



# City of Chicago



SO2019-1050

Office of the City Clerk

## Document Tracking Sheet

**Meeting Date:** 1/23/2019

**Sponsor(s):** Emanuel (Mayor)

**Type:** Ordinance

**Title:** Redevelopment agreement with New Congress LLC and Arthur 7159 LLC for rehabilitation of Congress Theater and construction of residential units at 2117-2139 N Rockwell Ave, 2115-2139 N Milwaukee Ave, 2149-2163 N Milwaukee Ave and 2120-2132 N Rockwell St

**Committee(s) Assignment:** Committee on Finance

**SUBSTITUTE**

**AN ORDINANCE**

**DESIGNATING NEW CONGRESS, LLC, AND ARTHUR 7159 LLC,  
COLLECTIVELY, AS DEVELOPER,  
AUTHORIZING A REDEVELOPMENT AGREEMENT,  
THE ISSUANCE OF TWO CITY NOTES AND  
PAYMENT OF CERTAIN INCREMENTAL TAXES**

**ORDINANCE**

**WHEREAS**, pursuant to an ordinance adopted by the City Council ("City Council") of the City of Chicago (the "City") on February 16, 2000 and published at pages 25063 through 25162, inclusive, of the Journal of the Proceedings of the City Council (the "Journal") of such date, as amended, a certain redevelopment plan and project (the "Plan") for the Fullerton/Milwaukee Redevelopment Project Area as a Redevelopment Project Area (the "Area") was approved (the "Plan Adoption Ordinance") pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1 et seq.) (the "Act"); and

**WHEREAS**, pursuant to an ordinance adopted by the City Council on February 16, 2000 and published at pages 25161 through 25184, inclusive, of the Journal of such date, the Area was designated as a redevelopment project area pursuant to the Act (the "Area Designation Ordinance"); and

**WHEREAS**, pursuant to an ordinance adopted by the City Council on February 16, 2000 and published at pages 25183 through 25205, inclusive, of the Journal of such date, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain Area redevelopment project costs (as defined in the Act) incurred pursuant to the Plan (the "TIF Financing Ordinance" and together with the Plan Adoption Ordinance and the Area Designation Ordinance, the "TIF Ordinance"); and

**WHEREAS**, to establish modified affordable housing requirements for designated neighborhoods along the Milwaukee corridor in the City adjacent to the Chicago Transit Authority's Blue Line that are experiencing gentrification, the City Council adopted the Milwaukee Corridor ARO Pilot Area Ordinance on October 11, 2017 published at pages 56913 through 56919, inclusive, of the Journal of such date (the "Milwaukee Corridor ARO Ordinance"); and

**WHEREAS**, pursuant to Section 5/11-74.4-8(b) of the Act and the TIF Ordinance, incremental taxes ("Incremental Taxes") are deposited from time to time in the "Fullerton/Milwaukee Redevelopment Project Area Special Tax Allocation Fund" (the "TIF Allocation Fund") established pursuant to the TIF Ordinance and pursuant to Section 5/11-74.4-8(b) of the Act; and

**WHEREAS**, New Congress, LLC, an Illinois limited liability company (the "Theater Developer") has purchased or intends to purchase certain property located within the Area at 2117-39 N. Rockwell Avenue and 2115-39 North Milwaukee Avenue, Chicago, Illinois 60647, and legally described on Exhibit A hereto with a building thereon commonly known as the Congress

Theater (the "Theater Property"), and the Developer intends to substantially rehabilitate the approximately 160,000 square foot Theater Property into a 4,900 seat music venue with the addition of an approximately 30-room boutique hotel; the addition of approximately 14 affordable residential rental units; and approximately 16,000 square feet of ground floor restaurant/retail commercial space (the "Theater Rehabilitation"); and

**WHEREAS**, Arthur 7159 LLC, an Illinois limited liability company (the "Residential Developer") has purchased or intends to purchase certain property within the Redevelopment Area at 2149–63 North Milwaukee Avenue and 2120–32 North Rockwell Avenue, Chicago, Illinois 60647, as legally described on Exhibit A hereto (the "Residential Property") and together with the Theater Property, the "Property"), and the Developer intends to construct on the Residential Property a building with approximately 72 affordable residential rental units and with ground floor retail commercial space (the "Residential Building Construction" and together with the Theater Rehabilitation, the "Project")

**WHEREAS**, the Theater Developer and the Residential Developer are together referred to herein as the "Developer"; and

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

**WHEREAS**, the Developer will be obligated to undertake the Project in accordance with the terms and conditions of a proposed redevelopment agreement to be executed by the Developer and the City, with such Project to be financed in part by certain pledged Incremental Taxes; and

**WHEREAS**, pursuant to its Resolution 18-CDC-16 adopted by the Community Development Commission of the City of Chicago (the "Commission") on June 12, 2018, the Commission recommended to City Council that the Developer be designated as the developer for the Project and that the City be authorized to negotiate, execute and deliver on the City's behalf a redevelopment agreement with the Developer for the Project; now therefore,

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

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

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

**SECTION 3.** The Commissioner of DPD (the "Commissioner") or a designee of the Commissioner is each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver a redevelopment agreement among the Developer, certain land trusts created by the Developer for the benefit of Developer, and the City, substantially in the form attached hereto as Exhibit B and made a part hereof (the "Redevelopment Agreement"), and such other supporting documents as may be necessary to carry out and comply with the provisions of the Redevelopment Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Redevelopment Agreement.

**SECTION 4.** The City Council of the City hereby finds that the City is authorized to pay \$8,850,000 ("Theater Rehabilitation City Funds") from Incremental Taxes deposited in the Phase I Account of the TIF Allocation Fund (defined herein) as provided in this Ordinance and the Redevelopment Agreement to Developer to finance a portion of the eligible costs included within the Theater Rehabilitation portion of the Project;

**SECTION 5.** The City Council of the City hereby finds that the City is authorized to pay \$800,000 ("Residential Building Construction City Funds") from Incremental Taxes deposited in the Phase II Account (defined herein) of the TIF Allocation Fund as provided in this Ordinance and the Redevelopment Agreement to finance a portion of the eligible costs included within the Residential Building Construction portion of the Project. The proceeds of the Residential Building Construction City Funds and together with the Theater Rehabilitation City Funds, the "City Funds") are hereby appropriated for the purposes set forth in Section 4 and Section 5.

**SECTION 6.** There shall be borrowed for and on behalf of the City an amount not to exceed \$5,400,000 for the payment of a portion of the eligible redevelopment project costs included within the Project. The borrowing shall be evidenced by notes of the City as follows: (i) a note of the City in an amount not to exceed \$4,600,000 (the "City #1 Note"); (ii) a note of the City in an amount not to exceed \$800,000 (the "City #2 Note"); and (iii) a requisition form to the City from the Developer in an amount up to \$4,250,000 for reimbursement of other eligible costs. The notes shall be issued and each shall be designated "Tax Increment Allocation Revenue Note (Congress Theater Phase I Redevelopment Project), Taxable Series A" and "Tax Increment Allocation Revenue Note (Congress Theater Phase II Redevelopment Project), Taxable Series A" or as otherwise deemed necessary by the Commissioner (each, a "Note," and collectively, the "Notes"). The Notes shall be dated as of the date of delivery thereof, shall bear the date of authentication, shall be in fully registered form, shall be in the denomination of the maximum outstanding principal amount thereof and shall become due and payable as provided therein.

The Notes shall bear interest at interest rates per annum equal to the interest rates set forth in the Redevelopment Agreement. Interest on the Notes shall be subject to federal income taxes and shall be computed on the basis of a 360-day year of twelve 30-day months. The City shall not be obligated to pay principal of or interest on the Note in any year in which there are inadequate Available Incremental Taxes, as defined in the Redevelopment Agreement. The City shall be obligated to pay the amount of any unpaid principal or accrued interest in any subsequent year but only to the extent of the Available Incremental Taxes for those subsequent years.

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

The seal of the City shall be affixed to or a facsimile thereof printed on each Note, and each Note shall be signed by the manual or facsimile signature of the Mayor of the City and attested by the manual or facsimile signature of the City Clerk of the City, and in case any officer

whose signature shall appear on any such Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

Each Note shall have thereon a certificate of authentication substantially in the form hereinafter set forth duly executed by the Registrar, as authenticating agent of the City for such Note, and showing the date of authentication. No Note shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such certificate of authentication shall have been duly executed by the Registrar by manual signature, and such certificate of authentication upon the Note shall be conclusive evidence that the Note has been authenticated and delivered under this Ordinance.

**SECTION 7.** The City shall cause books (the "Register") for the registration and for the transfer of the Notes (to the extent such transfer is permitted under the Redevelopment Agreement) as provided in this Ordinance to be kept at the principal office of the Registrar, which is hereby constituted and appointed the registrar of the City for the Notes. The City is authorized to prepare, and the Registrar shall keep custody of, multiple Note blanks executed by the City for use in the transfer of the Notes.

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

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

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

**SECTION 8.** The principal of the Notes shall be subject to determination, reduction and prepayment as provided in the form of the Notes attached to the Redevelopment Agreement as Exhibits M-1 and M-2 and as provided in the Redevelopment Agreement, including, without limitation in Section 4.03 thereof. As directed by the Commissioner, the Registrar shall proceed with redemptions without further notice or direction from the City.

**SECTION 9.** The Registrar shall note on the Payment Schedule attached to each Note the amount of any payment of principal or interest on such Notes, including the amount of any redemption or prepayment, and the amount of any reduction in principal pursuant to the Redevelopment Agreement.

**SECTION 10.** The Notes shall be prepared in substantially the form attached hereto as Exhibits M-1 and M-2 to the Redevelopment Agreement.

**SECTION 11.** The Notes hereby authorized shall be executed as provided in this Ordinance and the Redevelopment Agreement and thereupon be deposited with the Commissioner, and be by said Commissioner delivered to the Developer.

**SECTION 12.** (a) Special Tax Allocation Fund. Pursuant to the TIF Ordinance, the City has created a special fund, designated as the Fullerton/Milwaukee Redevelopment Project Area Special Tax Allocation Fund (the "Tax Allocation Fund").

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

(b) Tax Allocation Fund Subaccounts. There is hereby created within the Tax Allocation Fund two special subaccounts to be known as (i) the "Theater Rehabilitation Phase I Project Account" (the "Phase I Account") and (ii) the "Residential Building Phase II Project Account" (the "Phase II Account"). The City shall designate and deposit into the Phase I Account an amount equal to (A) until the date that the City Note #1 is paid in full, the incremental ad valorem taxes deposited into the Tax Allocation Fund attributable to increases in the equalized assessed value of the tax parcels comprising Phase I (as defined in the Redevelopment Agreement) of the Project, plus (B) until the date the City issues a Phase I Certificate (as defined in the Redevelopment Agreement), the incremental ad valorem taxes deposited into the Tax Allocation Fund attributable to increases in the equalized assessed value of the tax parcels comprising Phase II (as defined in the Redevelopment Agreement) of the Project (such amounts, the "Phase I Available Incremental Taxes"). The City shall designate and deposit into the Phase II Account an amount equal to (C) commencing on the date of issuance of City Note #2, the incremental ad valorem taxes deposited into the Tax Allocation Fund attributable to increases in the equalized assessed value of the tax parcels comprising Phase II of the Project the Project, plus (D) after the date that the City Note #1 is paid in full, the incremental ad valorem taxes deposited into the Tax Allocation Fund attributable to increases in the equalized assessed value of the tax parcels comprising Phase I of the Project (such amount, the "Phase II Available Incremental Taxes"). Subject to the terms and conditions of the Redevelopment Agreement,

the City shall use the Phase I Available Incremental Taxes and the Phase II Available Incremental Taxes to make the payments of City Funds (as defined in the Redevelopment Agreement) including payments with respect to the applicable Notes until the Notes have been fully repaid. In the event that an event of default under the Redevelopment Agreement entitles the City to permanently terminate further payments of City Funds (as defined in the Redevelopment Agreement) with respect to any Note, the City may in its discretion, return the amounts in the applicable subaccount established above that would otherwise be allocated to the payment of the applicable Note to the General Account of the Tax Allocation Fund of the City and such subaccount shall be closed.

(c) Pledge of Developer Subaccounts. The City hereby assigns, pledges and dedicates the Phase I Account and the Phase II Account, together with all amounts on deposit in such subaccounts, to the payment of the City Funds (as defined in the Redevelopment Agreement) and of the principal of and interest, if any, on the Phase I Note and the Phase II Note, respectively, when due under the terms of the Redevelopment Agreement, including specifically, but without limitation, Section 4.03 thereof. Upon deposit, the moneys on deposit in the Phase I Account and the Phase II Account may be invested as hereinafter provided. Interest and income on any such investment shall be deposited in the applicable subaccount. All moneys on deposit in the (i) Phase I Account shall be used to pay the City Funds cash payments (as provided in the Redevelopment Agreement) and the principal of and interest on the Phase I Note, (ii) Phase II Account shall be used to pay the principal of and interest on the Phase II Note, in each case at maturity or upon payment or redemption prior to maturity, in accordance with their terms, which payments from the Phase I Account and the Phase II Account are hereby authorized and appropriated by the City. Upon payment of all City Funds and of amounts due under the Notes and the Redevelopment Agreement in accordance with their terms (or the termination of the City's obligation to make such payments), the amounts on deposit in the Phase I Account and the Phase II Account, as applicable, shall be deposited in the General Account of the Tax Allocation Fund of the City and the applicable subaccount shall be closed.

**SECTION 13.** The Notes are special limited obligations of the City, and are payable solely from amounts on deposit in the Phase I Account and the Phase II Account, as applicable, and shall be a valid claim of the registered owner thereof only against said sources. The Notes shall not be deemed to constitute an indebtedness or a loan against the general taxing powers or credit of the City, within the meaning of any constitutional or statutory provision. The registered owner(s) of the Notes shall not have the right to compel any exercise of the taxing power of the City, the State of Illinois or any political subdivision thereof to pay the principal of or interest on the Notes.

**SECTION 14.** Moneys on deposit in the Phase I Account and the Phase II Account may be invested as allowed under Section 2-32-520 of the Municipal Code of the City of Chicago (the "Municipal Code"). Each such investment shall mature on a date prior to the date on which said amounts are needed to pay the principal of or interest on the Notes.

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

**SECTION 16.** The provisions of this Ordinance shall constitute a contract between the

City and the registered owners of the Notes. All covenants relating to the Notes are enforceable by the registered owners of the Notes.

**SECTION 17.** The Mayor, the Chief Financial Officer, the Comptroller, the City Clerk, the Commissioner (or his or her designee) and the other officers of the City are authorized to execute and deliver on behalf of the City such other documents, agreements and certificates and to do such other things consistent with the terms of this Ordinance as such officers and employees shall deem necessary or appropriate in order to effectuate the intent and purposes of this Ordinance.

**SECTION 18.** If any provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this Ordinance.

**SECTION 19.** All ordinances, resolutions, motions or orders in conflict with this Ordinance are hereby repealed to the extent of such conflict. No provision of the Municipal Code or violation of any provision of the Municipal Code shall be deemed to impair the validity of this Ordinance or the instruments authorized by this Ordinance or to impair the security for or payment of the instruments authorized by this Ordinance; provided further, however, that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for violation of any provision of the Municipal Code.

**SECTION 20.** This Ordinance shall be in full force and effect immediately upon its passage and approval.



## EXHIBIT A

### ADDRESSES AND LEGAL DESCRIPTIONS OF PROPERTY (Subject to Final Title and Survey)

#### THEATER PROPERTY LEGAL DESCRIPTION

Lots 14 to 18 both inclusive, (except the north 16 feet of said Lot 14) of James M. Allen's Subdivision of Lots 8 to 11 in the subdivision by John Gray Guardian, of 8 acres east of and adjoining the West 25.62 acres of that part north of Milwaukee Plank Road of the Northeast  $\frac{1}{4}$  of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, also

The Vacated Alley east of and adjoining Lots 14 to 18 both inclusive, (except the north 16 feet of said Lot 14) in James M. Allen's Subdivision aforesaid, also

Lots 12 to 15 both inclusive (except the east 3 feet of said Lot 15 and except that part lying in Milwaukee Avenue) in John Gray Guardian, of 8 acres east of and adjoining the West 25.62 acres of that part north of Milwaukee Plank Road of the Northeast  $\frac{1}{4}$  of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, also

The Vacated East and West Alley north of and adjoining Lots 12 to 15 both inclusive (except the east 3 feet of said Lot 15) in John Gray Guardian, of 8 acres east of and adjoining the West 25.62 acres of that part north of Milwaukee Plank Road of the Northeast  $\frac{1}{4}$  of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, also

Lots 11 to 15 both inclusive, (except the east 3 feet of each of said Lots) in Herman's Papsien's Subdivision of Lot 19 (except the north 60 feet thereof) in James M. Allen's Subdivision of Lots 8 to 11 in the subdivision by John Gray Guardian, of 8 acres east of and adjoining the West 25.62 acres of that part north of Milwaukee Plank Road of the Northeast  $\frac{1}{4}$  of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois

PINs: 13-36-221-017-0000, 13-36-221-031-0000 and 13-36-221-032-0000

Common addresses: 2117-39 N. Rockwell Avenue and 2115-39 North Milwaukee Avenue,  
Chicago, Illinois 60647

#### RESIDENTIAL PROPERTY LEGAL DESCRIPTION

Lots 6, 7, 8, 9, 10 and 11 in Powell's Subdivision of Lots 12 to 15 both inclusive in Gray's Subdivision of 8 acres lying east of and adjoining 25 acres north of the Plank Road in the Northeast  $\frac{1}{4}$  of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois

PINs: 13-36-202-052-0000, 13-36-202-053-0000, 13-36-202-054-0000 and 13-36-202-055-0000

Common addresses: 2149-63 North Milwaukee Avenue and 2120-32 North Rockwell Avenue,  
Chicago, Illinois 60647

**EXHIBIT B**  
**REDEVELOPMENT AGREEMENT**  
(see attached)

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

### NEW CONGRESS, LLC REDEVELOPMENT AGREEMENT

This New Congress, LLC Redevelopment Agreement (this "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and among the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Planning and Development ("DPD"), and Arthur 7159 LLC, an Illinois limited liability company ("Arthur 7159 LLC"), and New Congress, LLC, an Illinois limited liability company ("New Congress") (as to Phase I as defined below, New Congress is sometimes referred to as the "Phase I Developer" and as to the Phase II, Arthur 7159 LLC is sometimes referred to as the "Phase II Developer." Arthur 7159 LLC and New Congress are together referred to as the "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, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals.

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

C. City Council Authority: To induce redevelopment pursuant to the Act, the City Council of the City (the "City Council") adopted the following ordinances on February 16, 2000: (1) "An

Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Fullerton/Milwaukee Redevelopment Project Area” (the “Plan Adoption Ordinance”); (2) “An Ordinance of the City of Chicago, Illinois Designating the Fullerton/Milwaukee Redevelopment Project Area as a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act”; and (3) “An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the Fullerton/Milwaukee Redevelopment Project Area” (the “TIF Adoption Ordinance”) (items(1)-(3), as amended, collectively referred to herein as the “TIF Ordinances”). The redevelopment project area referred to above (the “TIF Redevelopment Area”) is legally described in Exhibit A hereto. To establish modified affordable housing requirements for designated neighborhoods along the Milwaukee corridor in the City that are experiencing gentrification, the City Council adopted the Milwaukee Corridor ARO Pilot Area Ordinance on October 11, 2017 (the “Milwaukee Corridor ARO Ordinance”, and together with the TIF Ordinances, the “Ordinances”).

D. The Project: New Congress has purchased certain property located within the Redevelopment Area at 2117-39 North Rockwell Avenue and 2115-39 North Milwaukee Avenue, Chicago, Illinois 60647 and legally described on Exhibit B hereto with a building thereon commonly known as the Congress Theater (the “Theater Property”), and, within the time frames set forth in Section 3.01 hereof, the Developer shall commence and complete the rehabilitation of the approximately 160,000 square foot Theater Property. The Theater Property shall be rehabilitated into a 4,900 seat music venue with the addition of a 30-room boutique hotel (the “Hotel”), the addition of fourteen (14) affordable residential rental units pursuant to the terms this Agreement, and approximately 16,000 square feet of ground floor restaurant/retail space; provided, however, that the number of hotel rooms may be increased to not more than fifty (50) rooms and the residential units reduced or eliminated as part of Phase II as defined below. The Theater Property and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit C) are collectively referred to herein as “Phase I”.

Arthur 7159 LLC has purchased certain property which is currently used as a parking lot located within the Redevelopment Area at 2149-63 North Milwaukee Avenue and 2120-32 North Rockwell Avenue, Chicago, Illinois 60647 as legally described on Exhibit B hereto (the “Residential Property” and together with the Theater Property, the “Facility” or “Property”), and, within the time frames set forth in Section 3.01 hereof, shall commence the construction on the Residential Property of a building with approximately seventy-two (72) residential rental units subject to the Project Affordability Requirements (as defined herein), as provided in this Agreement, and with ground floor retail space. After completion of Phase II, the percentage of affordable residential rental units in the Project as a whole shall be at least thirty percent (30%). The Residential Property and related improvements are collectively referred to herein as “Phase II”. Phase I and Phase II shall together be referred to herein as the “Project”.

In connection with the Theater operations at the Theater Property, New Congress, as landlord, and AEG Live Chicago, LLC, a Delaware limited liability company (“AEG”), as tenant, has executed that certain Lease Agreement dated August 26, 2016 (as amended from time to time, the “Lease”) pursuant to which New Congress has, among other matters, leased the Theater Property to AEG, and granted an exclusive Parking License to a portion of the Residential Property to AEG.

The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

E. Redevelopment Plan: The Project will be carried out in accordance with this Agreement and the City of Chicago Fullerton/Milwaukee Redevelopment Project Area Tax

Increment Financing Program Redevelopment Plan (the "Redevelopment Plan") included in the Plan Adoption Ordinance and published at pages 25063 through 25162 of the Journal of the Proceedings of the City Council.

F. City Financing: The City agrees to use, in the amounts set forth in Section 4.03 hereof, (i) the proceeds of the City Notes (as defined below), and (ii) City Funds Cash Payments from certain Incremental Taxes (as defined below), to pay for or reimburse Developer for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement and the City Notes. The City has agreed to issue the City Notes in consideration of the Developer's incurring the costs of the TIF-funded Improvements and other costs of the Project.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. RECITALS, HEADINGS AND EXHIBITS**

The foregoing recitals are hereby incorporated into this Agreement by reference. The paragraph and section headings contained in this Agreement, including without limitation those set forth in the following table of contents, are for convenience only and are not intended to limit, vary, define or expand the content thereof. Developer agrees to comply with the requirements set forth in the following exhibits which are attached to and made a part of this Agreement. All provisions listed in the Exhibits have the same force and effect as if they had been listed in the body of this Agreement.

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	P      Investor Letter Q      [intentionally omitted] R      *Prohibited Uses  (An asterisk (*) indicates which exhibits are to be recorded.)
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## SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below:

“Act” shall have the meaning set forth in the Recitals hereof.

“Affiliate” shall mean any person or entity directly or indirectly controlling, controlled by or under common control with Developer.

“Annual Compliance Report” shall mean a signed report from Developer to the City (a) itemizing each of Developer’s obligations under the RDA during the preceding calendar year, (b) certifying Developer’s compliance or noncompliance with such obligations, (c) attaching evidence (whether or not previously submitted to the City) of such compliance or noncompliance and (d) certifying that Developer is not in default with respect to any provision of the RDA, the agreements evidencing the Lender Financing, if any, or any related agreements; provided, that the obligations to be covered by the Annual Compliance Report shall include the following: (1) compliance with the Operating Covenant (Section 8.06); (2) delivery of Financial Statements and unaudited financial statements (Section 8.13); (3) delivery of updated insurance certificates, if applicable (Section 8.14); (4) delivery of evidence of payment of Non-Governmental Charges, if applicable (Section 8.15); (5) Job Readiness Program (Section 8.25); (6) delivery of evidence that Chicago Sustainable Development Policy has been obtained (Section 8.22); (7) List of tenants of Project Affordable Housing Units (Section 7.01 and Section 8.24); (8) List of tenants of retail spaces of the Project (Section 7.01 and Section 8.25); and (9) compliance with all other executory provisions of the RDA.

“Annual Report of Incremental Taxes” means a signed report from a recognized financial consultant approved by the City that sets forth as of its date (i) a description of the Redevelopment Area, (ii) a description of the Project, (iii) a status update of the Project, including information on construction, occupancy, leasing or sales, as applicable; and (iv) a calculation of the Available Incremental Taxes constituting the source of funds for payment on each of City Note #1 and City Note #2, showing for each Property or applicable tax codes the current year equalized assessed value, the initial equalized assessed value, the incremental equalized assessed value and the composite tax rates for the last five years.

“Available Incremental Taxes” shall mean: (1) for Phase I and City Note #1, an amount equal to the Incremental Taxes deposited in the TIF Fund attributable to the taxes levied on the Theater Property as adjusted to reflect the amount of the City Fee described in Section 4.05(c) hereof; and (2) for Phase II and City Note #2, an amount equal to the Incremental Taxes deposited in the TIF Fund attributable to the taxes levied on the Residential Property as adjusted to reflect the amount of the City Fee described in Section 4.05(c) hereof.

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

"Certificates" shall mean together the Phase I Certificate and the Phase II Certificate.

"Change Order" shall mean any amendment or modification to the Scope Drawings, Plans and Specifications or the Project Budgets as described in Section 3.03, Section 3.04 and Section 3.05, respectively.

"Chicago's Sustainable Development Policy Compliance". The Developer will comply with all requirements of the City of Chicago's Sustainable Development Policy (a copy of which the Developer acknowledges having received from the City) as it pertains to the Project.

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

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

"City Fee" shall mean the fee described in Section 4.05(c) hereof.

"City Funds" shall mean the funds paid to Developer pursuant to the City Notes and the City Funds Cash Payments (defined below) described in Section 4.03(b) hereof.

"City Funds Cash Payments" shall mean the funds paid to Developer pursuant to the funds from Incremental Taxes in relation to the Phase I described in Section 4.03(b) hereof. The maximum aggregate amount of City Funds Cash payments shall not be in excess of \$4,250,000.

"City Note #1" shall mean the City of Chicago Tax Increment Allocation Revenue Note (Congress Theater Phase I Redevelopment Project), Taxable Series A, to be in the form attached hereto as Exhibit M-1, in the maximum principal amount not to exceed \$4,600,000, issued by the City to Developer as provided herein. City Note #1 shall bear interest upon issuance at an annual rate equal to the median value of the Corporate BBB Bond Index Rate (20 year) as published by Bloomberg for 15 business days prior to the date of issuance of the City Note #1 plus 175 basis points but in no event exceeding six percent (6%) per annum. The maturity date of City Note #1 shall be no later than December 31, 2024, which is the expiration date of the Fullerton/Milwaukee Redevelopment Project Area.

"City Note #2" shall mean the City of Chicago Tax Increment Allocation Revenue Note (Congress Theater Phase II Redevelopment Project), Taxable Series A, to be in the form attached hereto as Exhibit M-2. The face value of City Note #2 shall be determined based on the assessment given to the Residential Property one year after the issuance of the Phase II Certificate, but shall be in a principal amount not to exceed \$800,000 and shall be issued by the City to Developer as provided herein. City Note #2 shall bear interest upon issuance at an annual rate equal to the median value of the Corporate BBB Bond Index Rate (20 year) as published by Bloomberg for 15 business days prior to the date of issuance of the City Note #2 plus 175 basis points but in no event exceeding six percent (6%) per annum. The maturity date of City Note #2 shall be no later than December 31, 2024, which is the expiration date of the Fullerton/Milwaukee Redevelopment Project Area.

"City Notes" shall mean, together, the City Note #1, and the City Note #2.

"City Note Taxable Interest Rate" shall mean the interest rate on the City Notes as provided in the respective definition of City Note #1 and City Note #2 herein.

"Closing Date" shall mean the date of execution and delivery of this Agreement by all parties hereto, which shall be deemed to be the date appearing in the first paragraph of this Agreement.

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

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

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

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

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

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

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

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

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

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

"Equity" shall mean funds consisting of Developer Equity and Senior Equity (other than funds derived from Lender Financing, Historic Tax Credits and PACE Funding) irrevocably available for the Project, in the amount set forth in Section 4.01 hereof, which amount may be increased pursuant to Section 4.06 (Cost Overruns) or Section 4.03(b).

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



"Escrow Agreement" shall mean each the Escrow Agreement establishing a construction escrow, entered into by the Title Company (or an affiliate of the Title Company), the Developer and the Developer's lender(s), in form and content reasonably acceptable to DPD.

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

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

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

"Financial Statements" shall mean complete audited financial statements of Developer prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods.

"General Contractor" shall mean the general contractor(s) hired by Developer pursuant to Section 6.01.

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

"Human Rights Ordinance" shall have the meaning set forth in Section 10 hereof.

"In Balance" shall have the meaning set forth in Section 4.07 hereof.

"Incremental Taxes" shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

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

"Investor" shall mean shall mean an institutional "Accredited Investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933 (the "Securities Act"), or a person (other than a dealer) whom the seller reasonably believes is a "Qualified Institutional Buyer" within the meaning of Rule 144A(a)(1) under the Securities Act.

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

"Local Tenants" shall mean tenants that are businesses, other than national or regional businesses or franchises, whose main locations operate in, or whose principals reside in the Logan Square Community Area.

"MBE(s)" shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by

the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

"MBE/WBE Budget" shall mean the budgets attached hereto as Exhibit H-2 with respect to each of the Phase I and Phase II portions of the Project, as described in Section 10.03.

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

"Milwaukee Corridor ARO Pilot Area Ordinance" shall have the meaning set forth in the Recitals hereof.

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

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

"Net Annual Cash Flow Phase I" shall mean the amount remaining from Net Operating Income after payment of debt service, repayment of TIF Funds pursuant to Section 4.09 herein, 25% return on senior equity (including accrued returns), senior equity principal, 25% return on Developer equity and developer equity principal. PACE Funding and Historic Tax Credits will not be counted as debt or equity, provided, however, that any annual payments required to be made pursuant to the PACE funding agreement shall be included as an expense in calculating Net Operating Income.

"Net Annual Cash Flow Phase II" shall mean the amount remaining from Net Operating Income after payment of debt service, 25% return on senior equity (including accrued returns), senior equity principal, 25% return on Developer equity and Developer equity principal. PACE Funding and Historic Tax Credits will not be counted as debt or equity. PACE Funding and Historic Tax Credits will not be counted as debt or equity, provided, however, that any annual payments required to be made pursuant to the PACE funding agreement shall be included as an expense in calculating Net Operating Income.

"Net Operating Income" shall mean, with respect to any given year, Project Revenues minus Operating Expenses with respect to each of the Phase I and Phase II portions of the Project.

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

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

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

"Operating Expenses" shall mean those certain operating expenses set forth in the audited annual Financial Statements including Debt Service and any Lender required reserves, but excluding any reserves arising in connection with a Capital Event, Income Taxes, Depreciation and Amortization.

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

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

"Phase I" shall mean the first phase of the Project which shall include that part of the Project, all as set forth in the Recitals herein and Section 3 hereof and as shown on the site plan attached hereto as Exhibit B.

"Phase I Certificate" shall mean the Certificate of Completion of Rehabilitation for Phase I described in Section 7 hereof.

"Phase I Compliance Period" shall mean a period beginning on the date of issuance of the Phase I Certificate and concluding on the ending date of the Term of the Agreement.

"Phase II" shall mean the second and final phase of the Project which shall include that part of the Project, all as set forth in the Recitals herein and Section 3 hereof and as shown on the site plan attached hereto as Exhibit B.

"Phase II Certificate" shall mean the Certificate of Completion of Construction for Phase II described in Section 7 hereof.

"Phase II Compliance Period" shall mean a period beginning on the date of issuance of the Phase II Certificate and concluding on the ending date of the Term of the Agreement.

"Plans and Specifications" shall mean initial construction documents containing a site plan and working drawings and specifications for the Project, as submitted to the City as the basis for obtaining building permits for the Project. There may be separate Plans and Specifications for Phase I and Phase II.

"Prior Expenditure(s)" shall have the meaning set forth in Section 4.05(a) hereof.

"Prohibited Uses" shall mean the Prohibited Uses set forth in Exhibit R.

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

"Project Activities" shall include, but not be limited to mean Environmental Remediation, Demolition, Site Preparation, Building Construction, all soft costs directly related to new construction or rehabilitation (A&E, construction management, etc.), Construction contingency, as also listed in the MBE/WBE Budgets attached hereto as Exhibit H-2.

"Project Revenues" shall mean those certain revenues for the Project as set forth in the audited annual Financial Statements, including net proceeds to the Developer (as evidenced on the executed settlement statement), resulting from a Capital Event.

"Phase I Budget" shall mean the budget for Phase I attached hereto as Exhibit H-1, showing the total cost of Phase I by line item, furnished by Developer to DPD, in accordance with Section 3.03 hereof.

"Phase II Budget" shall mean the budget for Phase II, furnished by Developer to DPD, in accordance with Section 3.03 hereof.

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

"Redevelopment Area" shall have the meaning set forth in the Recitals hereof.

"Redevelopment Plan" shall have the meaning set forth in the Recitals hereof.

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

"Requisition Form – Phase I" shall mean the document, in the form attached hereto as Exhibit L-1, to be delivered by Developer to DPD pursuant to Section 4.04 of this Agreement.

"Requisition Form – Phase II" shall mean the document, in the form attached hereto as Exhibit L-2, to be delivered by Developer to DPD pursuant to Section 4.04 of this Agreement.

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

"Survey" shall mean a plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property, meeting the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, effective February 23, 2011, dated within 75 days prior to the Closing Date, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property in connection with the construction of the Facility and related improvements as required by the City or lender(s) providing Lender Financing).

"Term of the Agreement" shall mean the period of time commencing on the Closing Date and ending on the later of the tenth (10<sup>th</sup>) anniversary of the date of issuance of the Phase I Certificate or the date on which the Redevelopment Area is no longer in effect.

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

"TIF Fund" shall mean the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

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

"TIF Ordinances" shall have the meaning set forth in the Recitals hereof.

"Title Company" shall mean [\_\_\_\_\_].

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

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

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

### SECTION 3. THE PROJECT

3.01 The Project. The Project will be constructed in two (2) phases. With respect to Phase I, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of Section 18.17 hereof: (i) commence construction no later than April 1, 2019; and (ii) complete construction and conduct business operations therein no later than December 31, 2020. With respect to Phase II, the Developer shall, subject to the provisions in Section 3.13 herein, commence and complete construction of Phase II on a date agreed to in writing by the City pursuant to Phase II Plans and Specifications previously submitted to and acceptable to the City, and subject to the provisions of Section 18.17 hereof.

3.02 Scope Drawings and Plans and Specifications. Developer has delivered the Scope Drawings and Plans and Specifications to DPD and DPD has approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DPD as a Change Order pursuant to Section 3.04 hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan and all applicable federal, state and local laws, ordinances and regulations. Developer shall submit all necessary documents to the City's Department of Buildings, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

3.03 Project Budgets. (A) Developer has furnished to DPD, and DPD has approved, a Phase I Budget showing total costs for the Phase I in an amount not less than Sixty-nine million two hundred forty-one thousand and fifty Dollars (\$69,241,050). Developer hereby certifies to the City that (a) the City Funds, together with Developer Funds as described in Section 4.01 and Section 4.02 hereof, shall be sufficient to complete Phase I of the Project; and (b) the Phase I Budget is true, correct and complete in all material respects. Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Phase I Budget for approval pursuant to Section 3.04 hereof.

(B) Developer shall furnish to DPD for DPD's review and approval before the commencement of construction of Phase II of the Project, a Phase II Budget showing total costs for Phase II in an amount acceptable to the City. Developer shall certify to the satisfaction of the City that (a) the City Funds, together with Developer Funds as described in the Phase II Budget, shall be sufficient to complete Phase II of the Project; and (b) the Phase II Budget is true, correct and complete in all material respects. Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Phase II Budget for approval pursuant to Section 3.04 hereof.

3.04 Change Orders. Except as provided below in this Section 3.04, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to changes to the Project must be submitted by Developer to DPD concurrently with the progress

reports described in Section 3.07 hereof; provided, that any Change Order relating to any of the following must be submitted by Developer to DPD for DPD's prior written approval: (a) a reduction in the gross or net square footage of Phase I or Phase II by five percent (5%) or more (either individually or cumulatively); (b) a change in the use of Developer Space to a use other than as described in Recital D to this Agreement; (c) a delay in the completion of the Project by six (6) months or more; or (d) Change Orders resulting in an aggregate increase to the Phase I or Phase II Budget for the Project of ten percent (10%) or more. Developer shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by Developer of DPD's written approval (to the extent said City prior approval is required pursuant to the terms of this Agreement). The Construction Contract, and each contract between the General Contractor and any subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to Developer. Notwithstanding anything to the contrary in this Section 3.04, Change Orders other than those set forth above do not require DPD's prior written approval as set forth in this Section 3.04, but DPD shall be notified in writing of all such Change Orders within 10 business days after the execution of such Change Order and Developer, in connection with such notice, shall identify to DPD the source of funding therefor and shall be included in the Developer's Quarterly Progress Reports (as defined herein).

3.05 DPD Approval. Any approval granted by DPD of the Scope Drawings, Plans and Specifications and the Change Orders is for the purposes of this Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by DPD pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

3.06 Other Approvals. Any DPD approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, Developer's obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals) hereof. Developer shall not commence construction of the Project until Developer has obtained all necessary permits and approvals (including but not limited to DPD's approval of the Scope Drawings and Plans and Specifications) and proof of the General Contractor's and each subcontractor's bonding as required hereunder.

3.07 Progress Reports and Survey Updates. Developer shall provide DPD with written quarterly progress reports ("Quarterly Progress Reports") detailing the status of the Project, including duplicates of applicable support documentation verifying the disbursement and receipt of overall Project funds; and including a revised completion date, if necessary (with any change in completion date being considered a Change Order, requiring DPD's written approval pursuant to Section 3.04). Developer shall provide three (3) copies of an updated Survey to DPD upon the request of DPD or any lender providing Lender Financing, reflecting improvements made to the Property.

3.08 Inspecting Agent or Architect. An independent agent or architect (other than Developer's architect) approved by DPD shall be selected to act as the inspecting agent or architect, at Developer's expense, for the Project. The inspecting agent or architect shall perform periodic inspections with respect to the Project, providing certifications with respect thereto to DPD, prior to requests for disbursement for costs related to the Project hereunder.

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

3.10 Signs and Public Relations. Developer shall erect a sign of size and style approved by the City in a conspicuous location on the Property during the Project, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding Developer, the Property and the Project in the City's promotional literature and communications.

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

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

3.13 Cancellation of Phase II. It is agreed that Phase II shall not be cancelled without prior written notice submitted to DPD not more than six (6) months after the date of issuance of the Phase I Certificate and before the commencement of construction of Phase II.

3.14 The Developer Parties. New Congress shall own the Theater Property and undertake Phase I and shall operate Phase I in accordance with the Operating Covenant, the Naming Covenant, the Marquee Covenant, and this Agreement. Arthur 7159 shall own the Residential Property and undertake Phase II as applicable in accordance with this Agreement. New Congress, LLC and Arthur 7159 each agree that neither shall take any action which shall impede the other's performance under this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, each of New Congress and Arthur 7159 shall be jointly and severally liable for the obligations of the other party under this Agreement; provided, however, that the responsibility for repaying any City Funds to the City and complying with Phase I obligations and covenants that may be required pursuant to the terms of this Agreement shall be solely the responsibility of New Congress.

#### SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. (A) The cost of Phase I is estimated to be \$69,241,050, to be applied in the manner set forth in the Phase I Budget. Such costs shall be funded from the following sources:

Senior Equity (from Investor)	
Anschutz Entertainment Group ("AEG")	\$ 4,000,000
Historic Tax Credit Monetization	\$ 7,014,487
Developer Equity	\$ 8,641,038

Total Senior and Developer Equity (subject to <u>Sections 4.03(b) and 4.06</u> )	\$ 19,655,525
Lender Financing	\$ 36,066,828
TIF Bridge Loan	\$ 2,218,697
PACE Financing	\$11,300,000
ESTIMATED TOTAL	\$69,241,050
City Note #1	\$4,600,000
City Funds Cash Payments	\$4,250,000
ESTIMATED TOTAL CITY FUNDS (subject to <u>Section 4.03</u> herein)	\$8,850,000

(B) The cost of the Phase II is estimated to be not in excess of \$25,000,000, to be applied in the manner set forth in the Phase II Budget, as deemed acceptable to DPD. Such costs shall be funded from certain Lender Financing as deemed acceptable to DPD and the City Note #2 in the maximum amount of \$800,000 (subject to Section 4.03 herein).

Equity	TBD
Total Equity	TBD
Lender Financing	TBD
TIF Bridge Loan	TBD
ESTIMATED TOTAL	\$25,000,000
City Note #2	\$800,000
ESTIMATED TOTAL CITY FUNDS (subject to <u>Section 4.03</u> herein)	\$800,000

4.02 Developer Funds. Developer Equity, Senior Equity, Historic Tax Credits, PACE Funding and Lender Financing shall be used to pay all Project costs, including but not limited to Redevelopment Project costs and costs of TIF-Funded Improvements.

4.03 City Funds.

(a) Uses of City Funds. City Funds may only be used to pay directly or reimburse Developer for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit C sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to Sections 4.03(b) and 4.05(d)), contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost. City Funds shall not be paid to Developer hereunder prior to the issuance of a Certificate.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5 hereof, the City hereby agrees to provide City



funds from the sources and in the amounts described directly below with respect to the Phase I and the Phase II (the "City Funds") to pay for or reimburse Developer for the costs of the TIF-Funded Improvements:

Phase I

<u>Sources of City Funds</u>	<u>Maximum Amount</u>
Available Incremental Taxes with respect to Theater Property City Note #1 upon issuance of Phase I Certificate	\$4,600,000
Area Wide Incremental Taxes City Funds Cash Payment upon issuance of Phase I Certificate	\$1,750,000
Area Wide Incremental Taxes City Funds Cash Payment upon first (1 <sup>st</sup> ) anniversary of issuance of Phase I Certificate	\$1,500,000
Area Wide Incremental Taxes City Funds Cash Payment upon second (2 <sup>nd</sup> ) anniversary of issuance of Phase I Certificate	\$1,000,000

Phase II

<u>Sources of City Funds</u>	<u>Maximum Amount</u>
Available Incremental Taxes with respect to Residential Property City Note #2 upon issuance of Phase II Certificate	\$800,000

The total Project cost is at least \$69,241,050 (as described in Section 4.01 hereof, and the amount of City Funds will be reduced dollar for dollar if the total Project cost is less than \$69,241,050. The \$5,400,000 to be derived from Available Incremental Taxes and the \$4,250,000 aggregate principal amount of City Funds Cash Payments to be derived from Incremental Taxes for each of Phase I and Phase II shall be available to pay costs related to TIF-Funded Improvements and allocated by the City for that purpose only so long as:

(i) The amount of the Available Incremental Taxes and Incremental Taxes deposited into the TIF Fund shall be sufficient to pay for such costs;

(ii) Developer provides evidence that Developer has incurred TIF-eligible costs for the Project, in an equal amount to, or greater than \$9,650,000; and

(ii) No Event of Default or condition for which the giving of notice or the passage of time, or both, would constitute an Event of Default exists under this Agreement.

Developer acknowledges and agrees that the City's obligation to pay for the TIF-Funded Improvements up to a maximum of \$9,650,000 is contingent upon the fulfillment of the conditions

set forth in parts (i), (ii), and (iii) above. In the event that such conditions are not fulfilled, the amount of Equity to be contributed by Developer pursuant to Section 4.01 hereof shall increase proportionately.

Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5 hereof, the City hereby agrees to issue to New Congress: (i) City Note #1 in the principal amount of \$4,600,000 upon issuance of the Phase I Certificate; (ii) a City Funds Cash Payment in the amount of \$1,750,000 upon the issuance of the Phase I Certificate; (iii) a City Funds Cash Payment in the amount of \$1,500,000 upon the first anniversary of the issuance of the Phase I Certificate; (iv) a City Funds Cash Payment in the amount of \$1,000,000 upon the second anniversary of the issuance of the Phase I Certificate; and (v) City Note #2 in the principal amount of \$800,000 upon issuance of the Phase II Certificate. The aggregate amount of all the City Funds Cash Payments shall be \$4,250,000. The principal amounts of City Note #1 and City Note #2, plus the aggregate amount of the City Fund Cash Payments shall be an amount equal to the costs of the TIF-Funded Improvements which have been incurred by Developer and are to be reimbursed by the City through payments of principal and interest on the City Note #1, the City Note #2 and the City Funds Cash Payments subject to the provisions hereof. The total Project cost is at least \$69,241,050 (as described in Section 4.01 hereof, the amount of City Funds will be reduced dollar for dollar if the total Project cost is less than \$69,241,050. The \$5,400,000 to be derived from Available Incremental Taxes and the \$4,250,000 aggregate principal amount of City Funds Cash Payments to be derived from Incremental taxes for each of Phase I and Phase II shall be available to pay costs related to TIF-Funded Improvements and allocated by the City for that purpose; provided, however, that payments under City Note #1 and City Note #2 are subject to the amount of Available Incremental Taxes and the City Fund Cash Payments are subject to the amount of Incremental Taxes deposited into the TIF Fund being sufficient for such payments. The first payment of principal and interest on City Note #1 will be on April 1<sup>st</sup> of the year following the issuance of City Note #1, and thereafter the City will make payments on City Note #1 annually on or about May 1<sup>st</sup>. The first payment of principal and interest on City Note #2 will be on May 1<sup>st</sup> of the year following the issuance of City Note #2, and thereafter the City will make payments on City Note #1 annually on or about May 1<sup>st</sup>.

4.04 Requisition Form. Upon the issuance of the Phase I Certificate and the Phase II Certificate, and prior to each May 1 (or such other date as the parties may agree to) thereafter, beginning in [2019] and continuing throughout the earlier of (i) the Term of the Agreement or (ii) the date that Developer has been reimbursed in full under this Agreement, Developer shall provide DPD with a Requisition Form, along with the documentation described therein. Requisition for reimbursement of TIF-Funded Improvements shall be made not more than one time per calendar year (or as otherwise permitted by DPD). On each May 1 (or such other date as may be acceptable to the parties), beginning in [2019] and continuing throughout the Term of the Agreement, Developer shall meet with DPD at the request of DPD to discuss the Requisition Form(s) previously delivered.

#### 4.05 Treatment of Prior Expenditures and Subsequent Disbursements.

(a) Prior Expenditures. Only those expenditures made by Developer with respect to the Project prior to the date of issuance of the Phase I Certificate and the Phase II Certificate, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Project Budgets, shall be considered previously contributed Equity or Lender. DPD will consider Prior Expenditures on a case by case basis. Financing hereunder (the "Prior Expenditures"). DPD shall have the right, in its sole discretion, to disallow any such expenditure as a Prior Expenditure. Exhibit I hereto sets forth the prior expenditures approved by DPD as of the date

hereof as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements shall not be reimbursed to Developer, but shall reduce the amount of Equity and/or Lender Financing required to be contributed by Developer pursuant to Section 4.01 hereof.

(b) Reserved.

(c) City Fee. Annually, the City may allocate an amount not to exceed five percent (5%) of the Available Incremental Taxes for each of the Phase I and the Phase II for payment of costs incurred by the City for the administration and monitoring of the Redevelopment Area, including the Project. Such fee shall be in addition to and shall not be deducted from or considered a part of the City Funds, and the City shall have the right to receive such funds prior to any payment of City Funds hereunder.

(d) Allocation Among Line Items. Disbursements for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line item only, with transfers of costs and expenses from one line item to another, without the prior written consent of DPD, being prohibited; provided, however, that such transfers among line items, in an amount not to exceed \$25,000 or \$100,000 in the aggregate, may be made without the prior written consent of DPD.

(e) Reserved.

4.06 Cost Overruns. If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to Section 4.03 hereof, or if the cost of completing Phase I or Phase II of the Project exceeds each of the Phase I or Phase II Budgets, Developer shall be solely responsible for such excess cost, and shall hold the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds and of completing the Project.

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

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

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

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

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

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

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

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

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

4.08 Conditional Grant. The City Funds being provided hereunder are being granted on a conditional basis, subject to the Developer's compliance with the provisions of this Agreement. The City Funds are subject to being reimbursed by the Developer to the City subject to the rights and limitations and as otherwise provided in Section 4.09, Section 15.02 and Section 15.03 hereof.

4.09 Return of City Funds Upon Sale or Transfer. (A) In the event of a refinance, sale or transfer of the Theater Property ("Phase I Capital Event") or any part thereof occurring on or before the fifth-year anniversary of the issuance of the Phase I Certificate (the "Phase I Return Period") provided, however, that the replacement of financing for construction of the Project Phase I by more permanent financing of the Project costs, as deemed acceptable by DPD, shall not constitute a Phase I Capital Event, the Developer agrees to an overall reduction to the amount of the City Funds related to Phase I of the Project based on the following schedule:

Year of Capital Event	% Reduction of Total Cash Funds
Issuance of Certificate of Occupancy ("COO") to 1 <sup>st</sup> Anniversary	100%
1 <sup>st</sup> to 2 <sup>nd</sup> Anniversary	80%
2 <sup>nd</sup> to 3 <sup>rd</sup> Anniversary	60%
3 <sup>rd</sup> to 4 <sup>th</sup> Anniversary	40%
4 <sup>th</sup> to 5 <sup>th</sup> Anniversary	20%

If the Phase I Certificate is not issued prior to the first year anniversary of the COO, the Developer agrees to an overall reduction to the amount of the City Funds related to Phase I of the Project based on the following schedule:

Year of Capital Event	% Reduction of Total Cash Funds
Issuance of Phase I Certificate to 1 <sup>st</sup> Anniversary	100%
1 <sup>st</sup> to 2 <sup>nd</sup> Anniversary	75%
2 <sup>nd</sup> to 3 <sup>rd</sup> Anniversary	50%
3 <sup>rd</sup> to 4 <sup>th</sup> Anniversary	25%

Under no circumstances will the provisions under this Section 4.09 be in place for less than four (4) years from the issuance of the Phase I Certificate.

The manner and source from which the City Funds for Phase I will be reduced will be at the discretion of the City but could mean a cessation of the future cash payments, a reduction of the face value of City Note #1 or the return of the City Funds related to Phase I paid to date. The Developer shall never be required to pay and remit to the City an amount of money greater than the amount of the City Funds related to Phase I paid to date from the City.

If the Theater Property becomes subject to an option or other agreement to pursue a Capital Event during the Phase I Return Period, this Section 4.09 shall apply regardless of whether any resulting Capital Event actually occurs within the Phase I Return Period.

(B) In the event of a refinance, sale or transfer of the Residential Property (a "Phase II Capital Event") or any part thereof occurring on or before the fifth-year anniversary of the issuance of the Phase II Certificate (the "Phase II Return Period") provided, however, that the replacement of financing for construction of the Project Phase II by more permanent financing of the Project costs, as deemed acceptable by DPD, shall not constitute a Phase II Capital Event, the Developer agrees to pay and remit to the City an amount equal to one hundred percent (100%) of the City Funds related to Phase II of the Project paid. Additionally, all future City Funds related to Phase II of the Project payments, if any, shall cease. If the Residential Property becomes subject to an option or other agreement to pursue a Capital Event during the Phase II Return Period, this Section 4.09 shall apply regardless of whether any resulting Residential Capital Event actually occurs within the Phase II Return Period. The covenants set forth in this Section shall run with the land and be binding upon any transferee.

4.10 Annual Recapture. From the 5<sup>th</sup> year anniversary of the issuance of the Phase I Certificate until the end of the Phase I Compliance Period, the City will be entitled to receive 50% of the Net Annual Cash Flow generated from the operations and/or sale of the Phase I. The covenants set forth in this Section shall run with the land and be binding upon any transferee.

## SECTION 5. CONDITIONS PRECEDENT

The following conditions have been complied with to the City's satisfaction on or prior to the Closing Date:

5.01 Project Budgets. Developer has submitted to DPD, and DPD has approved, the Project Budgets in accordance with the provisions of Section 3.03 hereof.

5.02 Scope Drawings and Plans and Specifications. Developer has submitted to DPD, and DPD has approved, the Scope Drawings and Plans and Specifications for Phase I of the Project in accordance with the provisions of Section 3.02 hereof.

5.03 Other Governmental Approvals. Developer has secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to DPD.

5.04 Financing. (A) Developer has furnished proof reasonably acceptable to the City that Developer has Equity and Lender Financing in the amounts set forth in Section 4.01 hereof to complete Phase I and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender Financing, Developer has furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by Developer as needed and are sufficient (along with the Equity, AEG Contribution, PACE Funds and Historic Tax Credits set forth in Section 4.01) to complete Phase I.

Any liens against the Phase I Property in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein pursuant to a Subordination Agreement, in the form acceptable to the City attached hereto and incorporated herein as Exhibits N-1 and N-2, executed on or prior to the Closing Date, which is to be recorded, at the expense of Developer, with the Office of the Recorder of Deeds of Cook County.

(B) Unless the Developer has provided timely notice to DPD of the cancellation of Phase II as provided herein, the Parties agree that not more than 6 (six) months after the issuance of the Phase I Completion Certificate, Developer shall furnish proof reasonably acceptable to the City that Developer has Equity and Lender Financing in the amounts deemed acceptable to the City to complete Phase II and satisfy its obligations under this Agreement and shall deliver to DPD a copy of the construction escrow agreement entered into by Developer regarding the Lender Financing in a form acceptable to DPD. If a portion of such funds consists of Lender Financing, Developer shall furnish proof as of the Closing Date that the proceeds thereof are available to be drawn upon by Developer as needed and are sufficient (along with such other Equity and funds as deemed necessary by DPD to complete Phase II).

Any liens against the Phase II Property in existence shall be subordinated to certain encumbrances of the City set forth herein pursuant to a Subordination Agreement, in the form acceptable to the City attached hereto and incorporated herein as Exhibits N-1 and N-2, executed on or prior to the Closing Date, which is to be recorded, at the expense of Developer, with the Office of the Recorder of Deeds of Cook County.

5.05 Title. On the Closing Date, Developer has furnished the City with a copy of the Title Policy for the Property, certified by the Title Company, showing Developer as the named insured. The Title Policy is dated as of the Closing Date and contains only those title exceptions listed as Permitted Liens on Exhibit G hereto and evidences the recording of this Agreement pursuant to the provisions of Section 8.18 hereof. The Title Policy also contains such endorsements as shall be required by Corporation Counsel, including but not limited to an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, access and survey. Developer has provided to DPD, on or prior to the Closing Date, documentation related to the ownership of the Property and certified copies of all easements and encumbrances of record with respect to the Property not addressed, to DPD's satisfaction, by the Title Policy and any endorsements thereto.

5.06 Evidence of Clean Title. Developer, at its own expense, has provided the City with searches as indicated in the chart below under Developer's name [(and the following trade names of

Developer: \_\_\_\_\_)] showing no liens against Developer, the Property or any fixtures now or hereafter affixed thereto, except for the Permitted Liens:

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

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

5.08 Insurance. Developer, at its own expense, has insured the Property in accordance with Section 12 hereof, and has delivered certificates required pursuant to Section 12 hereof evidencing the required coverages to DPD.

5.09 Opinion of Developer's Counsel. On the Closing Date, Developer has furnished the City with an opinion of counsel, substantially in the form attached hereto as Exhibit J, with such changes as required by or acceptable to Corporation Counsel. If Developer has engaged special counsel in connection with the Project, and such special counsel is unwilling or unable to give some of the opinions set forth in Exhibit J hereto, such opinions were obtained by Developer from its general corporate counsel.

5.10 Evidence of Prior Expenditures. Developer has provided evidence satisfactory to DPD in its sole discretion of the Prior Expenditures in accordance with the provisions of Section 4.05(a) hereof.

5.11 Financial Statements. Developer has provided its Financial Statements for its most recent three fiscal years, as well as audited or unaudited interim financial statements and the Financial Statements from the most recent three fiscal years, as well as audited or unaudited interim financial statements of those entities with an ownership interest in the Project to DPD.

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

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

5.14 Corporate Documents; Economic Disclosure Statement. The Developer has provided a copy of its Articles of Organization containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of its state of organization and all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; Operating Agreement of the limited liability company; and such other documentation as the City has requested.

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

5.15 Litigation. Developer has provided to Corporation Counsel and DPD, a description of all pending or threatened litigation or administrative proceedings involving 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 Leases. Developer has provided to the City copies of as well as disclosing all current and prospective leases and lease termination agreements related to the Theater Property, the Residential Property and the Project.

5.17 Material Agreements. The Developer shall provide to the City at least thirty (30) days prior to the Closing Date, copies of all material agreements and documents relating to the Project, including, without limitation, all deeds, easements, construction agreements, development and land use agreements.

## SECTION 6. AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for General Contractor and Subcontractors. (a) Except as set forth in Section 6.01(b) below, prior to entering into an agreement with a General Contractor or any subcontractor for construction of the Project, Developer shall solicit, or shall cause the General Contractor to solicit, bids from qualified contractors eligible to do business with, and having an office located in, the City of Chicago, and shall submit all bids received to DPD for its inspection and written approval. (i) For the TIF-Funded Improvements, Developer shall select the General Contractor (or shall cause the General Contractor to select the subcontractor) submitting the lowest responsible bid who can complete the Project in a timely manner. If Developer selects a General Contractor (or the General Contractor selects any subcontractor) submitting other than the lowest responsible bid for the TIF-Funded Improvements, the difference between the lowest responsible bid and the bid selected may not be paid out of City Funds. (ii) For Project work other than the TIF-



Funded Improvements, if Developer selects a General Contractor (or the General Contractor selects any subcontractor) who has not submitted the lowest responsible bid, the difference between the lowest responsible bid and the higher bid selected shall be subtracted from the actual total Project costs for purposes of the calculation of the amount of City Funds to be contributed to the Project pursuant to Section 4.03(b) hereof. Developer shall submit copies of the Construction Contract to DPD in accordance with Section 6.02 below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof. Developer shall ensure that the General Contractor shall not (and shall cause the General Contractor to ensure that the subcontractors shall not) begin work on the Project until the Plans and Specifications have been approved by DPD and all requisite permits have been obtained.

(b) If, prior to entering into an agreement with a General Contractor for construction of the Project, Developer does not solicit bids pursuant to Section 6.01(a) hereof, then the fee of the General Contractor proposed to be paid out of City Funds shall not exceed 5% of the total amount of the Construction Contract. Except as explicitly stated in this paragraph, all other provisions of Section 6.01(a) shall apply, including but not limited to the requirement that the General Contractor shall solicit competitive bids from all subcontractors.

6.02 Construction Contract. Prior to the execution thereof, Developer shall deliver to DPD a copy of the proposed Construction Contract with the General Contractor selected to handle the Project in accordance with Section 6.01 above, for DPD's prior written approval, which shall be granted or denied within ten (10) business days after delivery thereof. Within ten (10) business days after execution of such contract by Developer, the General Contractor and any other parties thereto, Developer shall deliver to DPD and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

6.03 Performance and Payment Bonds. Prior to the commencement of any portion of the Project which includes work on the public way, Developer shall require that the General Contractor be bonded for its payment by sureties having an AA rating or better using a bond in the form attached as Exhibit O hereto. The City shall be named as obligee or co-obligee on any such bonds.

6.04 Employment Opportunity. Developer shall contractually obligate and cause the General Contractor and each subcontractor to agree to the provisions of Section 10 hereof.

6.05 Other Provisions. In addition to the requirements of this Section 6, the Construction Contract and each contract with any subcontractor shall contain provisions required pursuant to Section 3.04 (Change Orders), Section 8.09 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Employment Requirement) Section 10.03 (MBE/WBE Requirements, as applicable), Section 12 (Insurance) and Section 14.01 (Books and Records) hereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof.

## SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION

7.01 Certificate of Completion of Construction or Rehabilitation. (A) Upon completion of Phase I in accordance with the terms of this Agreement, including satisfaction of the conditions set forth in this Section 7.01, and upon Developer's written request, the City shall issue to Developer a Phase I Certificate in recordable form certifying that Developer has fulfilled its obligation to complete

Phase I in accordance with the terms of this Agreement. No Phase I Certificate shall be issued unless the City is satisfied that the Developer has fulfilled all of the following obligations that pertain to the Phase I Certificate being requested:

- (i) The Developer has completed construction of Phase I according to the Plans and Specifications.
- (ii) The Theater and the Hotel shall be open for business.
- (iii) The Developer has submitted to the City adequate documentation of the Phase I Cost.
- (iv) Not less than eighty percent (80%) of the retail space of Phase I is leased, occupied and open for business.
- (v) Not less than sixty percent (60%) of the retail space of Phase I is leased and occupied by Local Tenants. If Local Tenants cannot be sourced from the Logan Square Community Area, the Developer may source tenants other than national or regional businesses or franchises that are businesses whose main locations operate in, or whose principals reside in the City.
- (vi) Receipt of a Certificate of Occupancy, if applicable, or other evidence acceptable to the City that the Developer has complied with building permit requirements for Phase I.
- (vii) The City's Monitoring and Compliance Unit has verified that, at the time the Phase I Certificate is issued, the Developer is in full compliance as determined on a Phase I-wide basis with City requirements set forth in Section 10 and Section 8.09 (MBE/WBE, City Residency and Prevailing Wage) with respect to construction of Phase I, and that 100% of the Developer's MBE/WBE Commitment in Section 10.03 has been fulfilled.
- (viii) The Developer has incurred costs for TIF-Funded Improvements in an amount equal to or higher than the amount indicated on Exhibit C with respect to the Project, and that the Project costs are equal to, or in excess to \$69,241,050. If said amount is less, City Funds related to the Project will be reduced on a dollar for dollar basis at the sole discretion of the City.
- (ix) Evidence that the Developer has incurred TIF-eligible costs in an equal amount to, or greater than City Funds related to the Project.
- (x) Evidence that 12 of 14 affordable rental units in Phase I ("Phase I Affordable Units") are leased and occupied and that Phase I is otherwise in compliance with the Phase I Affordability Requirements as provided in this Agreement.
- (xi) There exists neither an Event of Default (after any applicable cure period) which is continuing nor a condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default.

(B) Upon completion of Phase II construction in accordance with the terms of this Agreement, including satisfaction of the conditions set forth in this Section 7.01, and upon Developer's written request, the City shall issue to Developer a Phase II Certificate in recordable form certifying that Developer has fulfilled its obligation to complete Phase II in accordance with the terms of this Agreement. No Phase II Certificate shall be issued unless the City is satisfied that the Developer has fulfilled all of the following obligations that pertain to the Phase II Certificate being requested:

- (i) The Developer has completed construction of Phase II according to the Plans and Specifications.
- (ii) The Developer has submitted to the City adequate documentation of the Phase II Project Cost.
- (iii) Evidence acceptable to the City that 90% of the residential units in the Project ("Project Affordable Units") are leased and occupied. Of the total number of the Project Affordable Units, 33% shall be affordable to Families with incomes not greater than 50% of area median income ("AMI"); 33% shall be affordable to Families with incomes not greater than 60% of AMI; and 33% shall be affordable to Low Income Families with incomes not greater than 80% of AMI. AMI shall be determined according to Section 2-45-115 of the Chicago Municipal Code (the "ARO") and the rules promulgated thereunder (collectively, the "Project Affordability Requirements").
- (iv) Receipt of a Certificate of Occupancy, if applicable, or other evidence acceptable to the City that the Developer has complied with building permit requirements for Phase II.
- (v) The City's Monitoring and Compliance Unit has verified that, at the time the Phase II Certificate is issued, the Developer is in full compliance as determined on a Phase II Project-wide basis with City requirements set forth in Section 10 and Section 8.09 (MBE/WBE, City Residency and Prevailing Wage) with respect to construction of the Phase II, and that 100% of the Developer's MBE/WBE Commitment in Section 10.03 has been fulfilled.
- (vi) There exists neither an Event of Default (after any applicable cure period) which is continuing nor a condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default.

(C) The City shall make its best efforts to respond to the Developer's written request for a Phase I Certificate or a Phase II Certificate within forty-five (45) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer in order to obtain the Certificate. There will be no deemed approval by the City associated with the Developer's request for a Certificate. The Developer may resubmit a written request for a Certificate upon completion of such measures.

7.02 Effect of Issuance of Certificate; Continuing Obligations. The Phase I Certificate relates only to the rehabilitation of Phase I and the Phase II Certificate relates only to the construction of Phase II. Upon the issuance of each respective Phase I Certificate and Phase II

Certificate, the City will certify that the terms of the Agreement specifically related to Developer's obligation to complete such respective activities have been satisfied. After the issuance of any of the Certificates, 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 a Certificate shall not be construed as a waiver by the City of any of its rights and remedies pursuant to such executory terms.

Those covenants specifically described at Sections 3.01, 4.09, 4.10, 8.02, 8.06, 8.14, 8.19, and 8.24 as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate; provided, that upon the issuance of a Certificate, the covenants set forth in Section 8.02 shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon Developer or a permitted assignee of Developer who, pursuant to Section 18.14 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 complete Phase I, and if undertaken, Phase II in accordance with the terms of this Agreement, then the City has, but shall not be limited to, any of the following rights and remedies

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

(b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. In the event that the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available pursuant to Section 4.01, Developer shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds; and

(c) the right to seek reimbursement of the City Funds from Developer.

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

## SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF DEVELOPER.

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

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

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

(c) the execution, delivery and performance by Developer of this Agreement has been duly authorized by all necessary action, and does not and will not violate its Articles of Organization or operating agreement as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which Developer is now a party or by which Developer is now or may become bound;

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

(e) Developer is now and for the Term of the Agreement shall 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, threatened or affecting Developer which would impair its ability to perform under this Agreement;

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

(h) 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 is bound;

(i) the Financial Statements are, and when hereafter required to be submitted will be, complete, correct in all material respects and accurately present the assets, liabilities, results of operations and financial condition of 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 the Phase I Certificate, or prior to the issuance of the Phase II Certificate (subject to the provisions of Section 3.13 of this Agreement), Developer shall not do any of the following without the prior written consent of DPD: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business; (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 or as provided in Section 4.09 of this Agreement, shall not, without the prior written consent of the Commissioner of DPD, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budgets; 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 pursuant to City ordinance, for services to any City agency ("City Contract") as an inducement for the City to enter into the Agreement or any City Contract with Developer in violation of Chapter 2-156-120 of the Municipal Code;

(m) neither Developer nor any affiliate of Developer is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (m) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

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

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

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

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

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

8.02 Covenant to Redevelop. Upon DPD's approval of the Project Budgets, the Scope Drawings and Plans and Specifications as provided in Sections 3.02 and 3.03 hereof, and Developer's receipt of all required building permits and governmental approvals, Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Milwaukee Corridor ARO Pilot Area Ordinance, the Scope Drawings, Plans and Specifications, Project Budgets and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or Developer. The covenants set forth in this Section shall run with the land and be binding upon any transferee, but shall be deemed satisfied upon issuance by the City of a Certificate with respect thereto.

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

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

8.05 Other Bonds. Developer shall, at the request of the City, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole discretion) any bonds in connection with the Redevelopment Area, the proceeds of which may be used to reimburse the City for expenditures made in connection with, or provide a source of funds for the payment for, the TIF-Funded Improvements (the "Bonds" or "Other Bonds"; provided, however, that any such amendments shall not have a material adverse effect on Developer or the Project. Developer shall, at Developer's expense, cooperate and provide reasonable assistance in connection with the marketing of any such Bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition and assisting the City in preparing an offering statement with respect thereto.

8.06 Maintenance and Operating Covenants. (a) Covenant to Maintain the Project Facilities. With respect to Phase I, New Congress hereby covenants and agrees to maintain the Theater portion of the Theater Property in condition so that it may operate as a theater throughout the Phase I Compliance Period. Maintaining the Theater portion of the Theater Property shall mean maintaining the Theater Property in a condition substantially consistent with its intended use and operation. New Congress hereby covenants and agrees to maintain or cause to maintain the Hotel portion of the Theater Property throughout the Phase I Compliance Period in a condition substantially consistent with its intended use and operation. With respect to Phase II, Arthur 7159 LLC hereby covenants and agrees to maintain the Phase II residential rental housing facilities throughout the Phase II Compliance Period in a manner and condition consistent with its intended use and operation. A default under this Covenant to Maintain the Project shall constitute an Event of Default without notice or opportunity to cure.

(b) Covenants to Maintain Theater Name and Marquee Sign. New Congress hereby covenants and agrees to maintain the name of the theater on the Theater Property as the "Congress Theater" throughout the Phase I Compliance Period (the "Naming Covenant"). New Congress further covenants and agrees to maintain the Theater Building's marquee sign, which exhibits the theater's name, in substantially the same location, size, and shape as it currently stands throughout the Phase I Compliance Period (the "Marquee Covenant" and together with the Naming Covenant and the Business Covenant, the "Operating Covenants"). The Naming Covenant and the Marquee

Covenant set forth in this Section 8.06 shall run with the land and be binding upon any transferee of the Property. A default under the Naming Covenant or the Marquee Covenant shall constitute an Event of Default without notice or opportunity to cure

(c) Covenant to Operate. New Congress (i) shall continuously operate or cause to be operated the Theater portion of Phase I as a Theater during the Phase I Compliance Period; (ii) shall continuously operate or cause to be operated the Hotel portion of Phase I as a Hotel during the Phase I Compliance Period; (iii) shall maintain the Theater and the Hotel open for business during the Phase I Compliance Period; (iv) shall continuously operate or cause to be operated the residential rental units portion of Phase I as residential rental housing during the Phase I Compliance Period; (v) shall maintain 100% of the rental housing units in the Theater Property occupied during the Phase I Compliance Period and in compliance with the ARO program rules and regulations; and (vi) shall continuously operate or cause to be operated Phase II as residential rental housing during the Phase I Compliance Period subject to the Project Affordability Requirements herein. There will be no cure period for a default under this Covenant to Operate.

(d) Covenant Runs with the Land; Remedy. The covenants set forth in this Section 8.06 shall run with the land and be binding upon any transferee of the Theater Property and the Residential Property throughout the Term of this Agreement. A default under this covenant shall constitute an Event of Default without notice or opportunity to cure. Upon expiration of the Term of this Agreement, if requested in writing by the Developer, the City shall deliver to Developer a release of this Agreement, in recordable form. In the event of a default of the Maintenance Covenant, Operating Covenant, the Naming Covenant, or the Marquee Covenant in this Section 8.06, the City shall have the right to recapture the City Funds previously paid or disbursed to the Developer for the related Project if such default is not cured during the applicable cure period, if any, and to exercise any remedies described or referred to in this Agreement.

8.07 Employment Opportunity; Progress Reports. Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and each subcontractor to abide by the terms set forth in Section 10 hereof for each Phase I and Phase II. Developer shall deliver to the City (i) written progress reports on a quarterly basis; duplicates of applicable support documentation verifying the disbursement and receipt of overall Project funds ("Quarterly Reports"); and (ii) monthly reports on MBE/WBE utilization, prevailing wage and City residency (based on expenditures to-date in relation to each of the Project Budgets) ("Monthly Reports") in compliance with the requirements of Sections 8.09, 10.02 and 10.03 of this Agreement. If any such reports indicate a shortfall in compliance, Developer shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, the manner in which Developer shall correct any shortfall. The City retains the right to review draw requests which must be accompanied by, among other things, invoices, cancelled checks, lien waivers, owner's sworn statement, general contractor's sworn statement and MBE/WBE subcontractor contract mounts and certification letters as a prerequisite for disbursement.

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

8.09 Prevailing Wage. Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "Department"), to all Project employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for



each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, Developer shall provide the City with copies of all such contracts entered into by Developer or the General Contractor to evidence compliance with this Section 8.09. If the Prevailing Wage requirement is not met, the City will not release the Project-related City Funds and shall be a basis for the City to pursue remedies under the provisions of Section 15.02 hereof.

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

8.11 Conflict of Interest. Pursuant to Section 5/11-74.4-4(n) of the Act, 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, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in Developer's business, the Property or any other property in the Redevelopment Area.

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

8.13 Financial Statements. Developer shall obtain and provide to DPD Financial Statements for Developer's fiscal years ended 2016, 2017, 2018 and each year thereafter for the Term of the Agreement. In addition, Developer shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

8.14 Insurance. Developer, at its own expense, shall comply with all provisions of Section 12 hereof.

8.15 Non-Governmental Charges. (a) Payment of Non-Governmental Charges. Except for the Permitted Liens, Developer agrees to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the Project, the Property or any fixtures that are or may become attached thereto, which creates, may create, or appears to create a lien upon all or any portion of the Property or Project; provided however, that if such Non-Governmental Charge may be paid in installments, 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 shall furnish to DPD, within thirty (30) days of DPD's request, official receipts from the appropriate entity, or other proof satisfactory to DPD, evidencing payment of the Non-Governmental Charge in question.

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

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 8.15); or

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

**8.16 Developer's Liabilities.** Developer shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder or to repay any material liabilities or perform any material obligations of Developer to any other person or entity. Developer shall 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.

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

**8.18 Recording and Filing.** Developer shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto to be recorded and filed against the Property on the date hereof in the conveyance and real property records of the county in which the Project is located. This Agreement shall be recorded prior to any mortgage made in connection with Lender Financing. Developer shall pay all fees and charges incurred in connection with any such recording. Upon recording, Developer shall immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

**8.19 Real Estate Provisions.**

(a) **Governmental Charges.**

(i) **Payment of Governmental Charges.** 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" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties of the State other than Cook

County, and municipalities other than the City) relating to 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 forfeiture of the Property. Developer's right to challenge real estate taxes applicable to the Property is limited as provided for in Section 8.19(c) below; provided, that such real estate taxes must be paid in full when due and may be disputed only after such payment is made. No such contest or objection shall 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,

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

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

(b) Developer's Failure To Pay Or Discharge Lien. If Developer fails to pay any Governmental Charge or to obtain discharge of the same, Developer shall advise DPD thereof in writing, at which time DPD may, but shall not be obligated to, and without waiving or releasing any obligation or liability of 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, shall be promptly disbursed to DPD by Developer. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate the City to pay any such Governmental Charge. Additionally, if 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 purpose of this Agreement, the total projected minimum assessed value of the Theater Property ("Minimum Assessed Value") is shown on Exhibit K attached hereto and incorporated herein by reference for the years noted on Exhibit K; and (B) the real estate taxes anticipated to be generated and derived from the respective portions of the Theater Property and the Phase I for the years shown are fairly and accurately indicated in Exhibit K.

Developer agrees that with respect to Phase II, (A) for the purpose of this Agreement, the total projected minimum assessed value of the Residential Property ("Minimum Assessed Value") shall be the assessed value set one year after the issuance of the Phase II Certificate by the Cook County Assessor's Office which the Developer shall acknowledge and provide to DPD no later than sixteen months after the issuance of the Phase II Certificate by the Cook County Assessor's Office; and (B) the real estate taxes anticipated to be generated and derived from the respective portions of the Residential Property shall be acknowledged and provided to DPD by the Developer no later than sixteen months after the issuance of the Phase II Certificate by the Cook County Assessor's Office.

(ii) Real Estate Tax Exemption. With respect to the Property or the Project, neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer shall, 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 shall, 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 (A) the Theater Property or Phase I below the amount of the Minimum Assessed Value as shown in Exhibit K for the applicable year; or (B) the Residential Property or Phase II assessed values set one year after the issuance of the Phase II Certificate as provided in Section 8.19(c)(ii) herein. Any default under this provision shall have no cure period.

(iv) No Objections. Neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer, shall object to or in any way seek to interfere with, on procedural or any other grounds, the filing of any Underassessment Complaint 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 "Underassessment Complaint" as used in this Agreement shall mean any complaint seeking to increase the assessed value of the Property up to (but not above) the Minimum Assessed Value as shown in Exhibit K or the Residential Property or Phase II assessed values set one year after the issuance of the Phase II Certificate as provided in Section 8.19(c)(ii) herein.

(v) Covenants Running with the Land. The parties agree that the restrictions contained in this Section 8.19(c) are covenants running with the land and this Agreement shall 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 shall be binding upon Developer and its agents, representatives, lessees, successors, assigns and transferees from and after the date hereof, provided however, that the covenants shall be released when the Redevelopment Area is no longer in effect. Developer agrees that any sale, lease, conveyance, or transfer of title to all or any portion of the Property or Redevelopment Area from and after the date hereof shall be made explicitly subject to such covenants and restrictions. Notwithstanding anything contained in this Section 8.19(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 8.19(c).

8.20 Annual Report(s). (a) Beginning with the issuance of the Certificates and continuing throughout the Phase I Compliance Period and the Phase II Compliance Period, Developer shall submit to DPD an Annual Compliance Report for each of the respective Phase I and Phase II at least sixty (60) days before May 1<sup>st</sup>, the payment date of the City Notes (the "City Notes Payment Date"). If the Annual Compliance Report is not received sixty (60) days prior to the City Notes Payment Date, the City shall provide notice to the Developer after which the Developer shall have ten (10) days to file the Annual Compliance Report. The Developer's failure to submit the Annual Compliance Report in a timely manner will result in a delay of City Funds payment(s) until any deficiencies are cured, and interest on the related City Note will accrue only up to the payment date designated in this Agreement.

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

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

8.22 Chicago Sustainable Development Policy. The Developer shall provide evidence acceptable to the City that they have complied with the Chicago Sustainable Development Policy for Phase I and Phase II within one (1) year after the date of the issuance of their respective Certificate. If a default occurs under the Chicago Sustainable Development Policy requirement, the City shall have the option to reduce the amount of the Project-related City Funds in at the sole discretion of DPD by Two-hundred and Fifty Thousand Dollars (\$250,000).

8.23. FOIA and Local Records Act Compliance.

(a) FOIA. The Developer acknowledges that the City is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et. seq., as amended ("FOIA"). The FOIA requires the City to produce records (very broadly defined in FOIA) in response to a FOIA request in a very short period of time, unless the records requested are exempt under the FOIA. If the Developer receives a request from the City to produce records within the scope of FOIA, then the Developer covenants to comply with such request within 48 hours of the date of such request. Failure by the Developer to timely comply with such request shall be an Event of Default.

(b) Exempt Information. Documents that the Developer submits to the City under Section 8.21, (Annual Compliance Report) or otherwise during the Term of the Agreement that

contain trade secrets and commercial or financial information may be exempt if disclosure would result in competitive harm. However, for documents submitted by the Developer to be treated as a trade secret or information that would cause competitive harm, FOIA requires that Developer mark any such documents as "proprietary, privileged or confidential." If the Developer marks a document as "proprietary, privileged and confidential", then DPD will evaluate whether such document may be withheld under the FOIA. DPD, in its discretion, will determine whether a document will be exempted from disclosure, and that determination is subject to review by the Illinois Attorney General's Office and/or the courts.

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

**8.24 Affordable Housing Covenant.** Developer agrees and covenants to the City that, prior to any foreclosure of the Property by a lender providing Lender Financing, the provisions of that certain Affordable Housing Covenant and Lien executed by Developer and DPD as of the date hereof shall govern the terms of Developer's obligation to provide affordable housing. Following foreclosure, if any, and from the date of such foreclosure through the Term of the Agreement, the following provisions shall govern the terms of the obligation to provide affordable housing under this Agreement:

(A) Phase I - Upon the issuance of the Phase I Certificate, the Developer agrees as follows:

(i) The residential rental housing portion of Phase I shall be operated and maintained solely as residential rental housing and as provided in A (ii) through and including A (v) below unless Section 8.24(B) applies.

(ii) One hundred percent (100%) of the total Phase I residential rental units ("Phase I Affordable Units") shall be available for occupancy to and to be occupied solely by one or more Low Income Families (as defined herein) meeting the Phase I Affordability Requirements, as defined below.

(iii) The Phase I Affordable Units shall consist of 33% affordable to Families with incomes not greater than 50% of area median income ("AMI") as defined in the ARO; 33% affordable to Families with incomes not greater than 60% of AMI as defined in the ARO; and 33% affordable to Families with incomes not greater than 80% of AMI as defined in the ARO (collectively, the "Phase I Affordability Requirements").

(iv) The Phase I Affordable Units shall be 100% occupied during the Phase I Compliance Period.

(v) The Phase I Affordable Units shall be in compliance with the provisions of the City Affordable Requirements Ordinance, Municipal Code § 2-45-115, and its related rules and regulations for the Term of the Agreement.

(B) Phase II - Upon the issuance of the Phase II Certificate, the Developer agrees as follows:

(i) Phase II shall be operated and maintained solely as residential rental housing.

(ii) The combined total of Phase I's residential rental units at the time of the issuance of the Phase I Certificate, and Phase II's residential rental units shall be in compliance with the Project Affordability Requirements as defined herein.

(iii) The unit mix of the Project Affordable Units must be the same as the overall unit mix of the Residential Project, as approved by DPD.

(iv) the Project Affordable Units shall be 100% occupied during the Term of the Agreement.

(v) The Project Affordable Units shall be in compliance with the provisions of the City Affordable Requirements Ordinance, Municipal Code § 2-45-115, and its related rules and regulations during the Term of the Agreement.

(C) As used in this Section 8.24, the term "Family" shall mean one or more individuals, whether or not related by blood or marriage.

(D) All of the Project Affordable Units shall be available for occupancy and be occupied solely by one or more Eligible Families (as defined below) upon initial occupancy; and all of the Affordable Units in the Project have monthly rents not in accordance with the ARO. Family size for such units shall be determined in accordance with the ARO and the rules promulgated thereunder.

(E) As used in this Section 8.24, the following terms have the following meanings:

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

(ii) "Eligible Families" shall mean Families whose annual income does not exceed fifty percent (50%), sixty percent (60%), or eighty percent (80%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time pursuant to the ARO, and thereafter such income limits shall apply to this definition.

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

(G) The City and Developer shall enter into a separate Affordable Housing Covenant and Lien to implement the provisions of this Section 8.24.

8.25 Job Readiness Program; Occupancy Covenant. (a) Developer shall undertake a job readiness program to work with the City through the Mayor's Office of Workforce Development to encourage the recruitment, hiring and training of City residents for the jobs created by Phase I of the Project and the operation of Developer's Phase I business on the Property.

(b) The Developer hereby covenants and agrees to maintain occupancy of a minimum of 80% of the retail space in each of Phase I and Phase II during the Compliance Period, by leasing to commercial space tenants whose operations shall not include any Prohibited Uses as set forth in Exhibit R, without the consent of the City. In addition, not less than 60% of the retail space in Phase I shall be occupied by Local Tenants during the Phase I Compliance Period. If Local Tenants cannot be sourced from the Logan Square Community Area, the Developer may source tenants

other than national or regional businesses or franchises that are businesses whose main locations operate in, or whose principals reside in the City.

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

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

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

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

(ii) a description of the Project;

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

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

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

(A) the equalized assessed value;

(B) the initial equalized assessed value;

(C) the incremental equalized assessed value;

(D) the composite tax rates;

(E) the available incremental taxes;

(F) the debt service of the City Note(s); and

(G) the debt service coverage ratio.



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

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

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

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

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

(i) Within five (5) days of the issuance of the Certificate:

(A) The Redevelopment Agreement, including the specimen of the City Note;

(B) The original feasibility study delivered to DPD; and

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

(ii) By February 15 of each year:

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

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

(C) The Consultant's Report.

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

(g) The Developer shall be responsible to pay or make provision for all costs and expenses relating to Developer's obligations hereunder, including but not limited to the fees and expenses of the Consultant and the costs of filing with EMMA. In addition to and not in limitation of the other provisions of this Agreement, Developer agrees to pay upon demand the City's out-of-pocket expenses, including attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement. This includes, subject to any limits under applicable law, attorney's fees and legal expenses.

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

## SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY

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

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

## SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS

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

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

in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

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

(c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

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

(e) Each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this Section 10.01 shall be a basis for the City to pursue remedies under the provisions of Section 15.02 hereof.

10.02 City Resident Construction Worker Employment Requirement. Developer agrees for itself and its successors and assigns, and shall contractually obligate its General Contractor and shall cause the General Contractor to contractually obligate its subcontractors, as applicable, to agree, that during the construction of Phase I and Phase II, they shall comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code (at least 50 percent (50%) of the total worker hours worked by persons on the site of each Project respectively shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, Developer, its General Contractor and each subcontractor shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions..

"Actual residents of the City" shall mean persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

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

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

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

At the direction of DPD, affidavits and other supporting documentation will be required of Developer, the General Contractor and each subcontractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

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

When work at the Project is completed, in the event that the City has determined that Developer has failed to ensure the fulfillment of the requirement of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the respective Phase I or Phase II Project Budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject Developer, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to Developer pursuant to Section 2-92-250 of the Municipal Code may be withheld by the City pending the Chief Procurement Officer's determination as to whether Developer must surrender damages as provided in this paragraph.

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

Developer shall cause or require the provisions of this Section 10.02 to be included in all construction contracts and subcontracts related to the Project.

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

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 10.03, during the course of Phase I and Phase II, at least the following percentages of the MBE/WBE Budget (as set forth in Exhibit H-2 hereto) shall be expended for contract participation by MBEs and by WBEs, the respective amounts of which shall be met individually and which will be taken into account for each of the Phase I and Phase II Budgets:

- (1) At least twenty-six percent (26%) by MBEs.
- (2) At least six percent (6%) by WBEs.

(b) For purposes of this Section 10.03 only, Developer (and any party to whom a contract is let by Developer in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by Developer in connection with the Project) shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code, as applicable.

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code, Developer's MBE/WBE commitment may be achieved in part by Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by Developer utilizing a MBE or a WBE as the General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials or services used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to Developer's MBE/WBE commitment as described in this Section 10.03. In accordance with Section 2-92-730, Municipal Code, Developer shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DPD.

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

Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

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

(f) Any reduction or waiver of Developer's MBE/WBE commitment as described in this Section 10.03 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code, as applicable. If the Developer seeks to exclude the cost of any of the applicable Project Activities from the MBE/WBE Budget as provided in Exhibit H-2 of this Agreement, the Developer must provide DPD with a list of those Program Activities, and the estimated cost of such Program Activities the Developer wishes to be excluded. The City, in its sole discretion, will determine if said Program Activities are to be excluded from the MBE/WBE Budget. The Developer may not request a waiver for any Project Activity and/or its associated cost after the earlier of the execution of this Agreement or the start of construction of the Project.

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

## SECTION 11. 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 and this Agreement and all Exhibits attached hereto, the Scope Drawings, Plans and Specifications and all amendments thereto, [the Bond

Ordinance] 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 Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from (A) all or any portion of the Property or (B) any other real property in which 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.

## SECTION 12. INSURANCE

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

(a) Prior to execution and delivery of this Agreement.

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

(iii) All Risk Property

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

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

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

(iii) Automobile Liability (Primary and Umbrella)

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

(iv) Railroad Protective Liability

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

(v) All Risk /Builders Risk

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

(vi) Professional Liability

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



(vii) Valuable Papers

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

(viii) Contractors Pollution Liability

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

(c) Post Construction:

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

(d) Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

## SECTION 13. INDEMNIFICATION

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

(i) Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement, including, be not limited to, Section 8.27; or

(ii) 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 improvement; or

(iii) the existence of any material misrepresentation or omission in this Agreement, any official statement, limited offering memorandum or private placement memorandum or

the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by Developer or any Affiliate Developer or any agents, employees, contractors or persons acting under the control or at the request of Developer or any Affiliate of Developer; or

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

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 shall contribute the maximum portion that it is permitted to pay and satisfy under the applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this Section 13.01 shall survive the termination of this Agreement.

#### SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

14.01 Books and Records. Developer shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to Developer's loan statements, if any, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at Developer's expense. Developer shall 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 three (3) business days' notice, any authorized representative of the City has access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

#### SECTION 15. DEFAULT AND REMEDIES

15.01 Events of Default. The occurrence of any one or more of the following events, subject to the provisions of Section 15.03, shall constitute an "Event of Default" by 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, assets, 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 to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

(e) the commencement of any proceedings in bankruptcy by or against Developer or for the liquidation or reorganization of Developer, or alleging that Developer is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of Developer'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; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

(f) the appointment of a receiver or trustee for Developer, for any substantial part of Developer's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of Developer; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within sixty (60) days after the commencement thereof;

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

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

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

(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 thirty (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);

(k) prior to the issuance of the Phase I Certificate or the Phase II Certificate, the sale or transfer of any part of the ownership interests of Developer, except to a wholly owned entity of the Developer, without the prior written consent of the City;

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

(m) The failure of the Developer, or the failure by any party that is a Controlling Person (defined in Section 1-23-010 of the Municipal Code) with respect to Developer to continuously operate Phase I in the manner described in this Agreement during the Phase I Compliance Period;

(n) The failure of the Developer, or the failure by any party that is a Controlling Person (defined in Section 1-23-010 of the Municipal Code) with respect to Developer to continuously operate Phase II or in the manner described in this Agreement, during the Phase II Compliance Period;

(o) the assignment or other direct or indirect transfer by the Developer of the Theater Lease without the prior written approval of the City (which shall be in the City's sole discretion));

(p) a Default (as defined in the Lease) by the Developer under the Lease that is not cured within the cure period, if any, granted under the Lease, or the Developer's execution of a Material Amendment without the prior written approval of the City under Section 8.24; or

(q) in addition to the events of Default outlined herein, any violation of covenants or any violation of the Operating Covenants herein shall also be considered Events of Default for which all applicable remedies, including termination of this Agreement, and the termination of the payments of City Funds shall apply.

For purposes of Sections 15.01(i) and 15.01(L) hereof, a person with a material interest in Developer shall be one owning in excess of seven and a half percent (7.5%) of Developer's membership, partnership or ownership interests.

**15.02 Remedies.** Upon the occurrence of an Event of Default, the City may terminate this Agreement and any other agreements to which the City and Developer are or shall be parties, suspend disbursement of City Funds, place a lien on the Project in the amount of City Funds paid, and/or seek reimbursement of any City Funds paid. 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 damages, injunctive relief or the specific performance of the agreements contained herein.

**15.03 Curative Period.** (a) In the event Developer shall fail 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 shall not be deemed to have occurred unless Developer has failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event Developer shall fail to perform a non-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 shall not be deemed to have occurred unless Developer has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured, provided, further, that there shall be no cure period under this Section 15.03 with respect to Developer's failure to comply with the Operations Covenant requirements of Section 8.06 hereof, and as otherwise stated herein.

(b) Except as otherwise stated herein, the Developer shall have two non-consecutive one-year cure periods during the Phase I Compliance Period which commences on the date of the issuance of the Phase I Certificate. The City shall have the right to cease City Funds payments; seek reimbursement for City Funds payments made to the Developer, and to terminate this Agreement if such Event of Default is not cured prior to the end of the cure period. Interest on Note #1 will not accrue during the cure period. Any year under which the Event of Default takes place and

is cured within the cure period shall not count toward the required 10 years of compliance or any other obligation of the Developer under this Agreement. If two Events of Default have occurred as determined by the City and have been independently cured within the cure period as described in this paragraph, then any subsequent Event of Default shall constitute an Event of Default without notice or opportunity to cure.

## SECTION 16. MORTGAGING OF THE PROJECT

All mortgages or deeds of trust in place as of the date hereof with respect to the Property or any portion thereof are listed on Exhibit G hereto (including but not limited to mortgages made prior to or on the date hereof in connection with Lender Financing) and are referred to herein as the "Existing Mortgages." Any mortgage or deed of trust that Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof is referred to herein as a "New Mortgage." Any New Mortgage that Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof with the prior written consent of the City is referred to herein as a "Permitted Mortgage." It is hereby agreed by and between the City and Developer as follows:

(a) In the event that a mortgagee or any other party shall succeed to Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under a New Mortgage (other than a Permitted Mortgage), whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 18.14 hereof, the City may, but shall 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 shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

(b) In the event that any mortgagee shall succeed to Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 18.14 hereof, 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 obligations and liabilities of "Developer" hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of Developer's interest under this Agreement, such party has no liability under this Agreement for any Event of Default of Developer which accrued prior to the time such party succeeded to the interest of Developer under this Agreement, in which case Developer shall 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 shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

(c) Prior to the issuance by the City to Developer of a Phase I Certificate or Phase II Certificate pursuant to Section 7 hereof, no New Mortgage shall be executed or financing undertaken with respect to the Property or any portion thereof without the prior written consent of the Commissioner of DPD. After a Phase I Certificate or Phase II Certificate have been issued pursuant to Section 7 hereof, if mortgagee or other permitted transferee executes a subordination agreement

acceptable to the City in which it subordinates its mortgage lien to the covenants in this Agreement that run with the land, City consent is not required.

**SECTION 17. NOTICE**

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) telecopy or facsimile; (c) overnight courier, or (d) registered or certified mail, return receipt requested.

<p><b>If to the City:</b></p> <p>City of Chicago          Department of Planning and Development          121 North LaSalle Street, Room 1000          Chicago, Illinois 60602          Attention: Commissioner</p>	<p><b>If to Developer:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Attention: _____</p> <p>With a copy to:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Attention: _____</p>
<p><b>With Copies To:</b></p> <p>City of Chicago          Department of Law          121 North LaSalle Street, Room 600          Chicago, Illinois 60602          Attention: Finance and Economic Development Division</p>	<p><b>With Copies To:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Attention: _____</p>

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to subsection (d) shall be deemed received two (2) business days following deposit in the mail.

**SECTION 18. MISCELLANEOUS**

18.01 Amendment. Except as provided in Section 3.13 herein, this Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement the Redevelopment Plan without the consent of any party hereto. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of

this Section 18.01 shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligations of Developer (including those set forth in Sections 10.02 and 10.03 hereof) by more than five percent (5%) or unless otherwise stated herein, materially changes the Project site or character of the Project or any activities undertaken by Developer affecting the Project site, the Project, or both, or increases any time agreed for performance by Developer by more than ninety (90) days.

18.02 Entire Agreement. This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

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

18.04 Further Assurances. Developer agrees to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

18.05 Waiver. Waiver by the City or Developer with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or Developer in writing. No delay or omission on the part of a party in exercising any right shall operate as a waiver of such right or any other right unless pursuant to the specific terms hereof. A waiver by a party of a provision of this Agreement shall not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing between the parties hereto, shall constitute a waiver of any such parties' rights or of any obligations of any other party hereto as to any future transactions.

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

18.07 Disclaimer. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

18.08 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

18.09 Severability. If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof, in any circumstance, is held invalid, this Agreement shall be construed as if such invalid part were never included herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.



18.10 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, or the Milwaukee Corridor ARO Pilot Area Ordinance, such ordinance(s) shall prevail and control.

18.11 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles.

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

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

18.14 Assignment. Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City. Any successor in interest to Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Sections 8.19 Real Estate Provisions and 8.23 (Survival of Covenants) hereof, for the Term of the Agreement. Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

18.15 Binding Effect. This Agreement shall be binding upon Developer, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of Developer, the City and their respective successors and permitted assigns (as provided herein). Except as otherwise provided herein, this Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right.

18.16 Force Majeure. Neither the City nor Developer nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

18.17 Business Economic Support Act. Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if Developer is required to provide notice under the WARN Act, Developer shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the

WARN Act notice to the Governor of the State, the 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.

18.18 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.

18.19 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, Developer agrees to pay upon demand the City's out-of-pocket expenses, including attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement. This includes, subject to any limits under applicable law, attorney's fees and legal expenses, whether or not there is a lawsuit, including attorney's fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services. Developer also will pay any court costs, in addition to all other sums provided by law.

18.20 Business Relationships. Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code, (B) that Developer has read such provision and understands that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a business relationship that creates a "Financial Interest" (as defined in Section 2-156-010 of the Municipal Code)(a "Financial Interest"), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a business relationship that creates a Financial Interest, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship that creates a Financial Interest, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. 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 hereby.

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

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

NEW CONGRESS, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

ARTHUR 7159 LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF CHICAGO

By: \_\_\_\_\_

David L. Reifman, Commissioner  
Department of Planning and Development

STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF COOK )

I, \_\_\_\_\_, a notary public in and for the said County, in the State aforesaid,  
DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the  
\_\_\_\_\_ of New Congress, LLC, an Illinois limited liability company (the  
ADeveloper"), 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 [\_\_\_\_\_] ]  
of Developer, as his/her free and voluntary act and as the free and voluntary act of Developer, for  
the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

(SEAL)



STATE OF ILLINOIS )  
  ) SS  
COUNTY OF COOK )

I, \_\_\_\_\_, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that David L. Reifman, personally known to me to be 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 and as the free and voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

EXHIBIT A

REDEVELOPMENT AREA

[To be attached at Closing Date]

EXHIBIT B

PROPERTY

[Subject to Survey and Title Insurance]

**THEATER PROPERTY LEGAL DESCRIPTION**

Lots 14 to 18 both inclusive, (except the north 16 feet of said Lot 14) of James M. Allen's Subdivision of Lots 8 to 11 in the subdivision by John Gray Guardian, of 8 acres east of and adjoining the West 25.62 acres of that part north of Milwaukee Plank Road of the Northeast ¼ of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, also

The Vacated Alley east of and adjoining Lots 14 to 18 both inclusive, (except the north 16 feet of said Lot 14) in James M. Allen's Subdivision aforesaid, also

Lots 12 to 15 both inclusive (except the east 3 feet of said Lot 15 and except that part lying in Milwaukee Avenue) in John Gray Guardian, of 8 acres east of and adjoining the West 25.62 acres of that part north of Milwaukee Plank Road of the Northeast ¼ of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, also

The Vacated East and West Alley north of and adjoining Lots 12 to 15 both inclusive (except the east 3 feet of said Lot 15) in John Gray Guardian, of 8 acres east of and adjoining the West 25.62 acres of that part north of Milwaukee Plank Road of the Northeast ¼ of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, also

Lots 11 to 15 both inclusive, (except the east 3 feet of each of said Lots) in Herman's Papsien's Subdivision of Lot 19 (except the north 60 feet thereof) in James M. Allen's Subdivision of Lots 8 to 11 in the subdivision by John Gray Guardian, of 8 acres east of and adjoining the West 25.62 acres of that part north of Milwaukee Plank Road of the Northeast ¼ of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PINs: 13-36-221-017-0000, 13-36-221-031-0000 and 13-36-221-032-0000

Common addresses: 2117-39 North Rockwell Avenue and 2115-39 North Milwaukee Avenue, Chicago, Illinois 60647

**RESIDENTIAL PROPERTY LEGAL DESCRIPTION**

Lots 6, 7, 8, 9, 10 and 11 in Powell's Subdivision of Lots 12 to 15 both inclusive in Gray's Subdivision of 8 acres lying east of and adjoining 25 acres north of the Plank Road in the Northeast ¼ of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PINs: 13-36-202-052-0000, 13-36-202-053-0000, 13-36-202-054-0000 and 13-36-202-055-0000

Common addresses: 2149-63 North Milwaukee Avenue and 2120-32 North Rockwell Avenue, Chicago, Illinois 60647



EXHIBIT C  
PROJECT  
TIF-FUNDED IMPROVEMENTS\*

<b>Acquisition</b>	\$	16,879,997
<b>Hard Costs</b>		
<b>General Conditions</b>	\$	1,440,226
<b>Site Work</b>	\$	1,465,563
<b>Concrete</b>	\$	486,090
<b>Masonry</b>	\$	3,134,546
<b>Metals</b>	\$	1,423,999
<b>Wood and Plastic</b>	\$	633,036
<b>Thermal and Moisture Protection</b>	\$	1,022,019
<b>Doors and Windows</b>	\$	2,276,721
<b>Finishes</b>	\$	2,888,452
<b>Specialties</b>	\$	189,170
<b>Equipment</b>	\$	-
<b>Furnishings</b>	\$	-
<b>Special Construction</b>	\$	4,859,581
<b>Conveying Systems</b>	\$	361,500
<b>Plumbing</b>	\$	2,056,680
<b>Fire Protection</b>	\$	384,000
<b>HVAC</b>	\$	2,995,250
<b>Electrical</b>	\$	3,048,547
<b>General Requirements</b>	\$	585,279
<b>Contingency</b>	\$	3,929,376
<b>Escalations</b>	\$	2,500,000
<b>Total Hard Costs</b>	\$	35,680,035

\*Notwithstanding the total of TIF-Funded Improvements or the amount of TIF-eligible costs, the assistance to be provided by the City is limited to the amount described in Section 4.03.

EXHIBIT D

(Intentionally Omitted)

EXHIBIT E

CONSTRUCTION CONTRACT

[To be attached at Closing Date]

EXHIBIT F

(Intentionally Omitted)

## EXHIBIT G

### PERMITTED LIENS

1. Liens or encumbrances against the Property:

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

2. Liens or encumbrances against Developer or the Project, other than liens against the Property, if any:

[To be completed by Developer's counsel, subject to City approval.]

EXHIBIT H-1

PHASE I BUDGET

**Acquisition** \$16,879,997

**Hard Costs**

<b>General Conditions</b>	\$1,440,226
<b>Site Work</b>	\$1,465,563
<b>Concrete</b>	\$486,090
<b>Masonry</b>	\$3,134,546
<b>Metals</b>	\$1,423,999
<b>Wood and Plastic</b>	\$633,036
<b>Thermal and Moisture Protection</b>	\$1,022,019
<b>Doors and Windows</b>	\$2,276,721
<b>Finishes</b>	\$2,888,452
<b>Specialties</b>	\$189,170
<b>Equipment</b>	\$109,000
<b>Furnishings</b>	\$96,550
<b>Special Construction</b>	\$4,859,581
<b>Conveying Systems</b>	\$361,500
<b>Plumbing</b>	\$2,056,680
<b>Fire Protection</b>	\$384,000
<b>HVAC</b>	\$2,995,250
<b>Electrical</b>	\$3,048,547
<b>General Requirements</b>	\$585,279
<b>Contingency</b>	\$3,929,376
<b>Escalations</b>	\$2,500,000
<b>Total Hard Costs</b>	<b>\$35,885,585</b>

**Soft Costs/Fees**

<b>General Contractor Fee</b>	\$949,334
<b>Development Fee</b>	\$2,233,251
<b>Overhead</b>	\$404,361
<b>Architecture, Engineering, Interior Consultants</b>	\$1,685,000
<b>Permits</b>	\$800,000
<b>Real Estate Taxes</b>	\$200,000
<b>Insurance</b>	\$285,000
<b>Soft Cost Contingency</b>	\$325,000
<b>Pre-Opening FF&amp;E</b>	\$296,894
<b>Pre-Opening OSE</b>	\$2,098,880
<b>Pre-Opening Working Capital</b>	\$1,346,380
	\$520,920

<b>Construction Loan Financing Fee</b>	\$175,000
<b>Appraisal Fee</b>	\$25,000
<b>Inspecting Architect</b>	\$40,000
<b>Financing Misc.</b>	\$75,000
<b>Loan Placement Fee</b>	\$700,000
<b>Acquisition Loan Interest</b>	\$1,300,000
<b>Development Period Interest</b>	\$2,300,000
<b>Insurance</b>	\$715,450
<b>Total Soft Costs</b>	<b>\$16,475,470</b>
<b>Total</b>	<b>\$69,241,052</b>

EXHIBIT H-2

MBE/WBE BUDGETS

Phase I

<u>Hard Costs</u>	
General Conditions	\$1,440,226
Site Work	\$1,465,563
Concrete	\$486,090
Masonry	\$3,134,546
Metals	\$1,423,999
Wood and Plastic	\$633,036
Thermal and Moisture Protection	\$1,022,019
Doors and Windows	\$2,276,721
Finishes	\$2,888,452
Specialties	\$189,170
Equipment	\$109,000
Furnishings	\$96,550
Special Construction	\$4,859,581
Conveying Systems	\$361,500
Plumbing	\$2,056,680
Fire Protection	\$384,000
HVAC	\$2,995,250
Electrical	\$3,048,547
General Requirements	\$585,279
Contingency	\$3,929,376
Escalations	\$0
<b>Total Hard Costs</b>	<b>\$33,385,585</b>
<b>Total</b>	<b>\$33,385,585</b>
<b>MBE (26%)</b>	<b>\$8,680,252</b>
<b>WBE (6%)</b>	<b>\$2,003,135</b>

Phase II

Developer shall furnish to DPD for DPD's review and approval, before the commencement of construction of Phase II of the Project, a Phase II MBE/WBE Budget in compliance with the terms of Section 10.03.



EXHIBIT I  
APPROVED PRIOR EXPENDITURES

**Phase I**

[To be inserted at Closing Date or such other time acceptable to DPD]

**Phase II**

[To be inserted at Closing Date or such other time acceptable to DPD]

EXHIBIT J

OPINION OF DEVELOPER'S COUNSEL

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

\_\_\_\_\_, 2019

City of Chicago  
121 North LaSalle Street  
Chicago, IL 60602

ATTENTION: Corporation Counsel

Ladies and Gentlemen:

We have acted as counsel to New Congress, LLC, an Illinois limited liability company (the "Developer"), in connection with the purchase of certain land and the rehabilitation and construction of certain Facilities (as defined below) thereon located in the Fullerton/Milwaukee Tax Increment Financing Redevelopment Project Area (the "Project"). In that capacity, we have examined, among other things, the following agreements, instruments and documents of even date herewith, hereinafter referred to as the "Documents":

(a) New Congress, LLC Redevelopment Agreement (the "Agreement") of even date herewith, executed by Developer and the City of Chicago (the "City");

(b) The deed, title policies and other documents related to the conveyance of the real property known as 2117-39 North Rockwell Avenue and 2115-39 North Milwaukee Avenue, Chicago, Illinois 60647 (the "Theater Property"), and 2149-63 North Milwaukee Avenue and 2120-32 North Rockwell Avenue, Chicago, Illinois 60647 (the "Residential Property" and together with the Residential Property, the "Facilities"); and

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

In addition to the foregoing, we have examined:

(a) the original or certified, conformed or photostatic copies of Developer's (i) Articles of Organization, as amended to date, (ii) qualifications to do business and certificates of good standing in all states in which Developer is qualified to do business, (iii) Operating Agreement, as amended to date, and (iv) records relating to the Project; and

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

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

Based on the foregoing, it is our opinion that:

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

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

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

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

5. Exhibit A attached hereto (a) identifies each class of units of Developer, (b) sets forth the number of issued and authorized units of each class, and (c) identifies the record owners of shares of each class of units of Developer and the number of units held of record by each such holder. To the best of our knowledge after diligent inquiry, except as set forth on Exhibit A, there are no warrants, options, rights or commitments of purchase, conversion, call or exchange or other rights or restrictions with respect to any of the units of Developer. Each outstanding unit of the Developer is duly authorized, validly issued, fully paid and nonassessable.

6. To the best of our knowledge after diligent inquiry, no judgments are outstanding against Developer, nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against Developer or affecting Developer or its property, or seeking to restrain or enjoin the performance by Developer of the Agreement or the transactions contemplated by the Agreement, or contesting the validity thereof. To the best of our knowledge after diligent inquiry, Developer is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority or in default in any respect under any law, order,

regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on Developer or its business.

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

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

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

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

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

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

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

Very truly yours,

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

EXHIBIT K

THEATER PROPERTY

PRELIMINARY TIF PROJECTION -- REAL ESTATE TAXES

<b>Tax Year</b>	<b>Phase I Total Assessed Value</b>
2018	\$ 6,126,271
2019	\$ 6,442,367
2020	\$ 6,442,367
2021	\$ 6,937,724
2022	\$ 6,937,724
2023	\$ 6,937,724
2024	\$ 7,471,170
2025	\$ 7,471,170
2026	\$ 7,471,170

EXHIBIT L-1

REQUISITION FORM – Phase I

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The affiant, \_\_\_\_\_, \_\_\_\_\_ of New Congress, LLC, an Illinois limited liability company (the "Developer"), hereby certifies that with respect to that certain New Congress, LLC Redevelopment Agreement between Developer and the City of Chicago dated \_\_\_\_\_, \_\_\_\_ (the "Agreement"):

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

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

\$ \_\_\_\_\_

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

\$ \_\_\_\_\_

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

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

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

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

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

[Developer]

By: \_\_\_\_\_  
Name  
Title: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Agreed and accepted:

\_\_\_\_\_  
Name  
Title: \_\_\_\_\_  
City of Chicago  
Department of Planning and Development





[Developer]

By: \_\_\_\_\_

Name

Title: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

Agreed and accepted:

\_\_\_\_\_  
Name  
Title: \_\_\_\_\_  
City of Chicago  
Department of Planning and Development

EXHIBIT M-1

FORM OF CITY NOTE #1

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

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

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

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

REGISTERED	MAXIMUM AMOUNT
NO. R-1	\$4,600,000

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

TAX INCREMENT ALLOCATION REVENUE NOTE (CONGRESS THEATER PHASE I REDEVELOPMENT PROJECT), TAXABLE SERIES A

Registered Owner: [Developer]

Interest Rate: The Note shall bear interest upon issuance at an annual rate equal to the median value of the Corporate BBB Bond Index Rate (20 year) as published by Bloomberg for 15 business days prior to the date of issuance of the City Note #1 plus 175 basis points but in no event exceeding six percent (6%) per annum.

Maturity Date: [No later than December 31, 2024, which is the expiration date of the Fullerton/Milwaukee Redevelopment Project Area]

KNOW ALL PERSONS BY THESE PRESENTS, that the City of Chicago, Cook County, Illinois (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, on or before the Maturity Date identified above, but solely from the sources hereinafter identified, the principal amount of this Note from time to time advanced by the Registered Owner to pay costs of the Project (as hereafter defined) in accordance with the ordinance hereinafter referred to up to the principal amount of \$4,600,000 and to pay the Registered Owner interest on that amount at the Interest Rate per year specified above from the date of the advance. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

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

This Note is issued by the City in the principal amount of up to \$4,600,000 for the purpose of paying the costs of certain eligible redevelopment project costs incurred by \_\_\_\_\_ (the "Project"), which were acquired, constructed and installed in connection with the development of an approximately 160,000 square foot building in the Fullerton/ Milwaukee Redevelopment Project Area (the "Project Area") in the City, all in accordance with the Constitution and the laws of the State of Illinois, and particularly the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.) (the "TIF Act") , the Local Government Debt Reform Act (30 ILCS 350/1 et seq.) and an

Ordinance adopted by the City Council of the City on \_\_\_\_\_, 2019 (the "Ordinance"), in all respects as by law required.

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

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

THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO (I) AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE

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

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

Pursuant to the Redevelopment Agreement dated as of [\_\_\_\_\_, \_\_\_\_] between the City and the Registered Owner (the "Redevelopment Agreement"), the Registered Owner has agreed to [rehabilitate the Project and to advance funds for the rehabilitation of certain facilities] related to the Project on behalf of the City. The cost of such acquisition and construction in the amount of \$69,241,050 shall be deemed to be a disbursement of the proceeds of this Note.

Pursuant to Section 15.02 of the Redevelopment Agreement, the City has reserved the right to suspend or terminate payments of principal of and interest on this Note upon the occurrence of certain conditions, and the City has reserved the right to offset liquidated damage amounts owed to the City against the principal amount outstanding under this Note. The City shall not be obligated to make payments under this Note if an Event of Default (as defined in the Redevelopment Agreement), or condition or event that with notice or the passage of time or both would constitute an Event of Default, has occurred. Such rights shall survive any transfer of this Note.

The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and for all

other purposes and neither the City nor the Registrar shall be affected by any notice to the contrary, unless transferred in accordance with the provisions hereof.

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

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

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

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City of Chicago, Cook County, Illinois, by its City Council, has caused its official seal to be imprinted by facsimile hereon or hereunto affixed, and has caused this Note to be signed by the duly authorized signature of the Mayor and attested by the duly authorized signature of the City Clerk of the City, all as of \_\_\_\_\_, 2019.

Mayor

(SEAL)

Attest:

City Clerk

CERTIFICATE  
OF  
AUTHENTICATION

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

This Note is described in the within mentioned Ordinance and is the Tax Increment Allocation Revenue Note (Congress Theater Phase I Redevelopment Project), Taxable Series A, of the City of Chicago, Cook County, Illinois.

Comptroller

Date:

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

## **NOTEHOLDER RISKS**

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

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

### **Loss of Investment**

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

### **Lack of Liquidity**

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

### **Reliance on Projections**

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

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

### **Limited Obligations**



THE NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY PAYABLE SOLELY FROM THE ALLOCATED AVAILABLE INCREMENTAL TAXES AFTER PAYMENT OF ALL OBLIGATIONS HAVING A PRIORITY OVER THE NOTE, IF ANY, AND SHALL BE A VALID CLAIM ONLY AGAINST SAID SOURCES. THE NOTE DOES NOT CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE NOTEHOLDER HAS NO RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF OR INTEREST ON THE NOTE.

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

### **Limited Information**

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

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

### **Unavailability of City Funds**

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

### **Risk of Failure to Maintain Levels of Assessed Valuation**

There can be no assurance that the equalized assessed value of the Project property will remain the same throughout the term of the Note. Furthermore, the successful petition or application of any owner for the reduction of the assessed value of the Project property may cause the equalized assessed value of the Project to be less than the originally projected equalized assessed value. If any time during the term of the Note the actual equalized assessed value is less

than what was projected, the generation of Available Incremental Taxes for payment on the Note is likely to be significantly impaired.

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

### **Risk of Change in Incremental Taxes**

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

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

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

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

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

### **Changes in Multiplier and Tax Rate**

The equalization factor annually determined by the Illinois Department of Revenue for properties located within Cook County (commonly referred to as the "multiplier") may vary substantially in future years. A decrease in the multiplier would reduce the equalized assessed value of the taxable real property in the Project Area and, therefore, the Available Incremental Taxes

available to pay principal of and interest on the Note. The future tax rates of the units of local government levying taxes in the Project Area either individually or on a composite basis, may differ from their historical levels. Any decrease in the composite tax rate of the governmental units would decrease the amount of Available Incremental Taxes available to pay principal of and interest on the Note. Any decrease in the composite tax rate of the governmental units could occur in future years as a result of various factors, including, but not limited to, one or more of the following: (a) reduced governmental costs; (b) constitutional or statutory spending or tax rate limitations; or (c) governmental reorganization or consolidation.

### **Economic Risks Affecting Incremental Taxes**

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

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

### **Failure to Sell or Lease Property**

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

### **Reliance on Primary Taxpayers**

If one or only a few property owners within the Project Area are responsible for generating a substantial amount of the Incremental Taxes, the generation of Available Incremental Taxes could

be significantly adversely affected if such owner or owners and/or their tenants discontinue or curtail their businesses or terminate or default on their leases, and substitutes or replacements cannot be made on a timely basis.

### **Force Majeure Conditions**

Riots, civil disturbances, vandalism, fires, and natural disasters or other "Acts of God" affecting the conditions and viability of the Project Area may reduce or eliminate the receipt of Incremental Taxes which would result in the reduction or elimination of Available Incremental Taxes to pay principal of and interest on the Note.

### **Contiguous Project Areas**

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

### **Risk of Delay in Payment**

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

### **Delays in Exercising Remedies**

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

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

### **Risk of Transferee Becoming a Debtor in Bankruptcy**

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

**Loss of Tax Exemption**

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

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

\* \* \* \* \*

PRINCIPAL PAYMENT RECORD

DATE OF PAYMENT PRINCIPAL PAYMENT PRINCIPAL BALANCE DUE

(ASSIGNMENT)

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

Dated:

Registered Owner

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

Signature Guaranteed:

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

Consented to by:

CITY OF CHICAGO  
DEPARTMENT OF PLANNING AND DEVELOPMENT

BY:

ITS:

CITY OF CHICAGO  
DEPARTMENT OF FINANCE

BY:

ITS:

CERTIFICATION OF EXPENDITURE

(\_\_\_\_\_ Date)

To: Registered Owner

Re: City of Chicago, Cook County, Illinois (the "City")  
\$4,600,000 Tax Increment Allocation Revenue Note  
(Congress Theater Phase I Redevelopment Project), Taxable Series A  
(the "Redevelopment Note")

This Certification is submitted to you, Registered Owner of the Redevelopment Note, pursuant to the Ordinance of the City authorizing the execution of the Redevelopment Note adopted by the City Council of the City on \_\_\_\_\_, 2019 (the "Ordinance"). All terms used herein shall have the same meaning as when used in the Ordinance.

The City hereby certifies that \$4,600,000 is advanced as principal under the Redevelopment Note as of the date hereof. Such amount has been properly incurred, is a proper charge made or to be made in connection with the redevelopment project costs defined in the Ordinance and has not been the basis of any previous principal advance. As of the date hereof, the outstanding principal balance under the Redevelopment Note is \$-0- including the amount of this Certificate and less payment made on the Redevelopment Note.

IN WITNESS WHEREOF, the City has caused this Certification to be signed on its behalf as of \_\_\_\_\_.

CITY OF CHICAGO

By: \_\_\_\_\_  
David L. Reifman, Commissioner  
Department of Planning and Development

AUTHENTICATED BY:

REGISTRAR



EXHIBIT M-2

FORM OF CITY NOTE #2

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

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

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

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

REGISTERED	MAXIMUM AMOUNT
NO. R-1	\$800,000

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

TAX INCREMENT ALLOCATION REVENUE NOTE (CONGRESS THEATER PHASE II REDEVELOPMENT PROJECT), TAXABLE SERIES A

Registered Owner: [Developer]

Interest Rate: The Note shall bear interest upon issuance at an annual rate equal to the median value of the Corporate BBB Bond Index Rate (20 year) as published by Bloomberg for 15 business days prior to the date of issuance of the City Note #2 plus 175 basis points but in no event exceeding six percent (6%) per annum.

Maturity Date: [No later than December 31, 2024, which is the expiration date of the Fullerton/Milwaukee Redevelopment Project Area]

KNOW ALL PERSONS BY THESE PRESENTS, that the City of Chicago, Cook County, Illinois (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, on or before the Maturity Date identified above, but solely from the sources hereinafter identified, the principal amount of this Note from time to time advanced by the Registered Owner to pay costs of the Project (as hereafter defined) in accordance with the ordinance hereinafter referred to up to the principal amount of \$800,000 and to pay the Registered Owner interest on that amount at the Interest Rate per year specified above from the date of the advance. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

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

This Note is issued by the City in the principal amount of up to \$800,000 for the purpose of paying the costs of certain eligible redevelopment project costs incurred by \_\_\_\_\_ (the "Project"), which were constructed in connection with the development of an approximately [\_\_\_\_\_] square foot building in the Fullerton/ Milwaukee Redevelopment Project Area (the "Project Area") in the City, all in accordance with the Constitution and the laws of the State of Illinois, and particularly the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.) (the "TIF Act"), the Local Government Debt Reform Act (30 ILCS 350/1 et seq.) and an Ordinance adopted by the City Council of the City on \_\_\_\_\_, 2019 (the "Ordinance"), in all respects as by law required.

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

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

THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO (I) AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) or (7) UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT") THAT DELIVERS TO THE CITY AN INVESTOR LETTER IN THE FORM OF

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

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

Pursuant to the Redevelopment Agreement dated as of [\_\_\_\_\_, \_\_\_\_] between the City and the Registered Owner (the "Redevelopment Agreement"), the Registered Owner has agreed to [acquire and construct the Project and to advance funds for the construction of certain facilities] related to the Project on behalf of the City. The cost of such acquisition and construction in the amount of \$[\_\_\_\_\_] shall be deemed to be a disbursement of the proceeds of this Note.

Pursuant to Section 15.02 of the Redevelopment Agreement, the City has reserved the right to suspend or terminate payments of principal of and interest on this Note upon the occurrence of certain conditions, and the City has reserved the right to offset liquidated damage amounts owed to the City against the principal amount outstanding under this Note. The City shall not be obligated to make payments under this Note if an Event of Default (as defined in the Redevelopment Agreement), or condition or event that with notice or the passage of time or both would constitute an Event of Default, has occurred. Such rights shall survive any transfer of this Note.

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

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

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

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

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City of Chicago, Cook County, Illinois, by its City Council, has caused its official seal to be imprinted by facsimile hereon or hereunto affixed, and has caused this Note to be signed by the duly authorized signature of the Mayor and attested by the duly authorized signature of the City Clerk of the City, all as of \_\_\_\_\_, 2019.

Mayor

(SEAL)  
Attest:

City Clerk

CERTIFICATE  
OF  
AUTHENTICATION

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

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

Comptroller  
Date:

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

## **NOTEHOLDER RISKS**

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

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

### **Loss of Investment**

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

### **Lack of Liquidity**

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

### **Reliance on Projections**

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

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

### **Limited Obligations**

THE NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY PAYABLE SOLELY FROM THE ALLOCATED AVAILABLE INCREMENTAL TAXES AFTER PAYMENT OF ALL OBLIGATIONS HAVING A PRIORITY OVER THE NOTE, IF ANY, AND SHALL BE A VALID CLAIM ONLY AGAINST SAID SOURCES. THE NOTE DOES NOT CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE NOTEHOLDER HAS NO RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF OR INTEREST ON THE NOTE.

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

### **Limited Information**

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

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

### **Unavailability of City Funds**

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

### **Risk of Failure to Maintain Levels of Assessed Valuation**

There can be no assurance that the equalized assessed value of the Project property will remain the same throughout the term of the Note. Furthermore, the successful petition or application of any owner for the reduction of the assessed value of the Project property may cause the equalized assessed value of the Project to be less than the originally projected equalized assessed value. If any time during the term of the Note the actual equalized assessed value is less



than what was projected, the generation of Available Incremental Taxes for payment on the Note is likely to be significantly impaired.

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

### **Risk of Change in Incremental Taxes**

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

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

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

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

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### **Changes in Multiplier and Tax Rate**

The equalization factor annually determined by the Illinois Department of Revenue for properties located within Cook County (commonly referred to as the "multiplier") may vary substantially in future years. A decrease in the multiplier would reduce the equalized assessed value of the taxable real property in the Project Area and, therefore, the Available Incremental Taxes

available to pay principal of and interest on the Note. The future tax rates of the units of local government levying taxes in the Project Area either individually or on a composite basis, may differ from their historical levels. Any decrease in the composite tax rate of the governmental units would decrease the amount of Available Incremental Taxes available to pay principal of and interest on the Note. Any decrease in the composite tax rate of the governmental units could occur in future years as a result of various factors, including, but not limited to, one or more of the following: (a) reduced governmental costs; (b) constitutional or statutory spending or tax rate limitations; or (c) governmental reorganization or consolidation.

### **Economic Risks Affecting Incremental Taxes**

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

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

### **Failure to Sell or Lease Property**

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

### **Reliance on Primary Taxpayers**

If one or only a few property owners within the Project Area are responsible for generating a substantial amount of the Incremental Taxes, the generation of Available Incremental Taxes could

be significantly adversely affected if such owner or owners and/or their tenants discontinue or curtail their businesses or terminate or default on their leases, and substitutes or replacements cannot be made on a timely basis.

### **Force Majeure Conditions**

Riots, civil disturbances, vandalism, fires, and natural disasters or other "Acts of God" affecting the conditions and viability of the Project Area may reduce or eliminate the receipt of Incremental Taxes which would result in the reduction or elimination of Available Incremental Taxes to pay principal of and interest on the Note.

### **Contiguous Project Areas**

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

### **Risk of Delay in Payment**

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

### **Delays in Exercising Remedies**

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

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

### **Risk of Transferee Becoming a Debtor in Bankruptcy**

If a transferee of the Note were to become a debtor under the United States Bankruptcy Code or applicable state laws, a creditor or trustee in bankruptcy of the transferee might argue that the sale of the Note by the transferee constituted a fraudulent conveyance or a pledge of the Note rather than a sale. If such positions were accepted by a court, then delays in principal and interest payments to the Noteholder could occur or reductions in the amounts of such payments could result.

Additionally, if the transfer of the Note is re-characterized as a pledge, then a tax lien, governmental lien or other lien created by operation of law on the property of the transferee could have priority over the holder's interest in the Note.

### **Loss of Tax Exemption**

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

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

\* \* \* \* \*

PRINCIPAL PAYMENT RECORD

DATE OF PAYMENT PRINCIPAL PAYMENT PRINCIPAL BALANCE DUE

(ASSIGNMENT)

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

Dated:

Registered Owner

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

Signature Guaranteed:

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

Consented to by:

CITY OF CHICAGO  
DEPARTMENT OF PLANNING AND DEVELOPMENT

BY:

ITS:

CITY OF CHICAGO  
DEPARTMENT OF FINANCE

BY:

ITS:

CERTIFICATION OF EXPENDITURE

(\_\_\_\_\_ Date)

To: Registered Owner

Re: City of Chicago, Cook County, Illinois (the "City")  
\$800,000 Tax Increment Allocation Revenue Note  
(Congress Theater Phase II Redevelopment Project, Taxable Series B)  
(the "Redevelopment Note")

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

The City hereby certifies that \$800,000 is advanced as principal under the Redevelopment Note as of the date hereof. Such amount has been properly incurred, is a proper charge made or to be made in connection with the redevelopment project costs defined in the Ordinance and has not been the basis of any previous principal advance. As of the date hereof, the outstanding principal balance under the Redevelopment Note is \$-0- including the amount of this Certificate and less payment made on the Redevelopment Note.

IN WITNESS WHEREOF, the City has caused this Certification to be signed on its behalf as of \_\_\_\_\_.

CITY OF CHICAGO

By: \_\_\_\_\_  
David L. Reifman, Commissioner  
Department of Planning and Development

AUTHENTICATED BY:

REGISTRAR

EXHIBIT N-1

FORM OF SUBORDINATION AGREEMENT

PHASE I

This document prepared by and after recording return to:  
\_\_\_\_\_, Esq.

City of Chicago  
Department of Law  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

SUBORDINATION AGREEMENT

This Subordination Agreement ("Agreement") is made and entered into as of the day of \_\_\_\_\_, 2019 between the City of Chicago by and through its Department of Planning and Development (the "City"), [Name Lender], a [national banking association] (the "Lender").

WITNESSETH:

WHEREAS, New Congress, LLC, an Illinois limited liability company ("Developer") has purchased certain property located within the Fullerton/Milwaukee Redevelopment Project Area at [2135 North Milwaukee Avenue, Chicago, Illinois 60647] and legally described on the Exhibit hereto with a building thereon commonly known as the Congress Theater (the "Property"), in order to rehabilitate the approximately 160,000 square foot Property. The Property shall be rehabilitated into a 4,900 seat music venue with the addition of a 44 room boutique hotel; the addition of 14 affordable residential rental units subject to the Project Affordability Requirements under the Redevelopment Agreement (as defined below); and approximately 16,000 square feet of ground floor restaurant/retail space (the "Project"); and

WHEREAS, as part of obtaining financing for the Project, Developer (the "Borrower"), has entered into a certain [Construction Loan Agreement] dated as of \_\_\_\_\_ with the Lender pursuant to which the Lender has agreed to make a loan to the Borrower in an amount not to exceed \$\_\_\_\_\_ (the "Loan"), which Loan is evidenced by a Mortgage Note and executed by the Borrower in favor of the Lender (the "Note"), and the repayment of the Loan is secured by, among other things, certain liens and encumbrances on the Property and other property of the Borrower pursuant to the following: (i) Mortgage dated \_\_\_\_\_ and recorded \_\_\_\_\_ as document number \_\_\_\_\_ made by the Borrower to the Lender; and (ii) Assignment of Leases and Rents recorded \_\_\_\_\_ as document number \_\_\_\_\_ made by the Borrower to the Lender (all such agreements referred to above and otherwise relating to the Loan referred to herein collectively as the "Loan Documents"); and

WHEREAS, Developer desires to enter into a certain Redevelopment Agreement dated the date hereof with the City in order to obtain additional financing for the Project (the



"Redevelopment Agreement," referred to herein along with various other agreements and documents related thereto as the "City Agreements"); and

WHEREAS, pursuant to the Redevelopment Agreement, Developer will agree to be bound by certain covenants expressly running with the Property, as set forth in Sections [3.01, 4.09, 4.10, 8.02, 8.06, 6.14, 8.19(c), 8.24] of the Redevelopment Agreement (the "City Encumbrances"); and

WHEREAS, the City has agreed to enter into the Redevelopment Agreement with Developer as of the date hereof, subject, among other things, to (a) the execution by Developer of the Redevelopment Agreement and the recording thereof as an encumbrance against the Property; and (b) the agreement by the Lender to subordinate their respective liens under the Loan Documents to the City Encumbrances;

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Lender and the City agree as hereinafter set forth:

1. Subordination. All rights, interests and claims of the Lender in the Property pursuant to the Loan Documents are and shall be subject and subordinate to the City Encumbrances. In all other respects, the Redevelopment Agreement shall be subject and subordinate to the Loan Documents. Nothing herein, however, shall be deemed to limit the Lender's right to receive, and Developer's ability to make, payments and prepayments of principal and interest on the Note, or to exercise its rights pursuant to the Loan Documents except as provided herein.

2. Notice of Default. The Lender shall use reasonable efforts to give to the City, and the City shall use reasonable efforts to give to the Lender, (a) copies of any notices of default which it may give to Developer with respect to the Project pursuant to the Loan Documents or the City Agreements, respectively, and (b) copies of waivers, if any, of Developer's default in connection therewith. Under no circumstances shall Developer or any third party be entitled to rely upon the agreement provided for herein.

3. Waivers. No waiver shall be deemed to be made by the City or the Lender of any of their respective rights hereunder, unless the same shall be in writing, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the City or the Lender in any other respect at any other time.

4. Governing Law; Binding Effect. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws and decisions of the State of Illinois, without regard to its conflict of laws principles, and shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Lender.

5. Section Titles; Plurals. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the plural form.

6. Notices. Any notice required hereunder shall be in writing and addressed to the party to be notified as follows:

<b>If to the City:</b> City of Chicago Department of Planning and Development 121 North LaSalle Street, Room 1000 Chicago, Illinois 60602 Attention: Commissioner	<b>If to Developer:</b> _____ _____ _____ Attention: _____
<b>With Copies To:</b> City of Chicago Department of Law 121 North LaSalle Street, Room 600 Chicago, Illinois 60602 Attention: Finance and Economic Development Division	<b>With Copies To:</b> _____ _____ _____ Attention: _____

or to such other address as either party may designate for itself by notice. Notice shall be deemed to have been duly given (i) if delivered personally or otherwise actually received, (ii) if sent by overnight delivery service, (iii) if mailed by first class United States mail, postage prepaid, registered or certified, with return receipt requested, or (iv) if sent by facsimile with facsimile confirmation of receipt (with duplicate notice sent by United States mail as provided above). Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) business days after its deposit in the United States mail. Notice given in any other manner described in this paragraph shall be effective upon receipt by the addressee thereof; provided, however, that if any notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

IN WITNESS WHEREOF, this Subordination Agreement has been signed as of the date first written above.

[LENDER], [a national banking association]

By:

Its: \_\_\_\_\_

CITY OF CHICAGO

By:

David L. Reifman

Its: Commissioner,

Department of Planning and Development

ACKNOWLEDGED AND AGREED TO THIS  
\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_

[Developer], a \_\_\_\_\_

By:

Its:

Exhibit to Subordination Agreement – Legal Description

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT David L. Reifman, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago, Illinois (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 as such \_\_\_\_\_ Commissioner, (s)he signed and delivered the said instrument pursuant to authority, as his/her free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires

(SEAL)

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, \_\_\_\_\_, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY THAT \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of [Lender], a \_\_\_\_\_, 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 Lender, as his/her free and voluntary act and as the free and voluntary act of the Lender, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires

(SEAL)

EXHIBIT N-2

FORM OF SUBORDINATION AGREEMENT

PHASE II

This document prepared by and after recording return to:

, Esq.  
City of Chicago  
Department of Law  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

SUBORDINATION AGREEMENT

This Subordination Agreement ("Agreement") is made and entered into as of the day of \_\_\_\_\_, \_\_\_\_\_ between the City of Chicago by and through its Department of Planning and Development (the "City"), [Name Lender], a [national banking association] (the "Lender").

WITNESSETH:

WHEREAS, New Congress, LLC, an Illinois limited liability company ("Developer") has purchased certain property located within the Fullerton/Milwaukee Redevelopment Project Area at [\_\_\_\_\_ North Milwaukee Avenue, Chicago, Illinois 60647] and legally described on the Exhibit hereto with a parking lot (the "Property"), in order to construct an approximately 87 unit residential building with ground floor retail space subject to the Project Affordability Requirements as provided in the Redevelopment Agreement (as defined below), to be located on the Property (the "Project"); and

WHEREAS, as part of obtaining financing for the Project, Developer (the "Borrower"), has entered into a certain [Construction Loan Agreement] dated as of \_\_\_\_\_ with the Lender pursuant to which the Lender has agreed to make a loan to the Borrower in an amount not to exceed \$\_\_\_\_\_ (the "Loan"), which Loan is evidenced by a Mortgage Note and executed by the Borrower in favor of the Lender (the "Note"), and the repayment of the Loan is secured by, among other things, certain liens and encumbrances on the Property and other property of the Borrower pursuant to the following: (i) Mortgage dated \_\_\_\_\_ and recorded \_\_\_\_\_ as document number \_\_\_\_\_ made by the Borrower to the Lender; and (ii) Assignment of Leases and Rents recorded \_\_\_\_\_ as document number \_\_\_\_\_ made by the Borrower to the Lender (all such agreements referred to above and otherwise relating to the Loan referred to herein collectively as the "Loan Documents"); and

WHEREAS, Developer desires to enter into a certain Redevelopment Agreement dated the date hereof with the City in order to obtain additional financing for the Project (the "Redevelopment Agreement," referred to herein along with various other agreements and documents related thereto as the "City Agreements"); and

WHEREAS, pursuant to the Redevelopment Agreement, Developer will agree to be bound by certain covenants expressly running with the Property, as set forth in Sections [3.01, 4.09, 4.10, 8.02, 8.06, 8.14, 8.19(c), 8.24] of the Redevelopment Agreement (the "City Encumbrances"); and

WHEREAS, the City has agreed to enter into the Redevelopment Agreement with Developer as of the date hereof, subject, among other things, to (a) the execution by Developer of the Redevelopment Agreement and the recording thereof as an encumbrance against the Property; and (b) the agreement by the Lender to subordinate their respective liens under the Loan Documents to the City Encumbrances;

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Lender and the City agree as hereinafter set forth:

1. Subordination. All rights, interests and claims of the Lender in the Property pursuant to the Loan Documents are and shall be subject and subordinate to the City Encumbrances. In all other respects, the Redevelopment Agreement shall be subject and subordinate to the Loan Documents. Nothing herein, however, shall be deemed to limit the Lender's right to receive, and Developer's ability to make, payments and prepayments of principal and interest on the Note, or to exercise its rights pursuant to the Loan Documents except as provided herein.

2. Notice of Default. The Lender shall use reasonable efforts to give to the City, and the City shall use reasonable efforts to give to the Lender, (a) copies of any notices of default which it may give to Developer with respect to the Project pursuant to the Loan Documents or the City Agreements, respectively, and (b) copies of waivers, if any, of Developer's default in connection therewith. Under no circumstances shall Developer or any third party be entitled to rely upon the agreement provided for herein.

3. Waivers. No waiver shall be deemed to be made by the City or the Lender of any of their respective rights hereunder, unless the same shall be in writing, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the City or the Lender in any other respect at any other time.

4. Governing Law; Binding Effect. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws and decisions of the State of Illinois, without regard to its conflict of laws principles, and shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Lender.

5. Section Titles; Plurals. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the plural form.

6. Notices. Any notice required hereunder shall be in writing and addressed to the party to be notified as follows:

<b>If to the City:</b>  City of Chicago Department of Planning and Development 121 North LaSalle Street, Room 1000 Chicago, Illinois 60602 Attention: Commissioner	<b>If to Developer:</b>  _____ _____ _____ Attention: _____
<b>With Copies To:</b>  City of Chicago Department of Law 121 North LaSalle Street, Room 600 Chicago, Illinois 60602 Attention: Finance and Economic Development Division	<b>With Copies To:</b>  _____ _____ _____ Attention: _____

or to such other address as either party may designate for itself by notice. Notice shall be deemed to have been duly given (i) if delivered personally or otherwise actually received, (ii) if sent by overnight delivery service, (iii) if mailed by first class United States mail, postage prepaid, registered or certified, with return receipt requested, or (iv) if sent by facsimile with facsimile confirmation of receipt (with duplicate notice sent by United States mail as provided above). Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) business days after its deposit in the United States mail. Notice given in any other manner described in this paragraph shall be effective upon receipt by the addressee thereof; provided, however, that if any notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

IN WITNESS WHEREOF, this Subordination Agreement has been signed as of the date first written above.

[LENDER], [a national banking association]

By:

Its: \_\_\_\_\_

CITY OF CHICAGO

By:

David L. Reifman

Its: Commissioner,

Department of Planning and Development

ACKNOWLEDGED AND AGREED TO THIS  
\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_

[Developer], a \_\_\_\_\_

By:

Its:

Exhibit to Subordination Agreement – Legal Description



STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF COOK        )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT David L. Reifman, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago, Illinois (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 as such \_\_\_\_\_ Commissioner, (s)he signed and delivered the said instrument pursuant to authority, as his/her free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires

(SEAL)

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF COOK        )

I, \_\_\_\_\_, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY THAT \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of [Lender], a \_\_\_\_\_, 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 Lender, as his/her free and voluntary act and as the free and voluntary act of the Lender, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires

(SEAL)

EXHIBIT O  
FORM OF PAYMENT BOND

[To be attached at Closing Date]

EXHIBIT P  
INVESTOR LETTER

\_\_\_\_\_, 20\_\_

City of Chicago  
Department of Planning and Development  
121 N. LaSalle Street, Suite 1000  
Chicago, Illinois 60602  
Attention: Commissioner

Re: \$[\_\_\_\_\_] City of Chicago, Illinois Tax Increment Allocation Revenue Note  
(Congress Theater Phase \_\_ Redevelopment Project) Taxable Series [\_\_] issued to  
[\_\_\_\_\_]

Ladies and Gentlemen:

The undersigned (the "Investor") is the acquirer of the above-described note (the "Note"). The undersigned acknowledges that the Note was issued by the City of Chicago (the "City") for the purpose of paying the costs of certain eligible redevelopment project costs incurred by [\_\_\_\_\_] (the "Developer") which were incurred in connection with the development of an approximately [\_\_\_\_\_] square foot [\_\_\_\_\_] (the "Project") in the [\_\_\_\_\_] Redevelopment Project Area (the "Redevelopment Area") in the City of Chicago.

The undersigned acknowledges that the Note was issued pursuant to an ordinance adopted by the City Council of the City on \_\_\_\_\_, 20\_\_ (the "Project Ordinance") and the [\_\_\_\_\_] Redevelopment Agreement dated as of \_\_\_\_\_, 20\_\_ and recorded on \_\_\_\_\_, 20\_\_ as Document Number \_\_\_\_\_ in the Office of the Cook County Recorder of Deeds (the "Agreement") by and between the City and the Developer.

In connection with the acquisition of the Note by the Investor, the Investor hereby makes the following representations upon which the City may rely:

1. The Investor is a [\_\_\_\_\_] duly formed, validly existing and in good standing under the laws of the State of [\_\_\_\_\_] and has authority to acquire the Note and to execute this letter and any other instruments and documents required to be executed by the Investor in connection with the acquisition of the Note.

[2. The Investor is an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) of the Securities and Exchange Commission (the "Commission") promulgated under the Securities Act of 1933, as amended (the "Securities Act") or a "qualified institutional buyer" within the meaning of Rule 144A of the Commission promulgated under the Securities Act.<sup>1</sup>]

<sup>1</sup> If the Investor is a broker or dealer and is purchasing the Note with a view toward any distribution, sale or resale of the Note or any beneficial interest therein, replace paragraph 2 with the following:

[2. The Investor is a “dealer” meeting the requirements of Rule 144A(a)(1)(ii) or (iii) of the Commission promulgated under the Securities Act.]

3. The Investor has sufficient knowledge and experience in financial and business matters, including the acquisition and ownership of notes issued by municipalities, to be able to evaluate the merits and risks of its investment in the Note, and the Investor is able to bear any economic risk associated with its investment in the Note.

[4. The Investor is acquiring the Note for its own account and not with a view toward any distribution, sale or resale of the Note. The Investor intends to hold the Note for an indefinite period of time. The Investor understands that it may need to bear the risks of this investment for an indefinite time, since any sale of the Note prior to maturity may not be possible.<sup>2]</sup>

<sup>2</sup> If the Investor is a broker or dealer and is purchasing the Note with a view toward any distribution, sale or resale of the Note or any beneficial interest therein, replace paragraph 4 with the following:

[4. The Investor (i) has not solicited offers for, or offered or sold, and will not solicit offers for, or offer and sell the Note or any beneficial interest therein except to persons who it reasonably believes are “qualified institutional buyers” within the meaning of Rule 144A(a)(1) of the Commission promulgated under the Securities Act; (ii) has not solicited offers for, or offered or sold, and will not solicit offers for, or offer or sell Notes by, any form of general solicitation or general advertising or in any manner involving a public offering; and (iii) shall inform each prospective purchaser of the Note or any beneficial interest therein of the restrictions on resale of the Note or beneficial interests therein under the Agreement.]

[<sup>1</sup> If the Investor is a “dealer” meeting the requirements of Section 144A(a)(1) (ii), replace paragraph 4 with the following:

4. The Investor (i) has not solicited offers for, or offered or sold, and will not solicit offers for, or offer and sell the Note or any beneficial interest therein, except to persons who it reasonably believes are “qualified institutional buyers” within the meaning of Rule 144A(a)(1) under the Securities Act; (ii) has not solicited offers for, or offered or sold, and will not solicit offers for, or offer or sell Notes by, any form of general solicitation or general advertising or in any manner involving a public offering; and (iii) shall inform each prospective purchaser of the Note or any beneficial interest therein of the restrictions on resale of the Note or beneficial interests therein under the Agreement]

5. The Investor understands that the Note is not registered under the Securities Act and that such registration is not legally required as of the date hereof; and the Investor further understands that the Note (a) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service, and (d) will be delivered in a form which is not to be readily marketable.

6. The Investor understands that (a) the Note is a limited obligation of the City, payable solely from moneys on deposit in the [ ] Account (as defined in the Project Ordinance); (b) the Note does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, (c) no holder of the Note will have the right to

compel the exercise of any taxing power of the City for payment of the principal of, or interest premium, if any, on the Note; and (d) the Note does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the City, the State of Illinois or any political subdivision thereof.

7. The Investor has read and considered the risk factors set forth in "Noteholder Risks" attached hereto.

8. The Investor has not relied upon the City for any information in connection with its acquisition of the Note. The Investor has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Investor has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Developer, the Project and the Note. The Investor is in possession of all the information and material necessary to evaluate the merits and risks of the acquisition of the Note.

9. The Investor has been furnished with and has examined the Agreement and other documents, certificates and the legal opinions delivered in connection with the issuance of the Note. The Investor acknowledges that neither the City nor the Developer has prepared an offering document with respect to the Note. The Investor has made its own inquiry and analysis with respect to the Note and material factors affecting the payment of the Note.

10. The Investor acknowledges that with respect to the Notes, the City has no obligation to provide any continuing disclosure to the Electronic Municipal Market Access System maintained by the Municipal Securities Rulemaking Board, any holder of the Note or any other person under Rule 15c2-12 of the Commission promulgated under the Securities Exchange Act of 1934 or otherwise, and shall have no liability with respect thereto.

11. The Investor understands that the City, the Developer, their respective counsel and Bond Counsel will rely upon the accuracy and truthfulness of the representations and warranties contained herein and hereby consents to such reliance.

Very truly yours,

\_\_\_\_\_],

a[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## NOTEHOLDER RISKS

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

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

### **Loss of Investment**

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

### **Lack of Liquidity**

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

### **Reliance on Projections**

The City does not endorse projections of any kind from any source as to the sufficiency of available incremental taxes to pay principal and interest on the Note. Investor who rely on any such projections do so at their own risk.

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

### **Limited Obligations**

THE NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY PAYABLE SOLELY FROM THE AVAILABLE INCREMENTAL TAXES, AND SHALL BE A VALID CLAIM ONLY AGAINST SAID SOURCES. THE NOTE DOES NOT CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE NOTEHOLDER HAS NO RIGHT TO

COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OR INTEREST OF THE NOTE.

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

### **Limited Information**

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

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

### **Unavailability of City Funds**

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

### **Risk of Failure to Maintain Levels of Assessed Valuation**

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

### **Risk of Change in Available Incremental Taxes**

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

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

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

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

4. Failure by Cook County to remit property taxes to the City on a timely basis could result in insufficient Available Incremental Taxes being available to pay principal of or interest on the Note when due.

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

### **Changes in Multiplier and Tax Rate**

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

### **Economic Risks Affecting Available Incremental Taxes**

Changing economic circumstances or events in the Project Area may result in reductions in Available Incremental Taxes available to pay debt service on the Note. Relocations of major property owners to sites outside the Project Area or sales of major properties to tax-exempt entities could reduce the assessed valuation of the Project Area. Substantial damage to or destruction of improvements within the Project Area could cause a material decline in assessed valuation and



impair the ability of the taxpayers in the Project Area to pay their respective portions of real estate taxes. There can be no assurance that the improvements in the Project Area are or will be insured under fire and extended coverage insurance policies, and, even if such insurance exists, the proceeds thereof will not be assigned as security for the payment of real estate taxes or to secure payment of the Note. In addition, any insurance proceeds may not be sufficient to repair or rebuild the improvements. The restoration of the improvements may be delayed by other factors, or the terms of then-applicable mortgage financing could require the application of insurance proceeds to the reduction of mortgage balances. Any of the foregoing circumstances could result in the assessed valuation of property in the Project Area remaining depressed for an unknown period of time and decrease the amount of Available Incremental Taxes available to pay debt service on The Note.

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

### **Failure to Sell or Lease Property**

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

### **Reliance on Primary Taxpayers**

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

### **Force Majeure Conditions**

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

### **Contiguous Project Areas**

The Project Area is contiguous with other redevelopment areas designated by the City pursuant to the TIF Act and may become contiguous with others. The TIF Act allows the City to expend incremental taxes collected from the Project Area which are in excess of the amounts

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

### **Risk of Delay in Payment of Available Incremental Taxes**

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

### **Delays in Exercising Remedies**

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

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

### **Risk of Transferee Becoming a Debtor in Bankruptcy**

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

### **Loss of Tax Exemption**

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

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

\* \* \* \* \*

EXHIBIT Q  
(Intentionally Omitted)

## EXHIBIT R

### PROHIBITED USES

- Adult oriented businesses
- Strip clubs
- Astrology, card-reading, palm-reading or fortune telling businesses
- Currency exchanges
- Houses of worship
- Inter-track wagering facilities
- Laundromats
- Pawn shops
- Pay day loan stores/predatory lenders
- Tattoo parlors
- Bingo parlors
- Game rooms or arcades
- Night clubs or discotheques
- Flea markets
- Junkyard or recycling center
- Automobile, truck, motorcycle, trailer or recreational vehicle sale, display, or repair
- Mortuaries or funeral homes
- Second hand stores or thrift shops
- Liquidators
- Beauty shops, beauty supply stores, barber shops, nail salons
- Taverns
- Package liquor stores
- Gasoline service station
- Discounters occupying less than 25,000 square feet
- General merchandise discounters whose goods generally have price points that range from under one dollar to ten dollars including by way of example but not by limitation Family Dollar, Dollar Tree and Dollar General

FIN

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OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

January 23, 2019

TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith the execution of a redevelopment agreement for the Congress Theatre.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

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CHICAGO March 13, 2019

To the President and Members of the City Council:

Your Committee on Finance having had under consideration a substitute ordinance authorizing the Commissioner of the Department of Planning and Development to enter into and execute a Redevelopment Agreement with New Congress LLC and Arthur 7159, LLC for the Congress Theatre and to approve the issuance of a City of Chicago Tax Increment Allocation Revenue Note (Congress Theatre Phase I Redevelopment Project), Taxable Series A and the issuance of a City of Chicago Tax Increment Allocation Revenue Note (Congress Theater Phase II Redevelopment Project), Taxable Series A.

O2019-1050

Amount of Notes  
Not to exceed: \$5,400,000

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed ordinance Transmitted Herewith.

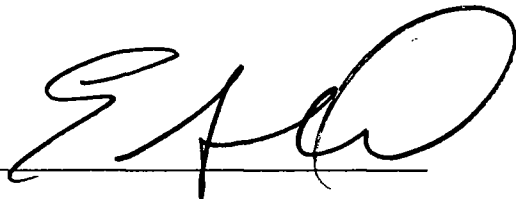
This recommendation was concurred in by \_\_\_\_\_ (a viva voce vote of members of the committee with \_\_\_\_\_ dissenting vote(s)).

Respectfully submitted

(signed) Patrick O'Connor

Chairman

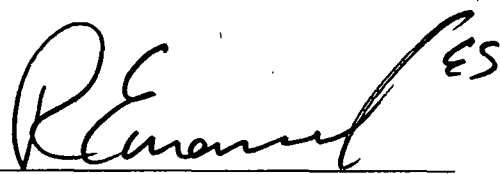
APPROVED

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

CORPORATION COUNSEL

DATED: 3/21/19

APPROVED

A handwritten signature in black ink, appearing to read 'R. Emanuel' with 'ES' written in the upper right corner of the signature.

MAYOR

DATED: 3/21/19