



(the "Plan Commission") on April 16, 2015, the Plan Commission recommended the sale of the Property; and

WHEREAS, public notices advertising the proposed sale and requesting alternative proposals appeared in the Chicago Sun-Times, a newspaper of general circulation, on April 24, May 1 and 8, 2015; and

WHEREAS, no alternative proposals have been received by the deadline set forth in the aforesaid public notices; now therefore.

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

SECTION 1. The foregoing recitals are hereby adopted as the findings of the City Council.

SECTION 2. The sale of the Property to the Developer in the amount of Eighty-Eight Thousand and No/Dollars (\$88,000) is hereby approved. This approval is expressly conditioned upon the City entering into a redevelopment agreement with the Developer substantially in the form attached hereto as Exhibit B and made a part hereof (the "Redevelopment Agreement"). The Commissioner of the Department ("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 the Redevelopment Agreement, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Redevelopment Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Redevelopment Agreement.

SECTION 3. The Mayor or his proxy is authorized to execute, and the City Clerk or Deputy City Clerk is authorized to attest, a quitclaim deed conveying the Property to the Developer, or to a land trust of which the Developer is the sole beneficiary, or to an entity of which the Developer is the sole owner and the controlling party, subject to those covenants, conditions and restrictions set forth in the Redevelopment Agreement.

SECTION 4. 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 5. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 6. This ordinance shall take effect immediately upon its passage and approval.

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

(SUBJECT TO FINAL SURVEY AND TITLE COMMITMENT)

LOTS 20, 21, 22, 23 AND 24 IN JOHN G. SHORTALL TRUSTEE'S SUBDIVISION OF THE NORTH VI OF



This Document Prepared by and After  
Recording Return To:

Department of Law Real Estate  
Division 121 North LaSalle Street  
Room 600  
Chicago, Illinois 60602 (312) 744-  
0200

**AGREEMENT FOR THE SALE AND  
REDEVELOPMENT OF LAND**

(The Above Space For Recorder's Use Only)

This AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND, as may be amended from time to time ("Agreement"), is made on or as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), by and between the CITY OF CHICAGO, an Illinois municipal corporation and home rule unit of government ("City"), acting by and through its Department of Planning and Development (together with any successor department thereto, the "Department"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 and 7200 South Kimbark, LLC, an Illinois limited liability company ("Developer"), located at 6918 S. Dorchester, Chicago, Illinois 60637.

**RECITALS**

WHEREAS, the Developer desires to purchase from the City certain real property located at 1245-57 East 72d Place, Chicago, Illinois, as legally described on Exhibit A-1 attached hereto ("Property"); and

WHEREAS, the Developer owns certain real property north of the Property at 7200 South Kimbark Avenue, and operates an art studio, which includes painting, drawing, design, modeling, landscaping, industrial art production, metalworking and brick making ("Existing Business") thereon; and

WHEREAS, the Developer has filed an application to vacate approximately 128.77 feet of East 72d Place that is located adjacent to the Property, as legally described on Exhibit A-2 attached hereto and depicted upon the preliminary plat of vacation attached hereto as Exhibit B ("Vacated Property"); and

WHEREAS, the Vacated Property will be vacated pursuant to separate ordinance ("Vacation Ordinance"); and

WHEREAS, the Property and the Vacated Property shall be referred to herein as the "Project Site"; and

WHEREAS, the Developer wishes to expand its Existing Business by constructing a sculpture garden and off-street parking on the Project Site, as more fully described on Exhibit C attached hereto (the "Project"); and

WHEREAS, the Developer engaged \_\_\_\_\_ to conduct a Phase 1 Environmental Site Assessment of the Property prior to the Property Closing Date (as defined in Section 3 below); and

WHEREAS, the City Council, pursuant to an ordinance ("Project Ordinance") adopted on \_\_\_\_\_, 2015, (the "Ordinance Date") and published, at pages \_\_\_\_\_ through \_\_\_\_\_ in the Journal of such date, authorized the sale of the Property to the Developer for Eighty-Eight Thousand and No/100 Dollars (\$88,000), subject to the execution, delivery and recording of this Agreement, and in consideration of the Developer's fulfillment of its obligations under this Agreement, including the obligation to complete 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 agree as follows:

**SECTION 1. INCORPORATION OF RECITALS.**

The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

**SECTION 2. PURCHASE PRICE / EARNEST MONEY / PERFORMANCE DEPOSIT.**

1 Purchase Price. Subject to the terms, covenants and conditions of this Agreement, the City agrees to sell the Property to the Developer, and the Developer agrees to purchase the Property from the City, for Eighty-Eight Thousand and No/100 Dollars (\$88,000) (the "Purchase Price") to be paid by cashier's check, certified check or wire transfer of immediately available funds, on the Property Closing Date (defined in Section 3).

2 Earnest Money. The City acknowledges that the Developer has deposited with the Department the amount of Four Thousand Four Hundred and No/100 Dollars (\$4,400) ("Earnest Money"), which shall be credited against the Purchase Price at Property Closing (as defined in Section 3 below).

3 Performance Deposit. The City acknowledges that the Developer has deposited with the Department the amount of Four Thousand Four Hundred and No/100 Dollars (\$4,400), as security for the performance of its obligations under this Agreement ("Performance Deposit"), which the City will retain until the City issues the Certificate of Completion (as defined in Section 12).

4 Interest. The City will pay no interest to the Developer on the Performance Deposit.

### SECTION 3. CLOSINGS

1 RDA Closing. The closing of the Agreement between the City and the Developer (the "RDA Closing", which occurs on the "RDA Closing Date") shall in no event occur (1) until and unless the conditions precedent set forth in Section 8.1 are all satisfied, unless the Department, in its sole and absolute discretion, waives one or more of such conditions; and (2) any later than sixty (60) days following the Ordinance Date (i.e., \_\_\_\_\_) (the "Outside RDA Closing Date"), unless, the Commissioner, in his sole discretion, extends such Outside RDA Closing Date by no more than six (6) months. The Developer shall pay to record this Agreement and any other documents incident to the RDA Closing.

2 Property Closing. The closing of the transfer of the Property from the City to the Developer (the "Property Closing", which occurs on the "Property Closing Date") shall take place at the downtown offices of Greater Illinois Title Company, 120 North LaSalle Street, Chicago, Illinois 60602 or such other reputable title company as may be selected by the Developer (the "Title Company"). In no event shall the Closing occur (1) until and unless the conditions precedent set forth in Section 8.2 are all satisfied, unless the Department, in its sole and absolute discretion, waives one or more of such conditions; and (2) any later than sixty (60) days following the RDA Closing Date (the "Outside Property Closing Date"), unless the Commissioner, in his sole discretion, extends such Outside Property Closing Date by no more than six (6) months. At the Property Closing, the City shall deliver to the Developer (a) the Deed (as defined below); (b) all necessary state, county and municipal real estate transfer declarations; and (c) possession of the Property.

### SECTION 4. CONVEYANCE OF TITLE .

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

- a. standard exceptions in an ALTA title insurance policy;
- b. general real estate taxes and any special assessments or other taxes;
- c. all easements, encroachments, covenants and restrictions of record and not shown of record;
- d. such other title defects that may exist; and
- e. any and all exceptions caused by the acts of the Developer or its agents.

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3 Recording Costs. The Developer shall pay to record the Deed and any other documents incident to the conveyance of the Property to the Developer.

4 Escrow. If the Developer requires conveyance through escrow, the Developer shall pay all escrow fees.

**SECTION 5. TITLE, SURVEY AND REAL ESTATE TAXES.**

1 Title Commitment and Insurance. Not less than 30 days before the anticipated Property Closing Date, the Developer shall order a current title commitment for the Property issued by the Title Company. The Developer shall pay the cost of, and shall be responsible for, obtaining on the Property Closing Date, any title insurance, extended coverage and any endorsements it deems necessary. The City agrees to provide the Title Company with a completed ALTA owner's statement, and other transfer documents typically required by the Title Company and typically provided by the City (but expressly excluding, however, "gap" undertakings, title indemnities and similar liabilities) at or prior to the Property Closing. At the Property Closing, the Developer shall deliver to the City a copy of the owner's policy of title insurance that it obtains with respect to the Property.

2 Survey. The Developer will be responsible for obtaining, at Developer's expense, a survey for the Property.

3 Real Estate Taxes. The City shall use reasonable efforts to obtain the waiver or release of any delinquent real estate taxes or tax liens on the Property prior to the Property Closing Date, to the extent such taxes or tax liens can be waived or released through submission of an abatement letter to the Cook County Treasurer, a motion to vacate a tax sale, or a petition for exemption. If, after using such reasonable efforts, the City is unable to obtain the waiver or release of any such tax liens or is unable to cause the Title Company to insure over such tax liens, or if the Property is encumbered with any other exceptions that would adversely affect the use and insurability of the Property for the development of the Project, the Developer shall have the option to do one of the following: (1) accept title to the Property subject to the exceptions, without reduction in the Purchase Price; or (2) terminate this Agreement by delivery of written notice to the City, in which event this Agreement shall be null and void, and except as otherwise specifically provided herein, neither party shall have any further right, duty or obligation hereunder. If the Developer elects not to terminate this Agreement as aforesaid, the Developer agrees to accept title subject to all exceptions.

**SECTION 6. BUILDING PERMITS AND OTHER GOVERNMENTAL APPROVALS.**

The Developer shall apply for and obtain all necessary building permits and other approvals, including, without limitation, zoning approval (collectively, the "Governmental Approvals") necessary for the Project, prior to the Property Closing Date, unless the Department, in its sole discretion, agrees to waive such requirement.

**SECTION 7. PROJECT BUDGET AND PROOF OF FINANCING.**

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The total budget for the Project is currently estimated to be One Hundred Eighty-Nine Thousand and No/100 Dollars (\$189,000.00) (the "Preliminary Project Budget"). Not less than fourteen (14) days prior to the Property Closing Date, the Developer shall submit to the Department for approval: (1) a final budget for the Project which is materially consistent with the Preliminary Project Budget (the "Final Project Budget"); and (2) evidence of funds adequate to construct the Project, as shall be acceptable to the Department, in its sole discretion (the "Proof of Project Financing"). The Department agrees that the Proof of Project Financing will be deemed satisfied where evidence exists of available funds, including financing that will close on the Closing

and grants that have been received prior to the Property Closing, in a dollar amount of at least eighty percent (80%) of the Final Project Budget; not more than fifteen percent (15%) of such eighty percent (80%) (i.e., 12% of the Final Project Budget) may be comprised of written pledges.

**SECTION 8. CONDITIONS TO THE CITY'S OBLIGATION TO CLOSE.**

8.1 RDA Closing. The obligations of the City to "close" this Agreement are contingent upon the Developer's satisfaction of the obligations set forth in Section 8.1(A) through 8.1(E) no later than sixty (60) days after the Ordinance Date, or by such other date as may be specified, unless waived or extended in writing by the Commissioner of the Department (the "Commissioner"), in the Commissioner's sole and absolute discretion:

A. Legal Opinion. The Developer shall have delivered to the City a legal opinion stating, in part, that the Developer has been duly organized and that the Developer is duly authorized to enter into this Agreement. Such opinion shall be in a form and substance reasonably acceptable to the City's Corporation Counsel.

B. Due Diligence. The Developer shall have delivered to the City due diligence searches in Developer's name (UCC, State and federal tax lien, pending litigation and judgments in Cook County and the U.S. District Court for the Northern District of Illinois, and bankruptcy) showing no unacceptable liens, litigation, judgments or filings, as reasonably determined by the City's Corporation Counsel.

C. Organization and Authority Documents. The Developer shall have delivered to the City articles of organization, including all amendments thereto, of the Developer, as furnished and certified by the Secretary of State of the State of Illinois; a Certificate of Good Standing dated no more than thirty (30) days prior to the RDA Closing Date, issued by the Office of the Secretary of State of the State of Illinois, as to the good standing of the Developer; and operating agreement, resolutions and such other organizational documents as the City may reasonably request.

D. Representations and Warranties. On the RDA Closing Date, each of the representations and warranties of the Developer in this Agreement shall be true and correct.

E. Other Obligations. On the RDA Closing Date, the Developer shall have performed all of the other obligations required to be performed by the Developer under this Agreement as of the RDA Closing Date.

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F. Developer Election Not to Proceed. At any time following the Ordinance Date but prior to the RDA Closing Date, the Developer may elect not to proceed with the transaction by delivering written notice to the City. If the Developer elects not to proceed, the Developer shall deliver notice to the City and the City shall return the Earnest Money to the Developer.

G. City Right to Terminate. If any of the conditions in this Section 8.1 have not been satisfied to the City's reasonable satisfaction within the time period provided for herein, the City may, at its option, terminate this Agreement after (a) delivery of written notice to the Developer at any time after the expiration of the applicable time period, stating the condition or conditions that have not been fulfilled, and (b) providing the Developer with forty-five (45) days to fulfill those conditions. If, after receiving notice and an opportunity to cure as described in the preceding sentence, the Developer still has not fulfilled the applicable conditions to the

City's reasonable, satisfaction, this Agreement shall be null and void and, except as otherwise specifically provided, neither party shall have any further right, duty or obligation hereunder.. Any forbearance by the City in exercising its right to terminate this Agreement upon a default hereunder shall not be construed as a waiver of such right.

8.2. Property Closing. The obligations of the City to close on the conveyance of the Property to the Developer are contingent upon each of the following items in Section 8.2(A) through Section 8.2(K) being satisfied at least fourteen (14) days prior to the Property Closing Date, or by such other date as may be specified, unless waived or extended in writing by the Commissioner, in the Commissioner's sole and absolute discretion:

A. Final Governmental Approvals. Developer shall have delivered to the City evidence of its receipt of all Governmental Approvals necessary to construct the Project.

B. Budget and Proof of Financing. The City shall have approved the Developer's Final Project Budget and Proof of Financing.

C. Simultaneous Loan Closing. [Intentionally Omitted]

D. Insurance. The Developer shall provide evidence of insurance reasonably acceptable to the City. The City shall be named as an additional insured on any liability insurance policies (\$1M per occurrence and \$2M aggregate) and as a loss payee (subject to the rights of any permitted mortgagee) on any property insurance policies from the Property Closing Date through the date the City issues the Certificate of Completion. With respect to property insurance, the City will accept an ACORD 28 form. With respect to liability insurance, the City will accept an ACORD 25 form, together with a copy of the endorsement that is added to the Developer's policy showing the City as an additional insured.

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E. Due Diligence. The Developer shall have delivered to the City updated due diligence searches in Developer's name (UCC, State and federal tax lien, pending litigation and judgments in Cook County and the U.S. District Court for the Northern District of Illinois, and bankruptcy) showing no unacceptable liens, litigation, judgments or filings, as reasonably determined by the City's Corporation Counsel.

F. Subordination Agreement. [Intentionally Omitted]

G. MBE/WBE and Local Hiring Compliance Plan. The Developer and the Developer's general contractor and all major subcontractors shall meet with staff from the Department regarding compliance with the 24% MBE, 4% WBE, 50% Local Hiring and other requirements set forth in Section 22, and at least fourteen (14) days prior to the Property Closing Date, the City shall have approved the Developer's compliance plan in accordance with Section 22.4.

H. Phase I Environmental Report. The Developer shall have delivered a Phase I Environmental Site Assessment Report ("Phase I Report"), dated within 180 days prior to the Property Closing Date, to the City.

I. Representations and Warranties. On the Property Closing Date, each of the representations and warranties of the Developer in this Agreement shall be true and correct.

J. Other Obligations. On the Property Closing Date, the Developer shall have performed all of the other obligations required to be performed by the Developer under this Agreement as of the Property Closing Date.

K. Reconveyance Deed. Prior to the conveyance of the Property to the Developer, the Developer shall deliver to the City a special warranty deed for the Property in recordable form naming the City as grantee ("Reconveyance Deed"), for possible recording in accordance with Section 18.3(d) below, if applicable.

L. Right to Terminate. If any of the conditions in this Section 8.2 have not been satisfied to the City's reasonable satisfaction within the time period provided for herein, the City may, at its option, terminate this Agreement after (a) delivery of written notice to the Developer at any time after the expiration of the applicable time period, stating the condition or conditions that have not been fulfilled, and (b) providing the Developer with forty-five (45) days to fulfill those conditions. If, after receiving notice and an opportunity to cure as described in the preceding sentence, the Developer still has not fulfilled the applicable conditions to the City's reasonable satisfaction, this Agreement shall be null and void and, except as otherwise specifically provided, neither party shall have any further right, duty or obligation hereunder; provided.. Any forbearance by the City in exercising its right to terminate this Agreement upon a default hereunder shall not be construed as a waiver of such right.

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**SECTION 9. SITE PLANS AND ARCHITECTURAL DRAWINGS.**

1 Site Plans. The Developer shall construct the Project on the Project Site in accordance with the site plan, specifications and architectural drawings prepared by Jeanna DiMaria, 824 W. Superior Street, Suite #203, Chicago, IL 60642, which have been approved by the Department and which are attached hereto as Exhibit D (collectively, the "Working Drawings and Specifications"). No material deviation from the Working Drawings and Specifications may be made without the Department's prior written approval. If the Developer submits and the Department approves revised design development drawings and specifications after the date of this Agreement, the term "Working Drawings and Specifications" as used herein shall refer to the revised design development drawings and specifications upon the Department's written approval of the same.

2 Relocation of Utilities, Curb Cuts and Driveways. To the extent necessary to complete the Project, the Developer shall be solely responsible for and shall pay all costs in regard to: (1) the relocation, installation or construction of public or private utilities located on the Project Site; (2) the relocation, installation and construction of any curb cuts and driveways; (3) the repair or reconstruction of any curbs,

vaults, sidewalks or parkways required in connection with the Developer's redevelopment; (4) the removal of existing pipes, utility equipment or building foundations located on the Project Site; and (5) the termination of existing water or other services. Any streetscaping, including any paving of sidewalks, landscaping and lighting provided by the Developer, as part of the Project, must be approved by the City.

3 Inspection by the City. For the period commencing on the Property Closing Date and continuing through the date the City issues the Certificate of Completion, any duly authorized representative of the City shall have access to the Project Site at all reasonable times for the purpose of determining whether the Developer is constructing the Project in accordance with the terms of this Agreement and all applicable federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders and judgments, including, without limitation. Sections 7-28 and 11-4 of the Municipal Code of Chicago relating to waste disposal (collectively, "Laws").

4 Barricades and Signs. Upon the City's request, the Developer agrees to erect such signs as the City may reasonably require identifying the Project Site as a City redevelopment project. The Developer may erect signs of its own incorporating such approved identification information upon the execution of this Agreement. Prior to the commencement of any construction activity requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable Laws. The City shall have the right to approve all barricades, the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades, and all signage, which approval shall not be unreasonably withheld or delayed.

#### **SECTION 10. LIMITED APPLICABILITY.**

The approval of any Working Drawings and Specifications by the Department's Bureau of Economic Development is for the purpose of this Agreement only and does not constitute the approval required by the City's Department of Buildings, any other Department Bureau (such as

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but not limited to, the Department's Bureau of Zoning), or any other City department; nor does the approval by the Department pursuant to this Agreement constitute an approval of the quality, structural soundness or the safety of any improvements located or to be located on the Project Site. The approval given by the Department shall be only for the benefit of the Developer and any lienholder authorized by this Agreement.

#### **SECTION 11. COMMENCEMENT AND COMPLETION OF PROJECT.**

Subject to the receipt of all necessary government approvals, the Developer shall commence construction of the Project no later than sixty (60) days after the RDA Closing Date (the date on which construction commences, the "Construction Commencement Date"), and shall complete the Project, as reasonably determined by the Department and evidenced by a "Certificate of Completion" (as defined in Section 12), no later than six (6) months following the Construction Commencement Date.

The Commissioner shall have discretion to extend the Project construction commencement and completion dates for good cause shown by issuing a written extension letter. The Developer shall give written notice to the City within five (5) days after it commences construction of the Project. The Project shall be constructed in accordance with all applicable Laws.

#### **SECTION 12. CERTIFICATE OF COMPLETION**

A. Upon the completion of the construction of the Project, the Developer shall request from the City a Certificate of Completion (the "Certificate of Completion"). Within forty-five (45) days thereof, the City shall provide the Developer with either the Certificate of Completion or a written statement indicating in adequate detail how the Developer has failed to complete the Project in compliance with this Agreement, or is otherwise in default, and what measures or acts are necessary, in the sole reasonable opinion of the Department, for the Developer to take or perform in order to obtain the Certificate of Completion. If the Department requires additional measures or acts to assure compliance, the Developer shall resubmit a written request for the Certificate of Completion upon compliance with the City's response. The Certificate of Completion shall be in recordable form, and shall, upon recording, constitute a conclusive determination of satisfaction and termination of certain of the covenants in this Agreement and the Deed (but excluding those on-going covenants as referenced in Section 17) with respect to the Developer's obligations to construct the Project.

**SECTION 13. RESTRICTIONS ON USE.**

The Developer, for itself and its successors and assigns, agrees as follows:

13.1 The Developer shall use and maintain the Project Site as a sculpture garden and off-street parking for three (3) years after the issuance of the Certificate of Completion. For purposes of this Agreement, "sculpture garden" shall mean landscaped and secured green space with artistic sculptures erected that will be open to the public.

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2 The Developer shall construct the Project in accordance with the Working Plans and Specifications, this Agreement and all applicable Laws.

3 The Developer shall not, in violation of applicable law, discriminate on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income in the sale, lease, rental, use or occupancy of the Project Site or any part thereof, except as permitted by applicable law.

4 INTENTIONALLY OMITTED.

5 Commencing one (1) year after the City's issuance of the Certificate of Completion, and annually for a period of three (3) years thereafter, the Developer shall submit to the Department documentation evidencing the Developer's payment of real estate taxes, if any, owed on the Project Site, and the Developer's application for an exemption from real property taxes, if applicable (if the Cook County Board of Review has issued an exemption to the Developer, a copy of such exemption shall be substituted for the exemption application). Said documentation must be submitted to the Department within thirty (30) days following the completion of the applicable one (1) year period.

**SECTION 14. PROHIBITION AGAINST TRANSFER OF PROJECT SITE.**

a) Prior to the date that is three (3) years following the City's issuance of the Certificate of Completion, the Developer shall not, without the prior written consent of the Department, which consent shall be in the Department's sole discretion: (1) directly or indirectly sell, transfer or otherwise dispose of the Project Site or any part thereof or any interest therein, or the Developer's controlling interests therein (including

without limitation, a transfer by assignment of any beneficial interest under a land trust); or (2) directly or indirectly assign this Agreement. In the event of a proposed sale, the City shall be provided copies of any and all sales contracts, legal descriptions, descriptions of intended use, certifications from the proposed buyer regarding this Agreement and such other information as the City may reasonably request. The proposed buyer must be qualified to do business with the City (including but not limited to anti-scofflaw requirement).

b) For purposes of this Section 14:

"Appraised Fair Market Value of the Project Site" means the appraised fair market value of the Project Site, as improved, as of a date that is within ninety (90) days of the Developer's proposed closing date for the Proposed Project Site Sale (as defined below), and which appraisal may be ordered by the City and, if so ordered, shall be paid for by the Developer; provided, however, that the Department may require, pursuant to written notice, that the Developer order and pay for such appraisal.

"Gross Sales Price" means the gross price at which the Developer offers to sell and a purchaser agrees to pay to purchase all or a portion of the Project Site, without any set-offs or credits.

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"Proposed Project Site Sale" means the Developer's sale of all or a portion of the Project Site (i.e., the land, the air rights or both the land and air rights).

"Cost of Vacation" means the dollar amount the Developer paid the City to vacate the Vacated Property.

"Project Cost" means the cost of the Project's construction as evidenced by the dollar amount of the general contractor's sworn statement.

c) The Department's consent to a Proposed Project Site Sale of the Project Site also is subject to the following: If the Proposed Project Site Sale is scheduled to close prior to the date that is three (3) years following the City's issuance of the Certificate of Completion: The Developer shall pay (by cashier's check or certified check) to the City concurrent with the Developer's closing on the Proposed Project Site Sale an amount equal to fifty percent (50%) of the difference between (x) minus (y) minus (z), where (x) equals the greater of the Gross Sales Price and the Appraised Fair Market Value of the Project Site, (y) equals the dollar amount of the Project Cost and (z) equals the Cost of Vacation.

d) Three (3) years plus one (1) day after the City's issuance of the Certificate of Completion, no City consent shall be required for any transfer of the Project Site or portion thereof.

## **SECTION 15. LIMITATION UPON ENCUMBRANCE OF PROJECT SITE.**

Prior to the three (3) years following the issuance of the Certificate of Completion, the Developer shall not, without the Department's prior written consent, which consent shall be in the Department's sole discretion, engage in any financing or other transaction which creates a financial encumbrance or lien on the Project Site.

## **SECTION 16. MORTGAGEES NOT OBLIGATED TO CONSTRUCT**

Notwithstanding any other provision of this Agreement or of the Deed, the holder of any mortgage authorized by this Agreement (or any affiliate of such holder) shall not itself be obligated to construct or

complete the Project, or to guarantee such construction or completion, but shall be bound by the other covenants running with the land specified in Section 17 and, at Closing, at the City's request, shall execute a Subordination Agreement (as defined in Section 8.2(F)). If any such mortgagee or its affiliate succeeds to the Developer's interest in the Project Site prior to the issuance of the Certificate of Completion, whether by foreclosure, deed-in-lieu of foreclosure or otherwise, and thereafter transfers its interest in the Project Site to another party (that is not also a mortgagee), such transferee shall be obligated to complete the Project, and shall also be bound by the other covenants running with the land specified in Section 17.

## **SECTION 17. COVENANTS RUNNING WITH THE LAND.**

The parties agree, and the Deed shall so expressly provide, that the covenants provided in Section 11 (Commencement and Completion of Project), Section 13 (Restrictions on Use), and

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Section 14 (Prohibition Against Transfer of Project Site) and Section 15 (Limitation Upon Encumbrance of Project Site) will be covenants running with the land, binding on the Developer and its successors and assigns (subject to the limitations set forth in Section 16 above as to any permitted mortgagee) to the fullest extent permitted by law and equity for the benefit and in favor of the City, and shall be enforceable by the City. The covenants provided in Section 11, and Section 13.2 shall terminate upon the issuance of the Certificate of Completion. The covenants contained in Section 13.3 shall remain in effect without limitation as to time. The covenants contained in Section 13.1, Section 14 and Section 15 shall terminate three (3) years and one (1) day after the date the City issues the Certificate of Completion, unless terminated in writing at an earlier date in the sole discretion of the Commissioner. The covenant contained in Section 13.5 shall terminate upon the Developer's submission to the Department of the Developer's third (annual) documentation evidencing the Developer's payment of real estate taxes on the Project Site.

## **SECTION 18. PERFORMANCE AND BREACH.**

1 Time of the Essence. Time is of the essence in the Developer's performance of its obligations under this Agreement.

2 Permitted Delays. The Developer shall not be considered in breach of its obligations under this Agreement in the event of a delay due to unforeseeable causes beyond the Developer's control and without the Developer's fault or negligence, including but not limited to, acts of God, acts of the public enemy, acts of the United States government, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, material shortages, and unusually severe weather or delays of contractors or subcontractors due to such causes. The time for the performance of the obligations shall be extended only for the period of the delay and only if the Developer requests it in writing of the City within thirty (30) days after the beginning of any such delay.

3 Breach.

- a. Generally. If the Developer defaults in performing its obligations under this Agreement, the City shall deliver written notice of such default, after which the Developer shall have a 45-day cure period to remedy such default. If the default is not capable of being cured within the 45-day period, then provided the Developer has commenced to cure the default and is diligently proceeding to cure the default within the 45-day period, and thereafter diligently prosecutes such cure through to completion, then the 45-day period shall be extended for the length of time that is reasonably necessary to cure the default. If the default is not cured in the time period provided for herein, the City may institute such proceedings at law or in equity as may be necessary or desirable to cure and

remedy the default, including but not limited to, proceedings to compel specific performance.

No notice or cure period shall apply to a failure to close by the respective dates as set forth in Section 3 herein. Unless the failure to close is due to circumstances described in Section 18.2 above or caused by a breach by the City under the terms of this Agreement, such failure shall constitute an immediate "Event of Default". Failure to

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close by the dates set forth in Section 3 shall entitle the City to terminate this Agreement.

- b. Event of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" after written notice from the City (if required):
1. The Developer fails to perform any obligation of the Developer under this Agreement; which default is not cured pursuant to Section 18.3.a.; or
  2. The Developer makes or furnishes a warranty, representation, statement or certification to the City (whether in this Agreement, an Economic Disclosure Form, or another document) which is not true and correct, which default is not cured pursuant to Section 18.3(a).; or
  3. A petition is filed by or against the Developer under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereafter existing, which is not vacated, stayed or set aside within thirty (30) days after filing; or
  4. Except as excused by Section 18.2 above, the Developer abandons or substantially suspends the construction work for a period of time greater than 60 days (no notice or cure period shall apply); or
  5. The Developer fails to comply with the operating covenant set forth in Section 13.1, which default is not cured pursuant to Section 18.3(a); provided however that for the purposes of this Section 18.3(b)(5) the cure period shall be ninety (90) days instead of forty-five (45); or
  6. The Developer fails to timely pay real estate taxes or assessments affecting the Project Site or suffers or permits any levy or attachment, material suppliers' or mechanics' lien, or any other lien or encumbrance unauthorized by this Agreement to attach to the Project Site, which default is not cured pursuant to Section 18.3(a); or
  7. The Developer makes an assignment, pledge, unpermitted financing, encumbrance, transfer or other disposition in violation of this Agreement (no notice or cure period shall apply); or
  8. The Developer's financial condition or operations adversely change to such an extent that would materially and adversely affect the Developer's ability to complete the Project, which default is not cured pursuant to Section 18.3(a).; or

9. The Developer fails to perform, keep or observe any of the other covenants, promises, agreements, or obligations under this Agreement, including but not limited to, the covenants set forth in Sections 13 and 17 herein, or any other written agreement entered into with the City with respect to this Project, which default is not cured pursuant to Section 18.3(a); or
10. Failure to close by the Outside RDA Closing Date or the Outside Property Closing Date, unless the Commissioner in his sole discretion extends the Outside RDA Closing Date or the Outside Property Closing Date for six (6) months in accordance with Section 3 of this Agreement; or
11. Failure to commence or completion construction in accordance with the timeframes set forth in Section 11 of this Agreement (no notice or cure period shall apply); or
12. Failure to pay the City the amount set forth in Section 14, if applicable (no notice or cure period shall apply).

c. Prior to Conveyance. Prior to Property Closing, if an Event of Default occurs and is continuing, and the default is not cured in the time period provided herein, the City may terminate this Agreement, and institute any action or proceeding at law or in equity against the Developer.

d. After Conveyance. If an Event of Default occurs after the Property Closing but prior to three (3) years following the issuance of the Certificate of Completion, and the default is not cured in the time period provided for in this Section 18.3, the City may terminate this Agreement and exercise any and all remedies available to it at law or in equity, including, without limitation, the right to re-enter and take possession of the Project Site, terminate the estate conveyed to the Developer, and record the Reconveyance Deed for the purpose of reverting title to the Project Site in the City (the "Right of Reverter"); provided, however, the City's Right of Reverter shall be limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage authorized by this Agreement. If the Reconveyance Deed is recorded by the City, the Developer shall be responsible for all real estate taxes and assessments which accrued during the period the Project Site was owned by the Developer, and shall cause the release of all liens or encumbrances placed on the Project Site during the period of time the Project Site was owned by the Developer. The Developer will cooperate with the City to ensure that if the City records the Reconveyance Deed, such recording is effective for purposes of transferring title to the Project Site to the City, subject only to those title exceptions that were on title as of the date and time that the City conveyed the Project Site to the Developer.

If title to the Project Site reverts in the City pursuant to the Right of Reverter, the Developer shall be responsible for all real estate taxes and assessments which accrued during the period the Project Site was owned by the Developer, and shall cause the

release of all liens or encumbrances placed on the Project Site during the period of time the Project Site was owned by the Developer.

The City's Right of Reverter shall terminate three (3) years and one (1) day after the issuance of the City's Certificate of Completion.

e. Waiver and Estoppel. Any delay by the City in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive the City of or limit such rights in any way. No waiver made by the City with respect to any specific default by the Developer shall be construed, considered or treated as a waiver of the rights of the City with respect to any other defaults of the Developer.

**SECTION 19. CONFLICT OF INTEREST; CITY'S AND DEVELOPER'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.**

The Developer warrants that no agent, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement or the Project Site, nor shall any such agent, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any entity or association in which he or she is directly or indirectly interested. No agent, official, or employee of the City shall be personally liable to the 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 the Developer or successor or on any obligation under the terms of this Agreement. It is expressly understood and agreed to by and between the parties hereto, anything herein to the contrary notwithstanding, that no individual member of the Developer, its officers, members of its board of directors, officials, agents, representatives or employees shall be personally liable for any of the Developer's obligations or any undertaking or covenant of the Developer contained in this Agreement .

**SECTION 20. INDEMNIFICATION.**

The Developer agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) (collectively "Losses") suffered or incurred by the City arising from or in connection with: (1) an Event of Default that has occurred; (2) the failure of the Developer or any of Developer's contractors, subcontractors or agents to pay contractors, subcontractors or material suppliers in connection with the construction of the Project; (3) the failure of the Developer to redress any misrepresentations or omissions in this Agreement or any other agreement relating hereto; and (4) any actions, including but not limited to, conducting environmental tests on the Project Site as set forth in Section 21 herein, resulting from any activity undertaken by the Developer on the Project Site prior to or after the conveyance of said Project Site to the Developer by the City; provided, however, the Developer shall have no obligation to indemnify the City for Losses to the extent such Losses are caused by the City or its agents. This indemnification shall survive any termination of this Agreement (regardless of the reason for such termination).

**SECTION 21. ENVIRONMENTAL MATTERS.**

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The City makes no covenant, representation or warranty as to the environmental condition of the Project Site or the suitability of the Project Site for any purpose whatsoever, and the Developer agrees to accept the Project Site "as is".

It shall be the responsibility of the Developer, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Project Site. Prior to the date of Property Closing, Developer may enter the Project Site owned by the City for the purpose of conducting environmental tests on the Project Site to determine that the environmental condition of such Project Site is acceptable. The Developer's activities on such Project Site shall be limited to those reasonably necessary to perform the environmental testing. Upon

completion of the work, the Developer shall restore the Project Site to its original condition. The Developer shall keep such Project Site free from any and all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Developer, and agrees to indemnify and hold the City harmless against any such liens.

The Developer will deliver to the City a copy of each report prepared by or for the Developer regarding the environmental condition of the Project Site. If prior to the Property Closing, the Developer's environmental consultant determines an environmental or soil condition exists on the Project Site to such an extent that the Developer determines that it is not satisfied, in its sole discretion, with the condition of the Project Site, the Developer may declare this Agreement null and void by giving written notice thereof to the City, and the City shall promptly return the Earnest Money and Performance Deposit to the Developer.

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

## **SECTION 22. DEVELOPER'S EMPLOYMENT OBLIGATIONS.**

22.1 Employment Opportunity. The Developer agrees, and shall contractually obligate its various contractors, subcontractors and any affiliate of the Developer operating on the Project Site (collectively, the "Employers" and individually, an "Employer") to agree, that with respect to the provision of services in connection with the construction of the Project:

(a) Neither the Developer nor any Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, gender identity, 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, Section 2-160-010 et seq. of the Municipal Code of Chicago, as amended from time to time (the "Human Rights Ordinance"). The

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Developer and each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon the foregoing grounds, 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. The Developer and 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 Developer and each Employer, in all print solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon the foregoing grounds.

b) To the greatest extent feasible, the Developer and each Employer shall present

opportunities for training and employment of low and moderate income residents of the City, and provide that contracts for work in connection with the construction of the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in, the City.

c) The Developer and each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including, without limitation, the 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) The Developer, in order to demonstrate compliance with the terms of this Section 22.1, shall cooperate with and promptly and accurately respond to reasonable 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) The Developer and each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the construction of 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 Project Site, so that each such provision shall be binding upon each contractor, subcontractor or affiliate, as the case may be.

(!) Failure to comply with the employment obligations described in this Section 22.1 shall be a basis for the City to pursue remedies under the provisions of Section 18.

22.2 City Resident Employment Requirement. The Developer agrees, and shall contractually obligate each Employer to agree, that during the construction of the Project, the Developer and each Employer shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in Section 2-92-330 of the Municipal Code of Chicago (at least fifty percent); provided, however, that doing so does not

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violate a collective bargaining agreement of Developer or an Employer and that in addition to complying with this percentage, the Developer and each Employer shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

a) The Developer and the Employers may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the chief procurement officer of the City of Chicago.

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

c) The Developer and the Employers shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the construction of Project. The Developer and the Employers shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

d) The Developer and the Employers shall submit weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) to the Department 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 Developer or Employer hired the employee should be written in after the employee's name.

e) The Developer and the Employers shall provide full access to their employment records to the chief procurement officer, the Department, the Superintendent of the Chicago Police Department, the inspector general, or any duly authorized representative thereof. The Developer and the Employers shall maintain all relevant personnel data and records for a period of at least three (3) years after the issuance of the Certificate of Completion.

f) At the direction of the Department, the Developer and the Employers shall provide affidavits and other supporting documentation to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

g) Good faith efforts on the part of the Developer and the Employers to provide work for 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 22.2 concerning the worker hours performed by actual Chicago residents.

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(h) If the City determines that the Developer or an Employer failed to ensure the fulfillment of the requirements of this Section 22.2 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 22.2. If such non-compliance is not remedied in accordance with the breach and cure provisions of Section 18.3, the parties agree that 1/20 of 1 percent (.05%) of the aggregate hard construction costs set forth in the Final Project Budget shall be surrendered by the Developer and for the Employers 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 the Developer and/or the other Employers or employees to prosecution.

(i) 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.

(j) The Developer shall cause or require the provisions of this Section 22.2 to be included in all construction contracts and subcontracts related to the construction of the Project.

22.3 Developer's MBE/WBE Commitment. The Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the general contractor to agree, that during the construction of the Project:

a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "Procurement Program"), and (ii) the Minority-and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq.. Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 22.3, during the course of construction of the Project, at least 24% of the aggregate hard construction costs shall be expended for contract participation by minority-owned businesses and at least 4% of the aggregate hard construction costs shall be expended for contract participation by women-owned businesses.

b) For purposes of this Section 22.3 only:

(i) The Developer (and any party to whom a contract is let by the Developer in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by the Developer in connection with the Project)

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shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

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

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

c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the 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 the 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 construction of the Project to one or more MBEs or WBEs; by the purchase of materials or services used in the construction of 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 the Developer's MBE/WBE commitment as described in this Section 23.3. In accordance with Section 2-92-730, Municipal Code of Chicago, the Developer shall not substitute any MBE or WBE general contractor or subcontractor without the prior written approval of the Department.

d) The Developer shall deliver quarterly reports to the City's monitoring staff 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 the 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 construction of 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 the Developer's compliance with this MBE/WBE commitment. The Developer shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the construction of the Project for at least five (5)

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years after completion of the Project, and the City's monitoring staff shall have access to all such records maintained by the Developer, on prior notice of at least five (5) business days, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the construction of the Project.

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

f) Any reduction or waiver of the Developer's MBE/WBE commitment as described in this Section 22.3 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

22.4 Pre-Construction Conference and Post-Closing Compliance Requirements. Not less than fourteen (14) days prior to the Property Closing Date, the Developer and the Developer's general contractor and all major subcontractors shall meet with the Department monitoring staff regarding compliance with all Section 22 requirements. During this pre-construction meeting, the Developer shall present its plan to achieve its obligations under this Section 22, the sufficiency of which the City's monitoring staff shall approve as a precondition to the Closing. During the construction of the Project, the Developer shall submit all documentation required by this Section 22 to the City's monitoring staff, including, without limitation, the following: (a) subcontractor's activity report; (b) contractor's certification concerning labor standards and prevailing wage requirements; (c) contractor letter of understanding; (d) monthly utilization report; (e) authorization for payroll agent; (f) certified payroll; (g) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (h) 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 the Developer is not complying with its obligations under this Section 22, shall, upon the delivery of written notice to the 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: (w) issue a written demand to the Developer to halt construction of the Project, (x) withhold any further payment of any City funds to the Developer or the general contractor, or (y) seek any other remedies against the Developer available at law or in equity.

**SECTION 23. REPRESENTATIONS AND WARRANTIES.**

23.1 Representations and Warranties of the Developer. To induce the City to execute this Agreement and perform its obligations hereunder, the Developer hereby represents and warrants to the City that as of the date of this Agreement and as of the RDA Closing Date and as of the Property Closing Date the following shall be true and correct in all respects:

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- a. The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois with full power and authority to acquire, own and redevelop the Project Site, and the person signing this Agreement on behalf of the Developer has the authority to do so.
- b. All certifications and statements contained in the Economic Disclosure Statement last submitted to the City by the Developer (and any legal entity holding an interest in the Developer) are true, accurate and complete.
- c. The Developer's execution, delivery and performance of this Agreement and all instruments and agreements contemplated hereby will not, upon the giving of notice or lapse of time, or both, result in a breach or violation of, or constitute a default under, any other agreement to which the Developer, or any party affiliated with the Developer, is a party or by which the Developer or the Project Site is bound.
- d. To the best of the Developer's knowledge, no action, litigation, investigation or proceeding of any kind is pending or threatened against the Developer, or any party affiliated with the Developer, and the Developer knows of no facts which could give rise to any such action, litigation, investigation or proceeding, which could: (a) affect the ability of the Developer to perform its obligations hereunder; or (b) materially affect the operation or financial condition of the Developer.
- e. To the best of the Developer's knowledge, the Project will not violate: (a) any Laws, including, without limitation, any zoning and building codes and environmental regulations; or (b) any building permit, restriction of record or other agreement affecting the Project Site.

2 Representations and Warranties of the City. To induce the Developer to execute this Agreement and perform its obligations hereunder, the City hereby represents and warrants to the Developer that the City has authority under its home rule powers to execute and deliver this Agreement and perform the terms and obligations contained herein, and the person signing this Agreement on behalf of the City has the authority to do so.

3 Survival of Representations and Warranties. Each of the parties agrees that all of its representations and warranties set forth in this Section 23 or elsewhere in this Agreement are true as of the date of this Agreement and will be true in all material respects at all times thereafter, except with respect to matters

which have been disclosed in writing and approved by the other party.

**SECTION 24. PROVISIONS NOT MERGED WITH DEED.**

The provisions of this Agreement shall not be merged with the Deed, and the delivery of the Deed shall not be deemed to affect or impair the provisions of this Agreement.

**SECTION 25. HEADINGS.**

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The headings of the various sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions thereof.

**SECTION 26. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between the parties and supersedes and replaces completely any prior agreements between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

**SECTION 27. SEVERABILITY.**

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

**SECTION 28. NOTICES.**

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) facsimile transmission, provided that there is written confirmation of such communications; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

City of Chicago  
Department of Planning and Development  
121 North LaSalle Street  
Room 1000 -City Hall  
Chicago, Illinois 60602  
Attn: Commissioner  
Fax: 312-744-5892

City of Chicago Department of Law 121 North LaSalle Street Room 600  
Chicago, Illinois 60602 Attn: Real Estate Division Fax: 312-742-0277

7200 South Kimbark, LLC 6918 S. Dorchester Chicago, Illinois 60637 Attn: Mercedes Zavala Fax: 773-834-



The Developer acknowledges (1) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (2) that it 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" (as defined in Section 2-156-080 of the Municipal Code of Chicago), 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, and (3) notwithstanding anything to the contrary contained in this Agreement, 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. The Developer hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

### **SECTION 35. PATRIOT ACT CERTIFICATION.**

The Developer represents and warrants that neither the Developer nor any Affiliate thereof (as defined in the next paragraph) 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.

As used in the above paragraph, an "Affiliate" shall be deemed to be a person or entity related to the Developer that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Developer, 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.

### **SECTION 36. PROHIBITION ON CERTAIN CONTRIBUTIONS -MAYORAL EXECUTIVE ORDER NO. 2011-4.**

Developer agrees that Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in Developer of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Developer's contractors (i.e., any person or entity in direct contractual privity with Developer regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Developer and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (1) after execution of this Agreement by Developer, (2) while this Agreement or any Other Contract is

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executory, (3) during the term of this Agreement or any Other Contract between Developer and the City, or (4) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Developer represents and warrants that from the later to occur of (1) May 16, 2011, and (2) the date the City approached the Developer or the date the Developer approached the City, as applicable, regarding the

formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Developer agrees that it shall not: (1) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (2) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (3) Bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Developer agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Developer intentionally violates this provision or Mayoral Executive Order No. 2011-4 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

"Bundle" means to collect contributions from more than one source, which is then delivered by one person to the Mayor or to his political fundraising committee.

"Other Contract" means any other agreement with the City of Chicago to which Developer is a party that is (1) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (2) entered into for the purchase or lease of real or personal property; or (3) for materials, supplies, equipment or services which are approved or authorized by the City Council of the City of Chicago.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

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1. they are each other's sole domestic partner, responsible for each other's common welfare; and
2. neither party is married; and
3. the partners are not related by blood closer than would bar marriage in the State of Illinois; and
4. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
5. two of the following four conditions exist for the partners:
  - a. The partners have been residing together for at least 12 months.
  - b. The partners have common or joint ownership of a residence.
  - c. The partners have at least two of the following arrangements:

- i. joint ownership of a motor vehicle;
  - ii. a joint credit account;
  - iii. a joint checking account;
  - iv. a lease for a residence identifying both domestic partners as tenants.
- d. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

### **SECTION 37. FAILURE TO MAINTAIN ELIGIBILITY TO DO BUSINESS WITH THE CITY.**

Failure by Developer or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of the Agreement and the transactions contemplated thereby. Developer shall at all times comply with Section 2-154-020 of the Municipal Code of Chicago.

### **SECTION 38. INSPECTOR GENERAL AND LEGISLATIVE INSPECTOR GENERAL.**

It is the duty of every officer, employee, department, agency, contractor, subcontractor, developer and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the City's Legislative Inspector General and with the City's Inspector General in any investigation or hearing undertaken pursuant to Chapters 2-55 and 2-56, respectively, of the Municipal Code of Chicago. The Developer understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code of Chicago.

### **SECTION 39. 2014 CITY HIRING PLAN.**

(i) The City is subject to the June 16, 2014 "City of Chicago Hiring Plan" (as amended, the "2014 City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois).

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Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(ii) Developer is aware that City policy prohibits City employees from directing any individual to apply for a position with Developer, either as an employee or as a subcontractor, and from directing Developer to hire an individual as an employee or as a subcontractor. Accordingly, Developer must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Developer under this Agreement are employees or subcontractors of Developer, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Developer.

iii) Developer will not condition, base, or knowingly prejudice or affect any term or aspect to the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

iv) In the event of any communication to Developer by a City employee or City official in violation of subparagraph (ii) above, or advocating a violation of subparagraph (iii) above, Developer will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General (the "OIG"), and also to the head of the relevant City Department utilizing services provided under this Agreement. Developer will also cooperate with any inquiries by the OIG.

**SECTION 40. COUNTERPARTS.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute a single, integrated document.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on or as of the date first above written.

**CITY OF CHICAGO,**  
an Illinois municipal corporation and home rule  
unit of government

By:  
Andrew J. Mooney Commissioner  
Department of Planning and Development

**7200 South Kimbark, LLC,**  
an Illinois limited liability company

By: \_ Name: Its:

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STATE OF ILLINOIS

COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Andrew J. Mooney, personally known to me to be the Commissioner of Planning and Development of the City of Chicago, an Illinois municipal corporation, 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 being first duly sworn by me acknowledged that as the Commissioner, he signed and delivered the instrument pursuant to authority given by the City of Chicago, as his free and voluntary act and as the free and voluntary act and deed of the City, for the uses and purposes therein set forth.

GIVEN under my notarial seal this

NOTARY PUBLIC

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STATE OF ILLINOIS )

) SS.

COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of 7200 South Kimbark, LLC, an Illinois limited liability company, 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, being first duly sworn by me, acknowledged that s/he signed and delivered the foregoing instrument pursuant to authority given by said corporation, as her/his free and voluntary act and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ .



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**EXHIBIT A-2 TO REDEVELOPMENT AGREEMENT**

**LEGAL DESCRIPTION OF VACATED PROPERTY**

(Subject to vacation ordinance and final plat of vacation)

THAT PART OF THE EAST-WEST OF EAST 72<sup>nd</sup> PLACE 66 FOOT PUBLIC RIGHT OF WAY LYING SOUTH AND ADJACENT TO LOT 33 IN BLOCK 12, NORTH AND ADJACENT TO LOTS 20 THROUGH 24 IN BLOCK 13, EAST OF THE EASTERLY RIGHT OF WAY OF ILLINOIS CENTRAL RAILROAD, WEST OF THE EAST LINE OF SOUTH KIMBARK AVENUE EXTENDED SOUTH IN JOHN G. SHORTALL TRUSTEE'S SUBDIVISION OF THE NORTH ½ OF THE NORTHEAST ¼ OF SECTION 26, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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**EXHIBIT B TO REDEVELOPMENT AGREEMENT PRELIMINARY PLAT OF VACATION**

(Subject to vacation ordinance) [ATTACHED]

**PLAT OF VACATION**

o o

**ZOMSNG RS-3**

**E. 72ND PL.**

**ZONI IMG RS-3**

ALL PARCELS DIMENSIONS AND ANGLES ARE  
MEASURED DISTANCES

THE FIELD WORK WAS COMPLETED ON APRIL  
17TH, 2015

NO MONUMENTS WERE SET OUT ON ANY PROPERTY CORNERS

NO DIMENSIONS SHOULD BE ASSUMED BY SCALE MEASUREMENTS UPON THE PLAT

DRAWING NO.: CDOT# XX-XX-XX-XXXX SCALE: 1 INCH EQUALS 50 FEET.  
DISTANCES ARE MARKED IN FEET AND DECIMAL PARTS THEREOF.

**ANDREW SPIEWAK LAND SURVEYOR, INC.**

5805 W. HIGGINS AVE., CHICAGO, IL 60630 phone: (773) 736-1344; fax: (773) 736-4616  
'www.surveyorsland.com <<http://www.surveyorsland.com>>470 SHAGBARK CT., ROSELLE, IL 60172 phone: (630) 351-9489;  
cell: (773) 617-3433 www.landsurveyors.pro <<http://www.landsurveyors.pro>> andrew@landsurveyors.pro  
<<mailto:andrew@landsurveyors.pro>>

SHEET 1 OF 2  
PENDING VACATION

**PLAT OF VACATION**

of

THAT PART OF THE EAST-WEST OF EAST 72ND PLACE 66 FOOT PUBLIC RIGHT OF WAY LYING SOUTH AND ADJACENT TO LOT 33 IN BLOCK 12 , NORTH AND ADJACENT TO LOTS 20 THROUGH 24 IN BLOCK 13, EAST OF THE EASTERLY RIGHT OF WAY OF ILLINOIS CENTRAL RAILROAD, WEST OF THE EAST LINE OF SOUTH KIMBARK AVENUE EXTENDED SOUTH IN JOHN G. SHORTALL TRUSTEE'S SUBDIVISION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

JOHN G. SHORTALL TRUSTEE'S SUB. OF N. 1/2 OF N.E. 1/4 SEC. 26-38-14. REC. MARCH 21, 1877 DOC. # 126830  
MEASURED DISTANCES <sup>174.S1</sup> N 89-00'31" E

REC. 128.75 M1-2

TO BE VACATED RECORD DISTANCES ZONING

TRAFFIC FLOW

R.O.W. LINE

LOT UNE

BOUNDARY TO BE VACATED

DOCUMENTS RECORDATION DESIGNATION

STATE OF ILLINOIS)

COUNTY OF COOK)

ANDREW SPIEWAK LAND SURVEYOR, INC., A PROFESSIONAL DESIGN FIRM, LAND SURVEYING CORPORATION, LICENSE NO. 184.006518 HEREBY CERTIFIES THAT A PLAT OF VACATION DESCRIBED ON SHEETS 1 OF 1 HAS BEEN PREPARED UNDER THE DIRECTION AND SUPERVISION OF AN ILLINOIS PROFESSIONAL LAND SURVEYOR FOR THE PURPOSE OF VACATING THE SAME AND THAT THE PLAT HEREON DRAWN IS A CORRECT REPRESENTATION THEREOF. CHICAGO, ILLINOIS, DATED: MAY 11, 2015

BY:

ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3178 MY LICENSE EXPIRES 11/30/2016.

DRAWING NO.: CDOT# XX-XX-XX-XXXX

ORDERED BY: MERCEDES ZAVALA 773-255-2403 ORGANIZATION: 7200 S KIMBARK LLC MAIL TO: 6918 S. DORCHESTER CHICAGO, IL 60637 PROJECT No.: 085-15

**ANDREW SPIEWAK LAND SURVEYOR, INC.**

5805 W. HIGGINS AVE., CHICAGO, IL 60630 phone: (773) 736-1344; fax: (773) 736-4616

www.surveyorsland.com <<http://www.surveyorsland.com>> 470 SHAGBARK CT., ROSELLE, IL 60172 phone: (630) 351-9489; cell: (773) 617-3433 [www.landsurveyors.pro](http://www.landsurveyors.pro) <<http://www.landsurveyors.pro>> [andrew@landsurveyors.pro](mailto:andrew@landsurveyors.pro) <<mailto:andrew@landsurveyors.pro>>

SHEET 2 OF 2  
PENDING VACATION

**EXHIBIT C TO REDEVELOPMENT AGREEMENT**

**NARRATIVE DESCRIPTION OF PROJECT**

The Developer will use the Project Site as an extension of its Existing Business and will construct a sculpture garden, and off-street parking for its Existing Business on the Project Site. The sculpture garden will be landscaped, secured green space with artistic sculptures erected and will be open to the public. The off-street parking will also be landscaped and will be used by guests of the Developer's Existing Business.

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EXHIBIT D TO REDEVELOPMENT AGREEMENT WORKING DRAWINGS AND SPECIFICATIONS

[To Come]

