

Contract Summary Sheet

Contract (PO) Number: 7947

Specification Number: 32363

Name of Contractor: CHICAGO KLEE DEVELOPMENT LLC

City Department: PLANNING & DEVELOPMENT

Title of Contract: Redevelopment Agreement Klee Building

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

\$1,163,000 00

PO Start Date: 1/7/05

PO End Date: 12/31/20

Brief Description of Work: Redevelopment Agreement Klee Building

Procurement Services Contact Person: THOMAS DZIEDZIC

Vendor Number: 50082432

Submission Date:

MAR 29 2005

SIGNED
ORIGINAL

Klee Building RDA R-6 wpd 01/07/05

**IRVING/CICERO
REDEVELOPMENT PROJECT AREA**

**CHICAGO KLEE DEVELOPMENT, LLC
REDEVELOPMENT AGREEMENT**

DATED AS OF JANUARY 14, 2005

BY AND BETWEEN

THE CITY OF CHICAGO

AND

**CHICAGO KLEE DEVELOPMENT, LLC,
an Illinois limited liability company**

This agreement was prepared by
and after recording return to
William A. Nyberg, Esq.
City of Chicago Law Department
121 North LaSalle Street, Room 600
Chicago, IL 60602

**CHICAGO KLEE DEVELOPMENT, LLC
REDEVELOPMENT AGREEMENT
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**CHICAGO KLEE DEVELOPMENT, LLC
REDEVELOPMENT AGREEMENT
LIST OF SCHEDULES AND EXHIBITS**

Schedules

Schedule A	Definitions
Schedule B	Insurance Requirements

Exhibits

Exhibit A	*Redevelopment Area Legal Description
Exhibit B-1	*Legal Description of the Property
Exhibit B-2	Site Plan for the Project
Exhibit B-3	Affordable Housing Ordinance
Exhibit B-4	Affordable Sales Prices
Exhibit B-5	* Schedule of Prohibited Uses/Approved Tenants for the Property
Exhibit C	Redevelopment Plan
Exhibit D-1	*Project Budget
Exhibit D-2	*Construction (MBE/WBE) Budget
Exhibit E	*TIF-Funded Improvements
Exhibit F	Construction Contract
Exhibit G	Approved Prior Expenditures
Exhibit H	Permitted Liens
Exhibit I	Opinion of Developer's Counsel
Exhibit J	*Preliminary TIF Projection - Real Estate Taxes
Exhibit K	Form of Payment and Performance Bond
Exhibit L	Reserved
Exhibit M	Form of Note and related Certificate of Expenditure
Exhibit N	Form of City Recapture Mortgage

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

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

This agreement was prepared by and
after recording return to
William A. Nyberg, Esq.
City of Chicago Law Department
121 North LaSalle Street, Room 600
Chicago, IL 60602

CHICAGO KLEE DEVELOPMENT, LLC REDEVELOPMENT AGREEMENT

This CHICAGO KLEE DEVELOPMENT, LLC Redevelopment Agreement (the "**Agreement**") is made as of this 14th day of January, 2005, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), and Chicago Klee Development, LLC, an Illinois limited liability company ("**Developer**").

RECITALS:

A. Constitutional Authority: As a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois (the "**State**"), the City has the power to regulate for the protection of the public health, safety, morals, and welfare of its inhabitants and, pursuant thereto, has the power to encourage private development in order to enhance the local tax base 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 June 10, 1996: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Irving/Cicero Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the Irving/Cicero 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 Irving/Cicero Redevelopment Project Area" (the "**TIF Adoption Ordinance**"). Collectively the three ordinances are defined as the "**TIF Ordinances**". The redevelopment project area (the "**Redevelopment Area**") is legally described in Exhibit A.

D. **The Project.** Developer presently owns the property located at 4015 N. Milwaukee Avenue, Chicago, Illinois 60641 (the former "Heller" building) and also owns the property located at 4017-21 N. Milwaukee Avenue (half of the former "Woolworth" building) (collectively, the Developer-owned property is defined for purposes of this recital as "Parcel 1") At closing, Developer will purchase the Klee Building located at 4001-13 N Milwaukee Avenue (Parcel 2) and the property located at 4022-32 N Cicero Avenue (Parcel 3). Both parcels 2 and 3 are presently owned by the City Developer will also apply for a partial vacation of a City Alley (the "**Alley**") as a part of its site assembly process Parcels 1, 2, 3 and the Alley are collectively defined as the "**Property**". A legal description of the Property is stated in Exhibit B-1. With the exception of the Klee Building, all buildings comprising the Property will be demolished Developer plans to redevelop the Klee Building and construct 2 new buildings. The Klee Building will be redeveloped into 32 residential condominium units (8 per floor) and with approximately 9,250 square feet of retail/commercial space on the ground floor. The Klee Building redevelopment will use the Portage Park Design Guidelines developed by the City's Main Street Program in 1998. Building No. 1 will be a newly constructed building located at 4015 and 4017-21 N. Milwaukee Avenue Building No 1 will be a 5-story masonry and steel constructed structure with similar architectural characteristics to the existing Klee Building. Building No. 1 will be built with the same floor elevations as the Klee Building to maintain one unified residential corridor between the two structures. Building No. 1 will contain approximately 4,000 square feet of ground floor retail/commercial space, 32 residential condominium units (8 per floor) on the upper floors and underground parking. Of the 64 residential condominium units, 13 (20.31%) will be reserved for households earning equal to or less than 100% of AMI (as defined below) Building No. 2, located at 4022-32 North Cicero Avenue will be a newly constructed, 1-story masonry and steel constructed retail building containing approximately 6,700 square feet of space. Building No. 2 will be built ready for customer build-out, and will contain street facades and storefronts similar to the Klee Building to complement its intended use. Twenty-three short-term outdoor parking spaces on the Property will be provided for the customers of the retail merchants. Redevelopment of the Klee Building and construction of Building Nos 1 and 2 and related work are defined as the "**Project**". A site plan for the Project is Exhibit B-2. 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 and the City of Chicago Irving/Cicero Redevelopment Project Area Tax Increment Finance Program Redevelopment Plan and Project dated March 21, 1996 (the "**Redevelopment Plan**") attached as Exhibit C, as amended from time-to-time.

F. City Financing and Assistance: Subject to the terms and conditions of this Agreement, the City will pay Incremented Taxes to Developer and issue the Note to Developer in the amounts stated in Section 4.03. The City will make payments of principal and interest on the Note to reimburse Developer out of Available Incremental Taxes for the cost of TIF-Funded Improvements. In addition, the City may, in its discretion, issue tax increment allocation bonds ("**TIF Bonds**") secured by Incremental Taxes (as defined below) as provided in a TIF bond ordinance (the "**TIF Bond Ordinance**"), at a later date as described and conditioned in Section 4.09. 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, or in order to reimburse the City for the costs of TIF-Funded Improvements.

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:

ARTICLE ONE: INCORPORATION OF 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.

ARTICLE TWO: DEFINITIONS

The definitions stated in Schedule A and those definitions stated in the recitals are hereby incorporated into this Agreement by reference and made a part of this Agreement.

ARTICLE THREE: THE PROJECT

3.01 **The Project.** Developer will: (i) begin redevelopment construction no later than August 1, 2005, and (ii) complete redevelopment construction no later than May 31, 2007, subject to the provisions of Section 18.17 (Force Majeure)

3.02 Scope Drawings and Plans and Specifications. Developer has delivered the Scope Drawings and Plans and Specifications to DPD and DPD has approved them or DPD has agreed to approve them as a post-closing item. 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 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 D-1, showing total costs for the Project in an amount not less than \$18,718,699. Developer certifies to the City on the Closing Date that: (a) it has Lender Financing and/or Equity in an aggregate amount 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.

(a) 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 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 in the Project budget by more than 10% or (iv) a delay in the Project completion date of more than 120 days. 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 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.

(b) Notwithstanding anything to the contrary in this Section 3.04, Change Orders costing less than Two Hundred Fifty Thousand Dollars (\$250,000) each, to an aggregate amount of Two Million Dollars (\$2,000,000), do not require DPD's prior written approval as stated in this Section 3.04, but DPD must be notified in writing of all such Change Orders and Developer, in connection with such notice, must identify to DPD the source of funding therefor in the progress reports described in Section 3.07

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. Developer will not make any verbal or written representation to anyone to the contrary.

3.06 **Other Approvals.** Any DPD approval under this Agreement will have no effect upon, nor will it operate as a waiver of, Developer's 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 or will install a construction barricade of a type and appearance satisfactory to the City and which barricade will be 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 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 which promotes, enables, and maximizes universal access throughout the Project. Plans for all buildings on the Property and related improvements will be 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.

3.14 **Affordable Housing Requirements.** Developer acknowledges that the Project is subject to the requirements of the City's Affordable Housing Ordinance, Chapter 2-44, Section 2-44-090 of the City's Municipal Code (the "**Affordable Housing Ordinance**"), which is Exhibit B-3. Developer agrees as follows

a. **Affordable Housing Ordinance** Developer acknowledges receipt of a copy of Section 2-44-090 of the Municipal Code and that Developer has read and understands such Municipal Code section.

b. **Affordable Housing Undertaking.** Developer agrees to sell 13 condominium units (20.31% of the 64 total number of condominium units) at the affordable sales prices (to households at or below 100% of area median income ("AMI")) listed in Exhibit B-4.

c. **City Lien.** Developer agrees that by recording this Agreement against the Property, Developer hereby grants the City a lien against the Property as security for Developer's performance to sell affordable units as provided in Municipal Code Section 2-44-090(i)(1).

d. **City Recapture Mortgage.** A form of the City recapture mortgage (the “City Recapture Mortgage”) is Exhibit N to this Agreement. In connection with the marketing of each affordable condominium unit, Developer agrees to attach as an exhibit to each purchase contract a copy of the City Recapture Mortgage. Developer agrees to require in each of its affordable condominium unit purchase contracts that the purchaser of each affordable condominium unit must execute the City Recapture Mortgage as a junior mortgage and must comply with the on-going requirements stated in the City Recapture Mortgage. At each closing of the sale of an affordable condominium unit, Developer will cause the fully signed and acknowledged City Recapture Mortgage to be recorded as a junior mortgage lien against the purchaser’s affordable condominium unit.

e. **Eligibility Record keeping.** Prior to the time that the City will reimburse Developer under Section 4.03 for TIF-Funded Improvements related to an affordable condominium unit which is intended by Developer to meet the affordability requirements described above, Developer must present evidence to DPD, in a form satisfactory to DPD, that the person(s) purchasing such unit meet the income eligibility criteria defined by the Affordable Housing Ordinance. Developer will maintain records at its principal place of business with complete documentation on income eligibility in a form acceptable to DPD. The City’s Department of Housing will monitor each affordable condominium sale.

3.15 **Scaffolding Rent Payments.** The Klee Building presently has scaffolding around the building. As of the Closing Date, the Developer will either (i) assume the existing scaffolding contract and assume the existing monthly rent for such scaffolding; or (ii) enter into a new contract with the existing vendor or a new vendor with such terms and conditions and rent as will provide for comparable scaffolding around the Klee Building on a continuous basis as required for the safety and protection of pedestrians until completion of construction.

3.16 **DPD Approval of Initial Commercial Tenants.** Prior to entering into commercial leases in the Project, Developer will first obtain DPD’s approval for potential tenants. Such approval will be subject to the reasonable discretion requirement stated in Section 18.20. A roster of approved tenants or uses will be scheduled on Exhibit B-5.

ARTICLE FOUR: FINANCING

4.01 **Total Project Cost and Sources of Funds.** The cost of the Project is estimated to be \$18,718,699 to be applied in the manner stated in the Project Budget. Such costs will be funded from the following sources when all anticipated Project financing has been completed:

Equity (subject to <u>Section 4.07</u>)	\$ 3,878,699 ⁽¹⁾
First Mortgage Lender Financing	14,660,000

TIF Assistance on the Closing Date	90,000
TIF Assistance at Certificate of Completion	<u>90,000</u>

ESTIMATED TOTAL **\$ 18,718,699 ⁽¹⁾**

NOTE ⁽¹⁾. Up to \$983,000 will be reimbursed to Developer by TIF in the form of a Developer Note with market rate interest. All Project costs will be front-funded by Developer. All payments of principal and interest on the Note will occur after issuance of a Certificate of Completion as provided in Section 7.01, and subject to the terms and conditions of this Agreement

4.02 **Developer Funds.** Equity and Lender Financing, if any, 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 reimburse Developer only for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit E states, by line item, the TIF-Funded Improvements for the Project 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.

(A) \$90,000 from Incremental Taxes on the Closing Date.

(B) \$90,000 from Incremental Taxes when Developer obtains the Certificate as provided in Section 7.01, and

(C) payment of principal and interest under the Note from Available Incremental Taxes.

(iii) Developer acknowledges and agrees that no payments of principal or interest on the Note will be made by the City until a Certificate as provided in Section 7.01 has been issued by the City to Developer. A Certificate will not be issued until Developer has complied with all of the following requirements:

(A) Developer has rehabilitated the Klee Building according to the plans and specifications -- building facade work, approximately 9,250 square feet of

retail space on floor 1, residential uses (32 condominium units on floors 2-5).

- (B) Developer has constructed Building No 1 including approximately 4,000 square feet of commercial/retail space, residential units (32 units on floor 2-5)
- (C) Developer has constructed Building No. 2 including 6,700 square feet of commercial/retail space.
- (D) Developer has constructed 69 underground parking spaces for the residential units and 23 street-level parking spaces for the retail/commercial customers.
- (E) Developer has completed construction of a green roof that covers at least 50% of the available roof area.
- (F) Developer has received a certificate of occupancy or other evidence acceptable to DPD that Developer has complied with building permit requirements.
- (G) Developer has incurred an equal or higher amount of TIF-eligible expenses as the Note principal amount.
- (H) Developer has complied with its obligations under the terms of the affordable housing program for the Project.
- (I) Closings for 40% of the market rate and 100% of the affordable units have taken place.
- (J) the City requirements stated in Section 8.08 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Construction Worker Employment Requirement) and Section 10.03 (Developer's MBE/WBE Commitment) have been met.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including this Section 4.03 and Article Five, the City hereby agrees to provide City Funds to Developer in the form of \$90,000 in cash assistance on the Closing Date, \$90,000 in cash assistance when a Certificate as provided in Section 7.01 has been issued by the City to Developer, and by issuing a Note at closing for a maximum amount of \$983,000. The \$180,000 in cash assistance will be paid from Incremental Taxes available in the Irving/Cicero Redevelopment Project Area Special Tax Allocation Fund. Any payments under the Note are subject to the amount of Available Incremental Taxes and Incremental Taxes for the Redevelopment Area, as applicable, being sufficient for such payments. Developer and

Developer's consultant will prepare for the City's review a schedule of estimated Available Incremental Taxes reflecting the Property and the Project at the time of issuance of the Certificate. The total amount of City Funds under this Agreement will be not greater than \$1,163,000.

(c) Issuance of the \$983,000 Project Note. At closing, the City will issue the Note to Developer 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 \$983,000. Such balance will be determined by the Certificate(s) of Expenditure issued by the City in the form of Exhibit M, 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 \$983,000, then the principal balance of the Note will be increased if the City issues additional Certificate(s) of Expenditure in the form of Exhibit M up to a maximum amount of \$983,000. Developer acknowledges that the principal value of the Note can be no larger than the aggregate amount of the cost of TIF-Funded Improvements reflected in the Certificate(s) of Expenditure issued by the City, and such principal value may be reduced (perhaps substantially) from the maximum amount of \$983,000 if Developer cannot provide satisfactory evidence for TIF-Funded Improvements.

(ii) Interest. The interest rate at the date of issuance will be based on the interest rate for the 10-year Treasury bill as published in the Federal Reserve Statistical Release ("index") plus a margin of 300 basis points but in no event greater than 9.0%. The interest rate will be set at issuance of the Note using the average 10-year Treasury Bill rate for 15 Business Days prior to issuance.

(iii) Term. The Note will be issued on the Closing Date and will have a term beginning at the date of the Certificate and ending at the end of the Term of the Agreement (December 31, 2020).

(iv) Payments of Principal and Interest.

(A) Interest on the Note will begin to accrue at the date of the Certificate. Amortization of principal will be over the term beginning at the date of the Certificate and ending at the end of the Term of the Agreement (December 31, 2020) as estimated in the pro forma payment schedule attached to the Note. Payments of principal and interest will be made annually on February 1st.

(B) No payments of principal or interest on the Note will be made until a Certificate for the Project has been issued by the City.

- (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 will establish an account denominated the: "Chicago Klee Development, LLC Developer Account" within the Irving/Cicero Redevelopment Project Area Special Tax Allocation Fund. All Available Incremental Taxes will be deposited into the Chicago Klee Development, LLC Developer Account.
- (D) After the principal and interest on the Note has been paid in full and the Note canceled according to its terms, then the Chicago Klee Development, LLC Developer Account will be closed and all subsequent Available Incremental Taxes will be deposited by the City in the Irving/Cicero 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: (1) the City will not be in default under this Agreement or the Note, and (2) 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 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) Pay-As-You-Go Reimbursement After Project Completion. If after the Project completion, and all redevelopment costs are known and verified by the City, the City-approved amount of costs of TIF-Funded Improvements that constitute Redevelopment Project Costs may be less than the maximum \$983,000 amount of the Note. Such difference in amount is defined as the "Pay-As-You-Go Amount". In such event, the City agrees to reimburse Developer out of Available Incremental Taxes for 30% of the annual construction and permanent financing interests costs incurred by Developer after the Closing Date up to the value of the Pay-As-You-Go Amount. The Pay-As-You-Go Amount (if any) is to be paid before the Note payments. Payments on the principal of the Note will be deferred and interest will accrue until such time as the value of the Pay-As-You-Go Amount has been paid to Developer. After such payments to Developer, the Note payments will resume according to the Note terms.
- (vii) Unpaid Balance at End of Note Term. If there is an unpaid balance at the expiration of the term of the Note, then the holder(s) of any such expired Note will be entitled to pay-as-you-go reimbursement from Available Incremental Taxes until such unpaid balance on the expired Note is paid in full. Pay-as-you-go reimbursement under this subsection is subject to: (i) surrender of the expired Note to the City, and (ii) the availability of unused costs of TIF-Funded Improvements which have not been used to establish the principal amount of the Note

(viii) Prepayment City may redeem all or any portion of the Note without premium or penalty at any time.

(ix) Cessation of Note Payments. If an Event of Default occurs, the City will have no further obligations to make any payments with respect to the Note and the City will have the remedies stated in Sections 7.03 and 15.02

4.04 Excess Profit and Resulting Note Principal Reduction. When an Excess Profit Amount (as defined below) exists, the principal value of the Note will be reduced as follows:

- (A) Developer represents and warrants that its current, good faith estimate of the gross sale proceeds (exclusive of upgrades and inclusive of the sale of parking spaces) anticipated to result from the sale of the 64 condominium units is \$13,279,300 (which includes an amount equal to 7% of \$13,279,300 for sales commissions and closing costs (the “**Assumed Gross Sales Proceeds Amount**”). If Developer realizes actual gross sales proceeds greater than the product of 110% multiplied by [(A) minus (B) minus (C)], where (A) equals the Assumed Gross Sales Proceeds Amount, (B) equals the product of \$13,500 multiplied by the number of unsold parking spaces, and (C) equals fifty percent (50%) of Developer’s net profit, if any, as reasonably documented, attributable to any upgrades on any condominium units, then Developer shall pay to the City fifty percent (50%) of such excess amount (such 50% City share, if any, the “**Excess Profit Amount**”), unless any of the terms of sub-section B below apply, in which event the Assumed Gross Sales Proceeds variable in the above calculation shall be recalculated as described below.
- (B) If the actual Project costs exceed the current estimated costs of \$18,718,699 (which represents current estimated Project costs of \$17,789,148 plus \$929,551, calculated as an amount equal to 7% of \$13,279,300 for sales commissions and closing costs), as documented by certificates of expenditure or other documentation approved by DPD, in its reasonable discretion, then, for purposes of the calculation stated in sub-section (A) above, the Assumed Gross Sales Proceeds Amount shall be increased by the amount of such cost overrun (e.g., if the actual Project costs are \$18,918,699 (up \$200,000) the Assumed Gross Sales Proceeds Amount variable used in Sub-section (A) shall be \$13,479,300) (up \$200,000)). If the actual Project costs are less than the current estimated costs of \$18,718,699, as documented by certificates of expenditure or other documentation approved by DPD, in its reasonable discretion, then, for purposes of the calculation stated in sub-section (A) above, the Assumed Gross Sales Proceeds Amount shall be decreased by the amount of such cost decrease (e.g., if the actual Project costs are \$18,318,699

(down \$400,000), then the Assumed Gross Sales Proceeds Amount variable used in sub-section (A) shall be \$12,879,300 (down \$400,000))

- (C) Within sixty days of the sale of the final market rate condominium unit (but in no event later than August 31, 2007), Developer shall provide the City with a written report in form and content satisfactory to the City setting forth, without limitation, actual gross sales proceeds, the number of unsold parking spaces, and actual Project costs. Such report shall also include calculations of the Excess Profit Amount, if any. If such report indicates any Excess Profit Amount is due, the City shall reduce, retroactive as to the issuance date of the Note, the principal of the Note by an amount equal to the payment due the City and any prior payments with respect to the Note, if any, shall be reapplied against the resized Note and the principal and interest due and payable with respect thereto. For example, if the Excess Profit Amount was \$100,000, and the original Note principal was \$1,100,000, the Note shall be retroactively resized to an obligation with an original principal balance of \$1,000,000, and all prior payments reapplied against such resized Note. If the Excess Profit Amount exceeds the entire outstanding balance of the Note, then any excess amount shall be paid in cash to the City.

4 05 Sale or Transfer of the Property or Project by Developer.

(a) Prior to the 5th Anniversary of the Date of Issuance of the Certificate Developer must obtain the prior approval of the City for any sale or transfer of any part of the Property or the Project during the period from the date of the Certificate to the 5th anniversary of the date of the Certificate. Such approval by the City will be subject to the reasonable discretion requirement stated in Section 18 20. The foregoing restriction does not apply to the sale of condominium units or leases to commercial tenants.

(b) After the 5th Anniversary of the Date of Issuance of the Certificate, But Prior to the Date when the Note is Paid After the 5th anniversary of 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 of 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 subsection, 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.

4.06 City Rights to Discontinue or Suspend Payments under the Note or Pay-As-You-Go Reimbursement. The City has the right to discontinue or suspend payments applicable to the Note or Pay-As-You-Go Reimbursement under the following circumstances

(a) **Net Leaseable Square Foot Requirement.** If Developer fails to maintain on an annual basis a minimum occupancy of 50% of the net leaseable area of the Project (the “**Net Leaseable Square Foot Requirement**”) for 10 years from the date of first occupancy of space by a commercial tenant. The calculation of the Net Leaseable Square Foot Requirement will be made annually as of the October 1st preceding the February 1st payment date on the Note.

(b) **Consequences of Non-Compliance with the Net Leaseable Square Foot Requirement.**

(i) **1st Year.** If in any year Developer is not in compliance with the Net Leaseable Square Foot Requirement for a period of 1 year, then Developer will not receive Note payments. Interest will continue to accrue on the principal balance of the Note. Developer has 18 months to cure the occupancy non-compliance from October 1st. When the non-compliance is cured, the amount of the Note payment held as a result of the non-compliance will be returned to Developer when compliance is achieved

(ii) **2nd Year.** If there is a second year that Developer fails to comply with the Net Leaseable Square Foot Requirement, and such second year need not be consecutive to the first year, then Developer will not receive Note payments. Interest will continue to accrue on the principal balance of the Note. Developer has 18 months to cure the occupancy non-compliance from October 1st. When the non-compliance is cured, the amount of the Note payment held as a result of the non-compliance will be returned to Developer when compliance is achieved.

(iii) **Failure to Cure.** If Developer is unable to completely cure non-compliance with the Net Leaseable Square Foot Requirement, in either of the 1st year or 2nd year periods, or if there is a 3rd year of non-compliance, and such 3rd year need not be consecutive to the 2nd year, then the principal amount of the Note will be reduced by \$200,000. The Commissioner of DPD may, at his or her discretion, upon application by Developer, extend the cure period.

(iv) **Non-Compliance Years Not Counted.** A year that Developer is out of compliance with the Net Leaseable Square Foot Requirement does not count toward fulfillment of Developer’s 10-year requirement stated in subparagraph (a) above.

(c) **Failure to Timely Complete the Project.** If Developer does not complete the Project and obtain the Certificate by May 31, 2007, or such revised date as may be approved in writing by the Commissioner of DPD, then the Note will become terminated, void and without effect. If there are any withheld payments under the Note when the Note is terminated, the City will retain all such funds. At the City’s request, Developer will promptly return the terminated Note to the City for cancellation

(d) **Prohibited Uses.** If Developer uses the Property for any of the Prohibited Uses listed in Exhibit B-5 or fails to comply with the applicable zoning requirements.

4.07 **Treatment of Prior Expenditures.** Only those expenditures made by Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Project Budget, 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 G) as a Prior Expenditure as of the date hereof. Exhibit G 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, but will reduce the amount of Equity and/or Lender Financing, if any, required to be contributed by Developer under Section 4.01.

4.08 **Cost Overruns.** If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available under Section 4.03, Developer 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.

4.09 **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 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.

4.10 **Sale of City-Owned Real Property Parcels and Partial Vacation of Alley.** On the Closing Date, the City shall sell and Developer shall purchase the Klee Building located at 4001-13 North Milwaukee Avenue (Parcel 2) and 4022-32 North Cicero Avenue (Parcel 3), and the partially vacated alley, respectively (collectively, the "**Sale Property**"), and legally described in Exhibit B-1, for \$200,000 total purchase price (\$20,000 on deposit with the City and \$180,000 in cash at closing), subject to the following terms and conditions:

(a) **Form of Deed.** The City will convey the Sale Property to Developer by quit claim deed ("**Deed**"), subject only to the terms of this Agreement and the following:

(i) The Redevelopment Plan for this Redevelopment Area.

(ii) The standard exceptions in an ALTA title insurance policy.

(iii) General Real Estate taxes which are not yet due and owing, subject to the City's duty under Section 4 10(d).

(iv) Easements, encroachments, covenants, conditions and restrictions of record and not shown of record.

(v) Such defects which cannot reasonably be cured but will not affect the use or marketability of the Sale Property

(b) Title Commitment and Insurance. The City agrees to provide Developer with a current title commitment issued by Chicago Title Insurance Company showing the City in title to the Sale Property Developer will pay the cost of, and will be responsible for, obtaining any title insurance, extended coverage or endorsements it deems necessary.

(c) Survey Developer will be responsible for any survey it deems necessary.

(d) Real Estate Taxes. The City agrees to use reasonable efforts to obtain the waiver of any delinquent real estate tax liens on the Sale Property, to the extent that such taxes may be waived or abated by writing to the County Assessor a customary abatement letter or filing a motion to vacated any tax sale made in error Developer will be responsible for all taxes accruing after the Closing.

(e) Recordation of Deed Developer, at its expense, will promptly record the Deed at the Office of the Cook County Recorder of Deeds.

Developer's construction plans presently contemplate a partial vacation by the City of the alley behind the existing structures. The City will assist Developer in the alley vacation process. Developer will pay the fair market value of the Alley.

4.11 Environmental Matters Concerning the Sale Property.

(a) The City makes no covenant, representation or warranty as to the environmental condition of the Sale Property or the suitability of the Sale Property for any purpose whatsoever, and Developer agrees to accept the Sale Property "as is".

(b) It is responsibility of Developer, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Sale Property. Prior to the Closing, Developer will have the right to request a right of entry for the purpose of conducting environmental tests on the Sale Property. If such a request is made, the City will grant Developer a right of entry for such purpose. The granting of the right of entry, however, will be contingent upon Developer obtaining all necessary permits and the following types and amounts of insurance: (x) commercial general liability insurance with a combined single limit of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage liability with the City named as an additional insured, (y) automobile liability insurance with limits of not less than \$1,000,000.00 per occurrence, combined single limit for bodily injury and property damage; and (z) worker's compensation and occupational disease insurance in statutory amounts covering all employees and agents who are to perform any work on the Sale Property. All insurance policies will be from insurance companies authorized to do business in the State of

Illinois, and will remain in effect until completion of all activity on the Sale Property. Developer will deliver duplicate policies or certificates of insurance to the City prior to commencing any activity on the Sale Property. Developer expressly understands and agrees that any coverage and limits furnished by Developer will in no way limit Developer's liabilities and responsibilities stated in this Agreement.

(c) Developer agrees to carefully inspect the Sale Property prior to the commencement of any activity on the Sale Property to make sure that such activity will not damage surrounding property, structures, utility lines or any subsurface lines or cables. Developer will be solely responsible for the safety and protection of the public. The City reserves the right to inspect any work being done on the Sale Property. Developer's activities on the Sale Property will be limited to those reasonably necessary to perform the environmental testing, or, subject to the terms of an agreed upon right of entry, remediation work. Upon completion of the work, Developer agrees to restore the Sale Property to its original condition. Developer will keep the Sale Property free from any and all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for Developer, and agrees to indemnify and hold the City harmless against any such liens.

(d) Developer agrees to deliver to the City a copy of each report prepared by or for Developer regarding the environmental condition of the Sale Property. If prior to the Closing, Developer's environmental consultant determines that contamination exists on the Sale Property to such extent that the parties agree that the estimated cost of remediation (such estimated cost being determined by the consultant) is too excessive for Developer, then Developer may declare these Real Estate Purchase Sections (Sections 4.10 and 4.11) null and void by giving written notice thereof to the City. Developer agrees that a request to terminate the Real Estate Purchase Sections will not be made until all reports concerning the condition of the Sale Property have been reviewed by the City.

(e) If after the Closing Date, the environmental condition of the Sale Property is not in all respects entirely suitable for the use to which the Sale Property is to be utilized, it will be the sole responsibility and obligation of Developer to take such action as is necessary to put the Sale Property in a condition which is suitable for the intended use of the Sale Property.

ARTICLE 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 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 will have submitted to DPD, and DPD will have approved, the Scope Drawings and Plans and Specifications as provided in Section 3.02 or DPD has agreed to approve them as a post-closing item

5.03 **Other Governmental Approvals.** Developer will have secured or applied for or begun work to prepare applications 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 will have furnished evidence acceptable to the City that Developer has Equity and Lender Financing, if any, at least in the amounts stated in Section 4.01 to complete the Project and satisfy its obligations under this Agreement. If a portion of such financing consists of Lender Financing, Developer will have furnished evidence as of the Closing Date that the proceeds thereof are available to be drawn upon by Developer as needed and are sufficient (along with the Equity and other financing sources, if any, stated in Section 4.01) to complete the Project.

(b) Prior to the Closing Date, Developer will deliver to DPD a copy of the construction escrow agreement entered into by Developer regarding Developer's Lender Financing, if any. The construction escrow agreement must provide that the City 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 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 Note may be pledged on a collateral basis to any lender or lenders providing Lender Financing, if any.

5.05 **Acquisition and Title.** On the Closing Date, Developer will furnish the City with a copy of the Title Policy for the Property, showing Developer as the named insured. The Title Policy will be dated as of the Closing Date and will contain only those title exceptions listed as Permitted Liens on Exhibit H 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 (3.1 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, at its own expense, will have provided the City with current searches under Developer's name 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
U S. Bankruptcy Court (N.D. IL)	Pending actions and judgments
Clerk of Circuit Court, Cook County	Pending suits and judgments

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

5.07 **Surveys.** Developer 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 Article Twelve. Prior to the Closing Date, certificates required under Article Twelve evidencing the required coverages will have been delivered to DPD.

5.09 **Opinion of Developer's Counsel.** On the Closing Date, Developer will furnish the City with an opinion of counsel, substantially in the form of Exhibit I, 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 I, such opinions shall be obtained by Developer from its general corporate counsel.

5.10 **Evidence of Prior Expenditures.** Developer will have provided evidence satisfactory to DPD of the Prior Expenditures, if any, as provided in Section 4.07

5.11 **Financial Statements.** Developer will have provided Financial Statements to DPD for its 2003 and 2004 fiscal years, if available, and its 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 will provide a copy of its current Articles of Organization, with all amendments, containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of its state of organization and all other states in which Developer is qualified to do business, its limited liability company agreement; a secretary's certificate in such form and substance as the Corporation Counsel may require; and such other organizational documentation as the City may request.

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

5.16 **Preconditions of Accepting Certificates of Expenditure.** Prior to the acceptance by DPD of any Certificate of Expenditure under the Note, Developer 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), which will be satisfactory to DPD. Delivery by Developer to DPD of any Certificate of Expenditure 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 has approved all work and materials for the current certificate and, to the reasonable belief of Developer, such work and materials conform to the Plans and Specifications;

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

(e) Developer has received no notice and has no knowledge of any liens or claim of lien either filed or threatened against the 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, and (iii) any other amounts deposited by Developer under this Agreement. Developer agrees that, if the particular phase of the Project is not In Balance, Developer 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 shall be made

The City will not execute any Certificate of Expenditure for the Note unless Developer has satisfied the City that Developer has complied, or is 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 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 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 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

ARTICLE SIX: AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for General Contractor and Subcontractors.

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

(b) Developer must submit copies of the Construction Contract to DPD as required under Section 6.02 below. Upon the written request of DPD, Developer will provide photocopies of all subcontracts entered or to be entered into in connection with the Project within 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 DPD and all requisite permits have been obtained

6.02 Construction Contract. Prior to the execution thereof, Developer must deliver to DPD a copy of the proposed Construction Contract with the General Contractor selected to work on the Project, for DPD's prior written approval. Following execution of such contract by

the Developer, the General Contractor and any other parties thereto, Developer must deliver to DPD and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

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 A rating or better using the bond form attached as Exhibit K. 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 Article Ten; provided, however, that the contracting, hiring and testing requirements associated with the MBE/WBE and the City resident obligations in Article Ten 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 Article Ten obligations are satisfied on an aggregate basis.

6.05 **Other Provisions.** In addition to the requirements of this Article Six, 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), Article Twelve (Insurance) and Section 14.01 (Books and Records).

ARTICLE 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 a certificate of completion of construction in recordable form (the "Certificate") certifying that Developer has fulfilled its obligation 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 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) Developer acknowledges and understands that the City will not issue a Certificate until the following conditions have been met

- (i) Developer has rehabilitated the Klee Building according to the plans and specifications -- building facade work, approximately 9,250 square feet of retail space on floor 1, residential uses (32 condominium units on floors 2-5)
- (ii) Developer has constructed Building No. 1 including approximately 4,000 square feet of commercial/retail space, residential units (32 units on floor 2-5)
- (iii) Developer has constructed Building No 2 including 6,700 square feet of commercial/retail space.
- (iv) Developer has constructed 69 underground parking spaces for the residential units and 23 street-level parking spaces for the retail/commercial customers
- (v) Developer has completed construction of a green roof that covers at least 50% of the available roof area.
- (vi) Developer has received a certificate of occupancy or other evidence acceptable to DPD that Developer has complied with building permit requirements.
- (vii) Developer has incurred an equal or higher amount of TIF-eligible expenses as the note principal amount.
- (viii) Developer has complied with its obligations under the terms of the affordable housing program for the Project
- (ix) Closing for 40% of the market rate and 100% of the affordable units have taken place
- (x) the City requirements stated in Section 8.08 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Construction Worker Employment Requirement) and Section 10.03 (Developer's MBE/WBE Commitment) have been met

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's obligation to complete such activities have been satisfied. After the issuance of a Certificate,

however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate 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) and Section 8.18 (Real Estate Provisions) and Section 8.19 (Prohibited Uses) 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 a Certificate will be binding only upon Developer or a permitted assignee of Developer who, as provided in Section 18.15 (Assignment) of this Agreement, has contracted to take an assignment of Developer's rights under this Agreement and assume Developer's liabilities hereunder

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

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

(b) the right (but not the obligation) 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, at Developer's written request, with a written notice in recordable form stating that the Term of the Agreement has expired.

ARTICLE EIGHT: REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEVELOPER.

8.01 General. Developer represents, warrants, and covenants, as of the date of this Agreement and as of the date of issuance of the Note, that:

(a) Developer is an Illinois limited liability company, duly organized, validly existing and qualified to do business in Illinois,

(b) 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,

(c) the execution, delivery and performance by Developer of this Agreement has been duly authorized by all necessary limited liability company action, and does not and will not violate its certificate of organization as amended and supplemented, its limited liability company 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) Developer has acquired and will maintain good, indefeasible and merchantable fee simple title to the Property (and improvements) free and clear of all liens except for the Permitted Liens or Lender Financing, if any, as disclosed in the Project Budget,

(e) 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;

(f) 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;

(g) 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;

(h) 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;

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

(j) prior to the issuance of a 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 any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business and except sales of condominium units and leases to retail tenants; (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; or (5) enter into any transaction that would cause a material and detrimental change to Developer's financial condition;

(k) Developer has not incurred and, prior to the issuance of a 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; and

(l) has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or 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 Developer in violation of Chapter 2-156-120 of the Municipal Code of the City, as amended.

(m) neither the Developer nor any Affiliate thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment the Specially Designated Nationals List, the Denied Persons Lists, the Unverified List, the Entity List and the Debarred List.

8.02 Covenant to Redevelop. Upon DPD's approval of the Scope Drawings and Plans and Specifications, and the Project Budget as provided in Sections 3.02 and 3.03, and Developer's receipt of all required building permits and governmental approvals, Developer will redevelop the Property in compliance with this Agreement, the TIF Ordinances, the Scope Drawings, the Plans and Specifications, the Project Budget and all amendments thereto, and all Federal, State and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project and/or Developer. The covenants stated in this Section 8.02 will run with the land and will be binding upon any transferee, until fulfilled as evidenced by the issuance of a Certificate.

8.03 Redevelopment Plan. Developer represents 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 will be used by Developer solely to reimburse Developer for its payment for the TIF-Funded Improvements as provided in this Agreement.

8.05 **Other Bonds.** At the request of the City, Developer 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 or the Project. Developer will cooperate and provide reasonable assistance in connection with the marketing of any such Bonds, including 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. Developer will not 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 that is determined to be false and misleading.

8.06 **Employment Opportunity.**

(a) Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and, as applicable, to cause the General Contractor to contractually obligate each subcontractor to abide by the terms set forth in **Section 8.08** and **Article Ten**. Developer will submit to DPD a plan describing its compliance program prior to the Closing Date.

(b) Developer will deliver to the City written progress reports by draw, but not less than quarterly, detailing compliance with the requirements of **Sections 8.08, 10.02 and 10.03** of this Agreement. If any such reports indicate a shortfall in compliance, Developer will also deliver a plan to DPD which will outline, to DPD’s satisfaction, the manner in which Developer will correct any shortfall.

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

8.08 **Prevailing Wage.** Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor to pay and to contractually cause each subcontractor to pay, the prevailing wage rate as ascertained by the 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 will provide the City with copies of all such contracts entered into by Developer 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 Developer may receive any portion of City Funds, directly or

indirectly, in payment for work done, services provided or materials supplied in connection with any TIF-Funded Improvement Developer will provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to an Affiliate by Developer and reimbursement to Developer for such costs using City Funds, or otherwise), upon DPD's request, prior to any such disbursement

8.10 **No Conflict of Interest.** Under Section 5/11-74.4-4(n) of the Act, Developer represents, warrants and covenants that to the best of its knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or Developer 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, the Property, the Project, or to Developer's actual knowledge, any other property in the Redevelopment Area.

8.11 **Disclosure of Interest.** Developer's counsel has no direct or indirect financial ownership interest in Developer, the Property, or any other feature of the Project.

8.12 **Financial Statements.** If requested by DPD, Developer will obtain and provide to DPD Financial Statements for Developer's fiscal year ended 2002 or 2003, as applicable, and each yearly thereafter for the Term of the Agreement. In addition, if requested by DPD, Developer will submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request

8.13 **Insurance.** Solely at its own expense, Developer will comply with all provisions of Article Twelve.

8.14 **Non-Governmental Charges.**

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

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

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

8.15 Developer's Liabilities. Developer will not enter into any transaction that would materially and adversely affect its ability to perform its obligations under this Agreement. Developer will immediately notify DPD of any and all events or actions which may materially affect Developer'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.

(a) **Representation** To the best of Developer'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 or the Project. Upon the City's request, Developer will provide evidence satisfactory to the City of such current compliance.

(b) **Covenant** Developer covenants that the Property and the Project will be operated and managed in compliance with all applicable Federal, State and local laws, statutes, ordinances, rules, regulations, executive orders and codes. Upon the City's request, Developer will provide evidence to the City of its compliance with this covenant.

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

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

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

(y) Developer will furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD may require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or transfer or forfeiture of the Property or the Project 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 fails to pay or contest any Governmental Charge or to obtain discharge of the same, Developer will advise DPD thereof in writing, at which time DPD may, but will not be obligated to, and without waiving or

releasing any obligation or liability of Developer under this Agreement, in DPD's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which DPD deems advisable. All sums so paid by DPD, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, will be promptly disbursed to DPD by Developer. Notwithstanding anything contained herein to the contrary, this paragraph must not be construed to obligate the City to pay any such Governmental Charge. Additionally, if Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require Developer to submit to the City audited Financial Statements at Developer's own expense.

(c) Real Estate Taxes

(i) Acknowledgment of Real Estate Taxes. Developer agrees that: (A) for the purposes of this Agreement, the total projected minimum assessed value of the Property (and related improvements) ("**Minimum Assessed Value**") is shown on Exhibit J for the years noted on Exhibit J; (B) Exhibit J sets forth the specific improvements which will generate the fair market values, assessments, equalized assessed values and taxes shown thereon, and (C) the real estate taxes anticipated to be generated and derived from the respective portions of the Project for the years shown are fairly and accurately indicated in Exhibit J.

(ii) Real Estate Tax Exemption. With respect to the Property (and related improvements) or the Project, neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer will, during the Term of this Agreement, seek or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)) for any year that the Redevelopment Plan is in effect.

(iii) No Reduction in Real Estate Taxes. Neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer will, during the Term of this Agreement, directly or indirectly, initiate, seek or apply for proceedings in order to lower the assessed value of all or any portion of the Property or the Project below the amount of the Minimum Assessed Value as shown in Exhibit J for the applicable year.

(iv) No Objections. Neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer, will object to or in any way seek to interfere with, on procedural or any other grounds, the filing of any Under Assessment Complaint (as defined below) or subsequent proceedings related thereto with the Cook County Assessor or with the Cook County Board of Appeals, by either the City or any taxpayer. The term "**Under Assessment Complaint**" as used in this Agreement means any complaint seeking to increase the assessed value of the Property (and related improvements) or the Project up to (but not above) the Minimum Assessed Value as shown in Exhibit J.

(v) **Covenants Running with the Land.** The parties agree that the restrictions contained in this **Section 8.18(c)** are covenants running with the land. This Agreement will be recorded by Developer as a memorandum thereof, at Developer's expense, with the Cook County Recorder of Deeds on the Closing Date. These restrictions will be binding upon Developer and its agents, representatives, lessees, successors, assigns and transferees from and after the date hereof, **provided however, that** the covenants will be released when the Redevelopment Area is no longer in effect. Developer agrees that any sale, transfer, lease, conveyance, or transfer of title to all or any portion of the Property or the Project from and after the date hereof must be made explicitly subject to such covenants and restrictions. Notwithstanding anything contained in this **Section 8.18 (c)** to the contrary, the City, in its sole discretion and by its sole action, without the joinder or concurrence of Developer, its successors or assigns, may waive and terminate Developer's covenants and agreements set forth in this **Section 8 18(c)**.

8.19 **Prohibited Uses** During the term of the Agreement, the Project and the Property will not be used for any of the purposes scheduled in **Exhibit B-5**, without the prior written consent of DPD. The covenants stated in this **Section 8 19** will run with the land and will be binding upon any transferee.

8.20 **Job Creation/Job Maintenance** The Project is anticipated to create approximately 20 new full-time and part-time positions. Developer will use its best efforts, in cooperation with its commercial tenants, to maintain a minimum of 20 full-time and part-time positions at the Project for a period of 10 years from the date of issuance of the Certificate

8.21 **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.

8.22 **Reserved.**

8.23 **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.

8.24 **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.

8.25 **Survival of Covenants.** All warranties, representations, covenants and agreements of Developer contained in this Article Eight 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 Article Seven upon the issuance of a Certificate) will be in effect throughout the Term of the Agreement.

ARTICLE 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 Article Nine or elsewhere in this Agreement are true, accurate, and complete at the time of the City's execution of this Agreement, and will survive the execution, delivery and acceptance by the parties and will be in effect throughout the Term of the Agreement.

ARTICLE 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 to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, 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 Article 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 Article. 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.

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

(a) Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "**MBE/WBE Program**"), Section 2-92-420 et seq., Municipal Code of Chicago, 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 construction budget set forth in Exhibit D-2 hereto will be expended for contract participation by MBEs or WBEs

- i. At least 25 percent by MBEs.
- ii. At least 5 percent by WBEs.

Developer, its successors and assigns and the General Contractor will each use their respective good faith efforts to exceed the percentages set forth above.

(b) For purposes of this Section 10.03 only, Developer (and any party to whom a contract is let by Developer in connection with the Project) will be deemed a "contractor" and this Agreement (and any contract let by Developer in connection with the Project) will be deemed a "contract" as such terms are defined in Section 2-92-420, Municipal Code of Chicago.

(c) Consistent with Section 2-92-440, 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 a 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 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 will not be credited more than once with regard to Developer's MBE/WBE commitment as described in this Section 10.03. Developer or the General Contractor may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in its activities and operations other than the Project.

(d) Developer will deliver quarterly reports to DPD during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports will 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 DPD in determining Developer's compliance with this MBE/WBE commitment. DPD will have access to Developer's books and records, including, without limitation, payroll records, books of account and tax returns, and records and books of account in accordance with Article Fourteen of this Agreement, on 5 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 will 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 Section 2-92-540, Municipal Code of Chicago

(f) Any reduction or waiver of Developer's MBE/WBE commitment as described in this Section 10.03 must be undertaken in accordance with Section 2-92-450, Municipal Code of Chicago.

(g) Prior to execution of this Agreement, Developer, the General Contractor and all major subcontractors then under contract shall be required to meet with the monitoring staff of DPD with regard to Developer's compliance with its obligations under this Section 10.03. During this meeting, Developer must demonstrate to DPD its plan to achieve its obligations under this Section 10.03, the sufficiency of which shall be approved by DPD. During the Project, Developer will submit the documentation required by this Section 10.03 to the monitoring staff of DPD. This information will include the following: (1) subcontractor's activity report; (2) General Contractor's certification concerning labor standards and prevailing wage requirements; (3) General Contractor letter of understanding; (4) monthly utilization report required under Section 3.07; (5) authorization for payroll agent; (6) certified payroll; and (7) evidence that MBE/WBE contractor associations have been informed of the Project, as required. Failure to submit such documentation on a timely basis, or a determination by DPD, upon analysis of the documentation, that Developer is not complying with its obligations hereunder will, upon the delivery of written notice to Developer, be deemed an Event of Default hereunder. Any such Event of Default will be subject to the cure provisions of Section 15.03(b).

(h) Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may withhold any further payment of any City Funds to Developer or the General Contractor, or seek any other remedies against Developer available at law or in equity.

ARTICLE 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, this Agreement and all Exhibits attached hereto, 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 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: (A) all or any portion of the Property, or (B) any other real property in which Developer, or any person directly or indirectly controlling, controlled by or under common control with Developer, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the

beneficial interest is owned, in whole or in part, by Developer), 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.

ARTICLE TWELVE: INSURANCE

12.01 **Insurance Requirements.** Developer's insurance requirements are stated in Schedule B which is hereby incorporated into this Agreement by reference and made a part of this Agreement.

ARTICLE THIRTEEN: INDEMNIFICATION

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

- (i) Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or
- (ii) Developer's or any contractor's failure to pay General Contractors, subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Project 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 Developer or any Affiliate or any of their respective agents, officers, directors, equity holders, employees, contractors or persons acting under the control or at the request of Developer or any Affiliate, or
- (iv) Developer's failure to cure any misrepresentation in this Agreement or any other document or agreement relating hereto; or
- (v) any act or omission by Developer or any Affiliate

provided, however, that Developer shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Developer 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.

ARTICLE FOURTEEN: MAINTAINING RECORDS/RIGHT TO INSPECT

14.01 Books and Records. Developer 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. Developer will not pay for salaries or fringe benefits of auditors or examiners. Developer must incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by Developer 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.

ARTICLE 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 Developer hereunder:

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

(b) the failure of Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Developer under any other agreement with any person or entity if such failure may have a material adverse effect on Developer'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 Developer to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

(d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt by Developer 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 Developer or Developer's ultimate parent entity or for the liquidation or reorganization of Developer or Developer's ultimate parent entity, or alleging that Developer or Developer's ultimate parent entity is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of Developer's or Developer's ultimate parent entity'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 Developer or Developer's ultimate parent entity, 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 Developer or Developer's ultimate parent entity, for any substantial part of Developer's or Developer's ultimate parent entity's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of Developer or Developer's ultimate parent entity; 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 Developer for an amount in excess of \$1.0 million which remains unsatisfied or undischarged and in effect for 60 days after such entry without a stay of enforcement or execution,

(h) the 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 or Developer's ultimate parent entity; or

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

For purposes of Section 15.01(j) hereof, a natural person with a material interest in Developer is one owning in excess of thirty-three percent (33%) of Developer's or Developer's ultimate parent entity's issued and outstanding ownership shares or interest.

15.02 **Remedies.** Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements, and may suspend payment of City Funds. 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.

15.03 **Curative Period.**

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

ARTICLE SIXTEEN: MORTGAGING OF THE PROJECT

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

(a) If a mortgagee or any other party shall succeed to Developer's interest in the Property or any portion thereof by the exercise of remedies under a mortgage or deed of trust

(other than an Existing Mortgage or a Permitted Mortgage) whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 18 15 hereof, the City may, but will not be obligated to, attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party will be entitled to no rights or benefits under this Agreement, but such party will be bound by those provisions of this Agreement that are covenants expressly running with the land

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

(c) Prior to the issuance by the City to Developer of a Certificate under Article Seven 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.

ARTICLE 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 312/744-4190 (Main No.) 312/744-2271 (Fax)
With Copies To:	City of Chicago Corporation Counsel Attn: Finance and Economic Development Division 121 North LaSalle Street, Room 600 Chicago, IL 60602 312/744-0200 (Main No) 312/744-8538 (Fax)
If to Developer	Chicago Klee Development, LLC Attn: Mr Gary Poter, Member 5440 N Cumberland Avenue, Suite 301 Chicago, Illinois 60656 Telephone: 773/693-7700 Fax: 773/693-8500
With Copies To.	Neal Murdock & Leroy, LLC Attn: Langdon D. Neal, Esq. 203 N. LaSalle Street Suite 2300 Chicago, IL 60601 Telephone: 312/641-7144 Fax: 312/641-5137

or at such other address or telecopier/fax or telephone 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 Developer 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 to request City or DPD approval;
- (c) if applicable, note in bold type that failure to respond to Developer'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 Developer's request.

ARTICLE EIGHTEEN: ADDITIONAL PROVISIONS

18.01 **Amendments.** This Agreement and the Schedules and Exhibits attached hereto may not be modified or amended except by an agreement in writing signed by the parties; provided, however, that the City in its sole discretion, may amend, modify or supplement the Redevelopment Plan, which is Exhibit C hereto. For purposes of this Agreement, Developer is only obligated to comply with the Redevelopment Plan as in effect on the date of this Agreement.

18.02 **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. This Agreement and the Schedules and Exhibits attached hereto may not be contradicted by evidence of prior, contemporaneous, or subsequent verbal agreements of the parties. There are no unwritten verbal agreements between the parties.

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

18.04 **Further Assurances.** Developer 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, 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

18.08 Titles and Headings. The Article, 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 Counterpart Facsimile Execution. For purposes of executing this Agreement, a document signed and transmitted by facsimile machine must be treated as an original document. The signature of any party thereon will be considered as an original signature, and the document transmitted will be considered to have the same binding legal effect as an original signature on an original document. At the request of either party, any facsimile document shall be re-executed by other parties in original form. No party hereto may raise the use of a facsimile machine as a defense to the enforcement of this Agreement or any amendment executed in compliance with this section. This section does not supercede the requirements of Article Seventeen: Notices.

18.11 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.

18.12 **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.

18.13 **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.

18.14 **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.

18.15 **Assignment.** Prior to the issuance by the City to Developer of a Certificate, Developer 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 Developer may pledge, on a collateral basis, the right to receive City Funds under the Note to a lender providing Lender Financing, if any, which has been identified to the City as of the Closing Date. Any successor in interest to Developer 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 8.25 (Survival of Covenants) hereof, for the Term of the Agreement. Developer hereby consents to the City's transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

18.17 **Force Majeure.** Neither the City nor Developer 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, acts of 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. 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.

18.18 **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

18.19 **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

18.20 **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 must 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 will 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

18.21 **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 Article, 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".

18.22 **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.

18.23 **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.

18.24 **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.

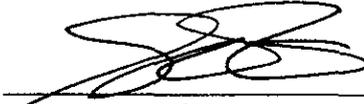
18.25 Venue and Consent to Jurisdiction. If there is a lawsuit under this Agreement, each party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

18.26 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, each party agrees to pay upon demand the other party's out-of-pocket expenses, including attorneys' fees, incurred in connection with the enforcement of the provisions of this Agreement, if such other prevails in an enforcement action. 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, and 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 Redevelopment Agreement to be signed on or as of the day and year first above written

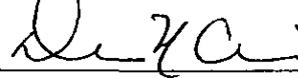
CHICAGO KLEE DEVELOPMENT, LLC, an Illinois limited liability company

By  _____

Printed Name: Gary Pater _____

Title: Managing Member _____

CITY OF CHICAGO

By.  _____

Commissioner,

Department of Planning and Development



STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, Patricia K. Prechel, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Gary Peter, personally known to me to be the Managing Member (title) of Chicago Klee Development, LLC, an Illinois limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him by the Developer, as his free and voluntary act and as the free and voluntary act of the Developer, for the uses and purposes therein set forth

GIVEN under my hand and official seal this 14th day of January, 2005

Patricia K Prechel
Notary Public



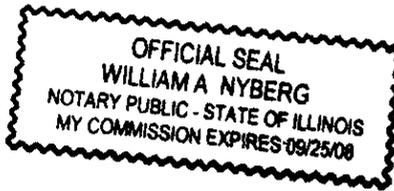
My Commission Expires _____

(SEAL)

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, William A Nyberg, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Denise M Casalino, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago (the "City"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument pursuant to the authority given to him/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 4th day of January, 2005.



William A. Nyberg
Notary Public

My Commission Expires 09/25/08

CHICAGO KLEE DEVELOPMENT, LLC

Redevelopment Agreement
dated as of January 14, 2005

SCHEDULE A

DEFINITIONS

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

“**Act**” has the meaning defined in Recital B.

“**Actual Residents of the City**” has the meaning defined for such phrase in Section 10 02(c)

“**Affiliate**” when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any person 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

“**Affordable Housing Ordinance**” has the meaning defined for such term in Section 3 14.

“**Agreement**” has the meaning defined in the Agreement preamble.

“**Alley**” has the meaning defined in Recital D.

“**AMI**” has the meaning defined in Section 3.14.

“**Assumed Gross Sale Proceeds Amount**” has the meaning defined in Section 4 04(A).

“**Available Incremental Taxes**” means an amount equal to 92.5% of the Incremental Taxes (as defined below) deposited after the Closing Date in the Irving/Cicero Redevelopment Project Area Special Tax Allocation Fund (as defined below) attributable to the taxes levied on the Property and the Project, using the year 1994 as a base year for equalized assessed valuation, after payment in full of any principal and interest due on the Irving/Cicero TIF bonds

“**Available Project Funds**” has the meaning defined for such phrase in Section 5 16(g).

“**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 certificates, in the form of Exhibit M hereto, issued by the City to increase the principal amount of the Note.

"**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(l)

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

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

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

"**City Recapture Mortgage**" has the meaning defined in Section 3.14.

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

"**Construction Contract**" means that certain contract substantially in the form of Exhibit F, to be entered into between the Developer and the General Contractor (as defined below) providing for construction of the TIF-Funded Improvements. The parties may agree that the Construction Contract may be provided after Closing

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

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

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

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

"Equity" means funds of Developer (other than funds derived from Lender Financing (as defined below)) irrevocably available for the Project, in the amount stated in Section 4.01 hereof, which amount may be increased under Section 4.08 (Cost Overruns).

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

"Excess Profit Amount" has the meaning defined in Section 4.04(A).

"Existing Mortgages" has the meaning defined in Section 16.01.

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

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

"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 Irving/Cicero Redevelopment Project Area Special Tax Allocation Fund.

"Indemnitee" and **"Indemnitees"** have the respective meanings defined in Section 13.01.

"Irving/Cicero 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 above) will be deposited.

"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 Section 4.01, if any.

"MBE(s)" means 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.

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

"Minimum Assessed Value" has the meaning defined in Section 8 18(c)(1).

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

"Net Leaseable Square Foot Requirement" has the meaning defined in Section 4.06.

"New Mortgage" has the meaning defined in Section 16 01.

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

"Note" means the taxable City of Chicago Tax Increment Allocation Revenue Note R-1 (Chicago Klee Development, LLC Redevelopment Project), Taxable Series A to be in the form attached hereto as Exhibit M in the maximum principal amount of up to \$983,000 to be issued by the City to Developer on the Closing Date. The Note will bear interest at a market rate set at the issue date, but in no event greater than 9% and will provide for accrued but unpaid interest to bear interest at the same annual rate, all payable as of each February 1. The payment of the amounts due under the Note will be secured only by the 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. The Note will have a term beginning at the date of the Certificate and ending at the Term of the Agreement (December 31, 2020).

"Pay-As-You-Go Amount" has the meaning defined in Section 4.03.

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

"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 07.

"Project" has the meaning defined in Recital D

"Project Budget" means the budget stated in Exhibit D-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 Recital D and as legally described in Exhibit B-1.

"Public Benefits Program" has the meaning defined in Section 8 22.

"Redevelopment Area" has the meaning defined in Recital C and as legally described in Exhibit A

"Redevelopment Plan" has the meaning defined in Recital E

"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.

"Sale Property" has the meaning defined in Section 4.10;

"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 Recital D.

"State" means the State of Illinois as defined in Recital A.

"Survey" means an urban plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property dated within 45 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 December 31, 2020, being the date when tax collections applicable to the 23rd year from the date of the TIF Ordinances ends

"TIF Adoption Ordinance" has the meaning stated in Recital C.

"TIF Bonds" has the meaning defined for such term in Recital F

"TIF Bond Ordinance" has the meaning stated in Recital F

"TIF Bond Proceeds" has the meaning stated in Recital F

"TIF Ordinances" has the meaning stated in Recital C

"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 E

"Title Company" means Chicago Title Insurance Company

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

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

"WBE(s)" means 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.

CHICAGO KLEE DEVELOPMENT, LLC

Redevelopment Agreement
dated as of January 14, 2005

SCHEDULE B

ARTICLE TWELVE: INSURANCE REQUIREMENTS

12 01 **Insurance.** Developer will provide and maintain, or cause to be provided and maintained, at Developer's own expense, during the Term of this Agreement, the insurance coverages 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 Insurance

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

(ii) Commercial General Liability Insurance (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 is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(b) Construction. Prior to the construction of any portion of the Project, Developer will cause its architects, contractors, sub-contractors, 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 Insurance

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

(ii) Commercial General Liability Insurance (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 2 years following Project completion), explosion, collapse, underground, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City 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 Insurance (Primary and Umbrella)

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

(iv) Railroad Protective Liability Insurance

When any work is to be done adjacent to or on railroad or rail transit property or within 50 feet of railroad or rail transit property, contractor must provide, or cause to be provided with respect to the operations that the contractor performs, 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 Insurance

When the contractor undertakes any construction, including improvements, betterments, and/or repairs, Developer must cause each contractor to provide, or cause to be provided All Risk Blanket Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the Project. Coverages shall include but are not limited to the following: collapse, boiler and machinery if applicable, flood including surface water backup. The City will be named as an additional insured and loss payee.

(vi) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Developer must cause such parties to maintain Professional Liability Insurance covering acts, errors, or omissions which shall 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 performed in connection with this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

(vii) Valuable Papers Insurance

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement by Developer's architects, contractors, sub-contractors, project managers and other parties constructing the Project, Developer will cause such parties to maintain Valuable Papers Insurance which must be maintained in an amount to insure against any loss whatsoever, and which must have limits sufficient to pay for the re-creations and reconstruction of such records.

(viii) Contractor's Pollution Liability

When any environmental remediation work is performed which may cause a pollution exposure, Developer will cause the party performing such work to maintain contractor's Pollution Liability insurance with limits of not less than \$1,000,000 insuring bodily injury, property damage and environmental remediation, cleanup costs and disposal. When policies are renewed, 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 1 year. The City is to be named as an additional insured on a primary, non-contributory basis.

(c) Other Insurance Required.

- (i) Prior to the execution and delivery of this Agreement and during construction of the Project, All Risk Property Insurance in the amount of the full replacement value of the Building. The City is to be named as an additional insured.
- (ii) Post-construction, throughout the Term of the Agreement, All Risk Property Insurance, including improvements and betterments in the amount of full replacement value of the Building site. Coverage extensions shall include business interruption/loss of rents, flood and

boiler and machinery, if applicable. The City is to be named as an additional insured.

(d) Other Requirements

- (i) Developer will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street, Chicago, Illinois 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term of this Agreement. Developer will submit evidence of insurance on the City Insurance Certificate Form or commercial 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 must not be deemed to be a waiver by the City. Developer will advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance will 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 terminate this Agreement until proper evidence of insurance is provided.
- (ii) The insurance will provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.
- (iii) Any and all deductibles or self insured retentions on referenced insurance coverages are borne by Developer.
- (iv) Developer agrees that insurers must waive rights of subrogation against the City, its employees, elected officials, agents, or representatives.
- (v) Developer expressly understands and agrees that any coverages and limits furnished by Developer will in no way limit Developer's liabilities and responsibilities specified within the Agreement documents or by law.
- (vi) Developer expressly understands and agrees that Developer's insurance is primary and any insurance or self insurance programs maintained by the City will not contribute with insurance provided by Developer under the Agreement.

- (vii) The required insurance will not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.
- (viii) Developer will require its general contractor and all subcontractors to provide the insurance required herein or Developer may provide the coverages for the contractor or subcontractors. All contractors and subcontractors will be subject to the same requirements of Developer unless otherwise specified herein.
- (ix) If Developer, contractor or subcontractor desires additional coverages, Developer, contractor and each subcontractor will be responsible for the acquisition and cost of such additional protection.
- (x) The City Risk Management Department maintains the right to modify, delete, alter or change these requirements, so long as such action does not, without Developer's written consent, increase such requirements.

Signed
01/29/04

FAX NO. +

P. 02

Chicago Klee Development,
LLC (Developer)

CERTIFYING THIS EDS: Execute the certification on the date of the initial submission of this EDS. You may be asked to re-certify this EDS on the last page as of the date of submission of any related ordinance to the City Council, or as of the date of the closing of your transaction.

PUBLIC DISCLOSURE: It is the City's policy to make this document available to the public on its Internet site and/or upon request.

GENERAL INFORMATION

Date this EDS is completed January 29, 2004

A. Who is submitting this EDS? That individual or entity will be the "Undersigned" throughout this EDS. Chicago Klee Development, LLC

NOTE: The Undersigned is the individual or entity submitting this EDS, whether the Undersigned is an Applicant or is an entity holding an interest in the Applicant. This EDS requires certain disclosures and certifications from Applicants that are not required from entities holding an interest in the Applicant. When completing this EDS, please observe whether the section you are completing applies only to Applicants.

- Check here if the Undersigned is filing this EDS as an Applicant.
- Check here if the Undersigned is filing as an entity holding an interest in an Applicant

Also, please identify the Applicant in which this entity holds an interest
Chicago Klee Development, LLC

B. Business address of the Undersigned: 5440 N. Cumberland
Suite 301
Chicago, IL 60656

C. Telephone: (713) 693-7100 Fax: (713) 693-8500 Email: gpoter@poter.net

D. Name of contact person: Gary Poter

E. Tax identification number (optional): 36-4232520

F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains (Include project number and location if applicable).

Adaptive reuse of 64 Condominiums and 20,000
Sq. Ft. of Commercial space located at 4001-4021
N. Milwaukee, Chicago, IL

G Is the Matter a procurement? Yes No

H If a procurement, Specification # _____ and
Contract # _____

I If not a procurement

1 City Agency requesting EDS Department of Planning

2 City action requested (e.g. loan, grant, sale of property)
Sale of property

3 If property involved, list property location
4001 N. Milwaukee

SECTION ONE: DISCLOSURE OF OWNERSHIP INTERESTS

A NATURE OF ENTITY

1 Indicate whether the Undersigned is an individual or legal entity

- | | |
|---|---|
| <input type="checkbox"/> Individual | <input checked="" type="checkbox"/> Limited Liability Company |
| <input type="checkbox"/> Business corporation | <input type="checkbox"/> Joint venture |
| <input type="checkbox"/> Sole proprietorship | <input type="checkbox"/> Not-for-profit corporation |
| | (Is the not-for-profit corporation also a 501(c)(3))? |
| | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> General partnership | <input type="checkbox"/> Other entity (please specify) |
| <input type="checkbox"/> Limited partnership | _____ |

2 State of incorporation or organization, if applicable:

Illinois

3 For legal entities not organized in the State of Illinois Is the organization authorized to do business in the State of Illinois as a foreign entity?

- Yes No N/A

B. ORGANIZATION INFORMATION

1 IF THE UNDERSIGNED IS A CORPORATION

a List below the names and titles of all executive officers and all directors of the corporation For not-for-profit corporations, also list below any executive director of the corporation, and indicate all members, if any, who are legal entities. If there are no such members, write "no members "

Name	Title
_____	_____
_____	_____
_____	_____

b(1) If the Matter is a procurement and the Undersigned is a corporation whose shares are registered on a national securities exchange pursuant to the Securities Exchange Act of 1934, please provide the following information concerning shareholders who own shares equal to or in excess of 7.5% of the corporation's outstanding shares

Name	Business Address	Percentage Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

b(2) If the Matter is not a procurement, and the Undersigned is a corporation whose shares are registered on a national securities exchange pursuant to the Securities Exchange Act of 1934, please provide the following information concerning shareholders who own shares equal to or in excess of 10% of the corporation's outstanding shares

Name	Business Address	Percentage Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

c For corporations that are not registered on a national securities exchange pursuant to the Securities Exchange Act of 1934, list below the name, business address and percentage of ownership interest of each shareholder.

Name	Business Address	Percentage Interest
------	------------------	---------------------

2 IF THE UNDERSIGNED IS A PARTNERSHIP OR JOINT VENTURE

For general or limited partnerships or joint ventures list below the name, business address and percentage of ownership interest of each partner For limited partnerships, indicate whether each partner is a general partner or a limited partner

Name	Business Address	Percentage Interest
------	------------------	---------------------

3 IF THE UNDERSIGNED IS A LIMITED LIABILITY COMPANY

a List below the name, business address and percentage of ownership interest of each (i) member and (ii) manager If there are no managers, write "no managers," and indicate how the company is managed

Name	Business Address	Percentage Interest
------	------------------	---------------------

Gary Peter, Managing Member	5440 N. Cumberland STE 301	50%
Joseph Oshinski, Member	619 S. LaSalle, Chicago	50%

b. List below the names and titles of all officers, if any. If there are no officers, write "no officers."

Name Title

No officers

4 IF THE UNDERSIGNED IS A LAND TRUST, BUSINESS TRUST, ESTATE OR OTHER SIMILAR ENTITY

a List below the name and business address of each individual or legal entity holding legal title to the property that is the subject of the trust.

Name Business Address

b List below the name, business address and percentage of beneficial interest of each beneficiary on whose behalf title is held.

Name Business Address Percentage Interest

5 IF THE UNDERSIGNED IS ANY OTHER LEGAL ENTITY, first describe the entity, then provide the name, business address, and the percentage of interest of all individuals or legal entities having an ownership or other beneficial interest in the entity.

Describe the entity

Name Business Address Percentage Interest

SECTION TWO: BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

A. DEFINITIONS AND DISCLOSURE REQUIREMENT

1 The Undersigned must indicate whether it had a "business relationship" with a City elected official in the 12 months before the date this EDS is signed

2 Pursuant to Chapter 2-156 of the Municipal Code of Chicago (the "Municipal Code"), a "business relationship" means any "contractual or other private business dealing" of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a "financial interest," with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year, but a "financial interest" does not include (i) any ownership through purchase at fair market value or inheritance of less than 1% of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended, (ii) the authorized compensation paid to an official or employee for his office or employment, (iii) any economic benefit provided equally to all residents of the City, (iv) a time or demand deposit in a financial institution, or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" does not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City

B. CERTIFICATION

1. Has the Undersigned had a "business relationship" with any City elected official in the 12 months before the date this EDS is signed?

Yes No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s)

SECTION THREE: DISCLOSURE OF RETAINED PARTIES

A. DEFINITIONS AND DISCLOSURE REQUIREMENTS

1 The Undersigned must disclose certain information about attorneys, lobbyists, accountants, consultants, subcontractors, and any other person whom the Undersigned has retained or expects to retain in connection with the Matter. In particular, the Undersigned must disclose the name of each such person, his/her business address, the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Undersigned is not required to disclose employees who are paid solely through the Undersigned's regular payroll.

"Lobbyist" means any person (i) who, for compensation or on behalf of any person other than himself, undertakes to influence any legislative or administrative action, or (ii) any part of whose duty as an employee of another includes undertaking to influence any legislative or administrative action.

2 If the Undersigned is uncertain whether a disclosure is required under this Section, the Undersigned must either ask the City whether disclosure is required or make the disclosure.

B. CERTIFICATION

Each and every attorney, lobbyist, accountant, consultant, subcontractor, or other person retained or anticipated to be retained directly by the Undersigned with respect to or in connection with the Matter is listed below [begin list here, add sheets as necessary]

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Undersigned (attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated)
London D. Neal	203 N. LaSalle, STE 2300	Attorney	\$20,000 est.
Myron Louik	54 W. Hubbard St, STE 210	Consultant	\$10,000 est.
David Haymes	814 N. Franklin, STE 400	Architect	\$300,000 est.

CHECK HERE IF NO SUCH INDIVIDUALS HAVE BEEN RETAINED BY THE UNDERSIGNED OR ARE ANTICIPATED TO BE RETAINED BY THE UNDERSIGNED.

SECTION FOUR: CERTIFICATIONS

I. CERTIFICATION OF COMPLIANCE

For purposes of the certifications in A, B, and C below, the term "affiliate" means any individual or entity that, directly or indirectly controls the Undersigned, is controlled by the Undersigned, or is, with the Undersigned, under common control of another individual or entity. Indicia of control include, without limitation interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees, or organization of a business entity following the ineligibility of a business entity to do business with the federal government or a state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity

A The Undersigned is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Undersigned or its affiliates delinquent in paying any fine, fee, tax or other charge owed to the City. This includes all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes. If there are any such delinquencies, note them below

None

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements

B The Undersigned and its affiliates have not, in the past five years, been found in violation of any City, state or federal environmental law or regulation. If there have been any such violations, note them below

None

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements

C If the Undersigned is the Applicant, the Undersigned and its affiliates will not use, nor permit their subcontractors to use, any facility on the U S EPA's List of Violating Facilities in connection with the Matter for the duration of time that such facility remains on the list

D. If the Undersigned is the Applicant, the Undersigned will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Section Four, I, (A-C) above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Undersigned has reason to believe has not provided or cannot provide truthful certifications

If the Undersigned is unable to make the certifications required in Section Four, paragraph I (C) and (D) above, provide an explanation:

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements

II. CHILD SUPPORT OBLIGATIONS - CERTIFICATION REGARDING COURT-ORDERED CHILD SUPPORT COMPLIANCE

For purposes of this part, "Substantial Owner" means any individual who, directly or indirectly, owns or holds a 10% or more interest in the Undersigned *Note: This may include individuals disclosed in Section One (Disclosure of Ownership Interests), and individuals disclosed in an EDS filed by an entity holding an interest in the Applicant*

If the Undersigned's response below is #1 or #2, then all of the Undersigned's Substantial Owners must remain in compliance with any such child support obligations until the Matter is completed Failure of the Undersigned's Substantial Owners to remain in compliance with their child support obligations in the manner set forth in either #1 or #2 constitutes an event of default

Check one:

- 1 No Substantial Owner has been declared in arrearage on any child support obligations by the Circuit Court of Cook County, Illinois or by another Illinois court of competent jurisdiction
- 2 The Circuit Court of Cook County, Illinois or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on child support obligations. All such Substantial Owners, however, have entered into court-approved agreements for the payment of all such child support owed, and all such Substantial Owners are in compliance with such agreements
- 3 The Circuit Court of Cook County, Illinois or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on child support obligations and (a) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support owed, or (b) at least one such Substantial Owner is not in compliance with a court-approved agreement for the payment of all such child support owed, or both (a) and (b)
- 4 There are no Substantial Owners

III. FURTHER CERTIFICATIONS

A The Undersigned and, if the Undersigned is a legal entity, its principals (officers, directors, partners, members, managers, executive director)

- 1 are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government,
- 2 have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, a violation of federal or state antitrust statutes, fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property,

3. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in clause (A)(2) of this section,
- 4 have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default, and
- 5 have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, in any criminal or civil action instituted by the City or by the federal government, any state, or any other unit of local government

B The certifications in subparts B and D concern

- the Undersigned,
- any party participating in the performance of the Matter ("an **Applicable Party**"),
- any "**Affiliated Entity**" (meaning an individual or entity that, directly or indirectly controls the Undersigned, is controlled by the Undersigned, or is, with the Undersigned, under common control of another individual or entity. Indicia of control include, without limitation interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity), with respect to Applicable Parties, the term Affiliated Entity means an individual or entity that directly or indirectly controls the Applicable Party, is controlled by it, or, with the Applicable Party, is under common control of another individual or entity,
- any responsible official of the Undersigned, any Applicable Party or any Affiliated Entity or any other official, agent or employee of the Undersigned, any Applicable Party or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Undersigned, any Applicable Party or any Affiliated Entity (collectively "Agents")

Neither the Undersigned, nor any Applicable Party, nor any Affiliated Entity of either the Undersigned or any Applicable Party nor any Agents have, during the five years before the date this EDS is signed, or, with respect to an Applicable Party, an Affiliated Entity, or an Affiliated Entity of an Applicable Party during the five years before the date of such Applicable Party's or Affiliated Entity's contract or engagement in connection with the Matter

1. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity,

2. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise, or

3. made an admission of such conduct described in (1) or (2) above that is a matter of record, but have not been prosecuted for such conduct, or

4. violated the provisions of Section 2-92-610 of the Municipal Code (**Living Wage Ordinance**)

C. The Undersigned understands and shall comply with (1) the applicable requirements of the Governmental Ethics Ordinance of the City, Title 2, Chapter 2-156 of the Municipal Code, and (2) all the applicable provisions of Chapter 2-56 of the Municipal Code (Office of the Inspector General)

D. Neither the Undersigned, Affiliated Entity or Applicable Party, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3, (2) bid-rotating in violation of 720 ILCS 5/33E-4, or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating

E. If the Undersigned is unable to certify to any of the above statements in this Part III, the Undersigned must explain below

None

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements

IV. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

For purposes of this Part IV, under Section 2-32-455(b) of the Municipal Code, the term "financial institution" means a bank, savings and loan association, thrift, credit union, mortgage banker, mortgage broker, trust company, savings bank, investment bank, securities broker, municipal securities broker, securities dealer, municipal securities dealer, securities underwriter, municipal securities underwriter, investment trust, venture capital company, bank holding company, financial services holding company, or any licensee under the Consumer Installment Loan Act, the Sales Finance Agency Act, or the Residential Mortgage Licensing Act. However, "financial institution" specifically shall not include any entity whose predominant business is the providing of tax deferred, defined contribution, pension plans to public employees in accordance with Sections 403(b) and 457 of the Internal Revenue Code [Additional definitions may be found in Section 2-32-455(b) of the Municipal Code]

A. CERTIFICATION

The Undersigned certifies that the Undersigned [check one]

_____ is
 is not

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code

B. If the Undersigned IS a financial institution, then the Undersigned pledges:

"We are not and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Undersigned is unable to make this pledge because it or any of its affiliates (as defined in Section 2-32-455(b) of the Municipal Code) is a predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary)

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements

V. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part V.

- 1 In accordance with Section 2-156-110 of the Municipal Code:
Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person in the Matter?
 Yes No

NOTE: If you answered "No" to Item V(1), you are not required to answer Items V(2) or (3) below. Instead, review the certification in Item V(4) and then proceed to Part VI. If you answered "Yes" to Item V(1), you must first respond to Item V(2) and provide the information requested in Item V(3). After responding to those items, review the certification in Item V(4) and proceed to Part VI.

- 2 Unless sold pursuant to a process of competitive bidding, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale") Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part V

Does the Matter involve a City Property Sale?
 Yes No

- 3 If you answered "yes" to Item V(1), provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest
- | Name | Business Address | Nature of Interest |
|------|------------------|--------------------|
|------|------------------|--------------------|

4 The Undersigned further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee

VI. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

The Undersigned has searched any and all records of the Undersigned and any and all predecessor entities for records of investments or profits from slavery, the slave industry, or slaveholder insurance policies from the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves) and has disclosed in this EDS any and all such records to the City. In addition, the Undersigned must disclose the names of any and all slaves or slaveholders described in those records. Failure to comply with these disclosure requirements may make the Matter to which this EDS pertains voidable by the City

Please check either (1) or (2) below. If the Undersigned checks (2), the Undersigned must disclose below or in an attachment to this EDS all requisite information as set forth in that paragraph (2).

1 The Undersigned verifies that (a) the Undersigned has searched any and all records of the Undersigned and any and all predecessor entities for records of investments or profits from slavery, the slave industry, or slaveholder insurance policies, and (b) the Undersigned has found no records of investments or profits from slavery, the slave industry, or slaveholder insurance policies and no records of names of any slaves or slaveholders

2 The Undersigned verifies that, as a result of conducting the search in step (1)(a) above, the Undersigned has found records relating to investments or profits from slavery, the slave industry, or slaveholder insurance policies and/or the names of any slaves or slaveholders. The Undersigned verifies that the following constitutes full disclosure of all such records

SECTION FIVE: CERTIFICATIONS FOR FEDERALLY-FUNDED MATTERS

I. CERTIFICATION REGARDING LOBBYING

A List below the names of all individuals registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Undersigned with respect to the Matter [Begin list here, add sheets as necessary]

None

[If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Undersigned means that NO individuals registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Undersigned with respect to the Matter.]

B The Undersigned has not spent and will not expend any federally appropriated funds to pay any individual listed in Paragraph A) above for his or her lobbying activities or to pay any individual to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement

C The Undersigned will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs I(A) and I(B) above

If the Matter is federally funded and any funds other than federally appropriated funds have been or will be paid to any individual for influencing or attempting to influence an officer or employee of any agency (as defined by applicable federal law), a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the Matter, the Undersigned must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The form may be obtained online from the federal Office of Management and Budget (OMB) web site at <http://www.whitehouse.gov/omb/grants/sflllin.pdf>, linked on the page http://www.whitehouse.gov/omb/grants/grants_forms.html

D The Undersigned certifies that either (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities"

E If the Undersigned is the Applicant, the Undersigned must obtain certifications equal in form and substance to paragraphs I(A) through I(D) above from all subcontractors before it awards any subcontract and the Undersigned must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request

II. CERTIFICATION REGARDING NONSEGREGATED FACILITIES

A If the Undersigned is the Applicant, the Undersigned does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained

"Segregated facilities," as used in this provision, means any waiting rooms, work areas, restrooms, washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of habit, local or employee custom, or otherwise

However, separated or single-user restrooms and necessary dressing or sleeping areas must be provided to assure privacy between the sexes

B If the Undersigned is the Applicant and the Matter is federally funded, the Undersigned will, before the award of subcontracts (if any), obtain identical certifications from proposed subcontractors under which the subcontractor will be subject to the Equal Opportunity Clause. Contracts and subcontracts exceeding \$10,000, or having an aggregate value exceeding \$10,000 in any 12-month period, are generally subject to the Equal Opportunity Clause. See 41 CFR Part 60 for further information regarding the Equal Opportunity Clause. The Undersigned must retain the certifications required by this paragraph (B) for the duration of the contract (if any) and must make such certifications promptly available to the City upon request.

C. If the Undersigned is the Applicant and the Matter is federally funded, the Applicant will forward the notice set forth below to proposed subcontractors

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

Subcontractors must submit to the Contractor a Certification of Nonsegregated Facilities before the award of any subcontract under which the subcontractor will be subject to the federal Equal Opportunity Clause. The subcontractor may submit such certifications either for each subcontract or for all subcontracts during a period (e.g., quarterly, semiannually, or annually).

III. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

Federal regulations require prospective contractors for federally funded Matters (e.g., the Applicant) and proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations. (NOTE: This Part III is to be completed only if the Undersigned is the Applicant.)

- A. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2)
 Yes No N/A
- B. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?
 Yes No N/A
- C. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?
 Yes No N/A

SECTION SIX: NOTICE AND ACKNOWLEDGMENT REGARDING CITY GOVERNMENTAL ETHICS AND CAMPAIGN FINANCE ORDINANCES

The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on individuals or entities seeking City contracts, work, business, or transactions. The Board of Ethics has developed an ethics training program for such individuals and entities. The full text of these ordinances and the training program is available on line at www.cityofchicago.org/Ethics/, and may also be obtained from the City's Board of Ethics, 740 N Sedgwick St, Suite 500, Chicago, IL 60610, (312) 744-9660. The following is descriptive only and does not purport to cover every

aspect of Chapters 2-156 and 2-164 of the Municipal Code The Undersigned must comply fully with the applicable ordinances

X **BY CHECKING THIS BOX THE UNDERSIGNED ACKNOWLEDGES THAT THE UNDERSIGNED UNDERSTANDS THAT THE CITY'S GOVERNMENTAL ETHICS AND CAMPAIGN FINANCING ORDINANCES, AMONG OTHER THINGS:**

- 1) Provide that any contract negotiated, entered into or performed in violation of the City's ethics laws can be voided by the City
- 2) Limit the gifts and favors any individual or entity can give, or offer to give, to any City official, employee, contractor or candidate for elected City office or the spouse or minor child of any of them, including
 - a any cash gift or any anonymous gift, and
 - b any gift based on a mutual understanding that the City official's or employee's or City contractor's actions or decisions will be influenced in any way by the gift
- 3) Prohibit any City elected official or City employee from having a financial interest, directly or indirectly, in any contract, work, transaction or business of the City, if that interest has a cost or present value of \$5,000 or more, or if that interest entitles the owner to receive more than \$2,500 per year
- 4) Prohibit any appointed City official from engaging in any contract, work, transaction or business of the City, unless the matter is wholly unrelated to the appointed official's duties or responsibilities
- 5) Provide that City employees and officials, or their spouses or minor children, cannot receive compensation or anything of value in return for advice or assistance on matters concerning the operation or business of the City, unless their services are wholly unrelated to their City duties and responsibilities
- 6) Provide that former City employees and officials cannot, for a period of one year after their City employment ceases, assist or represent another on any matter involving the City if, while with the City, they were personally and substantially involved in the same matter

- 7) Provide that former City employees and officials cannot ever assist or represent another on a City contract if, while with the City, they were personally involved in or directly supervised the formulation, negotiation or execution of that contract

SECTION SEVEN: CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE

The Undersigned understands and agrees that:

A The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Undersigned understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based

B If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded, void or voidable), at law, or in equity, including terminating the Undersigned's participation in the Matter and/or declining to allow the Undersigned to participate in other transactions with the City

C Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Undersigned waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS

D The Undersigned has not withheld or reserved any disclosures as to economic interests in the Undersigned, or as to the Matter, or any information, data or plan as to the intended use or purpose for which the Applicant seeks City Council or other City agency action

E The information provided in this EDS must be kept current. In the event of changes, the Undersigned must supplement this EDS up to the time the City takes action on the Matter.

CERTIFICATION

Under penalty of perjury, the person signing below (1) warrants that he/she is authorized to execute this EDS on behalf of the Undersigned, and (2) warrants that all certifications and statements contained in this EDS are true, accurate and complete as of the date furnished to the City

Chicago Klee Development LLC
(Print or type name of individual or legal entity submitting this EDS)

Date: 01/29/04

By



(sign here)

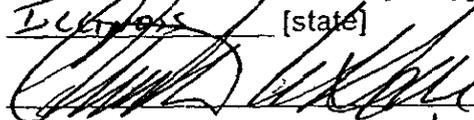
Print or type name of signatory

Gary Potter

Title of signatory

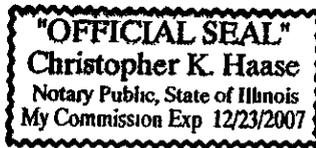
Managing Member

Subscribed to before me on [date] 1/29/04, at Cook County,
Illinois [state]



Notary Public

Commission expires 12/23/07



(DO NOT SUBMIT THIS PAGE WITH YOUR EDS. The purpose of this page is for you to recertify your EDS prior to submission to City Council or on the date of closing. If unable to recertify truthfully, the Undersigned must complete a new EDS with correct or corrected information)

RECERTIFICATION

Generally, for use with City Council matters. Not for City procurements unless requested.

This recertification is being submitted in connection with Chicago Klee Development, LLC (Identify the Matter). Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS recertification on behalf of the Undersigned, (2) warrants that all certifications and statements contained in the Undersigned's original EDS are true, accurate and complete as of the date furnished to the City and continue to be true, accurate and complete as of the date of this recertification, and (3) reaffirms its acknowledgments.

Gary Poter Date: 06/22/04
(Print or type name of individual or legal entity submitting this recertification)

By: [Signature]
(sign here)

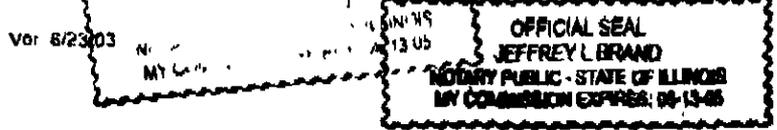
Print or type name of signatory:
Gary Poter

Title of signatory:
Managing Member

Subscribed to before me on [date] 6/22/04, at COOK County, ILLINOIS [state].

[Signature] Notary Public.

Commission expires:



CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS on behalf of the Undersigned, and (2) warrants that all certifications and statements contained in this FDS are true, accurate and complete as of the date furnished to the City.

CHICAGO KLEIN DEVELOPMENT, LLC

(Print or type name of individual or legal entity submitting this FDS)

Date: 5/27/04

By:

[Handwritten signature]

(Sign here)

Print or type name of signatory:

GARY POTER

Title of signatory:

MANAGING MEMBER

Subscribed to before me on [date] 5/27/04, at Cook County, Illinois [state]

[Handwritten signature]

Notary Public.

Commission expires: 12/23/07

