

Contract Summary Sheet

Contract (PO) Number: 12994

Specification Number: 51460

Name of Contractor: PARKSIDE OLD TOWN I LLC

City Department: PLANNING & DEVELOPMENT

Title of Contract: Redevelopment Agreement: Division/Larrabee

Term of Contract: Start Date: 9/27/2006

End Date: 7/30/2020

Dollar Amount of Contract (or maximum compensation if a Term Agreement) (DUR):

\$9,037,000.00

Brief Description of Work: Redevelopment Agreement: Division/Larrabee

Procurement Services Contract Area: COMPTROLLER-OTHER

Vendor Number: 50106740

Submission Date: 4/8/08

City

Ordin-

ance

The following is said ordinance as passed:

WHEREAS, pursuant to an ordinance adopted by the City Council (the "City Council") of the City of Chicago (the "City") on July 30, 1997 and published at pages 49207-49356 of 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, Parkside Old Town I, LLC, an Illinois limited liability company ("Parkside"), and the Chicago Housing Authority, an Illinois municipal corporation under the Housing Authorities Act, as amended (310 ILCS 10/1 et seq.) (the "CHA") are entering into one or more 99-year ground leases for the real property that is bounded by West Division Street on the north, Seward Park on the east, West Elm Street on the south, and North Larrabee Street on the west, in Chicago, Illinois (the "Property"), on which the Developer (as hereinafter defined) will construct two mid-rise multi-family condominium buildings and nine townhome buildings, having an aggregate of 280 residential units (as described more fully in the proposed Parkside Old Town Project Redevelopment Agreement attached hereto as Exhibit A, the "Project"); and

WHEREAS, of the 280 residential units, 72 shall, upon completion of construction, be conveyed by Parkside to Parkside Four Phase I, L.P., an Illinois limited partnership (the "Rental Owner"), which will thereafter own and operate such units as rental units that constitute replacement public housing units and that shall be subject to rent restrictions and rented only by households earning sixty percent (60%) or less of the median income for the City of Chicago; and

WHEREAS, the Project is necessary for the redevelopment of the Area; and

WHEREAS, Parkside, the Rental Owner and Parkside Four I, LLC, an Illinois limited liability company and general partner of the Rental Owner (hereinafter referred to collectively as the "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 Special Tax Allocation Fund for the Area (as defined in the TIF Ordinance) pursuant to Section 5/11-74.4-8(b) of the Act ("Incremental Taxes"); and

WHEREAS, pursuant to its Resolution 06-CDC-14 adopted by the Community Development Commission of the City of Chicago (the "Commission") on February 14, 2006, the Commission has recommended that the Developer be designated as the developer for the Project and that the City's Department of Planning and Development ("DPD") be authorized to negotiate, execute and deliver on behalf of the City a redevelopment agreement with the Developer for the Project; and

WHEREAS, pursuant to Section 146 of the Internal Revenue Code of 1986, as amended, the City, as a constitutional home rule city, is allocated a certain amount of volume cap per calendar year in connection with the issuance of tax-exempt bonds by the City; and

WHEREAS, the Illinois Private Activity Bond Allocation Act, as amended (30 ILCS 345/1 et seq.), provides, among other things, that the corporate authorities of any home rule unit may reallocate all or any portion of its unused allocation of volume cap; and

WHEREAS, the City has available unused volume cap for calendar year 2006 ("2006 Cap"); and

WHEREAS, the CHA wishes to issue up to \$15,000,000 of tax-exempt multi-family housing bonds (the "CHA Bonds") in order to fund a portion of the costs of constructing the Project and has been advised by its bond counsel that all or a portion of the CHA Bonds requires the allocation of volume cap; and

WHEREAS, the CHA has requested that the City reallocate a portion of its unused 2006 Cap, if available, to the CHA for the CHA Bonds, pursuant to an intergovernmental agreement between the City and the CHA for that purpose; now, therefore,

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

SECTION 1. The above recitals are incorporated herein and made a part hereof.

SECTION 2. The Developer is hereby designated as the developer for the Project pursuant to Section 5/11-74.4-4 of the Act.

SECTION 3. The Commissioner of DPD (the "Commissioner") or a designee of the Commissioner is each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver a redevelopment agreement among the Developer and the City, substantially in the form attached hereto as Exhibit A and made a part hereof (the "Redevelopment Agreement"), and such other supporting documents as may be necessary 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 4. The City Council hereby finds that the City is authorized to (i) issue its tax increment allocation revenue obligation in the maximum principal amount of \$3,700,000 and (ii) pay an amount not to exceed \$5,337,605 from Incremental Taxes to finance a portion of the eligible redevelopment costs included within the Project pursuant to the terms and conditions set forth in the Redevelopment Agreement.

SECTION 5. There shall be borrowed for and on behalf of the City an amount not to exceed \$3,700,000 for the payment of a portion of the eligible redevelopment project costs included within the Project. The borrowing shall be evidenced by a note of the City in an amount not to exceed \$3,700,000 (the "Note"), to be issued upon the issuance of the Certificate (as defined in the Redevelopment Agreement). In addition, supported by a requisition form(s) to the City from the Developer, the City is authorized to pay the Developer from Incremental Taxes an amount not to exceed \$5,337,605 pursuant to the terms and conditions set forth in the Redevelopment Agreement. The Note shall be dated as of the date of delivery thereof, shall bear the date of authentication, shall be in fully registered form, shall be in the denomination of the maximum outstanding principal amount thereof and shall become due and payable as provided therein, but in no event later than July 30, 2020.

The Note shall bear interest at fixed interest rates per annum equal to the interest rates set forth in the Redevelopment Agreement. Interest on the Note shall be computed on the basis of a 360-day year of twelve 30-day months. Accrued and unpaid interest on the Note shall compound on January 1st of each year and thereafter bear interest at the same fixed interest rate that applies to the principal of the Note.

The principal of and interest on the Note shall be paid by check or draft of the City Comptroller (the "Comptroller"), as registrar and paying agent (the "Registrar") (or, at the City's sole election, by wire transfer of funds), payable in lawful money of the United States of America to the persons in whose name such Note is registered at the close of business on the 15th day of the month immediately prior to the applicable payment date; provided, that the final installment of the principal and accrued but unpaid interest of such Note shall be payable in lawful money of the United States of America at the principal office of the Registrar or as otherwise directed by the City.

The seal of the City shall be affixed to or a facsimile thereof printed on the Note, and the Note shall be signed by the manual or facsimile signature of the Mayor of the City and attested by the manual or facsimile signature of the City Clerk of the City, and in case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

The Note shall have thereon a certificate of authentication substantially in the form hereinafter set forth duly executed by the Registrar, as authenticating agent of the City for such Note, and showing the date of authentication. No Note shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such

certificate of authentication shall have been duly executed by the Registrar by manual signature, and such certificate of authentication upon the Note shall be conclusive evidence that the Note has been authenticated and delivered under this Ordinance.

SECTION 6. The City shall cause books (the "Register") for the registration and for the transfer of the Note (to the extent such transfer is permitted under the Redevelopment Agreement) as provided in this Ordinance to be kept at the principal office of the Registrar, which is hereby constituted and appointed the registrar of the City for the Note. The City is authorized to prepare, and the Registrar shall keep custody of, multiple Note blanks executed by the City for use in the transfer of the Note.

Upon surrender for a transfer of the Note authorized under the Redevelopment Agreement at the principal office of the Registrar, duly endorsed by, or accompanied by (i) a written instrument or instruments of transfer in form satisfactory to the Registrar, (ii) an investment representation in form satisfactory to the City and duly executed by the registered owner or his attorney duly authorized in writing, (iii) the written consent of the City evidenced by the signature of the Commissioner (or his or her designee) on the instrument of transfer, and (iv) any deliveries required under the Redevelopment Agreement, the City shall execute and the Registrar shall authenticate, date and deliver in the name of any such authorized transferee or transferees a new fully registered Note of the same maturity, of authorized denomination, and for a like aggregate principal amount. The execution by the City of a fully registered Note shall constitute full and due authorization of such Note and the Registrar shall thereby be authorized to authenticate, date and deliver the Note, provided however, that the principal amount of the Note authenticated by the Registrar shall not exceed the authorized maximum principal amount of the Note less previous retirements. The Registrar shall not be required to transfer or exchange the Note during the period beginning at the close of business on the fifteenth day of the month immediately prior to the maturity date of the Note nor to transfer or exchange the Note after notice calling the Note for redemption has been made, nor during a period of five (5) days next preceding mailing of a notice of redemption of principal of the Note. No beneficial interests in the Note shall be assigned, except in accordance with the procedures for transferring the Note described above.

The person in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of the Note shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid.

No service charge shall be made for any transfer of the Note, but the City or the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer of the Note.

SECTION 7. The principal of the Note shall be subject to determination, reduction and prepayment as provided in the form of the Note attached to the Redevelopment Agreement as

Exhibit J and as provided in the Redevelopment Agreement, including, without limitation, Sections 4.03, 8.05 and 15.02 thereof. As directed by the Commissioner, the Registrar shall proceed with redemptions without further notice or direction from the City.

SECTION 8. The Registrar shall note on the Payment Schedule attached to the Note the amount of any payment of principal or interest on such Note, including the amount of any redemption or prepayment, and the amount of any reduction in principal pursuant to the Redevelopment Agreement.

SECTION 9. The Note shall be substantially in the form attached to the Redevelopment Agreement as Exhibit J and made a part hereof, with such additions or modifications as shall be determined to be necessary by the Authorized Officer (the person duly appointed and serving as the Chief Financial Officer of the City being referred to herein as an "Authorized Officer," or if there is no Chief Financial Officer, then the Comptroller) of the City, at the time of issuance to reflect the purpose of the issue.

SECTION 10. The Note hereby authorized shall be executed as provided in this Ordinance and the Redevelopment Agreement and thereupon be deposited with the Commissioner, and be by said Commissioner delivered to the Developer.

SECTION 11. (a) Special Tax Allocation Fund. Pursuant to the TIF Ordinance, the City has created a special fund, designated as the Near North Tax Increment Financing Redevelopment Project Area Special Tax Allocation Fund (the "Tax Allocation Fund").

The Comptroller is hereby directed to maintain the Tax Allocation Fund as a segregated interest-bearing account, separate and apart from the General Fund or any other fund of the City, with a bank which is insured by the Federal Deposit Insurance Corporation or its successor. Pursuant to the TIF Ordinance, all incremental ad valorem taxes received by the City for the Area are to be deposited into the Tax Allocation Fund.

(b) Tax Allocation Fund Subaccount. There is hereby created within the Tax Allocation Fund a subaccount to be known as the "Parkside Old Town Project Account." The City shall designate and deposit into the Parkside Old Town Project Account an amount equal to 90 percent of the incremental ad valorem taxes deposited into the Tax Allocation Fund attributable to increases in the equalized assessed value of the tax parcels comprising the Property (the "Available Incremental Taxes"). Subject to the terms and conditions of the Redevelopment Agreement, the City shall use the Available Incremental Taxes to make payments with respect to the Note until the Note has been fully repaid.

(c) Pledge of Parkside Old Town Project Account. The City hereby assigns, pledges and dedicates the Parkside Old Town Project Account, together with all amounts on deposit in the Parkside Old Town Project Account, to the payment of the principal of and interest, if any, on the Note when due under the terms of the Redevelopment Agreement, including specifically, but without limitation, Section 4.03 thereof. Upon deposit, the moneys on deposit in the

Parkside Old Town Project Account may be invested as hereinafter provided. Interest and income on any such investment shall be deposited in the Parkside Old Town Project Account. All moneys on deposit in the Parkside Old Town Project Account shall be used to pay the principal of and interest on the Note at maturity or upon payment or redemption prior to maturity, in accordance with their terms, which payments are hereby authorized and appropriated by the City. Upon payment of all amounts due under the Note and the Redevelopment Agreement in accordance with their terms (or the termination of the City's obligation to make such payments), the amounts on deposit in the Parkside Old Town Project Account shall be deposited in the Tax Allocation Fund and the Parkside Old Town Project Account shall be closed.

SECTION 12. The Note is a special limited obligation of the City, and is payable solely from amounts on deposit in the Parkside Old Town Project Account, and shall be a valid claim of the registered owner thereof only against said source. The Note shall not be deemed to constitute an indebtedness or a loan against the general taxing powers or credit of the City, within the meaning of any constitutional or statutory provision. The registered owner of the Note shall not have the right to compel any exercise of the taxing power of the City, the State of Illinois or any political subdivision thereof to pay the principal of or interest on the Note.

SECTION 13. Moneys on deposit in the Parkside Old Town Project Account may be invested as allowed under Section 2-32-520 of the Municipal Code of Chicago (the "Municipal Code"). Each such investment shall mature on a date prior to the date on which said amounts are needed to pay the principal of or interest on the Note.

SECTION 14. Upon issuance, the Note shall have an initial principal balance equal to the Developer's prior expenditures for TIF-Funded Improvements (as such term is defined in the Redevelopment Agreement) up to the maximum principal amount of \$3,700,000. After issuance, the principal amount outstanding under the Note shall be its initial principal balance of the Note, as the same may be increased from time to time in accordance with the terms of the Redevelopment Agreement, plus interest thereon, minus any principal amount and interest paid on the Note and other reductions or adjustments in principal as are provided for in the Redevelopment Agreement.

SECTION 15. The Registrar shall maintain a list of the name and address of the registered owner from time to time of the Note and upon any transfer shall add the name and address of the new registered owner and eliminate the name and address of the transferor.

SECTION 16. The provisions of this Ordinance shall constitute a contract between the City and the registered owner of the Note. All covenants relating to the Note are enforceable by the registered owner of the Note.

SECTION 17. The City hereby authorizes the Authorized Officer to reallocate, effective on the date of issuance of the CHA Bonds, up to \$15,000,000 of the City's unused 2006 Cap (the "Reallocation") for application by the CHA to the CHA Bonds; provided that if the CHA Bonds

are not issued as of or prior to 11:00 P.M. on December 31, 2006, the Reallocation shall not be made. The exact amount of the Reallocation shall be determined by the Authorized Officer based on the best interests of the City and on the amount of 2006 Cap available at the time of the Reallocation. The Authorized Officer is further authorized to determine, based on the best interests of the City, the amount, if any, of any compensation to be paid by the CHA to the City in consideration for the Reallocation. After the Reallocation has been made, the Authorized Officer shall file a certificate with the City Clerk stating the amount of 2006 Cap reallocated to the CHA pursuant to this Ordinance.

SECTION 18. In connection with the Reallocation, the Authorized Officer is hereby authorized, subject to the approval of the Corporation Counsel, to enter into such agreements with the CHA and other documents as shall be deemed necessary or desirable by the Authorized Officer.

SECTION 19. The City shall waive those certain fees, if applicable, imposed by the City with respect to 72 CHA Units in the Project as more fully described in Exhibit B attached hereto and made a part hereof. The CHA Units shall be deemed to qualify as "Affordable Housing" for purposes of Chapter 16-18 of the Municipal Code.

SECTION 20. The Mayor, the Authorized Officer, the City Clerk, the Deputy City Clerk, the Commissioner (or his or her designee) and the other officers of the City are authorized to execute and deliver on behalf of the City such other documents, agreements and certificates and to do such other things consistent with the terms of this Ordinance as such officers and employees shall deem necessary or appropriate in order to effectuate the intent and purposes of this Ordinance.

SECTION 21. If any provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this Ordinance.

SECTION 22. All ordinances, resolutions, motions or orders in conflict with this Ordinance are hereby repealed to the extent of such conflict. No provision of the Municipal Code or violation of any provision of the Municipal Code shall be deemed to impair the validity of this Ordinance or the instruments authorized by this Ordinance or to impair the security for or payment of the instruments authorized by this Ordinance; provided further, however, that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for violation of any provision of the Municipal Code.

SECTION 23. This Ordinance shall be in full force and effect immediately upon its passage.

RDA



Doc#: 0628602050 Fee: \$168.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/13/2006 09:00 AM Pg: 1 of 73

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

PARKSIDE OF OLD TOWN PROJECT REDEVELOPMENT AGREEMENT

This Parkside of Old Town Project Redevelopment Agreement (the "Agreement") is made as of this 1st day of September, 2006, by and among the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Planning and Development ("DPD"), and Parkside Old Town I, LLC, an Illinois limited liability company ("Developer"), Parkside Four Phase I, L.P., an Illinois limited partnership ("Partnership"), and Parkside Four I, LLC, an Illinois limited liability company ("General Partner").

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: Parkside Associates, LLC, an Illinois liability company and the sole member of Developer ("**Parkside**"), previously entered into a Contract for Redevelopment of Cabrini-Green Extension North dated September 29, 2005 (the "**CHA Redevelopment Agreement**") with the Chicago Housing Authority ("**CHA**") and Daniel E. Levin and The Habitat Company LLC, not personally but in their official capacity as Receiver for CHA, for the construction by Developer and other entities formed by Parkside of approximately 718 housing units, including replacement public housing, on sites located within the Near North Tax Increment Financing Redevelopment Project Area (the "**Redevelopment Area**"). The project contemplated by this Redevelopment Agreement is for the construction of approximately 280 of those units on a site in the Redevelopment Area that is generally bounded by West Division Street on the north, North Clybourn Avenue on the east, West Elm Street on the south, and North Larrabee Street on the west, in Chicago, Illinois (the "**Property**"). CHA has leased the Property to Developer pursuant to one or more 99-year ground leases. The Property is approximately eight acres, 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. 1006 (including any approved amendment thereof, the "**PD**"). In accordance with this Agreement, Developer plans to construct 2 new midrise multifamily condominium buildings and 9 new townhome buildings. The buildings will collectively comprise: approximately 280 residential units consisting of 72 CHA Units, 14 Below Market Condominiums, and 194 Market Rate Condominiums; and 273 parking spaces. The new construction work is collectively defined as the "**Project**". A site plan for the Project (the "**Site Plan**") is Exhibit B-2. As part of the overall Project, after construction, the CHA Units will be conveyed to the Partnership. 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 4.03 hereof, the proceeds of the Note (defined below) and/or 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 and the Note. 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 4.08 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, including any such payment made under the Note provided to Developer under this Agreement.

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 10.02(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.

“Available Incremental Taxes” means an amount equal to 90% of the Incremental Taxes (as defined below) deposited after the Closing Date in the Redevelopment Project Area Special Tax Allocation Fund (as defined below) attributable to the taxes levied on the Property, using the year 2004 as a base year for equalized assessed valuation.

“Available Project Funds” has the meaning defined for such phrase in Section 5.16(g).

“Below Market Condominiums” shall mean the 14 condominium units in the Project sold to Qualified Households for a below-market price.

“Bonds” has the meaning defined in Section 8.05.

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

“Certificate” means the Certificate of Completion of Construction described in Section 7.01.

“Certificate of Expenditure(s)” means the certificate, in the form of Exhibit J hereto, issued by the City to increase the principal amount of the Note.

"CHA Units" shall mean the 72 residential units in the Project which are the subject of the Purchase Contract and, upon completion of construction, shall be conveyed to the Partnership and thereafter leased to CHA Residents by the Partnership.

"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 3.04.

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

"City Contract" has the meaning defined in Section 8.01(o).

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

"City Funds" means the funds described in Section 4.03(a).

"City Group Member" has the meaning defined in Section 8.10.

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

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

"Condominium Act" shall mean the Illinois Condominium Property Act, 765 ILCS 605/1 et seq., as amended.

"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 Payment" has the meaning defined in Section 4.03(b).

"Construction Program" has the meaning defined in Section 10.03.

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

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

"Developer Parties" means, collectively, Developer, General Partner and Partnership; "Developer Party" means any one of the Developer Parties.

"DOH" means the City's Department of Housing.

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

"**Employer(s)**" has the meaning defined in Section 10.01.

"**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 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 4.07 (Cost Overruns).

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

"**Event of Default**" has the meaning defined in Section 15.01.

"**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 16.01.

"**Financial Statements**" means, for each of Developer and Partnership, the financial statements of such Developer Party regularly prepared by such Developer Party, 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 6.01.

"**Governmental Charge**" has the meaning defined in Section 8.18(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 10.01(a).

"In Balance" has the meaning defined in Section 5.16(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 13.01.

"Labor Department" has the meaning defined in Section 8.08.

"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.

"Market Rate Condominiums" shall mean the 194 condominium units in the Project that may be sold at the market rate without any income qualification or affordability requirements.

"MBE(s)" has the meaning defined in Section 10.03.

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

"MBE/WBE Program" has the meaning defined in Section 10.03.

"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 16.01.

"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 Developer Parties, the Property or the Project.

"Note" means the tax-exempt City of Chicago Tax Increment Allocation Revenue Note R-1 (Parkside of Old Town Redevelopment Project) Series A to be in the form attached hereto as Exhibit J, in the maximum principal amount of \$3,700,000 issued by the City to the Developer on or as of the date of the Certificate. The maximum principal amount of the Note is subject to a reduction equal to the amount of Excess Profit as set forth in Section 4.03. The payment of the

amounts due under the Note will be secured only by Available Incremental Taxes, unless the City, in its sole discretion, elects to use other legally available funds to make payments with respect to the Note.

"Note Interest Rate" has the meaning defined in Section 4.03.

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

"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 16.01.

"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 4.06.

"Procurement Program" has the meaning defined in Section 10.03.

"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 Developer to DPD, in accordance with Section 3.03.

"Property" has the meaning defined in the recitals.

"Purchase Contract" means that certain Real Estate Sales Contract dated as of this date among Developer, the Partnership and the General Partner for the installment purchase of the CHA Units.

"Qualified Household" means a single person, family or unrelated persons living together whose adjusted income is not more than 120% of the then-current Chicago-area median income, adjusted for family size, as such adjusted income and Chicago-area median income are determined from time to time by HUD for purposes of Section 8 of the United States Housing Act of 1937. As of the Closing Date, such income limitations are as follows:

<u># of Persons In Household</u>	<u>120% of AMI</u>
1	\$63,350
2	\$72,350
3	\$81,500
4	\$90,500
5	\$97,700
6	\$105,000

"Qualified Investor" means a qualified institutional buyer (QIB) or a registered investment company, or a trust where certificates of participation are sold to QIBs or registered

investment companies.

"Qualified Transfer" means, with respect to the Note, (i) the pledge of the Note to a Lender providing Lender Financing or (ii) the sale or assignment of the Note as long as (a) any sale or assignment is to a Qualified Investor with no view to resale or reassignment, or the City has given its prior written consent to such proposed sale or assignment, and (b) any sale or assignment is subject to the terms and procedures of an acceptable investment letter, and (c) any such sale or assignment occurs after the issuance of the Certificate.

"Recorded Affordability Documents" means, collectively: the City Regulatory Agreement; that certain Declaration of Restrictive Covenants by and among the CHA, Developer and Partnership dated as of the date hereof; that certain Property Rights Agreement by and among the CHA, Developer and Partnership dated as of the date hereof; that certain Regulatory and Operating Agreement by and among the CHA, Developer and the Partnership dated as of the date hereof; and that certain Land Use Restriction Agreement between the CHA, Developer and Partnership 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 (as defined below) 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 M**, to be delivered by the Developer Parties to DPD in connection with the Construction Payment pursuant to **Section 4.03(b)** 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.

"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 leasehold 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 10.03.

SECTION THREE: THE PROJECT

3.01 **The Project.** Developer 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 18.16 (Force Majeure).

3.02 **Scope Drawings and Plans and Specifications.** Developer has delivered the Scope Drawings and Plans and Specifications to DOH and DOH has approved them. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications within the scope of Section 3.04 will be submitted to DPD as a Change Order under Section 3.04. 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 Parties 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.

3.03 **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 \$97,076,423. 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. Developer will promptly deliver to DPD copies of any Change Orders with respect to the Project Budget as provided in Section 3.04.

3.04 **Change Orders.** Except as provided in subparagraph (b) below, 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 Developer to DPD concurrently with the progress reports described in Section 3.07; provided, however, that any Change Orders relating to any of the following must be submitted by Developer to DPD for DPD's prior written approval: (i) a reduction or increase by more than five percent (5%) in the square footage of the Project, or (ii) a change in the basic use of the Property and improvements, (iii) an increase or reduction in the Project budget by more than 10% or (iv) a delay in the Project completion date of more than 90 days, or (v) Change Orders costing more than \$250,000 each, or more than \$2,000,000 in the aggregate. DPD will respond to Developer's request for written approval within 30 days from receipt of such request by granting or denying such request or by requesting additional information from Developer. If DPD does not respond to Developer's request, and if Developer has complied with the requirements for notice stated in Section 17.02, then Developer's request will be deemed to have been approved by DPD. Developer Parties will not authorize or permit the performance of any work relating to any Change Order requiring DPD's prior written approval or the furnishing of materials in connection therewith prior to the receipt by Developer of DPD's written approval. The Construction Contract, and each contract between the General Contractor and any subcontractor, will contain a provision to this effect. An approved Change Order will not be deemed to imply any obligation on the part of the City to increase the amount of City Funds or to provide any other additional assistance to Developer.

3.05 **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.

3.06 **Other Approvals.** Any DPD approval under this Agreement will have no effect upon, nor will it operate as a waiver of, Developer Parties' obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals).

3.07 **Progress Reports and Survey Updates.** After the Closing Date, on or before the 15th day of each reporting month, 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 3.04). Developer must also deliver to the City written progress reports by draw, but not less than quarterly, detailing compliance with the requirements of Section 8.08 (Prevailing Wage), Section 10.02 (City Resident Construction Worker Employment Requirement) and Section 10.03 (Developer's MBE/WBE Commitment). If the

reports reflect a shortfall in compliance with the requirements of Sections 8.08, 10.02 and 10.03, 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.

3.08 **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.

3.09 **Barricades.** Developer has installed 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.

3.10 **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 Parties and the Project in the City's promotional literature and communications.

3.11 **Utility Connections.** Developer may connect all on-site water, sanitary, storm and sewer lines constructed 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.

3.12 **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.

3.13 **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 FOUR: FINANCING

4.01 **Total Project Cost and Sources of Funds.** The cost of the Project is estimated to be \$97,076,423 to be applied in the manner stated in the Project Budget and funded from the sources identified in Exhibit K.

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

4.03 **City Funds.**

(a) **Uses of City Funds.**

(i) Any principal or interest paid under the Note, and any other funds expended by the City under this Agreement or otherwise related to the Project or to the TIF-Funded Improvements, are defined as "City Funds".

(ii) City Funds may be used to pay for or reimburse Developer Parties only for costs incurred by Developer Parties of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit D states, by line item, the TIF-Funded Improvements for the Project, payment for which shall be contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such costs and their respective eligibility as a Redevelopment Project Cost. Reimbursement of costs through City Funds will be in the form of disbursements of the Construction Payment or payment of principal and interest under the Note.

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

(i) **Construction Payment.** Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5 hereof, the City will fund to the General Partner through the Escrow Agreement a maximum of Five Million Three Hundred Thirty-Seven Thousand Six Hundred Five Dollars (\$5,337,605) (the "Construction Payment") in two equal installments on the Closing Date and on March 1, 2007, as payment or reimbursement for construction costs that are TIF-Funded Improvements related to the CHA Units. Such construction costs related to the CHA Units shall be funded by the General Partner through the Escrow Agreement and in accordance with the Purchase Contract. Developer Parties must submit a Requisition Form and comply with Section 5.16 below in connection with each draw made on the Construction Payment funds through the Escrow Agreement. The Construction Payment will be funded solely from Incremental Taxes, and is subject to the amount of Incremental Taxes deposited into the Redevelopment Project Area Special Tax Allocation Fund being sufficient for such payment.

(ii) **Note.** Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5 hereof, the City hereby agrees to issue the Note to the Developer on the date of issuance of the Certificate. The Construction Payment together with the principal amount of the Note shall not exceed the amount of TIF-Funded Improvements which have been incurred by the Developer Parties and are to be paid for or reimbursed by the City through the

Construction Payment and payments of principal and interest on the Note, subject to the provisions hereof; provided, however, that payments under the Note are subject to the amount of Available Incremental Taxes deposited into the Redevelopment Project Area Special Tax Allocation Fund being sufficient for such payments. The Note will be used to reimburse the Developer for TIF-Funded Improvements incurred in the Project. From the date of issuance of the Certificate, the Note will be funded solely from Available Incremental Taxes. If, upon issuance of the Certificate, the principal amount of the Note exceeds the costs of TIF-Funded Improvements incurred in the Project, the principal amount of the Note, and any accrued interest, will be reduced accordingly.

(iii) The maximum total principal amount of City Funds, subject to reduction as set forth in Section 4.03(c), will be the lesser of \$9,037,605 or 10% of total Project costs.

(c) Issuance of the Note. On the date of the issuance of the Certificate, the City will issue to Developer the Note with the following terms and conditions:

(i) Principal. The principal balance for the Note will be equal to the cost of TIF-Funded Improvements incurred by Developer prior to the issuance date, up to a maximum amount of \$3,700,000. Such balance will be determined by the Certificate(s) of Expenditure issued by the City in the form of Exhibit J, upon Developer providing satisfactory evidence of expenditures for TIF-Funded Improvements and compliance with the applicable requirements and terms and conditions of this Agreement. After issuance of the Note, if the principal balance of the Note is less than \$3,700,000, then the principal balance of the Note will be increased when the City issues additional Certificate(s) of Expenditure in the form of Exhibit J, up to a maximum amount of \$3,700,000. The principal balance of the Note shall be reduced by Developer's Excess Profit, as set forth below.

(ii) Interest. When issued, the interest rate for the Note will be set as follows: on the date of issuance of the Note, the interest rate will be equal to the AAA 20-year General Obligation Bond rate as published by Bloomberg for 15 business days prior to the date hereof, plus a margin of 250 basis points (the "**Note Interest Rate**") but in no event will such interest rate be greater than 8.0%.

(iii) Term. The Note will be issued as of the date of issuance of the Certificate and will have a term that expires on July 30, 2020.

(iv) Payments of Principal and Interest.

(A) Interest on the Note will begin to accrue at the date of issuance. Amortization of principal will be over the term of the Note as provided in the debt service schedule attached to the Note.

(B) Payments of principal and interest on the Note shall commence upon the issuance of the Certificate, and notwithstanding the debt service schedule attached to the Note, will equal the Available Incremental Taxes so long as the Note is not sold or pledged.

- (C) Except as may be otherwise provided in this Agreement, Available Incremental Taxes only will be used to pay the principal of and interest on the Note and on unpaid interest, if any. In the ordinance authorizing the issuance of the Note, the City established an account denominated the: "Parkside Old Town Project Account" within the Redevelopment Project Area Special Tax Allocation Fund. All Available Incremental Taxes will be deposited into the Parkside Old Town Project Account.
- (D) Payments of principal and interest on the Note will be made from Available Incremental Taxes deposited into the Parkside Old Town Project Account first to interest due under the Note, next to scheduled principal payments on the Note.
- (E) After the principal and interest on the Note have been paid in full and the Note is canceled according to its terms, then the Parkside Old Town Project Account will be closed and all subsequent Available Incremental Taxes will be deposited by the City in the Redevelopment Project Area Special Tax Allocation Fund.
- (v) Insufficient Available Incremental Taxes. If the amount of Available Incremental Taxes pledged under this Agreement is insufficient to make any scheduled payment on the Note, then: (a) the City will not be in default under this Agreement or the Note, and (b) due but unpaid scheduled payments (or portions thereof) on the Note will be paid as provided in this Section 4.03 as promptly as funds become available for their payment. Interest per annum at the Note Interest Rate set when the Note is issued will accrue on any principal or interest payments which are unpaid because of insufficient Available Incremental Taxes.
- (vi) Reduction for Excess Profit. The principal amount of the Note shall be reduced on or prior to the issuance of the Certificate in an amount equal to 60% of Developer's Excess Profit, determined as follows:
- Excess Profit = Actual Profit – Threshold Profit
 Threshold Profit = 17.5% X Actual Project Costs
 Actual Profit = Net Sales Proceeds + TIF Assistance – Actual Project Costs
- For purposes of this Section 4.03(c)(vi): "Net Sales Proceeds" shall be gross sales proceeds (all income generated, including from upgrades) from the sale of Below Market Condominiums, Market Rate Condominiums and CHA Units minus actual sales commissions and closing costs; "Actual Project Costs" shall include all hard and soft costs actually expended to implement the Project, exclusive of sales commissions, closing costs, developer fee, overhead and profit, which costs shall be proved by Developer to DPD's satisfaction; and "TIF Assistance" means the lesser of \$3,700,000 or the amount of TIF-eligible costs certified under the Note.
- (vii) Sale or Transfer of the Note. After the issuance of the Note, the Note may

be pledged in a Qualified Transfer of the Note. Notwithstanding any such permitted pledge, the City shall have no obligation to make any payments with respect to the Note except to the Developer, and then subject to the conditions set forth in this Agreement, including but not limited to Section 18.14, and in the Note.

- (viii) No Cessation of the Note Payments. Notwithstanding anything to the contrary contained in this Agreement, after a Qualified Transfer of Note in compliance with Section 4.03(c)(vii) above, if an Event of Default occurs, the City will, notwithstanding such Event of Default, continue to make payments with respect to Note.
- (ix) Costs of Issuance of the Note. Developer will be responsible for paying all legal and issuance costs in relation to the Note, including all costs of bond counsel.
- (x) Other Incremental Taxes. Any Incremental Taxes that either (a) are not Available Incremental Taxes or (b) are not required to make payments under this Agreement (whether because all currently due payments have been made, because of the full repayment of the Note, or otherwise) shall belong to the City and may be pledged or used for such purposes as the City deems necessary or appropriate.

4.04 Sale or Transfer of the Property or Project by Developer.

(a) Prior to the Date of Issuance of the Certificate. Subject to Sections 4.04(c) and 16.01 below, Developer must obtain the prior approval of the City for any sale or transfer to an entity that is not a Developer Party of any part of the Property or the Project prior to the issuance of the Certificate. Such approval by the City will be subject to the reasonable discretion requirement stated in Section 18.19.

(b) After the Date of Issuance of the Certificate, But Prior to the Date when the Note is Paid. Subject to Section 4.04(c) below, after the date of the Certificate, but prior to the date when the Note is paid, Developer need not obtain prior approval for any sale or transfer of any part of the Property or the Project. Developer must, however, notify the City not less than 60 days before any closing of sale or Developer's intention to sell any part of the Property or the Project. Developer must provide the City with true and correct copies of any contract for sale and related documents as part of such notice.

(c) Sales of Assets or Equity. For purposes of this Section 4.04, the phrase: "sale or transfer of any part of the Property or 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. The foregoing restrictions of this Section 4.04 do not apply to: (i) the planned sale of the Below Market Condominiums or the Market Rate Condominiums to end-users; (ii) the planned sale of the CHA Units to the Partnership; (iii) the sale of any commercial or retail space; (iv) transfers of the ground lease; (v) transfers to any condominium association or community association; and (vi) any dedications or easements required by the subdivision, PD or applicable law.

4.05 City Rights to Discontinue or Suspend Construction Payment. The City has the right to discontinue or suspend installments of the Construction Payment under the following

circumstances:

(a) **Sale Requirements.** If Developer fails to comply with the approval requirement in Section 4.04(a) or the notice requirement in Section 4.04(b).

(b) **Permitted Uses.** If Developer fails to comply with the permitted uses for the Property under the PD or other applicable zoning requirements.

4.06 Treatment of Prior Expenditures. Only those expenditures made by 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 Developer Parties, but will reduce the amount of Equity and/or Lender Financing, if any, required to be contributed by Developer Parties under Section 4.01.

4.07 Cost Overruns. If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available under Section 4.03, 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, provided however, that Partnership shall only be responsible for excess costs related to the CHA Units.

4.08 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 proceeds of TIF Bonds may be used to pay the outstanding principal and accrued interest (through the date of prepayment) under the Note and the Construction Payment and for other purposes as the City may determine. The costs of issuance of the TIF Bonds would be borne solely by the City. Developer will cooperate with the City in the issuance of the TIF Bonds, as provided in Section 8.05.

SECTION FIVE: 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:

5.01 Project Budget. Developer Parties will have submitted to DPD, and DPD will have approved, a Project Budget in accordance with the provisions of Section 3.03.

5.02 Scope Drawings and Plans and Specifications. Developer Parties will have submitted to DPD, and DPD will have approved, the Scope Drawings and Plans and Specifications as provided in Section 3.02.

5.03 Other Governmental Approvals. Developer Parties 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.

5.04 Financing.

(a) Developer Parties will have furnished evidence acceptable to the City that Developer Parties have Equity and Lender Financing, if any, at least in the amounts stated in Section 4.01 and Exhibit K, which, together with the Construction Payment, are to complete the Project and satisfy their obligations under this Agreement. If a portion of such financing consists of Lender Financing, Developer Parties will have furnished evidence as of the Closing Date that the proceeds thereof are available to be drawn upon by Developer Parties as needed and are sufficient (along with the Equity, the Construction Payment and other financing sources, if any, stated in Section 4.01 and Exhibit K) to complete the Project.

(b) Prior to the Closing Date, Developer will deliver to DOH a copy of the Escrow Agreement. The Escrow Agreement must provide that DOH 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 7.02(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 respective interests in this Agreement to any of their collective or respective lenders if any such lenders require such collateral assignment.

5.05 Acquisition and Title. On the Closing Date, Developer Parties 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 8.17. 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.

5.06 Evidence of Clear Title. Not less than 5 Business Days prior to the Closing Date, Developer Parties, at their own expense, will have provided the City with current searches under the names of each of the entities comprising Developer Parties 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,	Pending suits and judgments

Cook County

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

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

5.08 **Insurance.** Developer, at its own expense, will have insured the Property and the Project as required under Section 12. Prior to the Closing Date, certificates required under Section 12 evidencing the required coverages will have been delivered to DPD.

5.09 **Opinions of Developer's Counsel.** On the Closing Date, 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 Developer has 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 Developer from its general corporate counsel.

5.10 **Evidence of Prior Expenditures.** Developer Parties will have provided evidence satisfactory to DPD of the Prior Expenditures as provided in Section 4.06.

5.11 **Financial Statements.** Developer Parties will have provided Financial Statements to DPD for their fiscal year 2005, and their most recently available unaudited interim Financial Statements.

5.12 **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.

5.13 **Environmental Audit.** Developer 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.

5.14 **Entity Documents.** Developer and General Partner will each 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 or organization and all other states in which Developer or General Partner is qualified to do business; its current Operating 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. Partnership shall provide comparable organizational documentation.

5.15 **Litigation.** Developer Parties will provide to Corporation Counsel and DPD a description of all pending or threatened litigation or administrative proceedings involving Developer Parties or any Affiliate of Developer Parties (excluding any limited partners of the Partnership) 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.

5.16 Preconditions of Accepting Certificates of Expenditure or Requisition Forms.

Prior to the acceptance by DPD of any Certificate of Expenditure under the Note or any Requisition Forms in connection with an installment of the Construction Payment, Developer Parties must submit to DPD documentation of such expenditures (in the form of waivers of lien, canceled checks, closing statements, or such other documentation as DPD may reasonably require), in form satisfactory to DPD. Delivery by Developer Parties to DPD of any Certificate of Expenditure or Requisition Form hereunder will, 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 for work performed on the Project, and/or their payees;

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

(c) Developer Parties have approved all work and materials for the current certificate and, to the reasonable belief of Developer Parties, such work and materials conform to the Plans and Specifications;

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

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

(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.

(g) the Project is In Balance. The Project will 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 means: (i) the undisbursed Lender Financing, if any; (ii) the undisbursed Equity; (iii) undisbursed Construction Payment; (iv) any undisbursed proceeds of any bonds issued to pay Project costs; (v) any budgeted interest amounts on any of the foregoing funds held pending disbursement for payment of Project costs; and (vi) any other amounts deposited by Developer or General Partner under this Agreement. Developer and General Partner agree that, if the particular phase of the Project is not In Balance, Developer and General Partner will, within 10 days after a written request by the City, deposit either with the lender providing any of the Lender Financing or with the construction escrow agent, cash in an amount that will place the particular phase of the Project In Balance, which deposit shall first be exhausted upon the request of such lender before any further acceptance of a Certificate of Expenditure or Requisition Form shall be made.

The City will not execute any Certificate of Expenditure for the Note or Requisition Form for the Construction Payment unless Developer Parties have satisfied the City that Developer Parties have complied, or are implementing a plan to comply, with the requirements of Sections 8.08, 10.02 and 10.03. The City will have the right, in its reasonable discretion, to require Developer and General Partner to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any acceptance of a Certificate of Expenditure or Requisition Form by the City will be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct. In addition, Developer Parties will have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements not inconsistent with this Agreement and stated in the TIF Bond Ordinance, if any, the Bonds, if any, the TIF Bonds, if any, the TIF Ordinances, the Note, and this Agreement.

SECTION SIX: AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for General Contractor and Subcontractors.

(a) DPD acknowledges that Developer has selected Linn-Mathes, 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 DOH as required under Section 6.02 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.

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

6.03 Performance and Payment Bonds. Prior to 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.

6.04 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 10; provided, however, that the contracting, hiring and testing requirements associated with the MBE/WBE and the City resident obligations in Section 10 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 10 obligations are satisfied on an aggregate basis.

6.05 **Other Provisions.** In addition to the requirements of this Section 6, the Construction Contract and each contract with any subcontractor must contain provisions required under Section 3.04 (Change Orders), Section 8.08 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Construction Worker Employment Requirement), Section 10.03 (Developer's MBE/WBE Commitment), Section 12 (Insurance) and Section 14.01 (Books and Records).

SECTION SEVEN: COMPLETION OF CONSTRUCTION

7.01 Certificate of Completion of Construction.

(a) Upon completion of the construction of the Project in compliance with the terms and conditions of this Agreement, and upon Developer's written request, DPD will issue to Developer Parties a certificate of completion of construction in recordable form (the "Certificate") certifying that Developer Parties have fulfilled their obligations to complete the Project in compliance with the terms and conditions of this Agreement. DPD will respond to Developer's written request for a Certificate within 30 days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed and the measures which must be taken by Developer Parties in order to obtain the Certificate. Developer may resubmit a written request for a Certificate upon completion of such measures, and the City will respond within 30 days in the same way as the procedure for the initial request. Such process may repeat until the City issues a Certificate.

(b) Each Developer Party acknowledges and understands that the City will not issue a Certificate until (i) the City's Monitoring and Compliance unit has determined in writing that Developer is in complete compliance with all City requirements (M/WBE, City residency and prevailing wage) as required in this Agreement, (ii) all CHA Units have been completed and conveyed to Partnership, (iii) all Below Market Condominiums have been sold, (iv) at least 80% of the Market Rate Condominiums have been sold, and (v) Developer Parties have received a Certificate of Occupancy from the City or other evidence reasonably acceptable to DPD that the Developer Parties have complied with building permit requirements.

7.02 Effect of Issuance of Certificate; Continuing Obligations.

(a) The Certificate relates only to the construction of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to Developer Parties' obligation to complete such activities have been satisfied. After the issuance of the Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate 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 8.02 (Covenant to Redevelop), Section 8.18 (Real Estate Provisions), and Section 8.19 (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. The other executory terms of this Agreement that remain after the issuance of the Certificate will be binding only upon each Developer Party or a permitted assignee of such Developer Party who, as provided in Section 18.14 (Assignment) of this Agreement, has contracted to take an assignment of such Developer Party's rights under this Agreement and assume such Developer Party's liabilities hereunder.

7.03 **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 (provided, however, under no circumstances shall the City suspend or cease disbursement of principal and interest payments on the Note);

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

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

7.05 **Release of Agreement as to Conveyed Units.** DPD shall provide Developer, at Developer's written request delivered from time to time in connection with the sale of the Below Market Condominiums (provided Developer is in compliance with Section 8.19 hereof), in accordance with the terms of this Agreement, with a written partial release in recordable form stating this Agreement is no longer an encumbrance against any such units so as to enable Developer to deliver good and marketable title to such units. DPD shall provide Developer, following the recording of the condominium declarations relating to the Market Rate Condominiums, in accordance with the terms of this Agreement, with a written partial release in recordable form stating this Agreement is no longer an encumbrance against any such units so as to enable Developer to deliver good and marketable title to such units.

**SECTION EIGHT: REPRESENTATIONS, WARRANTIES AND
COVENANTS OF DEVELOPER PARTIES.**

8.01 **General.** Each of Developer, Partnership and General Partner represent, warrant, and covenant, as of the date of this Agreement and as of the date of issuance of any of the Note as follows. Representations, warranties and covenants denoted (D Only) or (P/GP Only) shall be deemed to have been made only by Developer or Partnership/General Partner, as applicable; otherwise, they shall be deemed to apply to all.

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

(b) Parkside is the sole member of Developer, and Parkside consists of three members with the following corresponding interests: Kimball Hill Urban Centers Chicago One, LLC, an Illinois limited liability company (33.33%); Holsten Real Estate Development Corporation, an Illinois corporation (33.33%); and Cabrini Green LAC Community Development Corporation, an Illinois not-for-profit corporation (33.33%) (D only).

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

(d) The execution, delivery and performance of this Agreement has been duly authorized by all necessary limited liability company action, and does not and will not violate Developer's Articles of Organization as amended and supplemented, its Operating Agreement, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which Developer is now a party or by which Developer or any of its assets is now or may become bound (D only);

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

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

(g) Developer has acquired and will maintain good and merchantable leasehold title,

or fee simple title, as the case may be, 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 (D only);

(h) 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 (D only);

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

(j) 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 (D only);

(k) 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 effect its ability to comply with its obligations under this Agreement (D only);

(l) the Financial Statements are, and when hereafter required to be submitted will be, complete, correct in all material respects and accurately present the assets, liabilities, results of operations and financial condition of 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 (D only);

(m) prior to the issuance of the 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 4.04; (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 (D only);

(n) Developer has not incurred and, prior to the issuance of the 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 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 (D only);

(o) 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 such Developer Party in violation of Chapter 2-156-120 of the Municipal Code of the City, as amended; and

(p) None of Developer, Partnership, General Partner or 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.

8.02 **Covenant to Redevelop.** Upon DOH's approval of the Scope Drawings and Plans and Specifications as provided in Section 3.02, and DPD's approval of the Project Budget as provided in Section 3.03, and Developer's receipt of all required building permits and governmental approvals, Developer Parties will redevelop the Property in compliance with this Agreement, the TIF Ordinances, the PD, the CHA Redevelopment Agreement, the Purchase Contract, 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. Specifically:

- (a) Developer and General Partner shall construct the improvements constituting the Below Market Condominiums, the Market Rate Condominiums, the CHA Units, and the parking spaces in accordance with the recitals and Section 8.19;
- (b) Developer and General Partner shall fund the construction of the Project in accordance with Section 4.01 and Section 4.03;
- (c) Developer and General Partner shall convey the CHA Units to the Partnership in accordance with the Purchase Contract;
- (d) Developer shall sell the Below Market Condominiums to Qualified Households at below market rates;
- (e) Developer shall sell the Market Rate Condominiums to private purchasers at market rates; and
- (f) Developer and General Partner shall cause its General Contractor (or, if such work is subcontracted or handled by a third party, such subcontractor or third

party) to complete such work and provide such cooperation with the City and CHA as may be necessary to cover one or more NFRLs as may necessary or appropriate to cover the entire Property.

The covenants set forth in this Section 8.02 will run with the land and will be binding upon any transferee of the Property, 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 7.02 and recorded against the Property, or any portion thereof.

8.03 **Redevelopment Plan**. 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.

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

8.05 **Other Bonds**. At the request of the City, Developer Parties 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 Developer Parties or the Project and provided further, however, that payment obligations relating to any such Bonds shall be subordinate to the City's obligations hereunder with respect to payments under the Note or the proceeds of such Bonds shall be used to fully retire the Note. 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 Developer Parties that is determined to be false and misleading.

8.06 **Employment Opportunity**.

(a) Developer and General Partner covenant and agree 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 8.08 and Section 10; provided, however, that the contracting, hiring and testing requirements associated with the MBE/WBE and City resident obligations in Section 10 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 10 obligations are satisfied on an aggregate basis. Developer and General Partner will submit to DPD a plan describing their compliance program prior to the Closing Date.

(b) Developer and General Partner will deliver to the City written progress reports by draw, but not less than quarterly, detailing compliance with the requirements of Sections 8.08,

10.02 and 10.03 of this Agreement. If any such reports indicate a shortfall in compliance, Developer and General Partner will also deliver a plan to DPD which will outline, to DPD's satisfaction, the manner in which Developer Parties will correct any shortfall.

8.07 **Employment Profile.** Developer and General Partner 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.

8.08 **Prevailing Wage.** Developer and General Partner covenant and agree 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 State Department of Labor (the "Labor Department"), to all of 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 the Labor Department revises such prevailing wage rates, the revised rates will apply to all such contracts. Upon the City's request, Developer and General Partner will provide the City with copies of all such contracts entered into by any Developer Party or the General Contractor to evidence compliance with this Section 8.08.

8.09 **Arms-Length Transactions.** Unless DPD has given its prior written consent with respect thereto, no Affiliate of a Developer Party (other than the General Contractor) 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 Parties will provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to an Affiliate by a Developer Party and reimbursement to such Developer Party for such costs using City Funds, or otherwise), upon DPD's request, prior to any such disbursement.

8.10 **No Conflict of Interest.** Under Section 5/11-74.4-4(n) of the Act, each Developer Party 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 Developer Parties 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 Developer, Partnership, General Partner, the Property, the Project, or to any Developer Party's actual knowledge, any other property in the Redevelopment Area.

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

8.12 **Financial Statements.** Each of Developer and Partnership will obtain and provide to DPD Financial Statements for Developer's and Partnership's fiscal year ended 2005, and each yearly thereafter for the Term of the Agreement. In addition, if requested by DPD, Developer and Partnership 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.

8.13 **Insurance.** Solely at their own expense, Developer Parties will comply with all provisions of Section 12 hereof.

8.14 **Non-Governmental Charges.**

(a) **Payment of Non-Governmental Charges.** Except for the Permitted Liens, and subject to subsection (b) below, Developer Parties 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 a Developer Party, 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 Parties 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 Parties 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 Parties 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 Parties' covenants to pay any such Non-Governmental Charges at the time and in the manner provided in this Section 8.14); or

(ii) at DPD's sole option, to furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD 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.

(c) **Applicability After Conversion to Condominium Units.** This Section 8.14 shall not apply to Non-Governmental Charges payable by, or contestable by other owners of any individual residential, commercial or parking units of the Project or any other portion of the Property until after such time as any such owners, under the terms of their purchase contracts and/or the governing condominium and other declaration instruments recorded or to be recorded against the Property, become responsible for the payment of Non-Governmental Charges attributable to their respective units or other affected portion of the Property.

8.15 **Developer's Liabilities.** No Developer Party will enter into any transaction that would materially and adversely affect its ability to perform its obligations under this Agreement. Each Developer Party 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.

8.16 **Compliance with Laws.** To the best of each Developer Party's 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, Developer Parties will provide evidence satisfactory to the City of such current compliance.

8.17 **Recording and Filing.** Developer 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. Developer will pay all fees and charges incurred in connection with any such recording. Upon recording, Developer will immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

8.18 **Real Estate Provisions.**

(a) **Governmental Charges.**

(i) **Payment of Governmental Charges.** Subject to subsection (ii) below, Developer Parties agree to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon Developer Parties, the Property or the Project, or become due and payable, and which create, may create, or appear to create a lien upon Developer Parties 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 Parties, the Property, or the Project, including but not limited to real estate taxes.

(ii) **Right to Contest.** Developer Parties have 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 Parties' 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 a Developer Party's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option:

(x) Developer Parties will demonstrate to DPD's satisfaction that legal proceedings instituted by Developer Parties 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 Parties 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 Parties fail to pay or contest any Governmental Charge or to obtain discharge of the same as required by this Section 8.18, 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 Parties 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. Subject to Section 8.18(c) below, 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 Parties. Notwithstanding anything contained herein to the contrary, this paragraph must not be construed to obligate the City to pay any such Governmental Charge. Additionally, subject to Section 8.18(c) below, if Developer Parties fail to pay any Governmental Charge, the City, in its sole discretion, may require Developer Parties to submit to the City audited Financial Statements at Developer Parties' own expense.

(c) Applicability After Conversion to Condominium Units. The provisions of Section 8.18(a) and (b) shall apply to the Partnership upon and after its purchase of the CHA Units but shall not apply to Governmental Charges payable by, or contestable by, owners of individual condominium units after such time as such unit owners, under the terms of their purchase contracts and/or the condominium declaration, become responsible for the payment of Governmental Charges attributable to their respective units. Nothing in Section 8.18 shall be construed to prohibit or impair the Partnership's ability to seek an exemption from real estate taxes for the CHA Units.

8.19 Affordability Requirements.

(a) Affordable Units. Of the 280 units comprising the Project, 72 units (or 25% of the Project's units) shall be CHA Units affordable to households averaging less than 60% AMI; 14 units (or 5% of the Project's units) shall be Below Market Condominiums, affordable to households with AMI not greater than 120%; and 194 units shall be Market Rate Condominiums. The further breakdown of the units shall be as follows:

Number of Buildings	Type of Building	CHA Units	Below Market Condominiums	Market Rate Condominiums	Total
2	Mid-rise	46	10	151	207
9	Townhomes	26	4	43	73
	Total	72	14	194	280

(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 DOH as of the date hereof shall govern the terms of the Developer Parties' obligation to provide affordable housing. Following

foreclosure, if any, and from the date of such foreclosure through the Term of the Agreement, the following provisions shall govern the terms of the obligation to provide affordable housing under this Agreement:

- (i) The CHA Units shall be operated and maintained solely as residential rental housing;
- (ii) All of the CHA Units shall be available for occupancy to and be occupied solely by Very Low Income Families (as defined below) upon initial occupancy; and
- (iii) All of the CHA Units have monthly rents not in excess of thirty percent (30%) of the maximum allowable income for a Very 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 Very 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 8.19, 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) "Very 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.
- (v) The covenants set forth in this Section 8.19 shall run with the land and be binding upon any transferee.
- (vi) The City and the Developer may enter into a separate agreement to implement the provisions of this Section 8.19;
- (c) Below Market Condominiums. Developer shall sell each Below Market Condominium to a Qualified Household for a below market price.

8.20 **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.

8.21 **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.

8.22 **No Business Relationship with City Elected Officials**. Developer acknowledges receipt of a copy of Section 2-156-030(b) of the Municipal Code and that

Developer has read and understands 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. Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to this Agreement or the transactions contemplated thereby.

8.23 **Survival of Covenants.** All warranties, representations, covenants and agreements of Developer contained in this Section 8 and elsewhere in this Agreement are true, accurate and complete at the time of Developer's execution of this Agreement, and will survive the execution, delivery and acceptance by the parties and (except as provided in Section 7 upon the issuance of the Certificate) will be in effect throughout the Term of the Agreement.

SECTION NINE: REPRESENTATIONS, WARRANTIES AND COVENANTS OF CITY

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

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

SECTION TEN: DEVELOPER'S EMPLOYMENT OBLIGATIONS

10.01 **Employment Opportunity.** Developer, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of Developer operating on the 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 10.01 will be a basis for the City to pursue remedies under the provisions of Section 15.02 hereof, subject to the cure rights under Section 15.03.

10.02 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 2 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 10.02 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).

10.03 **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 10.03, 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 10.03 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 10.03. 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 10.03 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

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

SECTION ELEVEN: ENVIRONMENTAL MATTERS

11.01 **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.

This Section shall not be construed to require Developer to assume any of the obligations of the CHA with respect to remediation work required to be performed by the CHA, and Developer may exercise such rights and remedies it may have to enforce the CHA's performance of the work, provided, however, that this sentence shall not be construed to limit Developer's indemnification obligations hereunder.

SECTION TWELVE: INSURANCE

12.01. **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 Developer 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 named as an additional insured and loss payee/mortgagee if applicable.

(vi) Professional Liability

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

(vii) Valuable Papers

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

(viii) Contractors Pollution Liability

When any remediation work is performed which may cause a pollution exposure, the 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 named as an additional insured and loss payee/mortgagee if applicable.

(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 their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Developer in no way limit 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 THIRTEEN: INDEMNIFICATION

13.01 **General Indemnity.** Each of Developer Parties agrees to severally, but not jointly, 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) Such Developer Party's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or
- (ii) Such Developer Party's 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 such Developer Party or any of its Affiliates or any of their respective agents, employees, contractors or persons acting under the control or at the request of such Developer Party or any of its Affiliates; or
- (iv) a Developer Party's failure to cure any misrepresentation in this Agreement or any other document or agreement relating hereto; or
- (v) any act or omission by such Developer Party or any of its Affiliates.

provided, however, that no Developer Party shall 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, such Developer Party 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 13.01 will survive the termination of this Agreement.

SECTION FOURTEEN: MAINTAINING RECORDS/RIGHT TO INSPECT

14.01 **Books and Records.** 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 Developer's 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 Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at Developer's expense. No Developer Party will pay for salaries or fringe benefits of auditors or examiners. Developer Parties must incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by a Developer Party with respect to the Project.

14.02 **Inspection Rights.** Upon 3 Business Days notice, 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 FIFTEEN: DEFAULT AND REMEDIES

15.01 **Events of Default.** The occurrence of any one or more of the following events, subject to the provisions of Section 15.03, will constitute an "Event of Default" by a Developer Party, as applicable, hereunder (provided, however, the occurrence of an Event of Default by Developer shall not be deemed to constitute an Event of Default by Partnership or General Partner and the occurrence of an Event of Default by Partnership or General Partner shall not be deemed to constitute an Event of Default by Developer):

(a) the failure of a Developer Party 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 a Developer Party to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of such party under any other agreement with any person or entity if such failure may have a material adverse effect on such party's 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 a Developer Party 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 a Developer Party 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 a Developer Party or for the liquidation or reorganization of a Developer Party, or alleging that a Developer Party is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of a Developer Party's debts, whether under the United States Bankruptcy Code or under any other state or Federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving a Developer Party; 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 60 days after the commencement of such proceedings;

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

(g) the entry of any judgment or order against a Developer Party 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 occurrence 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 (except after sale of the final Market Rate Condominium and the reserving of any statutorily required reserves to cover any post-dissolution liabilities) or Partnership or General Partner; or

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

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

15.02 Remedies. Upon the occurrence of an Event of Default, the City may suspend payment of Construction Payment. 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 a Developer Party prior to the issuance of a Certificate, the City shall be entitled to seek reimbursement of City Funds from Developer Parties. If an Event of Default attributable to Developer's acts or omissions occurs, in no event shall the City be entitled to exercise remedies against Partnership, General Partner or the CHA Units previously conveyed to Partnership or against Below Market Condominiums or Market Rate Condominiums previously conveyed to purchasers. If an Event of Default attributable to Partnership's or General Partner's acts or omissions occurs, in no event shall the City be entitled to exercise remedies against Developer or Below Market Condominiums or Market Rate Condominiums previously conveyed to purchasers.

15.03 Curative Period.

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

(b) In the event a Developer Party fails to perform a non-monetary covenant which it is required to perform under this Agreement, an Event of Default will not be deemed to have occurred unless the applicable party (or the non-defaulting Developer 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.

SECTION SIXTEEN: MORTGAGING OF THE PROJECT

16.01 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 a Developer Party 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 a Developer Party 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 acknowledged that nothing in this Section 16 shall apply to, or in any way prohibit or limit, the granting of mortgages in connection with the conversion of a portion of the Property to a condominium form of ownership, and the sale of the CHA Units to the Partnership, and in connection with the sale of Below Market Condominiums and Market Rate Condominiums to private purchasers. It is hereby agreed by and between the City and the Developer Parties as follows:

(a) If a mortgagee or any other party shall succeed to a Developer Party'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 such Developer Party's interest hereunder in accordance with Section 18.14 hereof, the City may, but will not be obligated to, attorn to and recognize such party as the successor in interest to such Developer Party 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 7.02.

(b) If any mortgagee or any other party shall succeed to a Developer Party'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 a Developer Party's interest hereunder in accordance with Section 18.14 hereof, then the City hereby agrees to attorn to and recognize such party as the successor in interest to such Developer Party for all purposes under this Agreement so long as such party accepts all of the executory obligations and liabilities of a "Developer Party" hereunder. Notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of a Developer Party's interest under this Agreement, such party will have no liability under this Agreement for any Event of Default of such Developer Party which occurred prior to the time such party succeeded to the interest of such Developer Party under this Agreement, in which case such Developer Party will be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of such Developer Party'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 7.02.

(c) Prior to the issuance by the City to Developer Parties of a Certificate under Section 7 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 Certificate, consent of the Commissioner of DPD is not required for any such New Mortgage.

SECTION SEVENTEEN: NOTICES

17.01 **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 Department of Planning and Development Attn: Commissioner 121 North LaSalle Street, Room 1000 Chicago, IL 60602 312/744-2271 (Fax)
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With Copies To: City of Chicago
Corporation Counsel
Attn: Finance and Economic Development Division
121 North LaSalle Street, Room 600
Chicago, IL 60602
312/744-8538 (Fax)

If to a Developer Party: Parkside Old Town I, LLC
1333 North Kingsbury, Suite 305
Chicago, Illinois 60622
Attn: Peter Holsten
Fax: 312/337-4592

With copy to: Applegate & Thorne-Thomsen
322 S. Green Street, Suite 400
Chicago, Illinois 60607
Attention: Tom Thorne-Thomsen, Esq.
Fax: 312/421-6162

And to: Charity & Associates, P.C.
20 North Clark Street, Suite 700
Chicago, Illinois 60602
Attention: Elvin E. Charity, Esq.
Fax: 312/849-9001

And to: Holsten Real Estate Development Corporation
1333 N. Kingsbury, Suite 305
Chicago, IL 60622
Attn: Peter Holsten

And to: Edwin F. Mandel Legal Aid Clinic
6020 S. University Avenue
Chicago, IL 60637
Attn: Jeff Leslie, Esq.

And to: Cabrini Green LAC Community Development Corporation
1230 North Burling
Chicago, IL 60610
Attn: President

And to: Kimball Hill Urban Centers Chicago One, LLC
445 West Erie, Suite 200
Chicago, IL 60610
Attention: President

And to: Holland & Knight, LLP
131 South Dearborn Street
Chicago, IL 60603
Attn: Grant McCorkhill

And to: Alliant Asset Management
21600 Oxnard Street, Suite 1200
Woodland Hills, CA 91367
Attn: Shawn Horwitz

And to: Bocarsly, Emden, Cowan, Esmail, Parker & Arndt LLP
633 West Fifth Street,
70th Floor
Los Angeles, CA 90071
Attn: Lance S. Bocarsly, Esq.

If to Existing Mortgagee: JPMorgan Chase Bank, N.A.
Community Development Real Estate
Chase Tower
10 South Dearborn Street
Mail Code IL 1-0953
Chicago, IL 60670
Attn: Bruce F. Martin and John D. Bernhard

With copy to: Schwartz Cooper Chartered
Suite 2700, 180 North LaSalle Street
Chicago, IL 60601
Attn: Derek L. Cottier, Esq.

If to CHA: Chicago Housing Authority
626 West Jackson Boulevard
Chicago, Illinois 60661
Attn: Chief Executive Officer

With copy to: Chicago Housing Authority
200 West Adams Street, Suite 2100
Chicago, Illinois 60606
Attn: General Counsel

And to: The Habitat Company LLC
350 West Hubbard St.
Chicago, IL 60610
Attn: Jeff Head

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.

17.02 **Developer Requests for City or DPD Approval.** Any request under this

Agreement for City or DPD approval submitted by a Developer Party will comply with the following requirements:

- (a) be in writing and otherwise comply with the requirements of Section 17.01 (Notices);
- (b) expressly state the particular document and section thereof relied on by Developer Parties to request City or DPD approval;
- (c) if applicable, note in bold type that failure to respond to such Developer Party's 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 such Developer Party's request.

SECTION EIGHTEEN: ADDITIONAL PROVISIONS

18.01 **Amendments**. Except as provided in this Section 18.01, and except for changes or amendments that are otherwise expressly identified as being in the discretion of the Commissioner, this Agreement and the Schedules and Exhibits attached hereto may not be materially amended without the written consent of all parties. In addition to consents and discretion expressly identified herein, the Commissioner, in 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 3.05; (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's consent. The City in its sole discretion, may amend, modify or supplement the Redevelopment Plan. For purposes of this Agreement, Developer Parties are only obligated to comply with the Redevelopment Plan as in effect on the date of this Agreement.

18.02 **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.

18.03 **Limitation of Liability**. No member, elected or appointed official or employee or agent of the City shall be individually, collectively or personally liable to Developer Parties or any successor in interest to Developer Parties in the event of any default or breach by the City or

for any amount which may become due to Developer Parties or any successor in interest, from the City or on any obligation under the terms of this Agreement.

18.04 **Further Assurances.** Developer, Partnership, General Partner 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.

18.05 **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.

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

18.07 **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 Developer Parties.

18.08 **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.

18.09 **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.

18.10 **Severability.** If any provision of this Agreement, or the application thereof, to any person, place or circumstance, is 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.

18.11 **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.

18.12 **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.

18.13 **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.

18.14 **Assignment.** Prior to the issuance by the City to Developer Parties of the Certificate, Developer Parties may not sell, assign or otherwise transfer its interest in this Agreement or the Note in whole or in part without the written consent of the City; provided, however, that the Developer Parties may collaterally assign their respective interests in this Agreement to any of their collective or respective lenders identified to the City as of the Closing Date if any such lenders require such collateral assignment. Any successor in interest to 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 8.24 (Survival of Covenants) hereof, for the Term of the Agreement. Each Developer Party hereby consents to the City's transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

18.16 **Force Majeure.** Neither the City nor Developer Parties nor any successor in interest to either 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, and the CHA's failure to complete any environmental remediation work that is the CHA's responsibility under applicable agreements between the CHA and the Developer, if applicable. 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.

18.17 **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.

18.18 **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.

18.19 **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 Certificate or otherwise administering this Agreement for the City.

18.20 **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, 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."

18.21 **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.

18.22 **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.

18.23 **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.

18.24 **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.

18.25 **Costs and Expenses.** In addition to and not in limitation of the other provisions of this Agreement, Developer agrees to pay upon demand the City's out-of-pocket expenses,

including 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. Developer 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 Parkside of Old Town Project Redevelopment Agreement to be signed on or as of the day and year first above written.

CITY OF CHICAGO

By: Lori Healey
Lori Healey, Commissioner, *RL by SL*
Department of Planning and Development

PARKSIDE OLD TOWN I, LLC, an Illinois limited liability company

By: Parkside Associates, LLC, an Illinois limited liability company, its managing member

**HOLSTEN REAL ESTATE
DEVELOPMENT CORPORATION,**
an Illinois corporation

By: _____
Its: President

**KIMBALL HILL URBAN CENTERS
CHICAGO ONE, L.L.C. an Illinois
limited liability company**

By: _____
Its: _____

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

By: _____
Its: _____

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

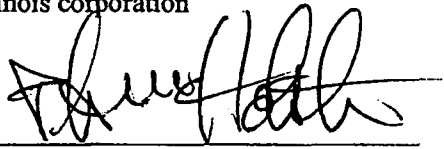
CITY OF CHICAGO

By: _____
Lori Healey, Commissioner,
Department of Planning and Development

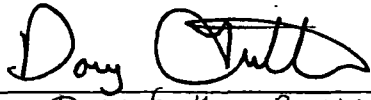
PARKSIDE OLD TOWN I, LLC, an Illinois limited liability company

By: Parkside Associates, LLC, an Illinois limited liability company, its managing member

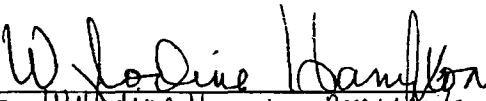
**HOLSTEN REAL ESTATE
DEVELOPMENT CORPORATION,**
an Illinois corporation

By: 
Its: President

**KIMBALL HILL URBAN CENTERS
CHICAGO ONE, L.L.C. an Illinois
limited liability company**

By: 
Its: Doug Guthrie, President

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

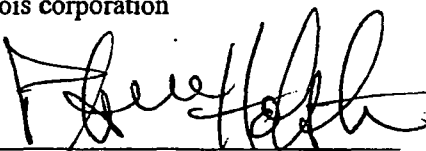
By: 
Its: Wynne Hampton, President

PARKSIDE FOUR PHASE I, L.P., an Illinois limited partnership


By: Parkside Four I, LLC, an Illinois limited liability company, its general partner

By: Parkside Associates, LLC, an Illinois limited liability company, its sole member and manager

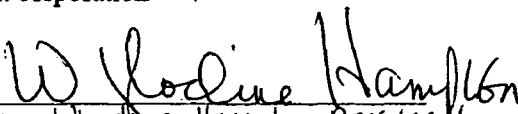
**HOLSTEN REAL ESTATE
DEVELOPMENT CORPORATION,**
an Illinois corporation

By: 
Its: President

**KIMBALL HILL URBAN CENTERS
CHICAGO ONE, L.L.C.** an Illinois
limited liability company

By: 
Its: Doug Guthrie, President

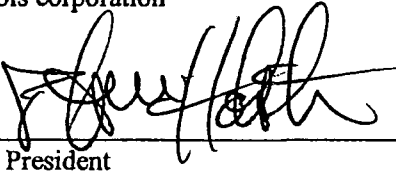
**CABRINI GREEN LAC
COMMUNITY DEVELOPMENT
CORPORATION,** an Illinois not for
profit corporation

By: 
Its: Wyodene Hampton, President

PARKSIDE FOUR I, LLC, an Illinois limited liability company

By: Parkside Associates, LLC, an Illinois limited liability company, its sole member and manager


**HOLSTEN REAL ESTATE
DEVELOPMENT CORPORATION,
an Illinois corporation**

By: 
Its: President

**KIMBALL HILL URBAN CENTERS
CHICAGO ONE, L.L.C. an Illinois
limited liability company**

By: 
Its: Doug Guthrie, President

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

By: 
Its: Wynne Hampton, President

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Bridget A. White a Notary Public in and for said County, in the State aforesaid, do hereby certify that Peter M. Holsten, the President of Holsten Real Estate Development Corporation, an Illinois corporation ("Holsten Corp"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of Holsten Corp, in its capacity as a member of Parkside Associates, LLC, an Illinois limited liability company (the "Company"), in the Company's capacity as the managing member of Parkside Old Town I, LLC, an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12 day of October, 2006.

Bridget A. White
NOTARY PUBLIC

(SEAL)



STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Bridget A. White a Notary Public in and for said County, in the State aforesaid, do hereby certify that Doug Guthrie, the President of Kimball Hill Urban Centers Chicago One, L.L.C., an Illinois limited liability company ("Kimball Hill"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of Kimball Hill, in its capacity as a member of Parkside Associates, LLC, an Illinois limited liability company (the "Company"), in the Company's capacity as the managing member of Parkside Old Town I, LLC, an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12 day of October, 2006.

Bridget A White
NOTARY PUBLIC

(SEAL)



STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Bridget A. White a Notary Public in and for said County, in the State aforesaid, do hereby certify that Wylodine Hampton, the President of Cabrini Green LAC Community Development Corporation, an Illinois not-for-profit corporation ("Cabrini Green LAC"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of Cabrini Green LAC, in its capacity as a member of Parkside Associates, LLC, an Illinois limited liability company (the "Company"), in the Company's capacity as the managing member of Parkside Old Town I, LLC, an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12 day of October, 2006.

Bridget A. White
NOTARY PUBLIC

(SEAL)



STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Bridget A. White a Notary Public in and for said County, in the State aforesaid, do hereby certify that Peter M. Holsten, the President of Holsten Real Estate Development Corporation, an Illinois corporation ("Holsten Corp"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of Holsten Corp, in its capacity as a member of Parkside Associates, LLC, an Illinois limited liability company (the "Company"), in the Company's capacity as the managing member of Parkside Four I, LLC, an Illinois limited liability company the general partner of Parkside Four Phase I, L.P. an Illinois limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12 day of October, 2006.

Bridget A. White
NOTARY PUBLIC

(SEAL)



STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

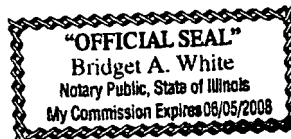
I, Bridget A. White a Notary Public in and for said County, in the State aforesaid, do hereby certify that Doug Guthrie, the President of Kimball Hill Urban Centers Chicago One, L.L.C., an Illinois limited liability company ("Kimball Hill"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of Kimball Hill, in its capacity as a member of Parkside Associates, LLC, an Illinois limited liability company (the "Company"), in the Company's capacity as the managing member of Parkside Four I, LLC, an Illinois limited liability company the general partner of Parkside Four Phase I, L.P. an Illinois limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12 day of October, 2006.

Bridget A. White

NOTARY PUBLIC

(SEAL)



STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Bridget A. White a Notary Public in and for said County, in the State aforesaid, do hereby certify that Wyloine Hampton, the President of Cabrini Green LAC Community Development Corporation, an Illinois not-for-profit corporation ("Cabrini Green LAC"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of Cabrini Green LAC, in its capacity as a member of Parkside Associates, LLC, an Illinois limited liability company (the "Company"), in the Company's capacity as the managing member of Parkside Four I, LLC, an Illinois limited liability company the general partner of Parkside Four Phase I, L.P. an Illinois limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12 day of October, 2006.

Bridget A. White

NOTARY PUBLIC

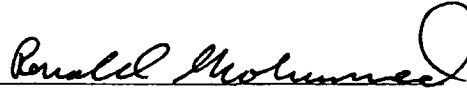
(SEAL)



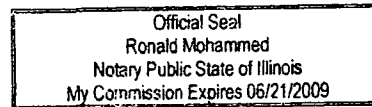
STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, undersigned, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Lori Healey, personally known to me to be Commissioner the 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 1st day of September, 2006.


Notary Public

My Commission Expires 6-21-09



Exhibit

List

**PARKSIDE OF OLD TOWN 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	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 Developer Parties
Exhibit I	Form of Payment and Performance Bond
Exhibit J	Form of the Note and related Certificate of Expenditure
Exhibit K	Lender Financing
Exhibit L	Escrow Agreement
Exhibit M	Requisition Form

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

B

PARKSIDE OLD TOWN PROJECT
REDEVELOPMENT AGREEMENT

EXHIBIT B-1

LEGAL DESCRIPTION OF THE PROPERTY

See attached .

EXHIBIT B-1

THE MID-RISE REAL ESTATE

LOT 1 IN BLOCK 2 AND LOT 1 IN BLOCK 4,

ALL IN PARKSIDE OF OLD TOWN, BEING A RESUBDIVISION AND CONSOLIDATION OF PARTS OF BLOCKS 2 AND 3, AND ALL OF BLOCKS 4 AND 5, AND PARTS OF VACATED ALLEYS LYING WITHIN BLOCK 2 AFORESAID, AND VACATED ALLEYS LYING WITHIN BLOCKS 3, 4 AND 5 AFORESAID, TOGETHER WITH THAT PART OF VACATED ELM STREET LYING SOUTH OF AND ADJOINING BLOCKS 2, 3 AND 5 AFORESAID, AND LYING NORTH OF AND ADJOINING BLOCKS 9, 7 AND 6, AND THAT PART OF VACATED NORTH HUDSON AVENUE LYING WEST OF AND ADJOINING BLOCK 2 AFORESAID, AND LYING EAST OF AND ADJOINING BLOCK 3 AFORESAID, AND LYING NORTH OF THE SOUTH LINE OF WEST ELM STREET, AND LYING SOUTH OF THE SOUTH LINE OF WEST DIVISION STREET AS WIDENED, ALL IN ROGERS' SUBDIVISION OF THAT PART WEST OF THE EAST LINE OF SEDGWICK STREET OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID PARKSIDE OF OLD TOWN RECORDED AUGUST 4, 2006 AS DOCUMENT NUMBER 0621632048.

EXHIBIT B-1 (CONT'D)

THE TOWNHOMES REAL ESTATE

LOTS 4 TO 8, INCLUSIVE, AND LOTS 10 TO 21 INCLUSIVE, IN BLOCK 1, LOTS 3 TO 10 INCLUSIVE, AND LOTS 12 TO 26, INCLUSIVE, IN BLOCK 2, LOTS 3 TO 9, INCLUSIVE, AND LOTS 19 TO 26, INCLUSIVE, IN BLOCK 3, LOTS 5 TO 22, INCLUSIVE, IN BLOCK 4,

ALL IN PARKSIDE OF OLD TOWN, BEING A RESUBDIVISION AND CONSOLIDATION OF PARTS OF BLOCKS 2 AND 3, AND ALL OF BLOCKS 4 AND 5, AND PARTS OF VACATED ALLEYS LYING WITHIN BLOCK 2 AFORESAID, AND VACATED ALLEYS LYING WITHIN BLOCKS 3, 4 AND 5 AFORESAID, TOGETHER WITH THAT PART OF VACATED ELM STREET LYING SOUTH OF AND ADJOINING BLOCKS 2, 3 AND 5 AFORESAID, AND LYING NORTH OF AND ADJOINING BLOCKS 9, 7 AND 6, AND THAT PART OF VACATED NORTH HUDSON AVENUE LYING WEST OF AND ADJOINING BLOCK 2 AFORESAID, AND LYING EAST OF AND ADJOINING BLOCK 3 AFORESAID, AND LYING NORTH OF THE SOUTH LINE OF WEST ELM STREET, AND LYING SOUTH OF THE SOUTH LINE OF WEST DIVISION STREET AS WIDENED, ALL IN ROGERS' SUBDIVISION OF THAT PART WEST OF THE EAST LINE OF SEDGWICK STREET OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID PARKSIDE OF OLD TOWN RECORDED AUGUST 4, 2006 AS DOCUMENT NO: 0621632048.

EXHIBIT B-1 (CONT'D)

THE OPEN SPACE REAL ESTATE

LOTS 1, 3 AND 9 IN BLOCK 1, LOTS 2 AND 11 IN BLOCK 2, LOT 10 IN BLOCK 3, AND LOTS 2, 3 AND 4, IN BLOCK 4,

ALL IN PARKSIDE OF OLD TOWN, BEING A RESUBDIVISION AND CONSOLIDATION OF PARTS OF BLOCKS 2 AND 3, AND ALL OF BLOCKS 4 AND 5, AND PARTS OF VACATED ALLEYS LYING WITHIN BLOCK 2 AFORESAID, AND VACATED ALLEYS LYING WITHIN BLOCKS 3, 4 AND 5 AFORESAID, TOGETHER WITH THAT PART OF VACATED ELM STREET LYING SOUTH OF AND ADJOINING BLOCKS 2, 3 AND 5 AFORESAID, AND LYING NORTH OF AND ADJOINING BLOCKS 9, 7 AND 6, AND THAT PART OF VACATED NORTH HUDSON AVENUE LYING WEST OF AND ADJOINING BLOCK 2 AFORESAID, AND LYING EAST OF AND ADJOINING BLOCK 3 AFORESAID, AND LYING NORTH OF THE SOUTH LINE OF WEST ELM STREET, AND LYING SOUTH OF THE SOUTH LINE OF WEST DIVISION STREET AS WIDENED, ALL IN ROGERS' SUBDIVISION OF THAT PART WEST OF THE EAST LINE OF SEDGWICK STREET OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID PARKSIDE OF OLD TOWN RECORDED AUGUST 4, 2006 AS DOCUMENT NUMBER 0621632048.

C

**PARKSIDE OLD TOWN PROJECT
REDEVELOPMENT AGREEMENT**

EXHIBIT C-1

PROJECT BUDGET

A project budget is attached to this exhibit cover sheet.

Exhibit C-1, Project Budget

	CHA	Affordable For-Sale	Market For-Sale	TOTAL
# of Units	72	14	194	280
SOURCES				
Sources				
TIF Proceeds	\$ 5,337,605	\$ 249,038	\$ 3,450,962	\$ 9,037,605
Construction Loan	-	3,665,061	65,334,939	69,000,000
Hope VI Funds	7,200,000	-	-	7,200,000
Developer Equity	-	134,615	1,865,385	2,000,000
CHA-Interest earnings	175,000	-	-	175,000
LHHC Equity	9,663,818	-	-	9,663,818
Total Sources	\$ 22,376,423	\$ 4,048,715	\$ 70,651,285	\$ 97,076,423
<i>Sources per Unit</i>	310,784	289,194	364,182	346,702
USES				
Hard Costs				
Unit Construction	\$ 17,416,889	\$ 2,525,241	\$ 49,657,870	\$ 69,600,000
Site Work	954,750	200,000	2,845,250	4,000,000
Hard Cost Contingency (5%)	918,582	136,262	2,625,156	3,680,000
Total Hard Costs	\$ 19,290,221	\$ 2,861,503	\$ 55,128,276	\$ 77,280,000
<i>Hard Costs per Unit</i>	267,920	204,393	284,166	276,000
Soft Costs				
Architecture	\$ 301,024	\$ 72,776	\$ 1,008,456	\$ 1,382,256
Condo Association	58,000	19,164	215,553	292,717
Private Utility Costs	125,100	-	-	125,100
Development Overhead	-	100,962	1,399,038	1,500,000
Development Rights	-	302,885	4,197,115	4,500,000
Engineering	200,000	53,831	745,949	999,780
Financing	129,250	27,445	225,314	382,009
Insurance	84,887	31,635	388,365	504,887
Accounting	100,000	-	-	100,000
Legal	320,000	49,124	257,407	626,531
Legal-Condo	20,000	-	-	20,000
Marketing	-	84,984	1,077,631	1,162,615
Environmental Reports	5,000	-	-	5,000
TIF Consultant	20,000	3,702	51,298	75,000
Appraisal\Market Study\Survey	7,500	-	-	7,500
Permits	35,000	-	-	35,000
Title & Recording	80,000	-	-	80,000
Bond Costs	207,900	-	-	207,900
Taxes & Insurance Reserve	40,000	-	-	40,000
Reserves	527,040	-	-	527,040
Miscellaneous	500	23,137	320,612	344,249
Public Relations	-	3,944	54,646	58,590
Sales Center	-	56,280	629,874	686,154
Sales Expense	-	71,069	984,816	1,055,885
Taxes and Fees	-	23,558	326,442	350,000
JPMC Soft Cost Contingency 3%	-	18,389	254,821	273,210
Total Soft Costs	\$ 2,261,201	\$ 942,885	\$ 12,137,337	\$ 15,341,423
<i>Soft Costs per Unit</i>	31,406	67,349	62,564	54,791
Financing Costs				
Construction Loan Interest	\$ -	\$ 244,327	\$ 3,385,673	\$ 3,630,000
Capitalized TIF Interest	-	-	-	-
Bridge Bond Interest	825,000	-	-	825,000
Total Financing Costs	\$ 825,000	\$ 244,327	\$ 3,385,673	\$ 4,455,000
<i>Finance Costs per Unit</i>	11,458	17,452	17,452	15,911
Total Uses	\$ 22,376,422	\$ 4,048,715	\$ 70,651,286	\$ 97,076,423
<i>Uses per Unit</i>	310,784	289,194	364,182	346,702

**PARKSIDE OLD TOWN PROJECT
REDEVELOPMENT AGREEMENT**

EXHIBIT C-2

CONSTRUCTION (MBE/WBE) BUDGET

A construction (MBE/WBE) budget is attached to this exhibit cover sheet.

**Parkside of Old Town - Phase I For-Sale
Project Budget-MBE/WBE Eligible Costs**

Hard Costs

New Construction, Site Work (excluding contingency)	\$67,999,802
Total	\$67,999,802

Soft Costs

Architecture	\$1,382,256
Engineering	\$999,780
TIF Consultant	\$75,000
Legal - Zoning, TIF	\$40,000
Total	\$2,497,036

<u>Total MBE/WBE Eligible Costs</u>	<u>\$70,496,838</u>
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Minimum Contract Amount to MBE Contractors - 24.00%	<u>\$16,919,241</u>
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Minimum Contract Amount to WBE Contractors - 4.00%	<u>\$2,819,874</u>
--	---------------------------

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.

**PARKSIDE OLD TOWN PROJECT
REDEVELOPMENT AGREEMENT**

EXHIBIT C-2

CONSTRUCTION (MBE/WBE) BUDGET

A construction (MBE/WBE) budget is attached to this exhibit cover sheet.

**Parkside of Old Town - Phase I For-Sale
Project Budget-MBE/WBE Eligible Costs**

Hard Costs

New Construction, Site Work (excluding contingency)	\$67,999,802
Total	\$67,999,802

Soft Costs

Architecture	\$1,382,256
Engineering	\$999,780
TIF Consultant	\$75,000
Legal - Zoning, TIF	\$40,000
Total	\$2,497,036

<u>Total MBE/WBE Eligible Costs</u>	<u>\$70,496,838</u>
--	----------------------------

Minimum Contract Amount to MBE Contractors -	24.00%	<u>\$16,919,241</u>
--	--------	----------------------------

Minimum Contract Amount to WBE Contractors -	4.00%	<u>\$2,819,874</u>
--	-------	---------------------------

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.

D

**PARKSIDE OLD TOWN PROJECT
REDEVELOPMENT AGREEMENT**

EXHIBIT D

TIF-FUNDED IMPROVEMENTS

ELIGIBLE COST	AMOUNT	TIF-ELIGIBLE	PERCENTAGE TIF-ELIGIBLE
Unit Construction	\$69,600,000	\$8,708,445	50% Eligible Cost for CHA Units
Site Work	\$4,000,000	\$4,000,000	100% of Costs
Hard Cost Contingency (5%)	\$3,680,000	\$459,291	50% Eligible Cost for CHA Units
Architecture	\$1,486,775	\$255,031	50% Eligible Cost for CHA Units
Engineering	\$1,062,135	\$162,355	50% Eligible Cost for CHA Units
Construction Loan Interest	\$3,630,000	\$1,089,000	30% Eligible
Bridge Bond Interest	\$658,126	\$451,876	50% Eligible Cost for CHA Units
Development Rights	\$4,500,000	\$4,500,000	100% Eligible, 99 Year Capital Lease
Total		\$19,625,998	

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