# City of Chicago

SO2015-7311

## Office of the City Clerk

## Document Tracking Sheet

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| **Meeting Date:** | 9/24/2015 |
| **Sponsor(s):** | Emanuel (Mayor) |
| **Type:** | Ordinance |
| **Title:** | Redevelopment agreement and associated conveyance and tax credits for Clydiv LLC for development of affordable rental housing at 454-466 W Division St and 1200-1226 N Clybourn Ave |
| **Committee(s) Assignment:** | Committee on Finance |

## SUBSTITUTE ORDINANCE

***WHEREAS,*** the City of Chicago (the "City"), a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois, has heretofore found and does hereby find that there exists within the City a serious shortage of decent, safe and sanitary rental housing available to persons of low and moderate income; and

***WHEREAS,*** the City has determined that the continuance of a shortage of affordable rental housing is harmful to the health, prosperity, economic stability and general welfare of the City; and

***WHEREAS***, the City is the owner of unimproved real property which is commonly known as 454-466 West Division Street and 1200-1226 North Clybourn Avenue, Chicago, Illinois, 60610 (the "Property"), and which is legally described on Exhibit A attached hereto; and

***WHEREAS,*** on September 20, 2010, by Resolution No. 10-CDC-57, the Community Development Commission (the "CDC"), authorized the City's Department of Planning and Development ("DPD") to advertise and issue a Request for Proposals ("RFP") for the sale and redevelopment of the Property for an affordable rental housing development; and

***WHEREAS,*** the advertisement appeared in the September 19, September 26 and October 3, 2010, issues of the Chicago Sun Times and the RFP documents were made available to the public beginning September, 2010; and

***WHEREAS***, DPD received two proposals by December 17, 2010, the deadline for submission of responses to the RFP; and

***WHEREAS***, Clydiv, LLC, is an Illinois limited liability company ("Developer"), whose principal place of business is located at 666 Dundee Road, Room 1102, Northbrook, Illinois, 60062; and

***WHEREAS***, Developer submitted the proposal which best satisfies the goals and objectives of the RFP and desires to acquire the Property from the City by having an affiliate of one of its members purchase the Property from the City for immediate reconveyance to the Developer, to develop thereon one seven-story elevator building containing 84 units of rental housing, 26 of which will be for CHA residents and an additional 26 of which will be affordable for moderate- to low-income families (the "Project"); and

***WHEREAS***, by Resolution No. 15-CDC-21, adopted on July 14, 2015, the CDC recommended that the Property be conveyed to the Developer for the Project and that DPD be authorized to negotiate, execute and deliver on behalf of the City a redevelopment agreement with the Developer for the Project, and to advertise its intention to enter into a negotiated sale with the Developer for the redevelopment of the Property; and

*WHEREAS*, the Property's current appraised fair market value is Five Million One Hundred Thousand Dollars ($5,100,000) and Sponsor and Developer have

submitted a proposal to DPD to purchase the Property for Twenty-Five Thousand and 00/100 Dollars ($25,000.00) which is a write-down of Five Million Seventy-Five Thousand Dollars ($5,075,000); and

***WHEREAS,*** the Illinois General Assembly pursuant to 20 ILCS 3805/7.28 (as supplemented, amended and restated from time to time) has authorized a program allowing the allocation of certain tax credits for qualified donations made in connection with affordable housing projects (the "Donation Tax Credit Program"); and

***WHEREAS***, pursuant to an ordinance adopted by the City Council of the City (the "City Council") on July 30, 1997, and published at pages 49207-49356 of in the Journal of the Proceedings of the City Council (the "Journal") of such date, a certain redevelopment plan and project (the "Plan") for the Near North Tax Increment Financing Redevelopment Project Area (the "Area") was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1 et seq.) (the "Act"); and

***WHEREAS***, pursuant to an ordinance adopted by the City Council on July 30, 1997, and published at pages 49356-49365 of the Journal of such date, the Area was designated as a redevelopment project area pursuant to the Act; and

***WHEREAS***, pursuant to an ordinance (the "TIF Ordinance") adopted by the City Council on July 30, 1997, and published at pages 49366-49374 of the Journal of such date, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain Area redevelopment project costs (as defined in the Act) incurred pursuant to the Plan; and

***WHEREAS,*** Developer will be obligated to undertake the Project in accordance with the terms and conditions of a proposed redevelopment agreement to be executed by the Developer and the City, with such Project to be financed in part by certain pledged incremental taxes deposited from time to time in the Near North Tax Increment Financing Redevelopment Project Area Special Tax Allocation Fund for the Area (the "TIF Fund") pursuant to Section 5/11-74.4-8(b) of the Act ("Incremental Taxes"); and

***WHEREAS***, pursuant to its Resolution 15-CDC-21, the CDC has recommended that the Developer be designated as the developer for the Project and that DPD be authorized to negotiate, execute and deliver on behalf of the City a redevelopment agreement with the Developer for the Project; now, therefore

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1.** The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

**SECTION 2.** The City hereby approves the sale of the Property to Cabrini Green LAC Community Development Corporation, an Illinois not-for-profit corporation ("Sponsor"), for immediate reconveyance to its wholly-owned subsidiary, Cabrini-Green CDC-SPE, LLC, a to-be-formed Illinois limited liability company ("Special Member"), that will be a special member of the Developer, with immediate reconveyance to the Developer, for inclusion in the Project for the amount of Twenty-Five Thousand and no/100 Dollars ($25,000.00). This approval is expressly conditioned upon the Developer, Special Member and Sponsor

entering into the Redevelopment Agreement in the form attached hereto as Exhibit B (the "Redevelopment Agreement"). The Acting Commissioner of DPD (the "Commissioner") or a designee of the Commissioner (the "Authorized DPD Officer") is each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver the Redevelopment Agreement, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Redevelopment Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Redevelopment Agreement.

**SECTION 3.** The Mayor or his proxy is authorized to execute, and the City Clerk is authorized to attest, a quitclaim deed conveying the Property to the Sponsor, or to a land trust of which the Sponsor is the sole beneficiary, or to a business entity of which the Sponsor is the sole controlling party or which is comprised of the same principal parties, subject to those covenants, conditions and restrictions set forth in the regulatory agreement to be entered into between the City and the Sponsor in connection with the Project.

**SECTION 4.** The following provisions shall govern the City's conveyance of the Property to Sponsor, and Sponsor's conveyance to Developer:

(i) Form of Quitclaim Deed. The City shall convey to Sponsor title to the Property by quitclaim deed for the sum of Twenty-Five Thousand and 00/100 Dollar ($25,000.00), which shall be paid by or on behalf of Sponsor to the City on the date the City conveys the Property. Developer acknowledges and agrees that the Property has an appraised fair market value price of approximately Five Million One Hundred Thousand Dollars ($5,100,000). The land write-down of the Property has been made by the City, subject to the restrictions set forth in the City's deed to the Property, the restrictions to be imposed pursuant to the Redevelopment Agreement, and this Ordinance. Without limiting the quitclaim nature of the deed, the conveyance of and title to the Property shall, in addition to the provisions of this Ordinance, be subject to:

(a) general real estate taxes and any special assessments or other taxes;

(b) all easements, encroachments, covenants and restrictions of record and not shown of record;

(c) such other title defects as may exist;

(d) any and all exceptions caused by the acts of Developer or its agents; and

(e) the Plan for the Area.

(ii) Environmental Condition of the Property. The City makes no covenant, representation or warranty as to the soil or environmental condition of the Property or the suitability of the Property for any purpose whatsoever, and Developer agrees to accept the Property "as is". If after the closing of the City's conveyance of the Property to Developer, environmental condition of the

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

**SECTION 5.** The City hereby approves the conveyance of the Property as a donation to the Sponsor from the City under the Donation Tax Credit Program in connection with the Project. The Authorized Officer (as hereinafter defined) is hereby authorized to transfer the tax credits allocated to the City, if any, under the Donation Tax Credit Program in connection with the conveyance of the Property to an entity satisfactory to the Authorized Officer on such terms and conditions as are satisfactory to the Authorized Officer (the "Transfer"). The proceeds, if any, received by the City in connection with the Transfer are hereby appropriated, and the Authorized Officer is hereby authorized to use such proceeds, to make a grant to the Developer or Sponsor, or to another entity affiliated with the Developer or Sponsor, in his or her sole discretion, for use in connection with the Project (the "Grant"). The Authorized Officer is hereby authorized, subject to approval by the Corporation Counsel, to enter into and execute such agreements and instruments, and perform any and all acts as shall be necessary or advisable in connection with the implementation of the Transfer and the Grant. Upon the execution and receipt of proper documentation, the Authorized Officer is hereby authorized to disburse the proceeds of the Grant to the Sponsor or Developer or another entity affiliated with the Sponsor or Developer, as applicable.

**SECTION 6.** The City Council hereby finds that the City is authorized to pay to Developer a maximum aggregate amount equal to $8,100,000 ("City Funds") from Incremental Taxes deposited in the general account of the TIF Fund (the "General Account") to finance a portion of the eligible costs included within the Project. The proceeds of the City Funds are hereby appropriated for the purposes set forth in this Section 6.

**SECTION 7.** Pursuant to the TIF Ordinance, the City has created the TIF Fund. The Chief Financial Officer of the City (or his or her designee) is hereby directed to maintain the TIF Fund as a segregated interest-bearing account, separate and apart from the City's Corporate Fund or any other fund of the City. Pursuant to the TIF Ordinance, all Incremental Taxes received by the City for the Area shall be deposited into the TIF Fund. The City shall use the funds in the TIF Fund to make payments pursuant to the terms of the Redevelopment Agreement.

**SECTION 8.** To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

**SECTION 9.** This ordinance shall be effective as of the date of its passage and approval.

Exhibit A: Legal Description of Property
Exhibit B: Form of Redevelopment Agreement

## EXHIBIT A

## LEGAL DESCRIPTION

(subject to final title commitment and survey)

That part of Butterfield's Addition to Chicago in the West Half of the Northwest Quarter, and the Southeast Quarter of the Northwest Quarter of Section 4, Township 39 North, Range 14 East of the Third Principal Meridian, described as follows: Beginning at the Southeast corner of Lot 1 in the Subdivision of Lot 34 in Butterfield's Addition to Chicago aforesaid; thence Northwest along the Southwesterly line of North Clybourn Avenue, 330.24 feet to the most Northerly corner of Lot 1 in the Subdivision of Lot 40 and the Northwest Half of Lot 38 in Butterfield's Addition to Chicago aforesaid; thence Southwest along the Northwesterly line of Lot 1 in aforesaid Subdivision of Lot 40 and the Northwest Half of Lot 38, a distance of 111.16 feet to the point of intersection with the Northerly extension of the East line of the West 20.00 feet of Lot 38 in Butterfield's Addition to Chicago aforesaid; thence South along said East line of the West 20.00 feet of Lot 39 and it's Northerly extension, 155.63 feet, more or less, to the point of intersection with the South line of said Lot 39, said line also being the North line of West Division Street; thence East along said North line of West Division Street 310.00 feet to the hereinabove designated Point of Beginning,

EXCEPTING THEREFROM that part described as follows; Beginning at the Southeast corner of Lot 1 in the Subdivision of Lot 34 in Butterfield's Addition to Chicago aforesaid; thence Northwest along the Southwesterly line of North Clybourn Avenue, 45.28 feet; thence Southwesterly 34.00 feet to a point on the South line of said Lot 1, also being the North line of West Division Street, said point being 43.30 feet West from the Southeast corner of said Lot 1; thence East along the South line of said Lot 1, 43.30 feet to the Point of Beginning, in Cook County, Illinois.

Said parcel containing 0.961 acres (41,880 sq. ft.), more or less.

**PIN #s:** 17-04-142-001; 17-04-142-002; 17-04-142-003; 17-04-142-004; 17-04-142-006; 17-04-142-007; 17-04-142-008; 17-04-142-009; 17-04-142-010; 17-04-142-011; 17-04-142-012; 17-04-142-013; 17-04-142-014, and 17-04-142-015.

**COMMONLY KNOWN AS:** 454-466 W. Division / 1200-1226 N. Clybourn

## EXHIBIT B

## FORM OF
## REDEVELOPMENT AGREEMENT

See attached

[leave blank 3" x 5" space for recorder's office]

This agreement was prepared by and
after recording return to:
Ann R. Kaplan-Perkins, Esq.
City of Chicago Law Department
121 North LaSalle Street, Room 600
Chicago, IL 60602

# CLYBOURN DIVISION RENTAL PROJECT REDEVELOPMENT AGREEMENT

This Clybourn Division Rental Project Redevelopment Agreement (the **"Agreement"**) is made as of this ___ day of _____, 2015, by and among the City of Chicago, an Illinois municipal corporation (the **"City"**), through its Department of Planning and Development (**"DPD"**), and Cabrini Green LAC Community Development Corporation, an Illinois not-for-profit corporation ("**Sponsor**"), Clydiv, LLC, an Illinois limited liability company ("**Developer**"), Cabrini Green CDC-SPE, LLC, an Illinois limited liability company ("**Special Member**"), and Clydiv Manager, LLC, a Illinois limited liability company ("**Manager**", and together with Sponsor, Special Member and Developer, the "**Developer Parties**").

## RECITALS:

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

B. **Statutory Authority:** The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq. (2002 State Bar Edition), as amended from time-to-time (the **"Act"**), to finance projects that eradicate blighted conditions through the use of tax increment allocation financing for redevelopment projects.

C. **City Council Authority:** To induce redevelopment under the provisions of the Act, the City Council of the City (the "**City Council**") adopted the following ordinances on July 30, 1997: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Near North Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the Near North Redevelopment Project Area as a Redevelopment Project Area Pursuant to Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the Near North

Redevelopment Project Area" (the "**TIF Adoption Ordinance**"). Collectively the three ordinances are defined as the "**TIF Ordinances**". The Redevelopment Area (as defined below) is legally described on Exhibit A.

D. **The Project:** The project contemplated by this Redevelopment Agreement is for the construction of one seven-story elevator building containing 84 rental housing units and commercial space located at 454-466 West Division Street and 1200-1226 North Clybourn Avenue (the "**Property**") in the Near North Tax Increment Financing Redevelopment Project Area (the "**Redevelopment Area**"). The City is selling the Property to the Sponsor for immediate reconveyance to the Developer, provided that the Sponsor will first convey the Property to Special Member, which will immediately convey the Property to the Developer. The Property is approximately .961 acre, and is located wholly within the Redevelopment Area. A legal description of the Property is stated in Exhibit B-1. The Property is currently undeveloped and subject to the zoning requirements stated in Residential-Business Planned District No. 1278 (including any approved amendment thereof, the "**PD**"). In accordance with this Agreement, the 84 residential units will consist of 26 rental units for public housing residents, 26 rental units for low-income families and 32 market rate rental units, and 56 parking spaces (the "**Residential Project**"), and the commercial portion of the development will include certain commercial space on the first floor of the building which may include a day care facility and other commercial uses, and 20 parking spaces (the "**Commercial Project**"). The new construction work is collectively defined as the "**Project**". The legal descriptions of the property comprising the Residential Project and the property comprising the Commercial Project, respectively, are attached hereto as Exhibits B-2 and B-3. A site plan for the Project (the "**Site Plan**") is Exhibit B-4. The completion of the Project would not reasonably be anticipated to occur without the financing contemplated in this Agreement.

E. **Redevelopment Plan:** The Project will be carried out in accordance with this Agreement, the PD and the City of Chicago Near North Redevelopment Project Area Tax Increment Finance Program Redevelopment Plan and Project (the "**Redevelopment Plan**"), and as amended from time-to-time.

F. **City Financing and Assistance:** The City agrees to use, in the amounts set forth in Section 5.03 hereof, Incremental Taxes to pay or reimburse the Developer Parties for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement. In addition, the City may, in its discretion, issue tax increment allocation bonds ("**TIF Bonds**") secured by Incremental Taxes (as defined below) pursuant to a TIF bond ordinance (the "**TIF Bond Ordinance**"), at a later date as described and conditioned in Section 5.07 hereof. The proceeds of the TIF Bonds (the "**TIF Bond Proceeds**") may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Available Incremental Taxes.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## AGREEMENT:

## SECTION 1: RECITALS

The recitals stated above are an integral part of this Agreement and are hereby incorporated into this Agreement by reference and made a part of this Agreement.

## SECTION TWO: DEFINITIONS

For purposes of this Agreement the following terms shall have the meanings stated below:

"**Act**" has the meaning defined in the recitals.

"**Actual Residents of the City**" has the meaning defined for such phrase in Section 11.02(c).

"**Affiliate**" means any individual, corporation, partner, partnership, trust or entity which owns or controls a controlling interest, or is owned or controlled by, or is under common ownership or control with, in whole or in part, a Developer Party or any successor to a Developer Party or its respective subsidiary(ies) or parent(s).

"**Agreement**" has the meaning defined in the Agreement preamble.

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

"**Annual Compliance Report**" shall mean a signed report from the Developer to the City (a) itemizing the Developer's obligations under this Agreement during the preceding calendar year, (b) certifying the Developer's compliance or noncompliance with such obligations, (c) attaching evidence (whether or not previously submitted to the City) of such compliance or noncompliance and (d) certifying that the Developer is not in default with respect to any provision of this Agreement, the agreements evidencing the Lender Financing, if any, or any related agreements; provided, that the obligations to be covered by the Annual Compliance Report shall include the following: (1) delivery of Financial Statements and unaudited financial statements (Section 9.12); (2) delivery of updated insurance certificates, if applicable (Section 9.13); (3) delivery of evidence of payment of Non-Governmental Charges, if applicable (Section 9.14); (4) compliance with the Affordability Requirements (Section 9.19); and (5) compliance with all other executory provisions of this Agreement.

"**Architect's Certificate**" shall mean a certificate from an architect indicating that the Project is 25% complete, 50% complete or 75% complete, as applicable.

"**Available Incremental Taxes**" means an amount equal to 90% of the Incremental Taxes (as defined below) deposited in the Redevelopment Project Area Special Tax Allocation Fund (as defined below) and not pledged to the Prior TIF Obligations set forth in Exhibit M, using the year [1997] as a base year for equalized assessed valuation.

"**Available Project Funds**" has the meaning defined for such phrase in Section 5.08(g).

"**Bonds**" has the meaning defined in Section 9.05.

"**Business Day**" means any day other than Saturday, Sunday or a legal holiday in the State.

"**CHA**" means Chicago Housing Authority.

"**CHA Units**" shall mean the 26 residential units in the Project which shall be leased to CHA Residents by the Developer.

"**CHA Residents**" shall mean tenants who qualify as being eligible to occupy "public housing" as defined in Section 3(b) of the United States Housing Act of 1937, as amended and

as may hereafter be amended from time to time or any successor legislation, together with all regulations implementing the same.

"**Change Order**" means any amendment or modification to the Scope Drawings, the Plans and Specifications, or the Project Budget (all as defined below) within the scope of Section 4.04.

"**Citibank**" means Citibank, N.A. and its successors and assigns.

"**City**" has the meaning defined in the Agreement preamble.

"**City Contract**" has the meaning defined in Section 9.01(n).

"**City Council**" means the City Council of the City of Chicago as defined in the recitals.

"**City Funds**" means the funds described in Section 5.03(b).

"**City Group Member**" has the meaning defined in Section 9.10.

"**City Regulatory Agreement**" means that certain Regulatory Agreement entered into on the date hereof by Developer and the City.

"**Closing Date**" means the date of execution and delivery of this Agreement by all parties hereto.

"**Construction Contract**" means collectively those certain contracts substantially in the form of Exhibit E, to be entered into between Developer and the General Contractor (as defined below) providing for construction of the TIF-Funded Improvements.

"**Construction Program**" has the meaning defined in Section 11.03(a).

"**Corporation Counsel**" means the City's Office of Corporation Counsel.

"**Davis-Bacon Act**" shall mean 40 U.S.C. Section 276a et seq.

"**Developer**" has the meaning defined in the Agreement preamble.

"**DPD**" has the meaning defined in the Agreement preamble.

"**Employer(s)**" has the meaning defined in Section 11.01.

"**Environmental Laws**" means any and all Federal, State or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago, including but not limited to the Municipal Code of Chicago, Sections 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or

11-4-1560.

"**Equity**" means funds of the Developer Parties (other than funds derived from Lender Financing (as defined below)) available for the Project, in the amount stated in Exhibit K attached hereto, which amount may be increased under Section 5.07 (Cost Overruns).

"**Escrow Agreement**" means that certain Escrow Agreement entered into on the date hereof by the City, Developer, Sponsor, lenders providing Lender Financing and other parties, in substantially the form attached as Exhibit L.

"**Event of Default**" has the meaning defined in Section 16.01.

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

"**Existing Mortgages**" has the meaning defined in Section 17.01.

"**Final Certificate**" means the Final Certificate of Completion of Construction described in Section 8.01.

"**Financial Statements**" means the financial statements of Developer regularly prepared by Developer, and including, but not limited to, a balance sheet, income statement and cash-flow statement, in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods, and which are delivered to the lender(s) providing Lender Financing pursuant to Developer's loan agreement(s), if any.

"**General Contractor**" means the general contractor(s) hired by Developer under Section 7.01.

"**Governmental Charge**" has the meaning defined in Section 9.18(a).

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

"**HUD**" shall mean the U.S. Department of Housing and Urban Development.

"**Human Rights Ordinance**" has the meaning defined in Section 11.01(a).

"**In Balance**" has the meaning defined in Section 5.08(g).

"**Incremental Taxes**" means such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to, and when collected are paid to, the Treasurer of the City for deposit by the Treasurer into a special tax allocation fund established to pay Redevelopment Project Costs (as defined below) and obligations incurred in the payment thereof, such fund for the purposes of this Agreement being the Redevelopment Project Area Special Tax Allocation Fund.

"**Indemnitee**" and "**Indemnitees**" have the respective meanings defined in Section 14.01.

"Lender Financing" means funds borrowed by Developer from lenders and available to pay for costs of the Project, in the amount stated in Exhibit K, if any.

"Limited Partner" means _____.

"Manager" means Clydiv Manager, LLC, an Illinois limited liability company.

"MBE(s)" has the meaning defined in Section 11.03.

"MBE/WBE Budget" shall mean the budget attached hereto as Exhibit C-2, as described in Section 11.03.

"MBE/WBE Program" has the meaning defined in Section 11.03.

"Municipal Code" means the Municipal Code of the City of Chicago as presently in effect and as hereafter amended from time to time.

"New Mortgage" has the meaning defined in Section 17.01.

"NFRL" shall mean a No Further Remediation Letter issued pursuant to the SRP.

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

"PD" has the meaning defined in the recitals.

"Permitted Liens" means those liens and encumbrances against the buildings in the Project and/or the Project stated in Exhibit G.

"Permitted Mortgage" has the meaning defined in Section 17.01.

"Plans and Specifications" means final construction documents containing a site plan and working drawings and specifications for the Project.

"Prior Expenditure(s)" has the meaning defined in Section 5.06.

"Prior TIF Obligations" means the City's pledge of Incremental Taxes as listed on Exhibit M hereto.

"Procurement Program" has the meaning defined in Section 11.03.

"Project" has the meaning defined in the recitals.

"Project Budget" means the budget stated in Exhibit C-1, showing the total cost of the Project by line item, as furnished by the Developer Parties to DPD, in accordance with Section 4.03.

"Property" has the meaning defined in the recitals.

"Recorded Affordability Documents" means, collectively: the City Regulatory Agreement; that certain Declaration of Restrictive Covenants by and among the CHA and Developer dated as of the date hereof; that certain Illinois Affordable Housing Tax Credit Regulatory Agreement by and among the Developer, _____ and the City dated as of the date hereof; and that certain Regulatory and Operating Agreement by and among the CHA and the Developer dated as of the date hereof.

"Redevelopment Area" has the meaning defined in the recitals.

"Redevelopment Plan" has the meaning defined in the recitals.

"Redevelopment Project Area Special Tax Allocation Fund" means the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

"Redevelopment Project Costs" means redevelopment project costs as defined in Section 5/11-74.4-3(q) of the Act that are included in the budget stated in the Redevelopment Plan or otherwise referenced in the Redevelopment Plan.

"Requisition Form" shall mean the document, in the form attached hereto as Exhibit J, to be delivered by the Developer Parties to DPD pursuant to Section 5.04 of this Agreement.

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

"Site Plan" has the meaning defined in the recitals.

"SRP" means the State of Illinois Site Remediation Program, as codified at 415 ILCS 5/58, et seq., as amended from time to time.

"State" means the State of Illinois as defined in the recitals.

"Substantial Completion Certificate" means the Certificate of Substantial Completion of Construction described in Section 8.01.

"Survey" means an urban plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property dated within 90 days prior to the Closing Date, reasonably acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and any updates thereof to reflect improvements to the Property as required by the City or the lender(s) providing Lender Financing, if any).

"Term of the Agreement" means the period of time commencing on the Closing Date and ending on July 30, 2020, such date being the date that is 23 years after the creation of the Redevelopment Area.

"TIF Adoption Ordinance" has the meaning stated in the recitals.

"TIF Bonds" has the meaning defined for such term in the recitals.

"TIF Bond Ordinance" has the meaning stated in the recitals.

"TIF Bond Proceeds" has the meaning stated in the recitals.

"TIF Ordinances" has the meaning stated in the recitals.

"TIF-Funded Improvements" means those improvements of the Project which: (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Redevelopment Plan and (iii) the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement, and (iv) are stated in Exhibit D.

"Title Company" means Greater Illinois Title Company.

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

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

"WBE(s)" has the meaning defined in Section 11.03.

## SECTION THREE: PROPERTY CONVEYANCE

3.01 **Conveyance of the Property.** The following provisions shall govern the City's conveyance of the Property to the Sponsor for immediate reconveyance to the Developer:

(a) Purchase Price. The City hereby agrees to sell, and Sponsor hereby agrees to purchase, upon and subject to the terms and conditions of this Agreement, the Property, for the amount of Twenty-Five Thousand and no/100 Dollars ($25,000.00) (the "**Purchase Price**"), which is to be paid by the Developer Parties on behalf of the Sponsor to the City on the date the City conveys the Property (the occurrence of such conveyance, the "**Property Closing**") in cash or by certified or cashier's check or wire transfer of immediately available funds. The Developer Parties shall pay all escrow fees and other title insurance fees, premiums and closing costs. The Developer Parties acknowledge and agree that (i) the appraised fair market value of the Property based on an appraisal dated May 6; 2015 was approximately $5.1 Million Dollars and (ii) the City has only agreed to sell the Property to Sponsor for the Purchase Price because the Developer Parties have agreed to execute this Agreement and comply with its respective terms and conditions.

(b) Form of Deed. The City shall convey the Property to Sponsor by quitclaim deed (the "**Deed**"), subject to the terms of this Agreement and, without limiting the quitclaim nature of the deed, the following:

(i) the Redevelopment Plan;

(ii) the standard exceptions in an ALTA title insurance policy;

(iii) general real estate taxes and any special assessments or other taxes;

(iv) all easements, encroachments, covenants and restrictions of record and not shown of record;

(v) such other title defects as may exist; and

(vi) any and all exceptions caused by the acts of the Developer Parties or their agents.

(c) Title and Survey. The Developer Parties acknowledge that they have obtained title insurance commitments for the Property, showing the City in title to the Property. The Developer Parties shall be solely responsible for and shall pay all costs associated with updating such title commitments (including all search, continuation and later-date fees), and obtaining any title insurance, extended coverage or other endorsements it deems necessary. The City shall have no obligation to cure title defects; provided; however, if there are exceptions for general real estate tax liens which accrued prior to the Property Closing with respect to the Property, the City shall file a petition to vacate the tax sale in the Circuit Court of Cook County if the tax liens have been sold and/or seek to abate the tax liens by filing a tax abatement letter with the appropriate Cook County authorities or, filing tax injunction proceedings in the Circuit Court of Cook County, but shall have no further obligation with respect to any such taxes. If the City is unable to obtain the waiver or release of any such tax liens or is unable to cause the Title Company to insure over such tax liens, or if the Property is encumbered with any other unpermitted exceptions, the Developer Parties shall have the option to do one of the following: (a) accept title to the Property subject to the unpermitted exceptions, which shall then become permitted exceptions; or (b) terminate this Agreement by delivery of written notice to the City at least fourteen (14) days prior to the scheduled date for the Property Closing.

The Developer Parties shall obtain and furnish the City with three (3) copies of a survey of the Property at the Developer Parties' sole cost and expense.

(d) Property Closing. The conveyance of the Property shall take place on the date of the Property Closing at the downtown offices of the Title Company or such other place as the parties may mutually agree upon in writing; provided, however, in no event shall the closing of the land sale occur unless the Developer Parties have satisfied all conditions precedent set forth in this Agreement, unless DPD, in its sole discretion, waives such conditions. On or before the Closing Date, the City shall deliver to the Title Company the Deed, all necessary state, county and municipal real estate transfer tax declarations, and an ALTA statement. The City will not provide a gap undertaking.

(e) Recordation of Quitclaim Deed and Other Documents. The Developer shall promptly record the Deed in the Office of the Recorder of Deeds of Cook County, Illinois and shall pay to record the Deed, this Agreement, and any other documents incident to the conveyance of the Property.

3.02 **Escrow.** In the event that the Developer Parties require conveyance through an escrow, the Developer Parties shall pay all escrow fees.

3.03 **Environmental Condition of the Property.** The City makes no covenant, representation or warranty as to the soil or environmental condition of the Property or the suitability of the Property for any purpose whatsoever, and the Developer Parties agree to accept the Property "as is". If after the Property Closing, the soil or environmental condition of the Property is not in all respects entirely suitable for the use to which the Property is to be utilized, it shall be the sole responsibility and obligation of the Developer Parties to take such action as is necessary to put the Property in a condition suitable for such intended use. The Developer Parties agree to release the City from any claims and liabilities relating to or arising from the environmental condition of the Property (including, without limitation, claims under CERCLA) and to undertake and discharge all liabilities of the City arising from any environmental condition which existed on the Property prior to the Property Closing.

The Developer Parties hereby waive and release the City from and against, any claims and liabilities relating to or arising from the structural, physical or environmental condition of the Property, including, without limitation, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), and shall undertake and discharge all liabilities of the City arising from any structural, physical or environmental condition that existed on the Property prior to the Property Closing, including, without limitation, liabilities arising under CERCLA. The Developer Parties hereby acknowledge that, in purchasing the Property, the Developer Parties are relying solely upon their own inspection and other due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the City or its agents or employees with respect thereto. The Developer Parties shall perform such studies and investigations, conduct such tests and surveys, and engage such specialists as the Developer Parties deems appropriate to evaluate fairly the structural, physical and environmental condition and risks of the Property. If, after the Property Closing, the structural, physical and environmental condition of the Property is not in all respects entirely suitable for their intended use, it shall be the Developer Parties' sole but collective responsibility and obligation to take such action as is necessary to put the Property in a condition which is suitable for their intended use.

3.04 **Restrictions on Use.** The Developer Parties agree that they:

(a) Shall devote the Property solely to the Project;

(b) Shall not discriminate on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income in the use or occupancy of the Property or any part thereof or the Project or any part thereof.

(c) Shall devote the Property to a use consistent with the Redevelopment Plan.

The covenant contained in this Section 4.04 shall terminate upon the expiration of the Redevelopment Plan as such expiration may be amended from time to time in accordance with and pursuant to applicable law.

## SECTION FOUR: THE PROJECT

4.01 **The Project.** The Developer Parties will: (i) begin redevelopment construction no later than ninety days after the Closing Date, and (ii) complete redevelopment construction no later than the third anniversary of the Closing Date, subject to the provisions of Section 19.16 (Force Majeure).

4.02 **Scope Drawings and Plans and Specifications.** Developer has delivered the Scope Drawings and Plans and Specifications to DPD and DPD has approved them. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications within the scope of Section 4.04 will be submitted to DPD as a Change Order under Section 4.04. The Scope Drawings and Plans and Specifications will at all times conform to the Redevelopment Plan as in effect on the date of this Agreement, and all applicable Federal, State and local laws, ordinances and regulations. Developer will submit all necessary documents to the City's Department of Buildings, Department of Transportation, and to such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

4.03 **Project Budget.** Developer has furnished to DPD, and DPD has approved, a Project Budget which is Exhibit C-1, showing total costs for the Project in an amount not less

than $39,776,055. Developer hereby certifies to the City that: (a) in addition to City Funds, the Lender Financing and/or Equity described in Exhibit K shall be sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects as of the date hereof. Developer will promptly deliver to DPD copies of any Change Orders with respect to the Project Budget as provided in Section 4.04.

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

4.05 **DPD Approval.** Any approval granted by DPD under this Agreement of the Scope Drawings, Plans and Specifications and the Change Orders is for the purposes of this Agreement only, and any such approval does not affect or constitute any approval required by any other City department or under any City ordinance, code, regulation, or any other governmental approval, nor does any such approval by DPD under this Agreement constitute approval of the utility, quality, structural soundness, safety, habitability, or investment quality of the Project.

4.06 **Other Approvals.** Any DPD approval under this Agreement will have no effect upon, nor will it operate as a waiver of, the Developer Parties' obligations to comply with the provisions of Section 6.03 (Other Governmental Approvals).

4.07 **Progress Reports and Survey Updates.** After the Closing Date, on or before the 15th day of January, April, July and October, Developer will provide DPD with written quarterly construction progress reports detailing the status of the Project, including a revised completion date, if necessary (with any delay in completion date being considered a Change Order, requiring DPD's written approval under Section 4.04). Developer must also deliver to the City written progress reports by draw, but not less than quarterly, detailing compliance with the requirements of Section 9.08 (Prevailing Wage), Section 11.02 (City Resident Construction Worker Employment Requirement) and Section 11.03 (Developer's MBE/WBE Commitment). If the reports reflect a shortfall in compliance with the requirements of Sections 9.08, 11.02 and 11.03, then there must also be included a written plan from Developer acceptable to DPD to address and cure such shortfall. At Project completion, upon the request of DPD, Developer will provide 3 copies of an updated Survey to DPD reflecting improvements made to the Property.

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

4.09 **Barricades.** Developer has installed (or shall install) a construction barricade of a type and appearance satisfactory to the City and which barricade was constructed in compliance with all applicable Federal, State or City laws, ordinances, rules and regulations. DPD retains the right to approve the maintenance, appearance, color scheme, painting, nature,

type, content, and design of all barricades (other than the name and logo of the Project) installed after the date of this Agreement.

4.10 **Signs and Public Relations.** Developer will erect in a conspicuous location on the Property during the Project a sign of commercially reasonable size and style, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and any other pertinent, non-confidential information regarding Developer and the Project in the City's promotional literature and communications.

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

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

4.13 **Accessibility for Disabled Persons.** Developer acknowledges that it is in the public interest to design, construct and maintain the Project in a manner that promotes, enables, and maximizes universal access throughout the Project. Plans for all buildings on the Property and related improvements have been reviewed and approved by the Mayor's Office for People with Disabilities ("MOPD") to ensure compliance with all applicable laws and regulations related to access for persons with disabilities and to promote the highest standard of accessibility.

## SECTION FIVE: FINANCING

5.01 **Total Project Cost and Sources of Funds.** The cost of the Project is estimated to be $39,776,055 to be applied in the manner stated in the Project Budget and funded from the sources identified in Exhibit K.

5.02 **Developer Funds.** Equity and Lender Financing will be used to pay the majority of Project costs, including but not limited to costs of TIF-Funded Improvements.

5.03 **City Funds.**

(a) Uses of City Funds. City Funds may only be used to pay directly or reimburse the Developer Parties for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit D sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to Section 5.03(b) and subject to revision by approved Change Orders), contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 5.03 and Section 6 hereof, the City hereby agrees to provide up to $8,100,000 of City funds (the "City Funds") from Available Incremental Taxes to pay for or reimburse the Developer Parties for the costs of the TIF-Funded Improvements; provided, however, that the $8,100,000 to be derived from Available Incremental Taxes and/or TIF Bond proceeds, if any, shall be available to pay costs related to TIF-Funded Improvements and allocated by the City for that purpose only so long as the amount of the Available Incremental Taxes deposited into the Redevelopment Project Area Special Tax Allocation Fund

shall be sufficient to pay for such costs. The City hereby represents to the Developer Parties that except for the Prior TIF Obligations the City has not made a senior or superior pledge of Incremental Taxes to any entity, party or person.

The Developer Parties acknowledge and agree that the City's obligation to pay for TIF-Funded Improvements up to a maximum of $8,100,000 is contingent upon the fulfillment of the conditions set forth above. In the event that such conditions are not fulfilled, the amount of Equity to be contributed by the Developer Parties pursuant to Section 5.01 hereof or Lender Financing shall increase proportionately. In the event that the final certified Project costs are less than the Project Budget, the City and CHA shall share the savings on a pro-rata basis. The City's share of the savings shall be deducted from the final installment paid to the Developer Parties after the issuance of the Final Certificate.

(c) Disbursement of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 5.03, Section 5.08 and Section 6 hereof, the City shall disburse the City Funds in five payments as follows: (i) $2,025,000 upon the completion of 25% of the construction of the Project as evidenced by an Architect's Certificate; (ii) $2,025,000 upon the completion of 50% of the construction of the Project as evidenced by an Architect's Certificate; (iii) $2,025,000 upon the completion of 75% of the construction of the Project as evidenced by an Architect's Certificate; (iv) $1,012,500 upon the issuance by DPD of the Substantial Completion Certificate; and (v) $1,012,500 upon the issuance by DPD of the Final Certificate.

5.04 **Construction Escrow**. The City and the Developer Parties hereby agree to enter into the Escrow Agreement. All disbursements of Project funds shall be made through the funding of draw requests with respect thereto pursuant to the Escrow Agreement and this Agreement. In case of any conflict between the terms of this Agreement and the Escrow Agreement, the terms of this Agreement shall control.

5.05 **Sale or Transfer of the Property or Project by Developer.**

(a) Prior to the Date of Issuance of the Final Certificate. Subject to Sections 5.05(c) and 17.01 below, Developer must obtain the prior approval of the City for any sale or transfer of any part of the Property or the Project prior to the issuance of the Final Certificate. Such approval by the City will be subject to the reasonable discretion requirement stated in Section 19.19.

(b) Prior to the End of the Affordability Covenant. Subject to Sections 5.05(c) and 17.01 below, if Developer shall enter into a sale or transfer of any part of the Residential Project prior to the termination of the affordability covenant set forth in Section 9.19, Developer agrees to remit City Funds to the City in an amount equal to $202,500 multiplied by X, where X equal 40 minus the number of years elapsed since the date of the Final Certificate.

(c) Sales of Assets or Equity. For purposes of this Section 5.05, the phrase: "sale or transfer of any part of the Residential Project" includes any sales or transfers which are a part of the sale or transfer of all or substantially all of Developer's assets or equity. Notwithstanding anything in this Section 5.05 to the contrary, the foregoing restrictions of this Section 5.05 and the penalty due in accordance with Section 5.05(b) do not apply to: (i) Developer's investor member to transfer its investor member interest to any person at any time, (ii) the removal by the investor member of the Manager, in accordance with Developer's operating agreement, provided the substitute managing member is acceptable to City in its reasonable discretion, (iii) Manager's pledge of Manager's rights, title and interest in and to Developer and under Developer's operating agreement as collateral for Developer's obligations under any Lender Financing; (iv) transfers to any condominium association or community association; (v) any

dedications or easements required by the subdivision, PD or applicable law and (vi) any sale or transfer of the Residential Project that is explicitly made subject to the Affordability Covenant. Developer must, however during the Term of the Agreement, notify the City not less than 60 days after any transfer is made.

(d) Sale and Transfer of the Commercial Project. Notwithstanding any other provision of this Agreement, after the issuance of the Substantial Completion Certificate, Developer will convey the Commercial Project to Clydiv Commercial LLC, an Illinois limited liability company.

5.06 **Treatment of Prior Expenditures.** Only those expenditures made by the Developer Parties with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Project Budget, will be considered previously contributed Equity or Lender Financing, if any, hereunder (the **"Prior Expenditure(s)"**). DPD has the right, in its sole discretion, to disallow any such expenditure (not listed on Exhibit F) as a Prior Expenditure as of the date hereof. Exhibit F states the prior expenditures approved by DPD as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements will not be reimbursed to the Developer Parties, but will reduce the amount of Equity and/or Lender Financing, if any, required to be contributed by the Developer Parties under Section 5.01.

5.07 **Cost Overruns.** If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available under Section 5.03, the Developer Parties will be solely responsible for such excess costs, and will hold the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds and from any and all costs and expenses of completing the Project in excess of the Project Budget.

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

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

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

(c) the Developer Parties have approved all work and materials for the current disbursement request, and such work and materials substantially conform to the Plans and Specifications;

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

(e) the Developer Parties have received no notice and have no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens and Non-Governmental Charges in accordance with Section 9.14(b);

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

(g) the Project is In Balance. The Project shall be deemed to be in balance ("**In Balance**") only if the total of the available Project funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. "**Available Project Funds**" as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by the Developer pursuant to this Agreement. The Developer Parties hereby agree that, if the Project is not In Balance, the Developer Parties shall, within 10 days after a written request by the City, defer developer fee or other amounts due the Developer, or deposit with the escrow agent or will make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require the Developer Parties to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct in all material respects; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Developer Parties. In addition, the Developer Parties shall have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements set forth in the Bond Ordinance, if any, TIF Bond Ordinance, if any, the Bonds, if any, the TIF Bonds, if any, the TIF Ordinances, this Agreement and/or the Escrow Agreement.

5.09 **Conditional Grant**. The City Funds being provided hereunder are being granted on a conditional basis, subject to the Developer Parties' compliance with the provisions of this Agreement. The City Funds are subject to being reimbursed as provided in Sections 5.05, 8.03 and 16.02 hereof.

5.10 **TIF Bonds.** The Commissioner of DPD may, in his or her sole discretion, recommend that the City Council approve an ordinance or ordinances authorizing the issuance of TIF Bonds in an amount which, in the opinion of the City Comptroller, is marketable under the then current market conditions. The costs of issuance of the TIF Bonds would be borne solely by the City. The Developer Parties will cooperate with the City in the issuance of the TIF Bonds, as provided in Section 9.05.

## SECTION SIX: CONDITIONS PRECEDENT

The following conditions precedent to closing must be complied with to the City's satisfaction within the time periods set forth below or, if no time period is specified, prior to the Closing Date:

6.01 **Project Budget.** Developer will have submitted to DPD, and DPD will have approved, a Project Budget in accordance with the provisions of Section 4.03.

6.02 **Scope Drawings and Plans and Specifications.** Developer will have submitted to DPD, and DPD will have approved, the Scope Drawings and Plans and Specifications as provided in Section 4.02.

6.03 **Other Governmental Approvals.** Developer will have secured or applied for all other necessary approvals and permits required by any Federal, State, or local statute, ordinance, rule or regulation to begin or continue construction of the Project, and will submit

evidence thereof to DPD.

6.04 **Financing.**

(a) Developer will have furnished evidence acceptable to the City that Developer has Equity and Lender Financing, if any, at least in the amounts stated in Section 5.01 and Exhibit K, which are sufficient to complete the Project and satisfy its obligations under this Agreement. If a portion of such financing consists of Lender Financing, Developer will have furnished evidence as of the Closing Date that the proceeds thereof are available to be drawn upon by Developer as needed and are sufficient (along with the Equity and other financing sources, if any, stated in Section 5.01 and Exhibit K) to complete the Project.

(b) Prior to the Closing Date, Developer will deliver to DPD a copy of the Escrow Agreement. The Escrow Agreement must provide that DPD will receive copies of all construction draw request materials submitted by Developer after the date of this Agreement.

(c) Any financing liens against the Property and Project in existence at the Closing Date will be subordinated to certain encumbrances of the City stated in Section 8.02(b) of this Agreement under a subordination agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of Developer, in the Office of the Recorder of Deeds of Cook County.

(d) The City agrees that the Developer Parties may collaterally assign their interests in this Agreement to any of its lenders if any such lenders require such collateral assignment.

6.05 **Acquisition and Title.** On the Closing Date, Developer will furnish the City with a copy of the Title Policy for the Property, showing Developer as the named insured. The Title Policy will be dated as of the Closing Date and will contain only those title exceptions listed as Permitted Liens on Exhibit G and will evidence the recording of this Agreement under the provisions of Section 9.17. The Title Policy will also contain the following endorsements as required by Corporation Counsel: an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (i.e., Zoning 3.1 plans and specifications) with parking, contiguity, location, access, and survey.

6.06 **Evidence of Clear Title.** Not less than 5 Business Days prior to the Closing Date, Developer, at its own expense, will have provided the City with current searches under the name of Developer as follows:

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

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

6.07 **Surveys.** Developer will have furnished the City with 3 copies of the Survey.

6.08 **Insurance.** Developer, at its own expense, will have insured the Property and the Project as required under Section 13. Prior to the Closing Date, certificates required under Section 13 evidencing the required coverages will have been delivered to DPD.

6.09 **Opinions of Developer Parties' Counsel.** On the Closing Date, the Developer Parties will furnish the City with an opinion of counsel, substantially in the form of Exhibit H, with such changes as may be required by or acceptable to Corporation Counsel. If the Developer Parties have engaged special counsel in connection with the Project, and such special counsel is unwilling or unable to give some of the opinions stated in Exhibit H, such opinions shall be obtained by the Developer Parties from its general corporate counsel.

6.10 **Evidence of Prior Expenditures.** One or more of the Developer Parties will have provided evidence satisfactory to DPD of the Prior Expenditures as provided in Section 5.06.

6.11 **Financial Statements.** Developer will have provided Financial Statements to DPD for its fiscal year 2014, and its most recently available unaudited interim Financial Statements.

6.12 **Additional Documentation.** Developer will have provided documentation to DPD, satisfactory in form and substance to DPD concerning Developer's employment profile and copies of any ground leases or operating leases and other tenant leases executed by Developer for leaseholds in the Project, if any.

6.13 **Environmental Audit.** The Developer Parties will have provided DPD with copies of all phase I environmental audits completed with respect to the Property, if any, and a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits. If environmental issues exist on the Property, the City will require written verification from the Illinois Environmental Protection Agency that all identified environmental issues have been or will be resolved to its satisfaction.

6.14 **Entity Documents.** Each of the Developer Parties, Brinshore and Michaels shall provide a copy of its current Articles of Organization, with all amendments, containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of its state of organization and all other states in which it is qualified to do business; its current limited liability company agreement; a secretary's certificate in such form and substance as the Corporation Counsel may require; and such organizational documentation as the City may request.

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

## SECTION SEVEN: AGREEMENTS WITH CONTRACTORS

7.01 **Bid Requirement for General Contractor and Subcontractors.**

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

(b) Developer must submit copies of the Construction Contract to DPD as required under Section 7.02 below. Upon the written request of the City, Developer will provide photocopies of all subcontracts entered or to be entered into in connection with the Project within five (5) Business Days of the execution thereof. The Developer must ensure that the General Contractor will not (and must cause the General Contractor to ensure that the subcontractors will not) begin work on the Project (or any phase thereof) until the applicable Plans and Specifications for that phase have been approved by the City and all requisite permits have been obtained.

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

7.03 **Performance and Payment Bonds.** Prior to commencement of construction of any work in the public way, Developer will require that the General Contractor and any applicable subcontractor(s) be bonded (as to such work in the public way) for their respective payment and performance by sureties having an AA rating or better using the bond form attached as Exhibit I. The City will be named as obligee or co-obligee on such bond.

7.04 **Employment Opportunity.** Developer will contractually obligate and cause the General Contractor to agree and contractually obligate each subcontractor to agree to the provisions of Section 11; provided, however, that the contracting, hiring and testing requirements associated with the MBE/WBE and the City resident obligations in Section 11 shall be applied on an aggregate basis and the failure of the General Contractor to require each subcontractor to satisfy or the failure of any one subcontractor to satisfy, such obligation shall not result in a default or a termination of this Agreement or require payment of the City resident hiring shortfall amounts so long as such Section 11 obligations are satisfied on an aggregate basis.

7.05 **Other Provisions.** In addition to the requirements of this Section 7, the Construction Contract and each contract with any subcontractor must contain provisions required under Section 4.04 (Change Orders), Section 9.08 (Prevailing Wage), Section 11.01(e) (Employment Opportunity), Section 11.02 (City Resident Construction Worker Employment Requirement), Section 11.03 (Developer's MBE/WBE Commitment), Section 13 (Insurance) and Section 15.01 (Books and Records).

## SECTION EIGHT: COMPLETION OF CONSTRUCTION

8.01 **Certificate of Completion of Construction**. (a) Upon each of the substantial completion and the final completion of the construction of the Project in accordance with the terms of this Agreement, and upon the Developer's written request, DPD shall issue to the Developer either the Substantial Completion Certificate or the Final Certificate, as applicable. The Final Certificate shall be in recordable form (substantially in the form attached hereto as Exhibit N) certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. DPD shall respond to the Developer's written request for either certificate within forty-five (45) days by issuing either the requested certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed (or substantially completed in the case of the Substantial Completion Certificate), and the measures which must be taken by the Developer in order to obtain the requested certificate. The Developer may resubmit a written request for either certificate upon completion of such measures.

(b) The Substantial Completion Certificate will not be issued until the following requirements have been met:

(i) The Developer has obtained a partial or temporary Certificate of Occupancy that covers all 84 residential units, and commercial space;

(ii) The 84 residential units, and the commercial space have been constructed substantially according to the Plans and Specifications;

(iii) There exists neither an Event of Default (after any applicable cure period) which is continuing nor a condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default; and

(iv) Developer has incurred costs for TIF-Funded Improvements in an amount equal to or higher than $7,087,500.

(c) The Final Certificate will not be issued until the following requirements have been met:

(i) The City's Monitoring and Compliance unit has determined in writing that the Developer is in complete compliance with all City requirements (M/WBE, City residency and prevailing wage) as required in this Agreement;

(ii) The Project, including all 84 residential units, the parking spaces and all related improvements, has been completed;

(iii) The Developer has received a Certificate of Occupancy from the City or other evidence reasonably acceptable to DPD that the Developer has complied with building permit requirements; and

(iv) Developer has incurred costs for TIF-Funded Improvements or such amounts are included in the Project Budget in an amount equal to or higher than $8,100,000.

8.02 **Effect of Issuance of Certificate; Continuing Obligations.**

(a) The Final Certificate relates only to the construction of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to Developer Parties' obligation to complete such activities have been satisfied. After the issuance of the Final Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Final Certificate must not be construed as a waiver by the City of any of its rights and remedies under such executory terms.

(b) Those covenants specifically described at Section 9.02 (Covenant to Redevelop), Section 9.18 (Real Estate Provisions), and Section 9.19 (Affordability Requirements) as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement, provided that (a) upon the issuance of the Final Certificate the covenants of Section 9.02 (Covenant to Redevelop) shall be deemed fulfilled and (b) upon the issuance of the Substantial Completion Certificate, the covenant of Section 9.19 (Affordability Requirements) shall not apply to and be deemed released from the Commercial Project. The other executory terms of this Agreement that remain after the issuance of the Final Certificate will be binding only upon Developer or a permitted assignee of Developer who, as provided in Section 19.14 (Assignment) of this Agreement, has contracted to take an assignment of Developer's rights under this Agreement and assume Developer's liabilities hereunder.

8.03 **Failure to Complete.** If Developer Parties fail to timely complete the Project in compliance with the terms of this Agreement, then the City will have, but will not be limited to, any of the following rights and remedies:

(a) the right to terminate this Agreement and cease all disbursement of City Funds not yet disbursed under this Agreement;

(b) the right (but not the obligation), upon not less than thirty (30) days prior written notice to the Developer to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of such TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. If the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available under Section 5.01, the Developer Parties will reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds; and

(c) the right to seek reimbursement of the City Funds from the Developer Parties, provided that the City is entitled to rely on an opinion of counsel that such reimbursement will not jeopardize the tax-exempt status, if any, of any TIF Bonds.

8.04 Notice of Expiration of Term of Agreement. Upon the expiration of the Term of the Agreement, DPD will provide the Developer Parties, at their written request, with a written notice in recordable form stating that the Term of the Agreement has expired.

## SECTION NINE: REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEVELOPER AND SPONSOR.

9.01 **General**. The Developer Parties each represents, warrants, and covenants, as of the date of this Agreement as follows. Representations, warranties and covenants denoted (Developer only) or (Sponsor only) shall be deemed to have been made only by Developer or Sponsor, as applicable; otherwise, they shall be deemed to apply to both.

(a) Developer is an Illinois limited liability company, duly organized, validly existing and in good standing (Developer only);

(b) Brinshore PL, LLC, an Illinois limited liability company ("**Brinshore**") and Michaels Chicago Holding Company, LLC, an Illinois limited liability company ("**Michaels**") are the sole members Manager,, which is the sole managing member of Developer (Developer only).

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

(d) Sponsor is the sole member of Cabrini Green CDC-SPE, LLC, which is a special member of Developer (Sponsor only);

(e) Each of the Developer Parties (i) has the right, power and authority to enter into, execute, deliver and perform this Agreement, and (ii) has been duly authorized by all necessary limited liability company or corporate action to execute, deliver and perform its obligations under this Agreement, which execution, delivery and performance does not and will not violate its certificate of organization or limited liability company agreement or by-laws as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the Developer Parties is now a party or by which it may become bound;

(f) Developer has acquired and will maintain good and merchantable fee simple title to the Property (and improvements) free and clear of all liens except for the Permitted Liens or Lender Financing, if any, as disclosed in the Project Budget (Developer only);

(g) Developer is now, and until the earlier to occur of the expiration of the Term of the Agreement and the date, if any, on which Developer has no further economic interest in the Project, will remain solvent and able to pay its debts as they mature (Developer only);

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

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

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

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

(l) prior to the issuance of the Final Certificate, if it would materially adversely affect Developer's ability to perform its obligations under this Agreement, Developer will not do any of the following without the prior written consent of DPD: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose (directly or indirectly) of all or substantially all of its assets or any portion of the Property or the Project (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business or in accordance with Section 5.05; (3) enter into any transaction outside the ordinary course of Developer's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity (except as required in connection with Lender Financing or tax credit equity investment for the Project); or (5) enter into any transaction that would cause a material and detrimental change to Developer's financial condition; provided, however, this section shall not apply to any commercial leases entered into in the ordinary course of business, it being acknowledged that Developer shall have the right to enter into commercial leases in the ordinary course of business for all or any portion of the Property on such terms as are determined by Developer (Developer only);

(m) Developer has not incurred and, prior to the issuance of the Final Certificate, will not, without the prior written consent of the Commissioner of DPD, allow the existence of any liens against the Project other than the Permitted Liens or Non-Governmental Charges; or incur any indebtedness secured or to be secured by the Project or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget (Developer only);

(n) None of the Developer Parties has made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or under City ordinance, for services to any City agency ("**City Contract**") as an inducement for the City to enter into the Agreement or any City Contract with the Developer Parties in violation of Chapter 2-156-120 of the Municipal Code of the City, as amended; and

(o) None of the Developer Parties nor any affiliate thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subsection only, "affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

9.02 **Covenant to Redevelop**. Upon DPD's approval of the Scope Drawings and Plans and Specifications as provided in Section 4.02, and DPD's approval of the Project Budget as provided in Section 4.03, and Developer's receipt of all required building permits and governmental approvals, Developer will redevelop the Property in substantial compliance with

this Agreement, the TIF Ordinances, the PD, the Scope Drawings, the Plans and Specifications, the Project Budget and all amendments thereto, and all Federal, State and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project and/or Developer.

The covenants set forth in this Section 9.02 will run with the land and will be binding upon any transferee of the Property (subject to the provisions of Section 8.02(b)), or a portion thereof, unless terminated in whole or in part by the City, acting through DPD, pursuant to a written instrument executed pursuant to Section 8.02 and recorded against the Property, or any portion thereof.

9.03 **Redevelopment Plan.** The Developer Parties represent that the Project is and will be in compliance with all applicable terms of the Redevelopment Plan, as in effect on the date of this Agreement.

9.04 **Use of City Funds.** City Funds disbursed to the Developer Parties will be used by the Developer Parties solely to pay for or reimburse the Developer Parties for payment for the TIF-Funded Improvements as provided in this Agreement.

9.05 **Other Bonds.** At the request of the City, the Developer Parties, at the City's cost and expense, will agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole and absolute discretion) TIF Bonds or other bonds **("Bonds")** in connection with the Project or the Redevelopment Area, the proceeds of which are to be used to reimburse the City for expenditures made in connection with the TIF-Funded Improvements; provided, however, that any such amendments will not have a material adverse effect on the Developer Parties or the Project. The Developer Parties will cooperate and provide reasonable assistance in connection with the marketing of any such Bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition, and assisting the City in its preparation of an offering statement with respect thereto. None of the Developer Parties will have any liability with respect to any disclosures made in connection with any such issuance that are actionable under applicable securities laws unless such disclosures are based on factual information provided by the Developer Parties that is determined to be false and misleading.

9.06 **Employment Opportunity.**

(a) Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and, as applicable, to cause the General Contractor to contractually obligate each subcontractor to abide by the terms set forth in Section 9.08 and Section 11; provided, however, that the contracting, hiring and testing requirements associated with the MBE/WBE and City resident obligations in Section 11 shall be applied on an aggregate basis and the failure of the General Contractor to require each subcontractor to satisfy, or the failure of any one subcontractor to satisfy, such obligations shall not result in a default or a termination of the Agreement or require payment of the City resident hiring shortfall amount so long as such Section 11 obligations are satisfied on an aggregate basis. Developer will submit to DPD a plan describing its compliance program prior to the Closing Date.

(b) Developer will deliver to the City written progress reports by draw, but not less than quarterly, detailing compliance with the requirements of Sections 9.08, 11.02 and 11.03 of this Agreement. If any such reports indicate a shortfall in compliance, Developer will also deliver a plan to DPD which will outline, to DPD's satisfaction, the manner in which Developer will correct any shortfall.

9.07 **Employment Profile.** Developer will submit, and contractually obligate and cause the General Contractor to submit and contractually obligate any subcontractor to submit, to DPD, from time to time, statements of its employment profile upon DPD's request.

9.08 **Prevailing Wage.** The Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor to pay and to contractually cause each subcontractor to pay, the prevailing wage rate as ascertained by the federal government pursuant to the Davis-Bacon Act, to all their respective employees working on constructing the Project or otherwise completing the TIF-Funded Improvements. All such contracts will list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If federal prevailing wage rates are revised, the revised rates will apply to all such contracts. Upon the City's request, Developer will provide the City with copies of all such contracts entered into by Developer or the General Contractor to evidence compliance with this Section 9.08.

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

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

9.11 **Disclosure of Interest.** None of the Developer Parties' counsel has direct or indirect financial ownership interest in the Developer Parties, the Property, or any other feature of the Project.

9.12 **Financial Statements.** Developer will obtain and provide to DPD Financial Statements for Developer's fiscal year ended 2014, and each yearly thereafter for the Term of the Agreement. In addition, if requested by DPD, Developer will submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

9.13 **Insurance.** Solely at its own expense, Developer will comply with all provisions of Section 13 hereof.

9.14 **Non-Governmental Charges.**

(a) Payment of Non-Governmental Charges. Except for the Permitted Liens, and subject to subsection (b) below, Developer agree to pay or cause to be paid when due any Non-Governmental Charges assessed or imposed upon the Project, or any fixtures that are or may become attached thereto and which are owned by Developer, which create, may create, or

appear to create a lien upon all or any portion of the Project; provided however, that if such Non-Governmental Charges may be paid in installments, Developer may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. Developer will furnish to DPD, within thirty (30) days of DPD's request, official receipts from the appropriate entity, or other evidence satisfactory to DPD, evidencing payment of the Non-Governmental Charges in question.

(b) Right to Contest. Developer will have the right, before any delinquency occurs:

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charges by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charges, prevent the imposition of a lien or remove such lien, or prevent the transfer or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend Developer's covenants to pay any such Non-Governmental Charges at the time and in the manner provided in this Section 9.14); or

(ii) to furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD will require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such transfer or forfeiture of the Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charges and all interest and penalties upon the adverse determination of such contest.

9.15 **Developer Parties' Liabilities.** The Developer Parties will not enter into any transaction that would materially and adversely affect its ability to perform its obligations under this Agreement. The Developer Parties will immediately notify DPD of any and all events or actions which may materially affect such party's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements related to this Agreement or the Project.

9.16 **Compliance with Laws.** To the best of the Developer Parties' knowledge, after diligent inquiry, the Property and the Project are in compliance with all applicable Federal, State and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Property and the Project. Upon the City's request, the Developer Parties will provide evidence satisfactory to the City of such current compliance.

9.17 **Recording and Filing.** The Developer Parties will cause this Agreement, certain exhibits (as specified by Corporation Counsel) and all amendments and supplements hereto to be recorded and filed on the date hereof in the conveyance and real property records of Cook County, Illinois against the Property. The Developer Parties will pay all fees and charges incurred in connection with any such recording. Upon recording, The Developer Parties will immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

9.18 **Real Estate Provisions.**

(a) Governmental Charges.

(i) Payment of Governmental Charges. Subject to subsection (ii) below, Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon Developer, the Property or the Project, or become due and payable, and which create, may create, or appear to create a lien upon Developer or all or any portion of the Property or the Project. "**Governmental Charge**" means all Federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties of the State other than Cook County, and municipalities other than the City) relating to Developer, the Property, or the Project, including but not limited to real estate taxes.

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

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

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

(b) Developer's Failure To Pay Or Discharge Lien. If Developer fail to pay or contest any Governmental Charge or to obtain discharge of the same as required by this Section 9.18, Developer will advise DPD thereof in writing, at which time DPD may, but will not be obligated to, and without waiving or releasing any obligation or liability of Developer under this Agreement, in DPD's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which DPD deems advisable. All sums so paid by DPD, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, will be promptly disbursed to DPD by Developer. Notwithstanding anything contained herein to the contrary, this paragraph must not be construed to obligate the City to pay any such Governmental Charge. Additionally, if Developer fail to pay any Governmental Charge, the City, in its sole discretion, may require Developer to submit to the City audited Financial Statements at Developer's own expense.

9.19 **Affordability Requirements.**

(a) Affordable Units. Of the 84 units comprising the Residential Project, 40 units (or 47.6% of the Residential Project's units) shall be affordable to households with AMI not greater than 60%, of which 24 units (or 31% of the Project's units) shall be CHA Units; 10 units (or 12% of the Project's units) shall be affordable to households with AMI not greater than 80% but not reserved for CHA households; 2 units (2.4% of the Residential Projects units) shall be CHA units affordable to households with AMI not greater than 80%; and 32 units shall not have any affordability restrictions.

(b) CHA Units. The Developer Parties agree and covenant to the City that, prior to any foreclosure of the Property by a lender providing Lender Financing, the provisions of that certain Regulatory Agreement executed by the Developer and DPD as of the date hereof shall govern the terms of the Developer's obligation to provide affordable housing. Following foreclosure, if any, and from the date of such foreclosure through the date set forth in subparagraph (c) below, the following provisions shall govern the terms of the obligation to provide affordable housing under this Agreement:

(i) All of the CHA Units shall be operated and maintained solely as residential rental housing;

(ii) 24 of the 26 CHA Units shall be available for occupancy to and be occupied solely by Low Income Families (as defined below) upon initial occupancy; and

(iii) 24 of the 26 CHA Units have monthly rents not in excess of thirty percent (30%) of the maximum allowable income for a Low Income Family (with the applicable Family size for such units determined in accordance with the rules specified in Section 42(g)(2) of the Internal Revenue Code of 1986, as amended); provided, however, that for any unit occupied by a Family (as defined below) that no longer qualifies as a Low Income Family due to an increase in such Family's income since the date of its initial occupancy of such unit, the maximum monthly rent for such unit shall not exceed thirty percent (30%) of such Family's monthly income.

(iv) As used in this Section 9.19, the following terms have the following meanings:

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

(B) "Low Income Families" shall mean Families whose annual income does not exceed sixty percent (60%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition.

(c) The covenants set forth in this Section 9.19 shall run with the land for a period of forty (40) years from the date of the Final Certificate and be binding upon any transferee. Provided, however, upon the issuance of the Substantial Completion Certificate the Commercial Project shall be released from and no longer subject to the covenants of this Section 9.19.

(d) The City and the Developer Parties may enter into a separate agreement to implement the provisions of this Section 9.19.

9.20 **Job Readiness Program.** If requested by the City, Developer will use its best

efforts to encourage its tenants at the Project to participate in job readiness programs established by the City to help prepare individuals to work for businesses located within the Redevelopment Area.

9.21 **Broker's Fees.** Developer has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to any of the transactions contemplated by this Agreement for which the City could become liable or obligated.

9.22 **No Business Relationship with City Elected Officials.** The Developer Parties acknowledge receipt of a copy of Section 2-156-030(b) of the Municipal Code and that the Developer Parties have read and understand such provision. Under Section 2-156-030(b) of the Municipal Code of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a "Business Relationship" (as defined in Section 2-156-080(b)(2) of the Municipal Code), or to participate in any discussion of any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship. Violation of Section 2-156-030(b) by any elected official, or any person acting at the direction of such official, with respect to this Agreement, or in connection with the transactions contemplated thereby, will be grounds for termination of this Agreement and the transactions contemplated thereby. The Developer Parties hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to this Agreement or the transactions contemplated thereby.

9.23 **Environmental Features.** The design of the Project incorporates the following environmentally-friendly elements for which Developer shall be responsible: permeable materials for all walkways, patios and driveways; high efficiency heating and hot water (including a solar thermal hot water boosting gas hot water); high insulation values in the windows and walls using environmentally-friendly insulation; insulated domestic hot water tanks; energy star advanced lighting package; recycled/recovered content gypsum wallboard; energy star labeled roofing materials; energy star rated programmable thermostat; low toxic adhesives; natural or recycled-content carpet pad; minimal VOC content paint and finishes, water-based lacquer finishes on woodwork and water-based urethane finishes.

9.24 **Annual Compliance Report**. Beginning with the issuance of the Final Certificate and continuing throughout the Term of the Agreement, the Developer shall submit to DPD the Annual Compliance Report within 30 days after the end of the calendar year to which the Annual Compliance Report relates.

9.25 **Survival of Covenants.** All warranties, representations, covenants and agreements of the Developer Parties contained in this Section 9 and elsewhere in this Agreement are true, accurate and complete at the time of the Developer Parties' execution of this Agreement, and will survive the execution, delivery and acceptance by the parties and (except as provided in Section 8 upon the issuance of the Final Certificate) will be in effect throughout the Term of the Agreement.

## SECTION TEN: REPRESENTATIONS, WARRANTIES AND COVENANTS OF CITY

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

10.02 **Survival of Covenants**. All warranties, representations, and covenants of the City contained in this Section 10 or elsewhere in this Agreement shall be true, accurate, and

complete at the time of the City's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and be in effect throughout the Term of the Agreement.

## SECTION ELEVEN: DEVELOPER PARTIES' EMPLOYMENT OBLIGATIONS

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

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

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

(c) Each Employer will comply with all applicable Federal, State and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the State Human Rights Act, 775 ILCS 5/1-101 et. seq. (2002 State Bar Edition, as amended), and any subsequent amendments and regulations promulgated thereto.

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

(e) Each Employer will include the foregoing provisions of subparagraphs (a) through (d) in every construction contract entered into in connection with the Project (other than

for remediation and demolition entered into prior to the date of this Agreement), and will require inclusion of these provisions in every subcontract entered into by any subcontractors and every agreement with any Affiliate operating on the Property, so that each such provision will be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this Section 11.01 will be a basis for the City to pursue remedies under the provisions of Section 16.02 hereof, subject to the cure rights under Section 16.03.

11.02 **City Resident Construction Worker Employment Requirement.**

(a) Developer agrees for itself and its successors and assigns, and will contractually obligate its General Contractor and will cause the General Contractor to contractually obligate its subcontractors, as applicable, to agree, that during the construction of the Project they will comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Project will be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, Developer, its General Contractor and each subcontractor will be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions. Developer, the General Contractor and each subcontractor will use their respective best efforts to exceed the minimum percentage of hours stated above, and to employ neighborhood residents in connection with the Project.

(b) Developer may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City.

(c) **"Actual residents of the City"** means persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

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

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

(f) Upon 5 Business Days prior written notice, Developer, the General Contractor and each subcontractor will provide full access to their employment records related to the Construction of the Project to the Chief Procurement Officer, the Commissioner of DPD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. Developer, the General Contractor and each subcontractor will maintain all relevant personnel data and records related to the Construction of the Project for a period of at least 3 years after final acceptance of the work constituting the Project.

(g) At the direction of DPD, affidavits and other supporting documentation will be required of Developer, the General Contractor and each subcontractor to verify or clarify an

employee's actual address when doubt or lack of clarity has arisen.

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

(i) When work at the Project is completed, in the event that the City has determined that Developer has failed to ensure the fulfillment of the requirement of this Section concerning the worker hours performed by actual residents of the City or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project Budget undertaken by Developer (and specifically excluding any tenant improvements which are not undertaken by Developer) (the product of .0005 x such aggregate hard construction costs) (as the same will be evidenced by approved contract value for the actual contracts) will be surrendered by Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject Developer, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to Developer pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether Developer must surrender damages as provided in this paragraph.

(j) Nothing herein provided will be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement or related documents.

(k) Developer will cause or require the provisions of this Section 11.02 to be included in all construction contracts and subcontracts related to the Project (other than contracts for remediation and demolition entered into prior to the date of this Agreement).

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

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the **"Procurement Program"**), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code of Chicago (the **"Construction Program,"** and collectively with the Procurement Program, the **"MBE/WBE Program"**), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 11.03, during the course of the Project, at least the following percentages of the aggregate hard construction costs (as set forth in the Project Budget) shall be expended for contract participation by minority-owned businesses (**"MBEs"**) and by women-owned businesses (**"WBEs"**):

(1) At least 24 percent by MBEs.

(2) At least four percent by WBEs.

(b) For purposes of this Section 11.03 only:

(i) The Developer (and any party to whom a contract is let by Developer in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by Developer in connection with the Project) shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

(ii) The term "minority-owned business" or "MBE" shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

(iii) The term "women-owned business" or "WBE" shall mean a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, Developer's MBE/WBE commitment may be achieved in part by Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by Developer utilizing a MBE or a WBE as the General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials or services used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to Developer's MBE/WBE commitment as described in this Section 11.03. In accordance with Section 2-92-730, Municipal Code of Chicago, Developer shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DPD.

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

(e) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if

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

(f) Any reduction or waiver of Developer's MBE/WBE commitment as described in this Section 11.03 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

(g) Prior to the commencement of the Project, Developer shall be required to meet with the City's monitoring staff with regard to Developer's compliance with its obligations under this Section 11.03. The General Contractor and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, Developer shall demonstrate to the City's monitoring staff its plan to achieve its obligations under this Section 11.03, the sufficiency of which shall be approved by the City's monitoring staff. During the Project, Developer shall submit the documentation required by this Section 11.03 to the City's monitoring staff, including the following: (i) subcontractor's activity report; (ii) contractor's certification concerning labor standards and prevailing wage requirements; (iii) contractor letter of understanding; (iv) monthly utilization report; (v) authorization for payroll agent; (vi) certified payroll; (vii) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (viii) evidence of compliance with job creation/job retention requirements. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that Developer is not complying with its obligations under this Section 11.03, shall, upon the delivery of written notice to Developer, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to Developer to halt the Project, (2) withhold any further payment of any City Funds to Developer or the General Contractor, or (3) seek any other remedies against Developer available at law or in equity.

## SECTION TWELVE: ENVIRONMENTAL MATTERS

12.01 **Environmental Matters.** Developer hereby represents and warrants to the City that Developer has conducted environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws (taking into account the anticipated issuance and applicability of any NFRLs issued with respect to the Property), this Agreement and all Exhibits, the Scope Drawings, the Plans and Specifications and all amendments thereto, the TIF Bond Ordinance, if any, and the Redevelopment Plan.

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

## SECTION THIRTEEN: INSURANCE

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

(a) Prior to execution and delivery of this Agreement

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

(iii) All Risk Property

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

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

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

(iii) Automobile Liability (Primary and Umbrella)

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

(iv) Railroad Protective Liability

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

(v) All Risk /Builders Risk

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

(vi) Professional Liability

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

(vii) Valuable Papers

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

(viii) Contractors Pollution Liability

When any remediation work is performed which may cause a pollution exposure, the Developer must cause remediation contractor to provide Contractor Pollution Liability covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of work with limits of not less than $1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured.

(c) Post Construction: All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be an additional insured mortgagee for liability coverage and named as an additional insured and loss payee/mortgagee on all property coverage.

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

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

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

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

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

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

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

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

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

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

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

## SECTION FOURTEEN: INDEMNIFICATION

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

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

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

(iii) the existence of any material misrepresentation or omission in this Agreement, any offering memorandum or the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by the Developer Parties or any of its Affiliates or any of their respective agents, employees, contractors or persons acting under the control or at the request of the Developer Parties or any of its Affiliates; or

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

(v) any act or omission by the Developer Parties or any of its Affiliates.

provided, however, that the Developer Parties shall not have any obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, the Developer Parties will contribute the maximum portion that it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this Section 14.01 will survive the termination of this Agreement.

## SECTION FIFTEEN: MAINTAINING RECORDS/RIGHT TO INSPECT

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

15.02 **Inspection Rights.** Upon 3 Business Days notice and subject to the rights of tenants, any authorized representative of the City will have access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

## SECTION SIXTEEN: DEFAULT AND REMEDIES

16.01 **Events of Default.** The occurrence of any one or more of the following events, subject to the provisions of Section 16.03, will constitute an "**Event of Default**" by the Developer Parties hereunder:

(a) the failure of the Developer Parties to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of such party under this Agreement or any related agreement;

(b) the failure of the Developer Parties to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations under any other agreement with any person or entity if such failure may have a material adverse effect on the Developer Parties' business, property (including the Property or the Project), assets (including the Property or the Project), operations or condition, financial or otherwise;

(c) the making or furnishing by the Developer Parties to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect when made;

(d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt by the Developer Parties to create, any lien or other encumbrance upon the Property or the Project, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

(e) the commencement of any proceedings in bankruptcy by or against the Developer Parties or for the liquidation or reorganization of the Developer Parties, or alleging that the Developer Parties is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of the Developer Parties' debts, whether under the United States Bankruptcy Code or under any other state or Federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving the Developer Parties; provided, however, that if such commencement of proceedings

is involuntary, such action will not constitute an Event of Default unless such proceedings are not dismissed within 120 days after the commencement of such proceedings;

(f) the appointment of a receiver or trustee for Developer, for any substantial part of Developer's assets, or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of Developer; provided, however, that if such appointment or commencement of proceedings is involuntary, such action will not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within 120 days after the commencement thereof;

(g) the entry of any judgment or order against Developer for an amount in excess of $1.0 million which remains unsatisfied or undischarged and in effect for 60 days after such entry without a stay of enforcement or execution;

(h) the declaration of an event of default under the Lender Financing, if any, which default is not cured within any applicable cure period;

(i) the dissolution of Developer; or

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

For purposes of Section 16.01(j) hereof, a natural person with a material interest in the Developer Parties is one owning in excess of thirty-three percent (33%) of such party's (or such party's ultimate parent entity's) issued and outstanding ownership shares or interest.

16.02 **Remedies.** Upon the occurrence of an Event of Default, the City may terminate this Agreement and any other agreements to which the City and the Developer Parties are or shall be parties and/or suspend disbursement of City Funds, except as otherwise provided in Section 5.03(c)(vii). The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. To the extent permitted by law, the City may also lien the Property. Without limiting the generality of the foregoing, with respect to Events of Defaults by the Developer Parties prior to the issuance of a Final Certificate, the City shall be entitled to seek reimbursement of City Funds from the Developer Parties.

16.03 **Curative Period.**

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

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

Agreement if it has commenced to cure the alleged default within such 30 day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

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

(a) if a monetary default exists, the Limited Partner may cause to be cured such monetary default within 90 days after the later of (and Citibank, except as provided in Section 16.04(h) below, and the City shall take no action during such 90 day period): (i) the expiration of the cure period, if any, granted under Section 16.03 to Developer Parties with respect to such monetary default; or (ii) receipt by the Limited Partner and Citibank of notice of default from the City. If the Limited Partner does not cause such monetary default to be cured within such 90-day time period set forth in the preceding sentence, then Citibank may cure such monetary default in the manner set forth in Section 16.04(c); and

(b) if a non-monetary default exists (except for a Personal Developer Default, as later defined), the Limited Partner may cause to be cured such non-monetary default within 90 days after the later of (and Citibank, except as provided in Section 16.04(h) below, and the City shall take no action during such 90 day period): (i) the expiration of the cure period, if any, granted under Section 16.03 to Developer with respect to such non-monetary default; or (ii) receipt by the Limited Partner and Citibank of notice of default from the City. If the Limited Partner does not cause such non-monetary default to be cured within such 90-day time period set forth in the preceding sentence, then Citibank may cure such monetary default in the manner set forth in Section 16.04(d); and

(c) if a monetary default exists, Citibank may cure such monetary default within 60 days after the later of (and the non-electing party and the City shall take no action during such 60-day period): (i) the expiration of the Limited Partner's 90-day cure period; or (ii) receipt by Citibank of notice from the City that the Limited Partner has failed to cure the default within the timeframe set forth in Section 16.04(a) above; and

(d) if a non-monetary default exists (except for a Personal Developer Default), Citibank may cure such non-monetary default within 90 days after the later of (and the non-electing party and the City shall take no action during such 90-day period): (i) the expiration of the Limited Partner's 90-day cure period; or (ii) receipt by Citibank of notice from the City that the Limited Partner has failed to cure the default within the timeframe set forth in Section 16.04(b) above; provided, however, if such non-monetary default is of a nature that is not subject to cure in 90 days, the cure period will be extended for the time period needed to cure such default (including any time period required by Citibank to take control of the Project by initiating foreclosure of its mortgage and/or appointing a receiver) and the City shall forbear from exercising its remedies hereunder so long as diligent and continuous efforts are being pursued to cure such default; and

(e)(1) If such non-monetary default would be an Event of Default set forth in Section 16.01(e), (f), (g), (i) or (j) hereof (each such default being a "Personal Developer Default"), the Limited Partner or Citibank (as applicable and in that strict order as more fully provided in this Section 16.04(e) below and not otherwise, the "Electing Party"), may provide written notice (the

"Assumption Notice") to the City and the Limited Partner or Citibank (as applicable, the "Non-Electing Parties") within 30 days of receipt of notice from the City of such Personal Developer Default, as more fully provided in Section 16.04(e)(2) below. If notice is delivered within said 30-day period, the Electing Party shall, in accordance with Section 16.04(e)(2) below, either cure or cause to be cured such Personal Developer Default by the assignment pursuant to Section 19.14 hereof of all of the Developer Parties' rights, obligations and interests in this Agreement to the Electing Party or any other party agreed to in writing by Citibank and the City, which assumption shall be deemed to cure the Personal Developer Default.

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

(f) If such Personal Developer Default is not cured by the Limited Partner or Citibank within the timeframes set forth in Section 16.04(e), then the City shall have available all remedies set forth in this Agreement, including those in Sections 16.02.

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

(h) The City agrees that at any time during which an Event of Default has occurred under the Lender Financing Documents, during the period that Citibank is diligently and continuously pursuing actions or remedies under the Lender Financing, with or without the Developer Parties, which are intended to cause substantial completion of the Project, and, as part of such actions or remedies, continues to fund or make advances to pay Project costs, the City shall likewise forbear from exercising its remedies under Section 16.02.

(i) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, the continuation of any cure periods under Section 16.03 and Section 16.04, in the event Citibank initiates a foreclosure proceeding, or the Limited Partner and Citibank provide a joint notice of discontinuance of actions or remedies intending to achieve substantial completion, the City may immediately commence to exercise any and all of the remedies specified in Section 16.02 above.

## SECTION SEVENTEEN: MORTGAGING OF THE PROJECT

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

(a) If a mortgagee or any other party shall succeed to Developer's interest in the Property or any portion thereof by the exercise of remedies under a mortgage or deed of trust (other than an Existing Mortgage or a Permitted Mortgage) whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 19.14 hereof, the City may, but will not be obligated to, attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party will be entitled to no rights or benefits under this Agreement, but such party will be bound by those provisions of this Agreement that are covenants expressly running with the land specified in Section 8.02.

(b) If any mortgagee or any other party shall succeed to Developer's interest in the Property or any portion thereof by the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 19.14 hereof, then the City hereby agrees to attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement so long as such party accepts all of the executory obligations and liabilities of a "Developer" hereunder. Notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of Developer's interest under this Agreement, such party will have no liability under this Agreement for any Event of Default of Developer or other claim of the City against the Developer based on events which occurred prior to the time such party succeeded to the interest of Developer under this Agreement, nor shall the City have the right to record a lien against or otherwise enforce any remedies hereunder against the Project, in which case Developer will be solely responsible. If the City placed a lien on the Project pursuant to Section 16.02 hereof in connection with an Event of Default of Developer or other claim of the City against the Developer based on events which accrued prior to the time such party succeeded to the interest of the Developer under this Agreement, the City shall release such lien upon written request to do so by such succeeding mortgagee. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of Developer's interest hereunder, such party will be entitled to no rights and benefits under this Agreement, and such party will be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land specified in Section 8.02.

(c) Prior to the issuance by the City to Developer of a Final Certificate under Section 8 hereof, no New Mortgage will be executed with respect to the Property or the Project or any portion thereof without the prior written consent of the Commissioner of DPD. A feature of such consent will be that any New Mortgage will subordinate its mortgage lien to the covenants in favor of the City that run with the land. After the issuance of a Final Certificate, consent of the Commissioner of DPD is not required for any such New Mortgage.

## SECTION EIGHTEEN: NOTICES

18.01 **Notices.** All notices and any other communications under this Agreement will: (A) be in writing; (B) be sent by: (i) telecopier/fax machine, (ii) delivered by hand, (iii) delivered by an overnight courier service which maintains records confirming the receipt of documents by the receiving party, or (iv) registered or certified U.S. Mail, return receipt requested; (C) be given at the following respective addresses:

| | |
|---|---|
| If to the City: | City of Chicago<br>Department of Planning and Development<br>Attn: Commissioner<br>121 North LaSalle Street, Room 1000<br>Chicago, IL 60602<br>312/744-2271 (Fax) |
| With copy to: | City of Chicago<br>Corporation Counsel<br>Attn: Finance and Economic Development Division<br>121 North LaSalle Street, Room 600<br>Chicago, IL 60602<br>312/744-8538 (Fax) |
| If to Developer Parties: | Clydiv, LLC<br>666 Dundee Road, Suite 1102<br>Northbrook, IL 60062<br>Attention: Peter Levavi<br>847/562-9401 (Fax) |
| With copy to: | Applegate & Thorne-Thomsen, P.C.<br>626 W. Jackson Blvd, Suite 400<br>Chicago, Illinois 60661<br>Attention: Nicole Jackson, Esq.<br>312/421-4411 (Fax) |
| With a copy to: | Cabrini Green LAC Community Development Corporation<br>530 West Locust<br>Chicago, Illinois 60610<br>Attention: President |
| With a copy to: | Cabrini Green CDC-SPE, LLC<br>530 West Locust<br>Chicago, Illinois 60610<br>Attention: President |
| With a copy to: | Jeff Leslie<br>Director, Clinical and Experiential Learning<br>Paul J. Tierney Director, Housing Initiative Clinic<br>The University of Chicago Law School<br>6020 S. University Ave<br>Chicago, IL 60637 |
| If to Limited Partner: | |

With copy to:

If to CHA: Chicago Housing Authority
60 East Van Buren, 12th Floor
Chicago, Illinois 60605
Attn: Chief Executive Officer

With copy to: Chicago Housing Authority
Office of the General Counsel
60 East Van Buren, 12th Floor
Chicago, Illinois 60605
Attn: Chief Legal Officer

or at such other address or telecopier/fax number or to the attention of such other person as the party to whom such information pertains may hereafter specify for the purpose in a notice to the other specifically captioned "Notice of Change of Address" and, (D) be effective or deemed delivered or furnished: (i) if given by telecopier/fax, when such communication is confirmed to have been transmitted to the appropriate telecopier/fax number specified in this section, and confirmation is deposited into the U.S. Mail, postage prepaid to the recipient's address shown herein; (ii) if given by hand delivery or overnight courier service, when left at the address of the addressee, properly addressed as provided above.

18.02 **The Developer Parties Requests for City or DPD Approval.** Any request under this Agreement for City or DPD approval submitted by the Developer Parties will comply with the following requirements:

(a) be in writing and otherwise comply with the requirements of Section 18.01 (Notices);

(b) expressly state the particular document and section thereof relied on by the Developer Parties to request City or DPD approval;

(c) if applicable, note in bold type that failure to respond to the Developer Parties' request for approval by a certain date will result in the requested approval being deemed to have been given by the City or DPD;

(d) if applicable, state the outside date for the City's or DPD's response; and

(e) be supplemented by a delivery receipt or time/date stamped notice or other documentary evidence showing the date of delivery of the Developer Parties' request.

## SECTION NINETEEN: ADDITIONAL PROVISIONS

19.01 **Amendments.** Except as provided in this Section 19.01, and except for changes or amendments that are otherwise expressly identified as being in the discretion of the Commissioner, this Agreement and the Schedules and Exhibits attached hereto may not be materially amended without the written consent of all parties. In addition to consents and discretion expressly identified herein, the Commissioner, in his or her sole discretion, may amend or otherwise revise: (a) any exhibits containing legal descriptions in order to correct a surveyor's, scrivener's or clerical error in such a legal description, or to reflect any new subdivision of property index numbers, provided that such correction does not have a material effect on any portion of the Project; and (b) Exhibit B-2 to adjust unit locations and types; (c) Exhibits C-1 and C-2 in connection with updated budgets and/or the approval of Change Orders resulting in changes in the Project Budget in accordance with Section 4.05; (d) Exhibit D to adjust allocations between line items or to add new line items permitted under the Plan; (e) Exhibit K to reflect the terms of the final project financing, so long as such financing is not materially inconsistent with that contemplated hereunder; and (f) Exhibit G to correct inadvertent omissions or permit other minor title encumbrances not in the nature of a lien. Amendments required in clauses (b), (c) and (e) shall also require the Developer Parties' consent. The City in its sole discretion, may amend, modify or supplement the Redevelopment Plan. For purposes of this Agreement, the Developer Parties is only obligated to comply with the Redevelopment Plan as in effect on the date of this Agreement.

19.02 **Complete Agreement, Construction, Modification.** This Agreement, including any exhibits and the other agreements, documents and instruments referred to herein or contemplated hereby, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, commitments and writings with respect to such subject matter.

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

19.04 **Further Assurances.** The Developer Parties, Sponsor and City each agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement, and to accomplish the transactions contemplated in this Agreement.

19.05 **Waivers.** No party hereto will be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by such party. No delay or omission on the part of a party in exercising any right will operate as a waiver of such right or any other right unless pursuant to the specific terms hereof. A waiver by a party of a provision of this Agreement will not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing between the parties hereto, will constitute a waiver of any of such parties' rights or of any obligations of any other party hereto as to any future transactions.

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

19.07 **Parties in Interest/No Third Party Beneficiaries.** The terms and provisions of this Agreement are binding upon and inure to the benefit of, and are enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement will not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the City or the Developer Parties, will be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or the Developer Parties.

19.08 **Titles and Headings.** The Section, section and paragraph headings contained herein are for convenience of reference only and are not intended to limit, vary, define or expand the content thereof.

19.09 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, must be construed together and will constitute one and the same instrument.

19.10 **Severability.** If any provision of this Agreement, or the application thereof, to any person, place or circumstance, is be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances will remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms will provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein. In such event, the parties will negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the parties' intent in entering into this Agreement.

19.11 **Conflict.** In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances in effect as of the date of this Agreement, such ordinance(s) will prevail and control.

19.12 **Governing Law.** This Agreement is governed by and construed in accordance with the internal laws of the State, without regard to its conflicts of law principles.

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

19.14 **Assignment.** Prior to the issuance by the City to the Developer Parties of the Final Certificate, the Developer Parties may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City; provided, however, that the Developer Parties may collaterally assign their interests in this Agreement to any of its lenders identified to the City as of the Closing Date if any such lenders require such collateral assignment. Any successor in interest to the Developer Parties under this Agreement will certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Section 9.25 (Survival of Covenants) hereof, for the Term of the Agreement. The Developer Parties hereby consents to the City's transfer, assignment or other disposal of this Agreement at any time in whole or in part.

19.15 **Binding Effect.** This Agreement is binding upon the Developer Parties, the Sponsor, the City and their respective successors and permitted assigns (as provided herein) and will inure to the benefit of the Developer Parties, the Sponsor, the City and their respective

successors and permitted assigns (as provided herein).

19.16 **Force Majeure.** None of the City, the Developer Parties and Sponsor nor any successor in interest to any of them will be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, war, terrorism, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. Such force majeure events shall also include the City's failure to complete the public improvements within the Property which, at the Closing Date, the City has agreed to undertake within a construction schedule mutually acceptable to the City and the Developer Parties. The individual or entity relying on this section with respect to any such delay will, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

19.17 **Exhibits and Schedules.** All of the exhibits and schedules attached hereto are incorporated herein by reference. Any exhibits and schedules to this Agreement will be construed to be an integral part of this Agreement to the same extent as if the same has been set forth verbatim herein.

19.18 **Business Economic Support Act.** Under the Business Economic Support Act (30 ILCS 760/1 et seq. 2002 State Bar Edition, as amended), if Developer is required to provide notice under the WARN Act, Developer will, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and Minority Leader of the Senate of State, and the Mayor of each municipality where Developer has locations in the State. Failure by Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

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

19.20 **Construction of Words.** The use of the singular form of any word herein includes the plural, and vice versa. Masculine, feminine and neuter pronouns are fully interchangeable, where the context so requires. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision. The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise. The word "shall" means "has a duty to."

19.21 **Date of Performance.** If any date for performance under this Agreement falls on a Saturday, Sunday or other day which is a holiday under Federal law or under State law, the date for such performance will be the next succeeding Business Day.

19.22 **Survival of Agreements.** Except as otherwise contemplated by this Agreement,

all covenants and agreements of the parties contained in this Agreement will survive the consummation of the transactions contemplated hereby.

19.23 **Equitable Relief.** In addition to any other available remedy provided for hereunder, at law or in equity, to the extent that a party fails to comply with the terms of this Agreement, any of the other parties hereto shall be entitled to injunctive relief with respect thereto, without the necessity of posting a bond or other security, the damages for such breach hereby being acknowledged as unascertainable.

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

19.25 **Costs and Expenses.** In addition to and not in limitation of the other provisions of this Agreement, the Developer Parties agree to pay upon demand the City's out-of-pocket expenses, including attorneys' fees, incurred in connection with the enforcement of the provisions of this Agreement but only if the City is determined to be the prevailing party in an action for enforcement. This includes, subject to any limits under applicable law, reasonable attorneys' fees and legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. The Developer Parties also will pay any court costs, in addition to all other sums provided by law.

[The remainder of this page is intentionally left blank and the signature page follows]

**IN WITNESS WHEREOF,** the parties hereto have caused this Clybourn Division Rental Project Redevelopment Agreement to be signed on or as of the day and year first above written.

**CITY OF CHICAGO**

By: _____
David L. Reifman, Acting Commissioner,
Department of Planning and Development

**CLYDIV, LLC**, an Illinois limited liability company

By: Clydiv Manager, LLC, an Illinois limited liability company, its Manager

By: Brinshore PL, LLC, an Illinois limited liability company, a Member

By: Brinshore Development, L.L.C., an Illinois limited liability company, a Member

By: RJS Real Estate Services, Inc., an Illinois corporation, a Member

By: _____
Richard J. Sciortino, President

By: Michaels Chicago Holding Company, LLC, an Illinois limited liability company, a Member

By: _____
Michael Leavitt, Its Sole Member

**CLYDIV MANAGER, LLC**, an Illinois limited liability company, its Manager

By: Brinshore PL, LLC, an Illinois limited liability company, a Member

By: Brinshore Development, L.L.C., an Illinois limited liability company, a Member

By: RJS Real Estate Services, Inc., an Illinois corporation, a Member

By: _____
Richard J. Sciortino, President

By: Michaels Chicago Holding Company, LLC, an Illinois limited liability company, a Member

By: _____
Michael Leavitt, Its Sole Member

**CABRINI GREEN LAC COMMUNITY DEVELOPMENT CORPORATION**, an Illinois not-for-profit corporation

By: _____
Name: _____
Its: _____

**CABRINI GREEN CDC-SPE, LLC**, an Illinois limited liability company

By: Cabrini Green LAC Community Development Corporation, its sole member

By: _____
Name: _____
Its: _____

STATE OF ILLINOIS )
) ss
COUNTY OF COOK )

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

GIVEN under my hand and official seal this ____ day of _____, 2015.

_____
Notary Public

My Commission Expires_____

STATE OF ILLINOIS )
) ss
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that _____ personally known to me to be the _____ of _____, an Illinois limited liability company, a member of Clydiv Manager, LLC, an Illinois limited liability company ("Manager"), the managing member of Clydiv, LLC, an Illinois limited liability company (the "the Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officer, he signed and delivered the said instrument, pursuant to authority given by the members of _____, on behalf of the Manager, as the free and voluntary act of such person, and as the free and voluntary act and deed of the Developer, for the uses and purposes therein set forth.

Given under my hand and official seal this ____ day of _____, 2015.

_____
Notary Public

(SEAL)

STATE OF ILLINOIS )
) ss
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that _____ personally known to me to be the _____ of Cabrini Green LAC Community Development Corporation ("Sponsor"), sole member of Cabrini Green CDC-SPE, LLC, an Illinois limited liability company ("Special Member"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officer, he signed and delivered the said instrument on behalf of the Sponsor, as the free and voluntary act of such person, and as the free and voluntary act and deed of the Sponsor and Special Member, for the uses and purposes therein set forth.

Given under my hand and official seal this ____ day of _____, 2015.

_____
Notary Public

(SEAL)

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

LIST OF EXHIBITS

| | |
|---|---|
| Exhibit A | Legal Description of the Redevelopment Area |
| Exhibit B-1 | *Legal Description of the Property |
| Exhibit B-2 | *Legal Description of the Residential Project |
| Exhibit B-3 | *Legal description of the Commercial Project |
| Exhibit B-4 | Site Plan for the Project |
| Exhibit C-1 | *Project Budget |
| Exhibit C-2 | *Construction (MBE/WBE) Budget |
| Exhibit D | *TIF-Funded Improvements |
| Exhibit E | Construction Contract |
| Exhibit F | Approved Prior Expenditures |
| Exhibit G | Permitted Liens |
| Exhibit H | Opinion of Counsel for the Developer Parties |
| Exhibit I | Form of Payment and Performance Bond |
| Exhibit J | Requisition Form |
| Exhibit K | Lender Financing |
| Exhibit L | Escrow Agreement |
| Exhibit M | Prior TIF Obligations |
| Exhibit N | Form of Final Certificate of Completion |

(An asterisk (*) indicates which exhibits are to be recorded.)

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT A

LEGAL DESCRIPTION OF REDEVELOPMENT AREA

[Not attached for ordinance]

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT B-1

LEGAL DESCRIPTION OF PROPERTY

[Subject to Final Title and Survey]

That part of Butterfield's Addition to Chicago in the West Half of the Northwest Quarter, and the Southeast Quarter of the Northwest Quarter of Section 4, Township 39 North, Range 14 East of the Third Principal Meridian, described as follows: Beginning at the Southeast corner of Lot 1 in the Subdivision of Lot 34 in Butterfield's Addition to Chicago aforesaid; thence Northwest along the Southwesterly line of North Clybourn Avenue, 330.24 feet to the most Northerly corner of Lot 1 in the Subdivision of Lot 40 and the Northwest Half of Lot 38 in Butterfield's Addition to Chicago aforesaid; thence Southwest along the Northwesterly line of Lot 1 in aforesaid Subdivision of Lot 40 and the Northwest Half of Lot 38, a distance of 111.16 feet to the point of intersection with the Northerly extension of the East line of the West 20.00 feet of Lot 38 in Butterfield's Addition to Chicago aforesaid; thence South along said East line of the West 20.00 feet of Lot 39 and it's Northerly extension, 155.63 feet, more or less, to the point of intersection with the South line of said Lot 39, said line also being the North line of West Division Street; thence East along said North line of West Division Street 310.00 feet to the hereinabove designated Point of Beginning,

EXCEPTING THEREFROM that part described as follows; Beginning at the Southeast corner of Lot 1 in the Subdivision of Lot 34 in Butterfield's Addition to Chicago aforesaid; thence Northwest along the Southwesterly line of North Clybourn Avenue, 45.28 feet; thence Southwesterly 34.00 feet to a point on the South line of said Lot 1, also being the North line of West Division Street, said point being 43.30 feet West from the Southeast corner of said Lot 1; thence East along the South line of said Lot 1, 43.30 feet to the Point of Beginning, in Cook County, Illinois.

Said parcel containing 0.961 acres (41,880 sq. ft.), more or less.

PIN #s: 17-04-142-001; 17-04-142-002; 17-04-142-003; 17-04-142-004; 17-04-142-006; 17-04-142-007; 17-04-142-008; 17-04-142-009; 17-04-142-010; 17-04-142-011; 17-04-142-012; 17-04-142-013; 17-04-142-014, and 17-04-142-015.

COMMONLY KNOWN AS: 454-466 W. Division / 1200-1226 N. Clybourn

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT B-2

RESIDENTIAL PROJECT LEGAL DESCRIPTION

[Not attached for ordinance]

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT B-3

COMMERCIAL PROJECT LEGAL DESCRIPTION

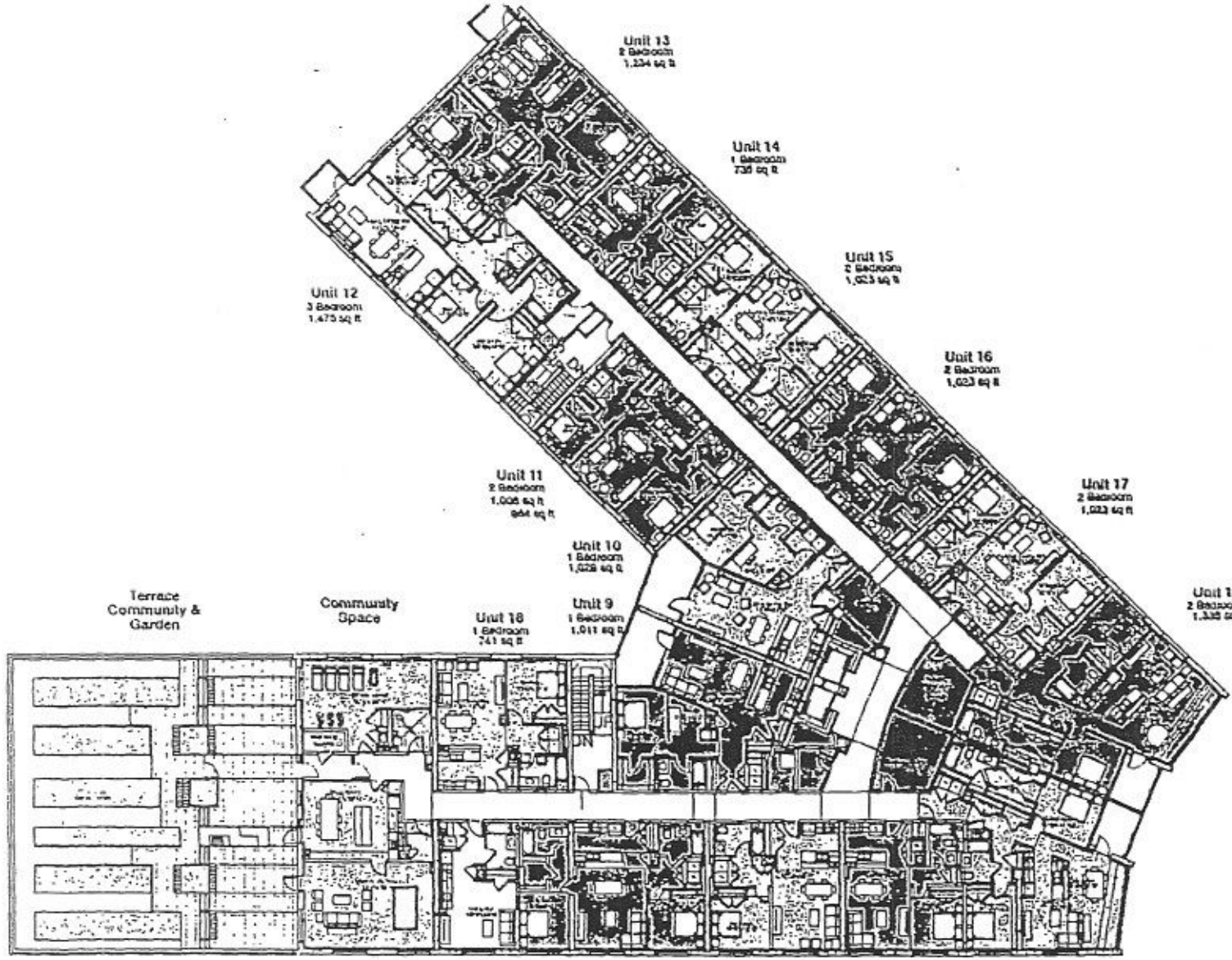
[Not attached for ordinance]

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT B-4

SITE PLAN

See attached.




3rd Floor Plan

BRINSHORE Michaels

Clydiv , LLC

# Clybourn & Division

Chicago, Illinois

452 sq ft

pappageorgehaymes partners

5/25/15

P/H # 142236

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT C-1

PROJECT BUDGET

See attached.

EXHIBIT C-1
PROJECT BUDGET

| | | |
|---|---|---|
| Acquisition | | $ 25,000.00 |
| Environmental Remediation | | $ 125,000.00 |
| Site Work (Landscape, Fencing) | | $ 200,000.00 |
| Site Work (Clearing and Grading) | | $ 125,000.00 |
| Construction Costs (Parking) | | $ 2,905,465.00 |
| Construction Costs (Residential Hard Costs) | | $17,242,838.00 |
| Construction Costs (Commercial) | | $ 3,624,534.00 |
| Construction General Requirements | | $ 1,439,862.00 |
| Construction Profit | | $ 1,439,862.00 |
| Construction Overhead | | $ 479,954.00 |
| Construction Contingency (Residential) | | $ 1,023,665.15 |
| Construction Contingency (Commercial) | | $ 181,226.70 |
| Architectural Planning & Design Services (Includes Landscape and Civil) | | $ 668,792.00 |
| Architectural Supervision | | $ 94,508.00 |
| Building Permit Review and Fees | | $ 70,000.00 |
| Reproduction Expense | | $ 5,000.00 |
| Surveys | | $ 15,000.00 |
| Construction Period Lender Inspections | | $ 25,000.00 |
| Security During Construction | | $ 200,000.00 |
| Winter Conditions | | $ 100,000.00 |
| Geotechnical | | $ 50,000.00 |
| Insurance During Construction (Builders Risk/Gen Liability) | | $ 120,000.00 |
| Environmental Testing & Monitoring during Construction | | $ 70,000.00 |
| F, F & E (Community Center, Rental Office & Model Unit) | | $ 200,000.00 |
| Utility Connection Fees (Cable, Electric & Gas) | | $ 125,000.00 |
| Developer Legal (Acquisition, PUD, Partnership, Construction, Permanent) | | $ 360,000.00 |
| Commercial Legal | | $ 100,000.00 |
| Lender Legal | | $ 60,000.00 |
| CHA Legal | | $ 100,000.00 |
| CHA Predevelopment Loan Interest | | $ 14,328.38 |
| Market Study | | $ 25,000.00 |
| Appraisal | | $ 35,000.00 |
| Real Estate Tax/Insurance Escrow | | $ 125,784.00 |
| Accounting, Cost Certifications | | $ 60,000.00 |
| Lender Perm Loan Legal | | $ 50,000.00 |
| Title/Recording/Closing/Bring Down Fees | | $ 90,000.00 |
| DPD Application Fees | | $ 1,500.00 |
| DPD Tax Credit Allocation Fees | | $ 63,250.00 |
| DPD Donation Tax Credit Allocation Fee | | $ 52,875.00 |
| Commercial Leasing Expenses (Commission and Legal Fees) | | $ 309,708.00 |
| Tenant Improvement Allowance | | $ 775,458.84 |

EXHIBIT C-1
PROJECT BUDGET

| | | |
|---|---|---|
| Permanent Loan Fees (Third Party Reports, Commitment) | | $ 90,000.00 |
| Capitalized Bridge Loan Interest | | $ 865,733.10 |
| Construction/Bridge Loan Fees | | $ 221,718.77 |
| Marketing (Residential and Commercial) | | $ 105,529.76 |
| Rent-up Fee (Leasing Fee Paid to Management Company as Units are Occupied) | | $ 42,000.00 |
| Developer Fee (Max per DOH underwriting) | | $ 2,205,179.63 |
| Affordability Reserve | | $ 249,600.00 |
| Operating Reserve (Resdiential and Commercial) | | $ 556,573.33 |
| Working Capital Rent up Reserve | | $ 832,115.58 |
| | | |
| Total Development Costs | | $37,947,061.23 |

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT C-2

CONSTRUCTION (MBE/WBE) BUDGET

| | |
|---|---|
| Project Hard Costs | $20,840,279* |
| Architectural Design | 668,792 |
| Total | $21,509,071 |

| | |
|---|---|
| **Project MBE Total at 24%** | **$5,162,177** |
| **Project WBE Total at 4%** | **$ 860,363** |

*Reflects $7,535,389 sole source exception for precast panel procurement

The above MBE/WBE dollar values are an estimate. If the actual cost of the above applicable MBE/WBE activities increase, the associated MBE/WBE dollar values will increase accordingly.

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT D

TIF-FUNDED IMPROVEMENTS

To come.

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT E

CONSTRUCTION CONTRACT

[Not attached for ordinance]

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT F

APPROVED PRIOR EXPENDITURES

[Not attached for ordinance]

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT G

PERMITTED LIENS

1. Liens or encumbrances against the Property (and related improvements):

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

2. Liens or encumbrances against the Partnership or the Project, other than liens against the Property (and related improvements), if any:

   NONE.

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT H

OPINION OF COUNSEL FOR DEVELOPER PARTIES

[To be retyped on Developer Parties' Counsel's letterhead]

_____, 2015
City of Chicago
City Hall, Room 600
121 North LaSalle Street
Chicago, IL 60602

ATTENTION: Corporation Counsel

Ladies and Gentlemen:

We have acted as counsel to Clydiv, LLC, an Illinois limited liability company (the "Developer") and Cabrini Green CDC-SPE, LLC, an Illinois limited liability company (the "Sponsor"), in connection with the construction of certain improvements on _____ _____ located in the Near North Redevelopment Project Area (the "Project"). In that capacity, we have examined, among other things, the following agreements, instruments and documents of even date herewith, hereinafter referred to as the "Documents":

(a) Clybourn Division Rental Project Redevelopment Agreement (the "Agreement") of even date herewith, executed by Developer and the City of Chicago (the "City"); and

(b) all other agreements, instruments and documents executed in connection with the foregoing.

In addition to the foregoing, we have examined

(a) the original or certified, conformed or photostatic copies of Developer's and Sponsor's (i) Certificate of Organization, as amended to date, (ii) Amended and Restated Agreement of Limited Liability Company, (iii) qualifications to do business and certificates of good standing in all states in which Developer is qualified to do business, and (iv) records of all corporate proceedings relating to the Project; and

(b) such other documents, records and legal matters as we have deemed necessary or relevant for purposes of issuing the opinions hereinafter expressed.

In all such examinations, we have assumed the genuineness of all signatures (other than those of Developer), the authenticity of documents submitted to us as originals and conformity to the originals of all documents submitted to us as certified, conformed or photostatic copies.

Based on the foregoing, it is our opinion that:

1. Each of Developer and Sponsor is a limited liability company duly organized, validly existing and in good standing under the laws of its state of organization, has

full power and authority to own and lease its properties and to carry on its business as presently conducted, and is in good standing and duly qualified to do business as a foreign organization under the laws of every state in which the conduct of its affairs or the ownership of its assets requires such qualification, except for those states in which its failure to qualify to do business would not have a material adverse effect on it or its business.

2. Each of Developer and Sponsor has full right, power and authority to execute and deliver the Documents to which it is a party and to perform its obligations thereunder. Such execution, delivery and performance will not conflict with, or result in a breach of, Developer's or Sponsor's Certificate of Organization or Amended and Restated Agreement of Limited Liability Company or result in a breach or other violation of any of the terms, conditions or provisions of any law or regulation, order, writ, injunction or decree of any court, government or regulatory authority, or, to the best of our knowledge after diligent inquiry, any of the terms, conditions or provisions of any agreement, instrument or document to which Developer or Sponsor is a party or by which Developer or Sponsor or its respective properties is bound. To the best of our knowledge after diligent inquiry, such execution, delivery and performance will not constitute grounds for acceleration of the maturity of any agreement, indenture, undertaking or other instrument to which Developer is a party or by which it or any of its property may be bound, or result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, any of its property pursuant to the provisions of any of the foregoing, other than in favor of any lender providing lender financing.

3. The execution and delivery of each Document and the performance of the transactions contemplated thereby have been duly authorized and approved by all requisite action on the part of Developer and Sponsor.

4. Each of the Documents to which Developer is a party has been duly executed and delivered by a duly authorized officer of Developer, and each such Document constitutes the legal, valid and binding obligation of Developer, enforceable in accordance with its terms, except as limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditors' rights generally. Each of the Documents to which Sponsor is a party has been duly executed and delivered by a duly authorized officer of Sponsor, and each such Document constitutes the legal, valid and binding obligation of Sponsor, enforceable in accordance with its terms, except as limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditors' rights generally.

5. Exhibit A attached hereto (a) identifies the members and managers of Developer and the percentage interest held by each member. To the best of our knowledge after diligent inquiry, except as set forth on Exhibit A, there are no warrants, options, rights or commitments of purchase, conversion, call or exchange or other rights or restrictions with respect to any of the equity of Developer. Each outstanding interest of Developer is duly authorized, validly issued, fully paid and nonassessable. Exhibit B attached hereto (a) identifies the members and managers of Sponsor and the percentage interest held by each member. To the best of our knowledge after diligent inquiry, except as set forth on Exhibit B, there are no warrants, options, rights or commitments of purchase, conversion, call or exchange or other rights or restrictions with respect to any of the equity of Sponsor. Each outstanding interest of Sponsor is duly authorized, validly issued, fully paid and nonassessable.

6. To the best of our knowledge after diligent inquiry, no judgments are outstanding against Developer, nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against Developer or affecting Developer or its property, or seeking to restrain or enjoin the performance by Developer of the Agreement or the transactions contemplated by the Agreement, or contesting the validity thereof. To the best of

our knowledge after diligent inquiry, Developer is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority or in default in any respect under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on Developer or its business.

7. To the best of our knowledge after diligent inquiry, there is no default by Developer or any other party under any material contract, lease, agreement, instrument or commitment to which Developer is a party or by which the company or its properties is bound.

8. To the best of our knowledge after diligent inquiry, all of the assets of Developer are free and clear of mortgages, liens, pledges, security interests and encumbrances except for those specifically set forth in the Documents.

9. The execution, delivery and performance of the Documents by Developer have not and will not require the consent of any person or the giving of notice to, any exemption by, any registration, declaration or filing with or any taking of any other actions in respect of, any person, including without limitation any court, government or regulatory authority.

10. To the best of our knowledge after diligent inquiry, Developer owns or possesses or is licensed or otherwise has the right to use all licenses, permits and other governmental approvals and authorizations, operating authorities, certificates of public convenience, goods carriers permits, authorizations and other rights that are necessary for the operation of its business.

11. A federal or state court sitting in the State of Illinois and applying the choice of law provisions of the State of Illinois would enforce the choice of law contained in the Documents and apply the law of the State of Illinois to the transactions evidenced thereby.

We are attorneys admitted to practice in the State of Illinois and we express no opinion as to any laws other than federal laws of the United States of America or the laws of the State of Illinois.

This opinion is issued at Developer's and Sponsor's request for the benefit of the City and its counsel, and may not be disclosed to or relied upon by any other person.

Very truly yours,

_____

By:_____

Name:_____

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT I

FORM OF PAYMENT AND PERFORMANCE BOND

[Not attached for ordinance]

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT J

REQUISITION FORM

STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

The affiant, _____, _____ of _____, a _____ (the "Developer"), hereby certifies that with respect to that certain _____ Redevelopment Agreement between the Developer and the City of Chicago dated _____, ____ (the "Agreement"):

A. Expenditures for the Project, in the total amount of $_____, have been made:

B. This paragraph B sets forth and is a true and complete statement of all costs of TIF-Funded Improvements for the Project reimbursed by the City to date:

$_____

C. The Developer requests reimbursement for the following cost of TIF-Funded Improvements:

$_____

D. None of the costs referenced in paragraph C above have been previously reimbursed by the City.

E. The Developer hereby certifies to the City that, as of the date hereof:

1. Except as described in the attached certificate, the representations and warranties contained in the Agreement are true and correct and the Developer is in compliance with all applicable covenants contained herein.

2. No event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default, exists or has occurred.

All capitalized terms which are not defined herein have the meanings given such terms in the Agreement.

[Developer]

By:_____
Name
Title:_____

Subscribed and sworn before me this ___ day of _____
_____.

_____
My commission expires:_____

Agreed and accepted:

_____
Name
Title:_____
City of Chicago
Department of Planning and Development

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT K
LENDER FINANCING

1. Construction/Equity Bridge Loan: Citibank, N.A. (the "Bank") shall provide a construction/equity bridge loan to the Owner in the approximate amount of $18,000,000, with monthly interest-only payments during the term, to be repaid from a combination of tax credit equity, TIF loan proceeds and the permanent 1st mortgage loan, described below. This loan will have a term of 28 months, with 1 6-month extension. The loan will bear interest at 30-day LIBOR + 3%. This loan will be secured by a 1st Mortgage during the construction period.

2. Permanent 1st Mortgage Loan (Residential Component): Citibank plans to provide the permanent first mortgage loan secured by the residential component of the project in the approximate amount of $4,000,000, with a fixed interest rate not to exceed 6.00% per annum, a 16 year term, and a 35-year amortization period. This loan will be secured by a 1st Mortgage during the permanent period, pursuant to subordination agreements entered into with the subordinate lenders.

3. Permanent 1st Mortgage Loan (Commercial Component): Citibank plans to provide the permanent first mortgage loan secured by the commercial component of the project in the approximate amount of $2,395,000, with a fixed interest rate not to exceed 7.00% per annum, a 7-year term, and a 25-year amortization period.

4. CHA HOPE VI/MTW FUNDS Construction/Permanent 2nd Mortgage Loan: The Chicago Housing Authority (CHA) will make an $8,100,000 construction/permanent loan to Owner from a HOPE VI grant and MTW funds. The loan will bear 0% interest. Repayment of the loan will be deferred until maturity. This loan will have a 42-year term (inclusive of the construction period). The loan will be secured by a 2nd Mortgage.

5. TIF Loan: ClyDiv Manager, LLC, recipient of a $8,100,000 TIF Grant from the City of Chicago, will capitally contribute the proceeds of the TIF Grant to the Owner. [$5,350,000] in TIF will become permanent debt of the commercial component of the project when the ownership is divided, leaving a TIF loan of [$2,750,000] on the residential component. [Note- the split between the 2 loans is still being determined.]

6. Citibank AHC funds. Citibank will loan funds set aside by Citibank as part of a settlement with the Department of Justice to the project in the approximate amount of $1,476,000, with a fixed term of 42 years, and an interest rate not to exceed [1%] with payments deferred until repayment.

7. Special Member Capital Contribution. The donation by the City of Chicago of the land to the nonprofit (Cabrini Green LAC Community Development Corporation) will generate a donation tax credit of $2,117,610 provided by the City of Chicago. These credits will be sold to an investor at a credit price of $.91 and generate $1,927,025 in equity, plus a $10,000 donation to the nonprofit. These amounts will be capitally contributed to the owner by the for profit affiliate of the nonprofit.

8. Equity: An affiliate of The Richman Group shall provide tax credit equity in the approximate amount of $13,154,684, as follows:

(i) $1,973,203 (at closing)
(ii) $5,261,874 (construction completion; no earlier than 7/2017)

(iii) $3,946,405 no earlier than 1/2018, to pay down construction loan. May be paid directly to the Construction Lender
(iv) $1,315,468 (at 95% occupancy, Breakeven, no earlier than January 1, 2018)
(v) $657,734 (@ 8609s, no earlier than January 1, 2018)

9. Deferred Developer Fee: BMD-I, LLC will defer a portion of its developer fee ($2,251,169) in the approximate amount of [$642,407]. Of this amount, [$47,331] will be attributable to the commercial component after the splitting of ownership, leaving [$595,075] to be repaid by the residential component from available cash flow over a 10 year period.

# EXHIBIT L
# ESCROW AGREEMENT

[Not attached for ordinance]

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT M
PRIOR TIF OBLIGATIONS

[Not attached for ordinance]

CLYBOURN DIVISION RENTAL PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT N
FORM OF CERTIFICATE OF COMPLETION

[Not attached for ordinance]