any interest therein, however consummated or occurring, and whether direct or indirect, or voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of any rights, remedies or controls provided in or resulting from this Agreement with respect to the Property or any part thereof or the construction of the Improvements thereon that the City would have had, had there been no such Disposition, transfer or change.

(3) All instruments and other legal documents involved in effecting the Disposition or transfer shall be submitted to the City.

(4) Developer, its permitted successors and assigns, or other transferees and every permitted successor in interest to the Property, or any part thereof, or any interest therein, shall comply with the terms and provisions of the Act, the redevelopment Plan and Project and this Agreement.

Section 8.3. Transfer of the Property after Completion of Improvements.

(a) The City agrees that upon issuance of a Certificate of Occupancy for the Improvements, the Property may be transferred as provided in this Section 8.3. Upon issuance of a Certificate of

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Occupancy, Developer may make a Disposition of the Property or cause a change in control of the entity owning the Property in accordance with the procedures set forth below. The City shall not unreasonably withhold approval of the recommendation of any new prospective owner or, if Developer is no longer the primary owner, management firm, so long as (a) a mutually agreed upon outside firm or individual shall review the new prospective owner or management firm's financial documentation, including management experience, financial history, related projects, etc., and (b) the findings and recommendation are then presented to City Council for action. Notwithstanding the recommendation, the City shall have no right to delay or block the transaction. Any documentation presented for review shall be kept confidential to the extent allowable by law. In any event, the City shall have forty-five (45) days notice before any final arrangement is entered into by Developer.

(b) In the event of a transfer of the Property is made as provided in Section 8.3(a) above and is in contravention of the recommendation presented to the City Council, to the extent that the anticipated incremental tax payments are not met in any given year or if money becomes unavailable to make payments on the Developer Revenue Bond, payments on the Developer Revenue Bond shall cease until such time as funds become available due to incremental tax increases in the Property.

Section 8.4. Relief from Obligations by Disposition of the Property. Disposition by Developer of the Property or assignment of this Agreement, prior to the completion of the

Improvements thereon, shall relieve Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements on the Property, from any of its obligations with respect thereto if the transaction has been approved pursuant to Section 8.2, but not if the transaction has not been approved pursuant to Section 8.2. A Disposition or assignment of this Agreement under Section 8.3, however, shall relieve Developer of all obligations under this Agreement with respect to the Property, provided, that the purchaser, assignee or transferee shall thereafter be responsible for all obligations, conditions and restrictions under the Agreement.

ARTICLE IX

REMEDIES

Section 9.1. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, such party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach and, in any event, shall cure or remedy such default or breach within sixty (60) days after receipt of such notice unless such default by its nature cannot be cured within such period and the party in default is diligently pursuing a cure, in which case such period shall be extended for a reasonable time but not to exceed 180 days. In case such action is not taken or not diligently pursued by Developer or the default or breach shall not be cured or remedied within such period of time, the City's sole remedy as to any

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default or breach of the provisions of this Agreement only shall be to stop payments on the Developer Revenue Bond or cancellation of this Agreement if a building permit has not been issued within five (5) years of the conveyance of the City-Owned Parcels to Developer or construction has not been initiated within the expiration date of said permit, if said expiration date occurs after the said five (5) year period.

Section 9.2. Termination Rights of the City Prior to the Closing Date. In the event that, prior to the conveyance of the City-Owned Parcels to Developer, and in violation of the terms of this Agreement, Developer:

(a) Disposes, assigns or attempts to Dispose or assign this Agreement, or any rights hereunder; or

(b) permits any change in the ownership of the general partner of Developer, where such ownership would constitute the majority of Developer or with respect to the identity of the parties in control of Developer;

and such failure is not cured within thirty (30) days after written demand by the City, then this Agreement and any right of Developer to the City-Owned Parcels, or any part thereof, shall, at the option of the City, be terminated by the City by written notice to Developer. In such event, neither Developer nor the City shall have any further rights against, or liability to, the other under this Agreement, but such termination shall not relieve or release Developer from any cost or expense or obligation incurred to third parties pursuant to this Agreement in respect to the Project Site

prior to the effective date of such termination which by act of Developer gives rise to or could give rise to a claim for lien against any portion of the Project Site.

Section 9.3. Repurchase of City-Owned Parcels by the City Upon Happening of Certain Events. Repurchase of the City-Owned Parcels by the City shall only occur upon the Developer failing to obtain a building permit, without fault of the City, within five (5) years after the date of conveyance of said Parcels to Developer or construction not being initiated within the expiration date of the building permit if said expiration date occurs after the said five (5) year period, or upon receipt of the Developer Notice as set forth in Section 4.2 herein.

The City's rights and remedies under this Section 9.3 are in addition to and not in limitation of any other rights or remedies the City may have under this Agreement. In the event of a repurchase, the City shall also be entitled to costs for all attorney's fees, consulting and other fees incurred in connection therewith.

Section 9.4. Non-Payment of Real Estate Taxes. Developer hereby covenants to pay the real estate taxes on the Property in a timely manner. In the event that the real estate taxes on the Property are not paid by Developer within ninety (90) days from the date that taxes are due, but in no event not later than December 1 of any year, and owing during any time that TIF obligations are outstanding during the term of the Redevelopment Plan and Project or this Agreement, the City shall deduct interest,

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compounded at an annualized rate of 18%, on any late taxes from the payment due under the Developer Revenue Bond to be paid for the following year. Developer may only appeal real estate taxes as provided in Section 4.1(a)(4)(A) of this Agreement.

Section 9.5. Other Rights and Remedies of City; No Waiver by Delay. Subject to any express limitation of remedies or rights hereunder, the City shall have the right to institute such actions or proceedings, as it may deem desirable, for effectuating the purposes of this Article IX, including the right to execute and record or file in the Office of the Recorder of Deeds, Cook County, Illinois, a written declaration of the termination of all the rights, title and interest of Developer (a) to the City-Owned Parcels if it has not been conveyed to Developer or (b) to the City-Owned Parcels that have been conveyed, but a building permit has not yet been issued or construction has not been initiated as set forth in Section 4.2, herein. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article or any other provision of this Agreement shall not operate as a waiver of such rights or deprive it of, or limit, such rights in any way. Any waiver in fact made by the City with respect to any specific default by Developer under this Article IX or any other provisions hereof, shall not be considered or treated as a waiver of the rights of the City with respect to any other defaults by Developer hereunder, or with respect to the particular default, except to the extent specifically waived in writing. It is the intent of this

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provision of this Agreement that the City should not be constrained, or limited in the exercise of any remedy provided in this Article or any other provision of this Agreement because of concepts of waiver, laches, or otherwise.

Section 9.6. Rights and Remedies Cumulative. The respective rights and remedies of the City and Developer, whether provided by this Agreement or by law, shall be cumulative, and the exercise by either party or any one or more of such rights or remedies shall not preclude the exercise, at the same or at different times, of any other such rights or remedies for the same default or breach by the other party, except as otherwise specifically limited.

ARTICLE X

ENFORCED DELAY IN PERFORMANCE  
FOR UNAVOIDABLE DELAYS

Section 10.1. Extension of Time for Unavoidable Delays. For the purposes of any of the provisions of this Agreement, except as otherwise specifically provided, neither the City nor Developer shall be considered in breach or default of its obligations with respect to the preparation of the Project Site for Development, or the commencement and completion of construction of the Improvements, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to Unavoidable Delays. In the event of the occurrence of any such Unavoidable Delay, the time or times for the performance of the obligations of the City (except with respect to the delivery of the City-Owned Parcels for development, but subject to Section 3.7

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above), or of Developer with respect to commencement and completion of construction of the Improvements, or progress in respect thereto, shall be extended for the period of such enforced delay, if the party seeking the extension shall request it in writing of the other party within fifteen (15) days after the beginning of any such delay.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Provisions Not Merged With Deed. All covenants, agreements, representations, indemnities, warranties and executory undertakings and matters contained herein shall not be deemed to have merged in any Escrow or any execution and delivery of the Deed provided for hereunder or the closing hereof and all shall survive and be enforceable at any time thereafter. All representations and warranties as of the date hereof shall be deemed remade and continue to be true as of the closing of the subject transactions hereunder except as affected by the transactions contemplated hereby.

Section 11.2. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting the Agreement.

Section 11.3. Conflict of Interest. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this

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Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association or other person in which he or she is, directly or indirectly, interested. In the event of any default or breach by the City, no member, official or employee of the City shall be personally liable to Developer, its successors and assigns, or any successor in interest to the Property, or any part thereof for any amount which may become due to Developer or any obligation under the terms of this Agreement.

Section 11.4 Notices. All notices, demands, requests, consents, approvals and other communications (herein collectively called "Notice(s)") required or permitted to be given hereunder, shall be in writing sent by certified or registered mail, postage prepaid, return receipt requested, addressed to the parties to be so notified as follows:

If to the City, to: City Clerk  
The City of Des Plaines  
1420 Miner Street  
Des Plaines, IL 60016-4498  
(708) 391-5488

With a copy to: City Attorney  
The City of Des Plaines  
1420 Miner Street  
Des Plaines, IL 60016-4498  
(708) 391-5302

If to Developer: Glenn Reschke  
The Prime Group  
2800 West Higgins Rd., Suite 600  
Hoffman Estates, IL 60195  
(708) 884-4150

Mark Schulte  
The Prime Group  
2800 West Higgins Rd., Suite 600  
Hoffman Estates, IL 60195  
(708) 884-4150

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Bob Rudnick  
The Prime Group  
35 West Wacker Drive  
Chicago, IL 60601  
(312) 917-1500

With a copy to:

Charles Hug  
Carlson & Hug  
135 South LaSalle Street  
Chicago, IL 60603  
(312) 726-1567

Samuel J. Polsky  
Polsky and Riordan  
1216 N. LaSalle Street  
Chicago, IL 60610  
(312) 642-1455

Each party may at any time change the address for Notices to such party by mailing a Notice as aforesaid.

Whenever a Notice is required by this Agreement to be given by any party hereto to the other party, and vice versa, the Notice shall be considered as having been given when a certified or registered Notice is placed in the United States Post Office mail as provided by this Section, and shall be deemed received on the third business day thereafter. For all purposes hereunder of starting any time period after such Notice, such period shall be conclusively deemed to have commenced three (3) business days after the giving of such Notice, regardless of whether it is provided that a time period commences after Notice is given or after Notice is received.

Section 11.5. Approvals. Each party agrees that it will not unreasonably withhold any consent or approval requested by the other party pursuant to the terms of this Agreement or of the

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Deed and that any such consent or approval will not be unreasonably delayed or qualified except as provided in Section 8.2 herein.

Section 11.6. Brokerage. Developer and the City each hereby represent and warrant to the other that neither has dealt with any broker or finder in connection with the transactions contemplated hereby and each hereby agrees to indemnify, defend and hold the other harmless of and from any and all manner of claims, liabilities, loss, damage, costs or expenses, including, but not limited to, reasonable attorneys' fees and expenses, incurred by either party and arising out of or resulting from, any claim by any such broker or finder with whom it is ultimately determined that either party has dealt in contravention of its representation and warranty herein contained.

Section 11.7. Assignability and Binding Effect. Developer shall not have the right to assign or to dispose of its rights in this Agreement, except, subject to the provisions of Article VIII, to a controlled affiliate of Developer, or to a general or limited partnership in which Developer or an affiliate of Developer shall be a general partner, organized for the purpose of financing and developing the Project Site.

Subject thereto, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, assigns and legal representatives.

Section 11.8. Matters of Essence. It is the essence of the City's agreements hereunder that the Project Site be completed

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within the time frames contemplated hereby, taking into account postponements and adjournments permitted hereunder, and by Unavoidable Delays in development.

Section 11.9. General. This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one and the same instrument. The words "herein", "hereof", "hereunder" and like words refer to the entirety of this Agreement. This Agreement (including all exhibits hereto) contains the entire Agreement between the parties with respect to the subject matter hereof, supersedes all prior understandings, if any, with respect thereto and may not be amended, supplemented or terminated, nor shall any obligation hereunder or condition hereof be deemed waived, except by a written instrument to such effect signed by the party to be charged. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The warranties, representations, agreements and undertakings contained herein shall not be deemed to have been made for the benefit of any person or entity, other than the parties hereto.

Section 11.10. Reporting Requirements. Without limitation of any other requirement hereof, commencing thirty (30) day from the date hereof, Developer shall make a private monthly progress report to the City Manager of the steps being taken by Developer to complete the documents necessary for the issuance of a demolition and/or building permit. Developer shall furnish the City Manager such additional oral or private written reports, from

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time to time, as the City Manager may reasonably request. After the Closing Date, Developer shall report the status of all construction in a monthly private progress report to the City Manager and upon commencing leases for the senior citizen housing units and commercial facilities, shall provide the absorption rate of rentals as the same progresses.

Section 11.11. Term of Agreement. The term of this Agreement shall be from the date of execution by both parties to July 15, 2008 or sooner if all the obligations hereunder are extinguished prior to June 1, 2008.

Section 11.12. Parties in Interest. To effectuate the purposes hereof and statutory objectives generally, Developer agrees that during the period between the execution hereof and completion of all Improvements as certified by the City: (a) Developer will promptly notify the City of any and all changes whatever in the Disposition or any other change in Control of Developer; (b) Developer shall at such time or times as the City may request furnish the City with a complete statement certified by an officer of Developer setting forth the controlling persons of Developer and the extent of their respective holdings. Such information shall in any event be furnished to the City immediately prior to the delivery of the Deed and as a condition precedent thereto and annually thereafter on the anniversary date of such Deed until issuance of a Certificate of Completion for the Project Site.

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Section 11.13. Equal Employment Opportunities. Developer agrees that during construction of the Improvements: (a) it will not discriminate against any employee or applicant for employment because of race, creed, color or national origin and will take affirmative action to assure that applicants are employed and that employees are treated during employment without regard to race, creed, color or national origin; (b) post in conspicuous places available to employees and applicants for employment notices to be provided by the City setting forth provisions of this non-discrimination clause; (c) in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin; and (d) send to each labor union or representative of Developer's commitments and posting copies of the notice in conspicuous places available to employees and applicants for employment.

Section 11.14. Land Trust No Release of Developer's Obligations. The decision of Developer to take title to the City-Owned Parcels in or through an Illinois "Land Trust" shall not be deemed to constitute or result in a waiver or release of Developer under any of the agreements or obligations of Developer in this agreement, particularly, but not by way of limitation, the obligation of Developer to construct and pay for the Improvements as described herein. This Section 11.14 shall not be construed too impose any additional personal liability upon Developer other than Developer's obligations under the terms of this Agreement.



Section 11.15. Signs. After the execution and delivery of this Agreement, Developer shall have the right from time to time to erect a sign or signs on vacant or unoccupied portions of the City-Owned Parcels then owned by the City, at such location or locations as shall be reasonably acceptable to the City; provided, however, that such signs and Developer's right to erect them shall, in each and every instance, be subject to the provisions of all of applicable legal Requirements, including, but not limited to, the Des Plaines Sign Ordinance, as amended from time to time, and shall be subject to the prior review by, and the reasonable approval of, the City and/or Zoning Board of Appeals, and shall be subject to the prior review by, and approval of, the Director of Community Development of the City of Des Plaines.

Section 11.16. Duplicate Originals and Counterparts. This Agreement may be executed in duplicate originals and in several counterparts, and all of which duplicate originals and counterpart originals when taken together shall constitute the Agreement in its entirety.

Section 11.17. Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity of such provision shall not affect any of the other provisions contained herein. Neither of the Parties shall challenge the validity or enforceability of this Agreement or any provision hereof or assert the invalidity or unenforceability thereof.

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Section 11.18. Execution of this Agreement. This Agreement shall be signed last by the City and the Mayor of the City shall affix the date on which he signs and approves this Agreement on the first page hereof, which date shall be the effective date of this Agreement.

Section 11.19. Authority. The City represents and warrants that:

(a) It has taken or will take such action(s) as may be required and necessary to bring about the amendments, exceptions, variations and modifications to its ordinances, codes and regulations and to grant such approvals, as may be necessary to insure the development of the Property in the manner described herein provided Developer complies with the terms of Ordinance Z-18-89 (89-5-PUD-R) and Ordinance Z-4-91 (91-1-PUD) and such other ordinances of the City relating to the development of the Property;

(b) It has taken or will take such action(s) as may be required and necessary to enable the City to execute this Agreement and fully perform the terms, covenants, agreements, duties and obligations on its part to be kept and performed herein.

(c) It has full right, power and authority to execute and deliver this Agreement and perform its terms and obligations and that all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions.

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(d) This Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms and provisions.

(e) There is no fact known to the City not disclosed herein which materially and adversely affects the City's ability to enter into this Agreement.

(f) The City has not entered into any other Agreement, license or commitment, involving the Project Site that has not been disclosed to the Developer.

(g) The City is not bound by any order, judgment, stipulation, consent or decree of any court or any governmental authority effecting or limiting the scope of governmental authority effecting or limiting the scope of its power to convey any property pursuant to the Agreement.

Section 11.20. Confidentiality. The City agrees that it shall keep as confidential to the extent permissible by law, and will protect from disclosure to all Persons other than Developer, to the extent permissible by law, all documents and all information made available to the City by Developer in connection with this Agreement.

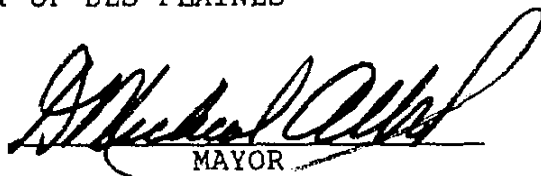
Section 11.21. Further Assurances. The Parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further actions as shall be necessary or desirable to fully carry out the terms and objectives of this Agreement.

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IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name and on its behalf by the Mayor and attested to by the Clerk of the City and Developer has signed the same as of the date and year first above written.

CITY:

CITY OF DES PLAINES

By:   
MAYOR

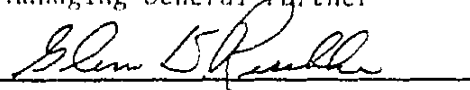
ATTEST:

By:   
CITY CLERK

DEVELOPER:

RIVER OAKS PARTNERS

BY: The Prime Group, Inc.  
Managing General Partner

By:   
Glenn D. Reschke  
Executive Vice President

Property of Cook County Clerk's Office

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**CITY OF DES PLAINES  
TAX INCREMENT REDEVELOPMENT PROJECT AREA**

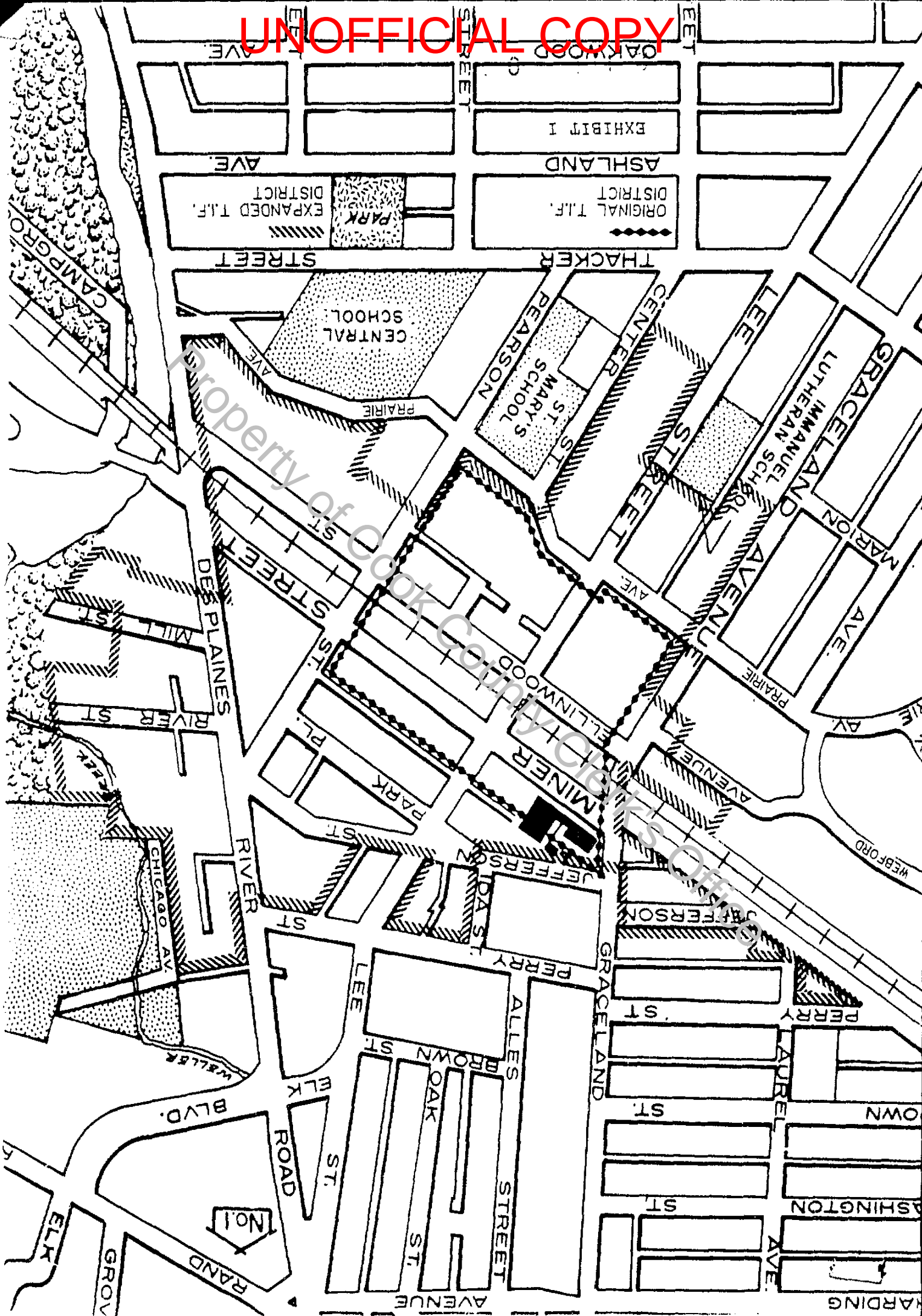
**MARCH, 1987**

Property of Cook County Clerk's Office

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EXHIBIT A

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Copyright © 2008

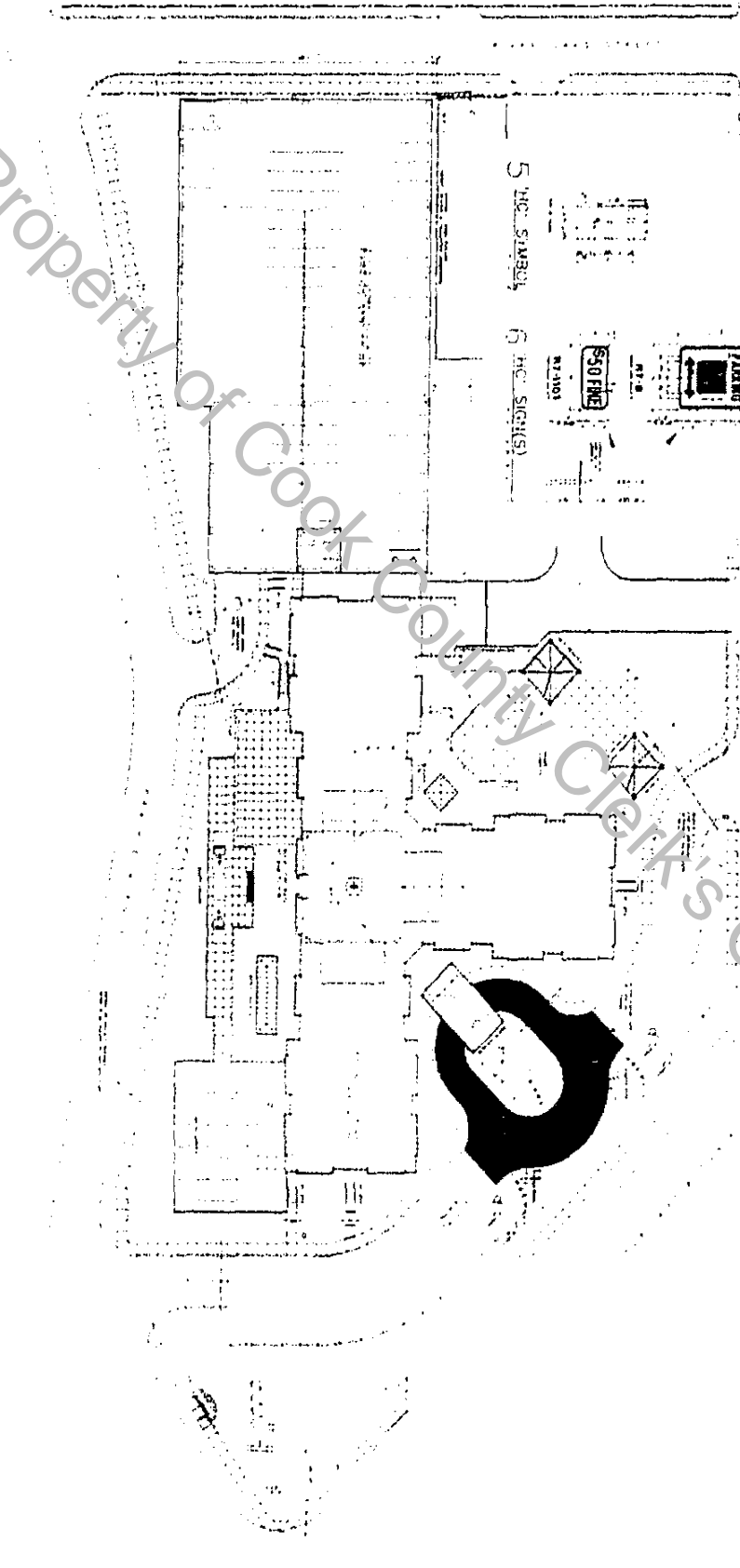
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EXHIBIT B

PLAN OF ENTRY PAVING



SITE PLAN



PLAN NOTES

SHEET NO.		SHEET TOTAL	
1	1	1	1

THE HERITAGE OF DES PLAINES	
DESIGNED BY	HERITAGE OF DES PLAINES ARCHITECTS, P.C.
DATE	APRIL 2011
PROJECT NO.	100101
SCALE	AS SHOWN



Property of Cook County Clerk's Office

QUIT CLAIM DEED  
Statutory LIEN IN  
(Corporation to Partnership)

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CAUTION: Consult a lawyer before using or acting under this form. Neither the publisher nor the seller of this form makes any warranty with respect thereto, including any warranty of merchantability or fitness for a particular purpose.

THE GRANTOR , CITY OF DES PLAINES

a corporation created and existing under and by virtue of the laws of the State of Illinois and duly authorized to transact business in the State of Illinois, for the consideration of Ten and No/100 ----- (\$10.00)-----  
----- DOLLARS,  
and other valuable consideration in hand paid,  
and pursuant to authority given by the Board of City Council of said corporation, CONVEYS and QUIT CLAIMS to

RIVER OAKS PARTNERS

(The Above Space For Recorder's Use Only)

partnership organized and existing under and by virtue of the laws of the State of ILLINOIS having its principal office at the following address 2800 West Higgins Road, Hoffman Estates, Illinois all interest in the following described Real Estate situated in the County of Cook and State of Illinois, to wit:

(See legal description attached hereto and made a part hereof as Exhibit "A")

Subject to certain conditions as set forth in Exhibit "B" attached hereto and made a part hereof.

Permanent Real Estate Index Number(s): 09-17-421-029-0000 and 09-17-421-031-0000

Address(es) of Real Estate: 800 South Des Plaines River Road, Des Plaines, Cook County, Illinois.

In Witness Whereof, said Grantor has caused its corporate seal to be hereto affixed, and has caused its name to be signed to these presents by its Mayor President, and attested by its City Clerk Secretary, this day of \_\_\_\_\_, 19\_\_\_\_\_.

THE CITY OF DES PLAINES

(NAME OF CORPORATION)

IMPRESS  
CORPORATE SEAL  
HERE

BY \_\_\_\_\_ Mayor ~~PRESIDENT~~  
ATTEST \_\_\_\_\_ City Clerk ~~SECRETARY~~

State of Illinois, County of COOK ss. I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that D. MICHAEL ALBRECHT personally known to me to be the Mayor President of the City of Des Plaines, a municipal

corporation, and Donna McAllister personally known to me to be the City Clerk Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor President and City Clerk Secretary, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of City Council of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IMPRESS  
NOTARIAL SEAL  
HERE

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_

Commission expires \_\_\_\_\_ 19\_\_\_\_\_ NOTARY PUBLIC

This instrument was prepared by Judith N. Kolman, Esq.  
1420 Miner Street, Des Plaines, IL 60016  
(NAME AND ADDRESS)

MAIL TO { RIVER OAKS PARTNERS  
(Name)  
2800 West Higgins Rd., Suite 600  
(Address)  
Hoffman Estates, IL 60195  
(City, State and Zip)

SEND SUBSEQUENT TAX BILLS TO  
River Oaks Partners  
(Name)  
2800 West Higgins Rd., Suite 600  
(Address)  
Hoffman Estates, IL 60195  
(City, State and Zip)

OR RECORDER'S OFFICE BOX NO \_\_\_\_\_

EXHIBIT "C"

APPLY "RIDERS" OR REVENUE STAMPS HERE



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**QUIT CLAIM DEED**

*Corporation to Corporation*

TO

**GEORGE E. COLE®  
LEGAL FORMS**

Property of Cook County Clerk's Office

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## EXHIBIT "A"

The Southeasterly 8.0 feet of Lot 100 (except the Northeasterly 150.00 feet thereof) and Lots 101 through 106 both inclusive (except that part of said lots taken for the opening of Prairie Avenue as recorded October 30, 1941 by Document #12785378) also (except the Northeasterly 150.00 feet of Lots 101, 102, 103, 104 and 106) all in the original Town of Rand (now Des Plaines) being a subdivision of Sections 16, 17, 20, and 21, Township 41 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois. Being situated in the City of Des Plaines, Cook County, Illinois and containing 2.93 acres more or less.

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Property of Cook County Clerk's Office

EXHIBIT "B"

Subject to a permanent and perpetual easement appurtenant to and for the benefit of the Bank of Chicago ("Bank") located on the West 25.0 feet of the North 105.0 feet of Lot 105 in the Town of Rand, a subdivision of the South Half of the Southwest Quarter of Section 16, part of the East Half of the Southeast Quarter of Section 17, the Northeast Quarter of Section 20, the Northwest Quarter and part of the Northeast Quarter of Section 21, all in Township 41 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois, for the purpose of vehicular ingress and egress to and from the Bank parking lot at the rear of the Bank property; subject to Schedule B exceptions, provided that the Chicago Title Insurance Company issues a general endorsement over the general exceptions 1 through 5, and Nos. 6, 7, 8, 9, 10, 11 and 12 of Schedule B, to the extent waived by the Title Company, of the Commitment for Title Insurance issued by the Chicago Title Insurance Company, dated June 10, 1991 and attached to the Redevelopment Agreement Between the City of Des Plaines and River Oaks Partners as Exhibit I and made a part thereof; and subject to permitted exceptions as set forth in the Redevelopment Agreement Between the City of Des Plaines and River Oaks Partners, recorded on \_\_\_\_\_, 1991, Recordation Number \_\_\_\_\_, and Permitted Exceptions as set forth in Exhibit "J" to the Redevelopment Agreement, which includes but is not limited to (i) general taxes which are not yet due and payable prior to the closing date; (ii) the City's building and zoning ordinances, laws and regulations; (iii) drainage districts and assessments or charges, if any, and (iv) acts done or suffered by or judgments against Developer or any person claiming by, through or under it.

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07-Jun-91  
 ESTIMATE OF PRIME GROUP TAX INCREMENT  
 DESPLAINES DOWNTOWN TIF  
 ASSUMES PROJECT ASSUMPTIONS OF 2/13/91 \*  
 AND REVISED TIMETABLE  
 EARLY 1993 OCCUPANCY  
 ASSUMES 3% INFLATION

YEAR	ESTIMATED EAV	TAX INCREMENT
1991	0	0
1992	0	0
1993	1,278,967	0
1994	1,518,451	100,373
1995	2,795,124	150,560
1996	2,795,124	219,361
1997	2,795,124	219,361
1998	3,054,307	219,361
1999	3,054,307	239,702
2000	3,054,307	239,702
2001	3,337,524	239,702
2002	3,337,524	261,929
2003	3,337,524	261,929
2004	3,647,003	261,929
2005	3,647,003	286,217
2006	3,647,003	286,217
2007	3,985,178	286,217
2008	3,985,178	312,757

NPV ANALYSIS AT 10%

1,250,843

\*LAND IS ASSUMED AS PART OF BASE EAV.

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EXHIBIT D

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AN ORDINANCE AUTHORIZING A REZONING FROM C-4  
COMMERCIAL CENTRAL BUSINESS DISTRICT TO R-5  
RESIDENTIAL CENTRAL CORE MULTI FAMILY RESIDENCE  
DISTRICT IN CONJUNCTION WITH A PLANNED UNIT DEVELOPMENT  
UNDER THE ZONING ORDINANCE OF THE CITY OF DES PLAINES  
(800 SOUTH RIVER ROAD) - CASE NO. 89-5-PUD-R

WHEREAS, THE PRIME GROUP, INC., a Limited Partnership,  
NORTHERN TRUST BANK/LAKE FOREST &/s/ O'HARE INTERNATIONAL BANK  
TRUST NO. 69-L-168, and the CITY OF DES PLAINES, are the sole  
owners of record of the real estate hereinafter described and  
will be the sole owners and operators of the Planned Unit  
Development hereinafter granted; and

WHEREAS, THE PRIME GROUP, INC. and NORTHERN TRUST  
BANK/LAKE FOREST made application to the Director of Municipal  
Development for authorization by the City Council of a Planned  
Unit Development and a rezoning from C-4 Commercial Central  
Business District to R-5 Residential Central Core Multi Family  
Residence District for said real estate, such Planned Unit  
Development consisting of a 257 congregate and 130 home health  
care senior citizen's housing units in a 139.8 ft. 15-story  
elevator building located on a 4.2 acre site at 800 South Des  
Plaines/River Road (unit mix to consist of 6 studios, 130 alcove  
units, 142 one-bedroom units, 16 one-bedroom/den units and 16  
two-bedroom units). Also included in the development are a  
health/fitness center with private clinic and examination rooms,  
an indoor pool, and an exercise area w/exercise equipment.  
Ancillary commercial facilities will include a beauty/barber  
shop, bank branch outlet, convenience store and ice  
cream/sandwich shop. A 3-1/2 story parking structure shall  
provide parking for 220 vehicles and surface parking shall be  
provided for 15 vehicles; and

WHEREAS, within fifteen (15) days of the receipt  
thereof, said application was referred by the Director of  
Municipal Development to the Plan Commission and Zoning Board of  
Appeals, and within ninety (90) days from the date of said

GROUP EXHIBIT E

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application, a joint public hearing was held by said Zoning Board of Appeals and Plan Commission, on September 12, 1989, to consider the Planned Unit Development and the rezoning from C-4 Commercial Central Business District to R-5 Residential Central Core Multi Family Residence District; and

WHEREAS, said combined public hearing of the Zoning Board of Appeals and Plan Commission was held pursuant to notice published as required by law, wherein competent testimony and evidence was given with respect to how said applicants intended to meet the provisions of the Zoning Ordinance and said Zoning Board of Appeals and Plan Commission filed written reports of such testimony and evidence and their recommendations thereon, to the City Council on September 13, 1989; and

WHEREAS, said applicants made certain commitments to the Plan Commission and Zoning Board of Appeals with respect to the manner in which said Plan Unit Development would be constructed and rezoned from C-4 Commercial Central Business District to R-5 Residential Central Core Multi Family Residence District, which representations are hereby found by the City Council to be material and upon which the City Council also relies in granting this Planned Unit Development and rezoning; and

WHEREAS, the City Council has studied the respective written reports of the Plan Commission and the Zoning Board of Appeals, together with the applicable standards as set out in the Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: That the City Council does hereby find:

- A. That the proposed Planned Unit Development is necessary for the public convenience at the location proposed.
- B. That the proposed Planned Unit Development is so designed, located and proposed to be operated that the public

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health, safety and welfare shall be protected.

C. That it will not cause substantial injury to the value of other property in the neighborhood in which it is located.

D. The proposed Planned Unit Development will cause the property to be cleared, cleaned and maintained in a sightly condition.

E. The proposed Planned Unit Development will bring the property into a higher assessed valuation without increasing the burden on schools and other public services.

SECTION 2: That authorization for a Planned Unit Development be and is hereby granted and approved for the property located at 800 South River Road, in the City of Des Plaines, Illinois, legally described as follows:

Lots 100 thru 111 (both inclusive) except that part of said lots taken for the opening of Prairie Avenue as recorded October 30, 1941 by Document No. 12785378 and also except that part of said Lot 111 lying South of Prairie Avenue aforesaid and also except the Southeasterly 8.0 feet of the Northeasterly 150.0 feet of Lot 100 and also except the Northeasterly 150.0 feet of Lots 101, 102, 103, 104 and 106 and also except that part thereof described as follows: Beginning at the Northeasterly corner of said Lot 109; thence South 08 degrees, 39 minutes, 51 seconds East along the East line of said Lots 109, 110 and 111, a distance of 230.0 feet; thence North 55 degrees, 34 minutes, 59 seconds West along a line parallel with the Northeasterly line of said lot 109, a distance of 23.28 feet to an intersection with a line 17.00 feet, as measured at right angles, Westerly of and parallel with a line 17.00 feet, as measured at right angles, Westerly of and parallel with the Easterly line of said lots 109 and 110; thence North 08 degrees, 39 minutes, 51 seconds West along said last described parallel line, 230.0 feet to an intersection with the northeasterly line of said Lot 109; thence South 55 degrees, 34 minutes, 59 seconds East along the Northeasterly line of said Lot 109, a distance of 23.28 feet to the place of beginning, all in the Original Town of Rand (now Des Plaines), being a subdivision of sections 16, 17, 20 and 21, Township 41 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

That said Planned Unit Development shall be constructed by The Prime Group, Inc., in substantial compliance with the site plan attached hereto and made a part hereof, as Exhibit "A".

SECTION 3: That said Planned Unit Development shall consist of the following:

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A. 257 congregate and 130 home health care senior citizen housing units in a 100,6 ft. 15-story elevator building, located on a 4.2 acre site at 800 South Des Plaines/River Road (unit mix to consist of 6 studios, 190 alcove units, 142 one-bedroom units, 16 one-bedroom/den units and 16 two-bedroom units).

B. Also included in the development are a health/fitness center with private clinic and examination rooms, an indoor pool, and an exercise area with exercise equipment.

C. Ancillary commercial facilities will include a beauty-barber shop, bank branch outlet, convenience store and ice cream/sandwich shop.

D. A 3-1/2 story parking structure shall provide parking for 220 vehicles and surface parking shall be provided for 16 vehicles.

E. All buildings shall be located and shall be of such size, shape, design and appearance as are shown on said site plan presented at the hearings aforesaid.

F. The Planned Unit Development granted and approved herein is for the entire 4.2 acres site described hereinabove, and shall permit only the above buildings and improvements. Any other buildings, structures, additions or improvements proposed shall require a new application, further public hearings, recommendations and authority of the corporate authorities of the City of Des Plaines.

SECTION 4: A final determination by any court of competent jurisdiction that The Prime Group, Inc. has exceeded any of the aforesaid limitations or is responsible for the non-occurrence or default as to any of the above conditions or restrictions shall constitute grounds for the suspension or termination by the City of the Planned Unit Development herein authorized until such time as such violation has ceased or been corrected.

SECTION 5: That notwithstanding the foregoing, said



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real estate hereinabove described and commonly known as 800 South River Road, Des Plaines, Illinois, be and is hereby rezoned from its present C-4 Commercial Central Business District classification to R-5 Residential Central Core Multi Family Residence District classification, and shall be and is hereby made subject to all limitations and conditions placed upon the property zoned as R-5 Residential Central Core Multi Family Residence District.

SECTION 6: Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of this Ordinance shall be fined not less than \$25.00 nor more than \$200.00 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 7: That this Ordinance shall be in full force and effect from and after its passage, approval and publication according to law. Said publication shall be in pamphlet form.

PASSED this 18 day of December, 1989.

APPROVED this 19 day of December, 1989.

VOTE: AYES 6 NAYS 0 ABSENT 2

92061128

ATTEST:

Laura M. Allen  
CITY CLERK

Published in pamphlet form this  
19 day of December, 1989.

Laura M. Allen  
CITY CLERK

Michael J. White  
MAYOR

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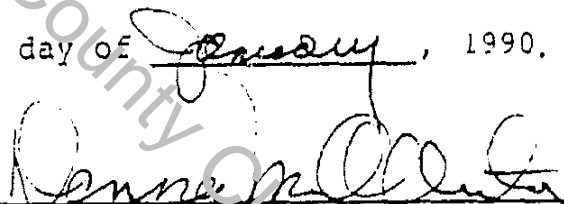
STATE OF ILLINOIS )  
                          )  
COUNTY OF COOK    )

## CLERK'S CERTIFICATE

I, DONNA McALLISTER, do hereby certify that I am the qualified and acting City Clerk\* of the City of Des Plaines, Cook County, Illinois, AND THAT AS SUCH, I am the officer duly designated by law to keep the minutes, ordinances, resolutions and proceedings of the City Council of the City of Des Plaines.

I further certify that the attached and foregoing copy of 2-18-89 is a true and correct copy of the records of the City of Des Plaines.

IN WITNESS WHEREOF, I hereunto affix my signature and impress hereon the corporate seal of the said City of Des Plaines, Cook County, Illinois, this 24 day of January, 1990.

  
\_\_\_\_\_  
DONNA McALLISTER, City Clerk  
City of Des Plaines, County of Cook

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\*Per the provisions of Chapter 24 §3-4-2  
of the Illinois Revised Statutes (1987)

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Amended 7/15/91

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AN ORDINANCE AMENDING ORDINANCE NO. 2-18-89 WHICH GOVERNS THE DEVELOPMENT AND USE OF THE PROPERTY COMMONLY KNOWN AS 800 SOUTH RIVER ROAD TO ALLOW FOR CHANGES IN THE PLANNED UNIT DEVELOPMENT AND CERTAIN VARIATIONS TO THE CITY OF DES PLAINES ZONING ORDINANCE ("RIVER OAKS") (91-1-PUD).

WHEREAS, application has been made by The Prime Group, Inc. for the amending of Ordinance No. 2-18-89 which governs the development and use of the subject property commonly known as 800 South River Road ("River Oaks"), Des Plaines, Illinois; and

WHEREAS, the subject property is presently zoned R-5, Planned Unit Development for a Residential Central Core Multi-Family Residence District pursuant to Ordinance No. 2-18-89; and

WHEREAS, the applicant has requested amendments to Ordinance No. 2-18-89 to allow for changes in the Planned Unit Development ("PUD"); and

WHEREAS, the applicant has requested variations to Sections 3.5.2.4, 3.5.2.5, 3.5.2.6, 3.5.2.8.1.3, 3.5.2.8.1.4, 3.5.2.8.6.1, 3.5.2.8.6.2, 3.5.2.8.6.3, 8.1.2.3, 8.2.7.4, 8.2.7.8, and 9.1.8.6.4 of the City of Des Plaines Zoning Ordinance to allow various variations to front, side and rear yard requirements, floor area requirements, lot area requirements, and parking requirements; and

WHEREAS, the present Ordinance shall supersede and control the development and use of the Subject Property to the extent of any inconsistencies between this Ordinance and Ordinance No. 2-18-89; and

WHEREAS, within fifteen (15) days of the receipt thereof, said application was referred by the Department of Planning and Zoning to the Plan Commission and Zoning Board of Appeals of the City of Des Plaines, and within ninety (90) days from the date of said application, a combined public hearing was held by said Plan Commission and Zoning Board of Appeals on January 29, 1991 to consider the amendment to the PUD so proposed by the applicant; and

WHEREAS, said combined hearing of the Plan Commission and Zoning Board of Appeals was held pursuant to notice published as required by law, wherein competent testimony and evidence was

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given, and said Plan Commission and Zoning Board of Appeals filed written reports of such testimony and evidence and their recommendations thereon, to the City Council on January 30, 1991; and

WHEREAS, said applicant made certain representations to the Plan Commission and Zoning Board of Appeals with respect to the amendments and variations requested, which representations are hereby found by the City Council to be material along with further conditions set forth by the City Council and upon which the City Council relies in granting this request for amendments and variations to the PUD subject to certain terms and conditions; and

WHEREAS, the City Council has studied the respective written reports of the Plan Commission and Zoning Board of Appeals, together with the applicable standards set forth in the Zoning Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: That Ordinance No. 7-18-89, entitled "An Ordinance Authorizing a Rezoning from C-4 Commercial Central Business District to R-5 Residential Central Core Multi Family Residence District in conjunction with a Planned Unit Development Under the Zoning Ordinance of the City of Des Plaines (800 South River Road) - Case No. 89-5-PUD-R," to the extent it is inconsistent with the terms and conditions of this Ordinance is superseded by this Ordinance.

SECTION 2: That Ordinance No. 2-18-89 is hereby amended to allow certain changes in the PUD and to grant variations to the City of Des Plaines Zoning Ordinance.

SECTION 3: That the property which is the subject of this ordinance is legally described as:

Lots 100 through 111 (both inclusive) except that part of said lots taken for the opening of Prairie Avenue as recorded October 30, 1941 by Document #12785378 and also except that part of said Lot 111 lying South of Prairie Avenue aforesaid and also except the Southeasterly 8.0 feet of the Northeasterly 150.0 feet of Lot 100 and also except the

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Cook County Clerk's Office

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Northeasterly 150.0 feet of Lot 101, 102, 103 and 104 and also except that part thereof described as follows: Beginning at the Northeasterly corner of Lot 109; thence south 08 Degrees, 39 Minutes, 51 Seconds East along the East line of said Lots 109, 110 and 111, a distance of 230.0 feet; thence North 55 Degrees, 34 Minutes, 59 Seconds West along a line parallel with the Northeasterly line of said Lot 109, a distance of 23.28 feet to an intersection with a line 17.00 feet, as measured at right angles, Westerly of and parallel with the Easterly line of said Lots 109 and 110; thence North 08 Degrees, 39 Minutes, 51 Seconds West along said last described parallel line, 230.0 feet to an intersection with the Northeasterly line of said Lot 109; thence south 55 Degrees, 34 Minutes, 59 Seconds east along the Northeasterly line of said Lot 109, a distance of 23.28 feet to the place of beginning, all in the original Town of Rand (now Des Plaines), being a Subdivision of Sections 16, 17, 20 and 21, Township 41 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

commonly known as 800 River Road, Des Plaines, Cook County, Illinois.

SECTION 4: That Preliminary and Final Plat approval is hereby granted for certain amendments to allow changes to the PUD and certain variations to the City of Des Plaines Zoning Ordinance in connection with the development and use of the subject property consisting of approximately 2.93 acres, subject to the terms and conditions hereinafter set forth in this Ordinance. The development and use of the subject property shall be in accordance with the following listed documents which were submitted to the Department of Planning & Zoning, the Plan Commission and Zoning Board of Appeals and to the City Council, and which are incorporated in this Ordinance as if fully set forth herein, and such modifications to said documents and further terms and conditions which are set forth in this Ordinance. Said documents and modifications thereto which development is subject are the following:

1. Application for PUD, dated December 1, 1990 and revised January 22, 1991, and submitted by the Prime Group, Inc.;
2. Planned Unit Development Plat Submission, dated December 11, 1990 and revised January 22, 1991, and submitted by the Prime Group, Inc.;
3. Adjacent Land Use Map, submitted by the Prime Group, Inc. on December 11, 1990 (Petitioner's Exhibit A);

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4. Sheet Index submitted by the Prime Group, Inc., on December 11, 1990 and revised January 22, 1991 (Petitioner's Exhibit B);
5. Policy of Title Insurance, by the Chicago Title Insurance Company, submitted by the Prime Group, Inc., on December 11, 1990 (Petitioner's Exhibit C);
6. "Project Description," "Economic and Community Impact," "Financial Aspects" and "City Assistance Needed," submitted by the Prime Group, Inc., on December 11, 1990 and revised on January 22, 1991 (Petitioner's Exhibit D);
7. Traffic Impact Analysis, dated December 11, 1990 by Gewalt-Hamilton Associates, Inc. (Petitioner's Exhibit E);
8. "Construction Schedule," submitted by the Prime Group, Inc. on December 11, 1990 (Petitioner's Exhibit F);
9. "Des Plaines Congregate Housing Unit Square Frontage Explanation" submitted by the Prime Group, Inc. on December 11, 1990, and revised on January 22, 1991 (Petitioner's Exhibit G);
10. Colored Rendering of River Oaks by Barancik, Conte and Associates, Inc., and submitted by the Prime Group, Inc.;
11. Site Plan, dated November 30, 1990, and revised on January 22, 1991, by Barancik, Conte and Associates, Inc., and submitted by the Prime Group, Inc.;
12. First Floor Plan, dated November 30, 1990, and revised on January 22, 1991, by Barancik, Conte and Associates, Inc., and submitted by the Prime Group, Inc.;
13. Typical Floor Plan ("Independent Living"), dated November 30, 1990, and revised on January 22, 1991, by Barancik, Conte and Associates, Inc., and submitted by the Prime Group, Inc.;
14. Colored Rendering of Site Plan, by Barancik, Conte and Associates, Inc., and submitted by the Prime Group, Inc.;
15. PUD Plat, dated December 12, 1990 and revised February 11, 1991, by Dean R. Crouse and submitted by the Prime Group, Inc.; and
16. Letter dated February 8, 1991 by Charles R. Hug, attorney, to Louis M. Pagonas, Acting Director of the Department of Planning & Zoning.

SECTION 5: Development of the subject property is

further subject to the following terms and conditions:

1. The following modifications to the provisions of Ordinance No. Z-18-89 are granted:

(a) PUD Generally - the PUD shall be constructed in substantially the following manner:

(i) The building (measured from grade level) shall consist of a 231,000 sq. ft. T-shape elevator building of ten (10) stories with a height of ninety-four (94) feet to the top of the building parapet and one hundred and twenty-six feet, nine inches (126'-9") to the top of the mechanical penthouse, with a maximum of two hundred and sixty (260) dwelling units. The building shall have a circular covered entrance.

(ii) The net rentable space shall be approximately one hundred and sixty thousand (160,000) square feet.

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- (iii) Ancillary retail and service space totaling ten thousand (10,000) square feet shall be located on the street level of the building. The uses may include a medical clinic, pharmacy, bank outlet, convenience store, hair salon and dry cleaners.
- (iv) Meal service, housekeeping and fully equipped units will be made available.
- (v) In accordance with the documents listed in Section 4 of this Ordinance, floors three (3) through ten (10) shall have balconies on certain units.
- (vi) Two (2) floors may be set aside for home health care assistance but shall not be the level of care received in a skilled care nursing home. The PUD Project shall not be a licensed skilled care or intermediate care nursing home as defined in the Ill. Rev. Stat., as amended from time to time.
- (vii) All reasonably necessary steps shall be taken to provide security for the residents of the development.

- (b) Parking -- There shall be a two-and one-half (2-1/2) story parking structure that shall accommodate one hundred and seventy (170) vehicles, with space for another twenty (20) vehicles on grade. Entry to the garage shall be a secured entry.
- (c) F.A.R. -- The Floor Area Ratio (F.A.R.) of the building, including the parking garage is approximately 2.334; the F.A.R. of the building, without the parking garage will be approximately 1.809.
- (d) Unit Mix - The unit mix shall consist of approximately thirty-five (35) two (2) bedroom units, one hundred and fifteen (115) one (1) bedroom units, twenty (20) alcove and ninety (90) studio units. There shall be approximately one hundred and ninety-two (192) independent living units and sixty-eight (68) home health care units.

2. That various variations to Sections 3.5.2.4, 3.5.2.5, 3.5.2.6, 3.5.2.8.1.3, 3.5.2.8.1.4, 3.5.2.8.6.1, 3.5.2.8.6.1, 3.5.2.8.6.3, 8.2.2.3, 8.2.7.4, 8.2.7.8 and 9.1.8.6.4 of the City of Des Plaines Zoning Ordinance are hereby granted as follows:

- (a) A variation to Section 3.5.2.4 (Front Yard) to allow a reduction in the required 100 foot front yard along River Road to 57.40 feet, 2.73 feet along Prairie Avenue and 55.61 along Ellinwood Street;
- (b) A variation to Section 3.5.2.5 (Side Yard) to allow a reduction in the required 100 foot side yard to 1.67 feet;
- (c) A variation to Section 3.5.2.6 (Rear Yard) to allow a reduction in the required 100 foot rear yard to 1.86 feet;
- (d) A variation to Section 3.5.2.8.1.3 (Floor Areas) to allow a reduction in the required minimum 650 square feet for one-bedroom units to 600 square feet;
- (e) A variation to Section 3.5.2.8.1.4 (Floor Areas) to allow a reduction in the required minimum 550 square feet for efficiency dwelling units to 400 square feet;

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- (f) A variation to Section 3.5.2.8.6.1 (Lot Areas) to allow a reduction in the required minimum 600 square feet for efficiency dwelling units to 434 square feet;
- (g) A variation to Section 3.5.2.8.6.2 (Lot Areas) to allow a reduction in the required minimum 700 square feet for one-bedroom units to 513 square feet;
- (h) A variation to Section 3.5.2.8.6.3 (Lot Areas) to allow a reduction in the required minimum 800 square feet for two-bedroom units to 593 square feet;
- (i) A variation to Section 8.2.2.3 (Bulk Regulations) to allow a reduction of 27.7 percent from the authorized 15 percent in the required minimum lot area per dwelling requirements;
- (j) A variation to Section 8.2.7.4 (Yards) to allow yards of 17.40, 2.73, 55.61, 1.67 and 1.86 as granted in (a) through (c) above from the required yards of 100 feet;
- (k) A variation to Section 8.2.7.8 (Density) to allow the minimum floor area of one-bedroom units to be 600 square feet from the required 650 square feet; efficiency dwelling units to be 400 square feet from the required 550 square feet; the minimum lot area per dwelling unit in an efficiency dwelling unit to be 434 square feet from the required 600 square feet; the minimum lot area per dwelling unit in a one-bedroom unit to be 513 square feet from the required 700 square feet; and the minimum lot area per dwelling unit in a two-bedroom unit to be 593 square feet from the required 800 square feet; and
- (l) A variation to Section 9.1.8.6. (Parking Location in Yards) to allow parking in the required front yard.

3. Prairie Avenue -- Prairie Avenue shall be reconstructed according to plans submitted by the firm of Gewalt-Hamilton Associates, Inc. to the City Engineer for approval. The Prairie Avenue public improvements shall be paid by applicant with reimbursement by the City for certain portions of said improvements. The Prairie Avenue improvements shall mean the improvements specified on the plans submitted by Gewalt-Hamilton Associates, Inc. Applicant shall design and bid said Prairie Avenue improvements; however, all plans and specifications must be approved by the City prior to acceptance of said improvement by the City. Said improvements shall include reconstruction of Prairie Avenue with curb and gutter from Pearson Street to River Road and construction of a watermain. These improvements will be constructed by applicant with reimbursement by the City for the City's portion of the improvements, with proper documentation, including, but not limited to, waivers of lien from all persons who have performed work and labor, furnished services, or supplied equipment, materials or supplies in connection with the construction of said improvements, within thirty (30) days of receipt of said documentation. Applicant shall pay for all design and construction engineering costs, fifty percent (50%) of the watermain (the City paying the other 50%) and all street related costs fronting the Project site. The City shall reimburse applicant for all street construction costs for the remaining frontage.

4. Sprinklers -- The entire building shall be sprinklered, have fire alarms, smoke detectors and elevators in compliance with applicable City ordinances.

5. Utilities -- Two (2) separate substations for electricity may be used to serve the structure. If not, an emergency generator for the elevator and emergency lighting shall be provided. The building shall be metered as required by Commonwealth Edison. Heating and cooling facilities shall be provided in the building.

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6. Engineering - Approval of the PUD is conditioned upon the applicant complying with all of the Engineering Department concerns as outlined in its Review Comments dated January 28, 1991.

7. Preliminary and Final Plat Approval is approved upon the condition that the subject property be developed in accordance with said Preliminary and Final Plats and the terms of this Ordinance and Ordinance No. 2-18-89 to the extent that it is not inconsistent with the terms and conditions of this Ordinance. Upon failure of Petitioner to obtain building permits and complete construction within five (5) years, the City may revoke approval of the Planned Unit Development.

SECTION 6: That nothing contained herein shall be construed to have any effect upon the zoning of the subject property, which shall remain as R-5 Residential Central Core Multi Family Residence District. The terms and conditions of this Ordinance and Ordinance No. 2-18-89, to the extent that it is not inconsistent with the terms and conditions of this Ordinance, shall constitute authorization for development of the subject property in accordance with the terms and conditions of this ordinance and shall prevail against other ordinances of the City to the extent that there might be any conflict. The terms of this Ordinance shall be binding upon Petitioner, its grantees, assigns and successors in interest to the subject property, including grantees and assigns of Petitioner. Except for the foregoing limitation, the development of the subject property is subject to all terms and conditions of the applicable existing ordinance and regulations, and as they may be amended from time to time, of the City of Des Plaines, including, without limitations, zoning ordinances, building codes and subdivision regulations and construction and designs for public improvements.

SECTION 7: That any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of this ordinance shall be fined not less than Twenty-Five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) for each offense. Each and every day that a violation of the Ordinance is allowed to remain in effect shall constitute a complete and separate offense. In addition, the appropriate authorities of the City may take such other action as they deem proper to enforce the terms and conditions of this Ordinance, including, without limitation, an action in equity to compel compliance with its terms. That any

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person, firm or corporation violating the terms of this Ordinance shall be subject, in addition to the foregoing penalties, to the payment of court costs and reasonable attorneys fees.

SECTION 8: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law, provided, however, that this Ordinance shall not take effect until a true and correct copy of this Ordinance is executed by the owner of the subject property or such other party in interest, consenting to and agreeing to be bound by the terms and conditions contained within this Ordinance. Such execution shall take place within sixty (60) days after the passage and approval of this Ordinance or within such extension of time as may be granted by the Corporate Authorities by motion.

PASSED this 15 day of July, 1991.

APPROVED this 16 day of July, 1991.

VOTE: AYES 8 NAYS 0 ABSENT 0

  
MAYOR

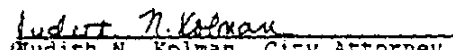
ATTEST:

  
CITY CLERK

Published in pamphlet form this  
16 day of July, 1991.

  
CITY CLERK

Approved as to form:

  
Judith N. Kolman, City Attorney

I, Glenn D. Reschke, on behalf of The Prime Group, Inc., being the owner or other party in interest of the property legally described within this Ordinance, having read a copy of the Ordinance, do hereby accept, concur and agree to develop and use the subject property in accordance with the terms of this Ordinance.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Executive Vice President  
The Prime Group, Inc.

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Form of Developer Revenue Bonds. Each Developer Revenue Bond, the form of assignment and the Certificate of Authentication shall be, respectively, in substantially the following form, with such insertions or variations as to any redemption or amortization provisions and such other insertions or omissions, endorsements and variations as may be required or permitted by the Bond Ordinance and the Redevelopment Agreement referred to in the form of Developer Revenue Bond:

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF COOK

CITY OF DES PLAINES

TAX INCREMENT DEVELOPER REVENUE BOND, SERIES 19\_\_

The CITY OF DES PLAINES (the "City"), a municipal corporation and a home rule unit of the State of Illinois situate in the County of Cook, acknowledges itself indebted and for value received hereby promises to pay, solely from the sources herein set forth, to \_\_\_\_\_ or registered assigns, the principal sum of \_\_\_\_\_, on July 15, 2008, upon presentation and surrender hereof at the office of the City Treasurer, as bond registrar, or any successor bond registrar (the "Bond Registrar"), and to pay interest on such principal sum, or unpaid portion thereof, from the date hereof until the earlier of (i) July 15, 2008 and (ii) the date the principal amount hereof shall have been fully paid, at the rate of ten percentum (10%) per annum, computed on the basis of a 360 day year consisting of twelve 30 day months and payable on January 15 and July 15 of each year, interest to maturity being payable by check or draft mailed to the registered owner of record hereof, as of the 15th day of the calendar month next preceding such interest payment date, at the address of such registered owner appearing on the registration books maintained by the City for such purpose at the office of the Bond Registrar. Both principal of and interest on this bond are payable in legal tender of the United States of America.

This bond is one of a duly authorized series of bonds of the City designated "Tax Increment Developer Revenue Bonds," Series 19\_\_ " and issued in the aggregate principal amount of \$ \_\_\_\_\_ (the "Bonds") under and pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and the provisions of the Tax Increment Allocation Redevelopment Act, as amended, constituting Division 74.4 of Article 11 of the Illinois Municipal Code (the

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"Redevelopment Act"), and by virtue of an ordinance adopted by the City Council of the City on \_\_\_\_\_, 1991 and entitled: "Ordinance Authorizing the Issuance of Tax Increment Developer Revenue Bonds of the City of Des Plaines, Illinois" (the "Bond Ordinance").

THE BONDS ARE LIMITED OBLIGATIONS OF THE CITY PAYABLE SOLELY FROM TAX INCREMENTAL REVENUES AND CERTAIN SALES TAX RECEIPTS (THE "TIF REVENUES") DEPOSITED INTO THE DEVELOPER REIMBURSEMENT ACCOUNT OF THE CITY OF DES PLAINES DOWNTOWN SPECIAL TAX ALLOCATION FUND ESTABLISHED BY THE CITY PURSUANT TO THE REDEVELOPMENT ACT. NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL TAXING POWER OF THE CITY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS.

The insufficiency of TIF Revenues to pay the interest on this bond in any given year shall not constitute a default on this bond, but such past due amounts shall be a continuing obligation payable from TIF Revenues deposited in the Developer Reimbursement Fund, provided that all such obligations for payment shall cease as of July 15, 2008. Any unpaid principal of or interest on this bond as of July 15, 2008 shall be extinguished.

THE BONDS ARE ALL EQUALLY AND RATABLY SECURED AND ENTITLED TO THE PROTECTION GIVEN BY THE BOND ORDINANCE. THE BONDS ARE SECURED BY A LIEN ON THE TIF REVENUES, WHICH LIEN IS JUNIOR AND SUBORDINATE TO THE LIEN ON THE TIF REVENUES IN FAVOR OF THE CITY'S TAX INCREMENT BONDS, SERIES 1985 AND MAY BE JUNIOR AND SUBORDINATE TO THE LIEN OF OTHER TIF BONDS AS SET FORTH IN THE BOND ORDINANCE.

Under the terms of the Bond Ordinance and the "Redevelopment Agreement Between the City of Des Plaines and River Oaks Partners" dated \_\_\_\_\_, 1991 (the "Redevelopment Agreement") the City may hereafter issue First Lien Tax Increment Revenue Bonds (as defined in the Redevelopment Agreement) payable from the TIF Revenues and secured by a lien on the TIF Revenues, which may be senior and superior to the lien on TIF Revenues provided as security for the Bonds. In accordance with the provisions of the Redevelopment Agreement and the Bond Ordinance, the City may also issue additional Developer Revenue Bonds payable from TIF Revenues and secured by a lien on the TIF Revenues on a parity with the Bonds. Reference is hereby made to the Bond Ordinance and to all ordinances supplemental thereto for a description of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the City and the registered owners of the Bonds, the issuance of additional bonds and the terms upon which the Bonds are issued and secured.

The Bonds are subject to redemption prior to maturity at the option of the City and upon notice as herein provided, as a