



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
www.chicityclerk.com

## Legislation Details (With Text)

**File #:** O2017-3050  
**Type:** Ordinance      **Status:** Passed  
**File created:** 3/29/2017      **In control:** City Council  
**Final action:** 4/19/2017

**Title:** Sale of City-owned property to and multi-family loan agreement with Montclare Englewood LLC at northwest corner of W 64th St and S Green St

**Sponsors:** Emanuel, Rahm

**Indexes:** Loan & Security, Sale

**Attachments:** 1. O2017-3050.pdf, 2. O2017-3050 (V1).pdf

Date	Ver.	Action By	Action	Result
4/24/2017	1	City Council	Signed by Mayor	
4/19/2017	1	City Council	Passed	Pass
4/18/2017	1	Committee on Finance	Recommended to Pass	Pass
3/29/2017	1	City Council	Referred	

### ORDINANCE

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

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

WHEREAS, the City has certain funds available from a variety of funding sources ("Multi-Family Program Funds") to make loans and grants for the development of multi-family residential housing to increase the number of families served with decent, safe, sanitary and affordable housing and to expand the long-term supply of affordable housing, and such Multi-Family Program Funds are administered by the City's Department of Planning and Development ("DPD"); and

WHEREAS, DPD has preliminarily reviewed and approved the making of a loan to Montclare Englewood, LLC, an Illinois limited liability company (the "Borrower") whose manager is Montclare Englewood Manager, LLC, an Illinois limited liability company (the "Manager"), whose managing member is Montclare Englewood MM Corp., an Illinois corporation ("Montclare Corp.") in an amount not to exceed \$6,600,000 (the "Loan"), to be funded from Multi-Family Program Funds pursuant to the terms and conditions set forth in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the City has established the Community Development Commission ("CDC") to, among other things, designate redevelopment areas, approve redevelopment plans, and recommend the sale of parcels located in redevelopment areas, subject to the approval of the City Council; and

WHEREAS, the City desires to convey five (5) vacant, City-owned parcels of real property (collectively,

the "Property"), which are legally described in Exhibit B attached hereto, for \$1 per parcel to an entity to be approved by the Authorized Officer (as hereinafter defined) (the "Purchaser"), and which such Purchaser shall either be (i) the Borrower, (ii) an entity affiliated with the Borrower, or (iii) a not-for-profit corporation which shall qualify as a Sponsor (a "Sponsor") pursuant to the Donation Tax Credit Program (as hereinafter defined); and

WHEREAS, the Authorized Officer shall only approve the conveyance of the Property to a Sponsor if such Sponsor shall agree to immediately re-convey the Property to the Borrower in connection with the Project (as hereinafter defined); and

WHEREAS, pursuant to ordinances adopted on June 27, 2001, the City Council of the City (the "City Council"): (i) approved a certain redevelopment plan and project (the "Redevelopment Plan") for the Englewood Neighborhood Redevelopment Project Area (the "Redevelopment Area"), pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1 et seq.) (the "Act"); (ii) designated the Redevelopment Area as a redevelopment project area pursuant to the Act; and (iii) adopted tax increment financing

1

pursuant to the Act as a means of financing certain Redevelopment Area project costs incurred pursuant to the Redevelopment Plan; and

WHEREAS, the Property is located in the Redevelopment Area; and

WHEREAS, the Borrower has submitted a proposal to the Department to acquire the Property in order to construct an independent senior living facility with 102 rental units, all of which will be affordable to households earning no more than 60 percent of the area median income (the "Project"); and

WHEREAS, the Project is consistent with the purposes and objectives of the Redevelopment Plan; and

WHEREAS, the Borrower has agreed to undertake the construction of the Project in accordance with the Redevelopment Plan and pursuant to the terms and conditions of a redevelopment agreement in substantially the form attached hereto as Exhibit C (the "Redevelopment Agreement"); and

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

WHEREAS, on January 16, 2002, the City Council enacted an ordinance published in the Journal of Proceedings for such date at pages 77362 through 77366, inclusive, as amended by an ordinance adopted by City Council on September 4, 2003 and published in the Journal of Proceedings for such date at pages 6475 through 6626, inclusive, which authorized the establishment of a program (as supplemented, amended and restated from time to time, the "Donation Tax Credit Program") to be implemented by DPD in connection with the use of certain tax credits authorized by the Act; and

WHEREAS, the City's conveyance of the Property to the Purchaser may qualify under the Donation Tax Credit Program as an eligible donation, and may generate certain additional proceeds for the Project, but such qualification as an eligible donation is not a condition to the making of the Loan; and

WHEREAS, by Resolution No. 17-CDC-8, adopted on February 14, 2017, the CDC authorized the Department to advertise its intent to negotiate a sale of the Property with the Borrower and to request

alternative proposals for the redevelopment of the Property, and recommended the sale of the Property to the Borrower if no responsive alternative proposals were received at the conclusion of the advertising period, or, if alternative proposals were received, if the Department determined in its sole discretion that it was in the best interest of the City to proceed with the Borrower's proposal; and

WHEREAS, public notices advertising the Department's intent to enter into a negotiated sale of the Property with the Borrower and requesting alternative proposals appeared in the Chicago Sun-Times on February 16 and 23, and March 2, 2017; and

***WHEREAS, no other responsive proposals were received by the deadline set forth in the aforesaid notices; now, therefore,***

2

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

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

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

SECTION 3. Upon the approval and availability of the Additional Financing as shown in Exhibit A hereto, the Commissioner of DPD (the "Commissioner") and a designee of the Commissioner (collectively, the "Authorized Officer") are each hereby authorized, subject to approval by the Corporation Counsel, to enter into and execute such agreements and instruments, and perform any and all acts as shall be necessary or advisable in connection with the implementation of the Loan. The Authorized Officer is hereby authorized, subject to the approval of the Corporation Counsel, to negotiate any and all terms and provisions in connection with the Loan which do not substantially modify the terms described in Exhibit A hereto. Upon the execution and receipt of proper documentation, the Authorized Officer is hereby authorized to disburse the proceeds of the Loan to the Borrower.

SECTION 4. The sale of the Property to the Purchaser for \$1.00 per parcel is hereby approved. The Authorized Officer is hereby authorized to approve the entity which shall be the Purchaser, provided that such Purchaser shall either be (i) the Borrower, (ii) an entity affiliated with the Borrower, or (iii) a not-for-profit corporation which shall qualify as a Sponsor under the Donation Tax Credit Program and which shall agree to immediately re-convey the Property to the Borrower. This approval is expressly conditioned upon the City entering into the Redevelopment Agreement with the Purchaser. The Authorized Officer is hereby authorized, with the approval of the City's Corporation Counsel, 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 and such other supporting documents.

SECTION 5. The City hereby approves the conveyance of the Property to the Purchaser. If the conveyance of the Property to the Purchaser qualifies as a donation under the Donation Tax Credit Program, and tax credits are allocated to the City in connection with such conveyance of the Property, the Authorized Officer is hereby authorized to transfer such tax credits to an entity satisfactory to the Authorized Officer on such terms and conditions as are satisfactory to the Authorized Officer (the "Transfer"). The proceeds, if any, received by the City in connection with the Transfer are hereby appropriated, and the Authorized Officer is hereby authorized to use such proceeds to make a grant to the Purchaser, in his or her sole discretion, for use in connection with the Project (the "Grant"). Upon the execution and receipt of proper documentation, the

Authorized Officer is hereby authorized to disburse the proceeds of the Grant to the Purchaser.

SECTION 6. The Mayor or his proxy is authorized to execute, and the City Clerk or the Deputy City Clerk is authorized to attest, one or more quitclaim deeds conveying the Property to the Purchaser, subject to those covenants, conditions and restrictions set forth in the Redevelopment Agreement.

3

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SECTION 7. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance. Section 2-45-115 of the Municipal Code of Chicago shall not apply to the Project or the Property.

SECTION 8. This ordinance shall be effective as of the date of its passage and approval.

Attachments: Exhibit A - Loan Terms

Exhibit B - Legal Description of Property Exhibit C -  
Redevelopment Agreement

**EXHIBIT A TERMS AND**  
**CONDITIONS**

Montclare Englewood, LLC, an Illinois limited liability company whose manager is Montclare Englewood Manager, LLC, an Illinois limited liability company ("Manager"), whose managing member is Montclare Englewood MM Corp. ("Montclare Corp."), and others to be hereafter selected as additional members

Acquisition of land and construction of a building to be located at the Project Property and of approximately 102 one bedroom residential dwelling units for low-income and very low-income persons, along with certain common areas and parking spaces.

Source:

Amount:

Term:

Interest:

Security:

Multi-Family Program Funds Not to exceed \$6,600,000 Not to exceed 42 years Zero percent per annum

Non-recourse loan; mortgage on the Property (the Mortgage")

ADDITIONAL  
FINANCING:

1. Amount: Approximately \$8,500,000 (the "Bridge Loan")  
Term: Not to exceed 30 months  
Source: Love Funding Corporation, or another source acceptable to the Authorized Officer  
Interest: A variable rate of interest not to exceed six percent per annum  
Security: Mortgage on the Property senior to the lien of the City Mortgage, or other security acceptable to the Authorized Officer
  
2. Amount: Amount not to exceed \$2,100,000 (the "Senior Loan")  
Term: Not to exceed 42 years  
Source: Love Funding Corporation, through the HUD Section 221(d)(4) program, or another source acceptable to the Authorized Officer  
Interest: Five percent per annum, or another interest rate acceptable to the Authorized Officer  
Security: Mortgage on the Property senior to the lien of the City Mortgage, or other security acceptable to the Authorized Officer

Low-Income Housing Tax Credit ("LIHTC")

Proceeds: Approximately \$15,700,000, all or a portion of which may be paid in on a delayed basis, and all or a portion of which may be used to repay the Bridge Loan

Source: To be derived from the syndication of approximately \$1,600,000 LIHTC allocation by the City

Amount: Not to exceed \$1,300,000

Term: Not to exceed 42 years  
Source: Chicago Low-Income Housing Trust Fund, or another source acceptable to the Authorized Officer Interest: Zero percent per annum, or another rate or rates acceptable to the Authorized Officer Security: Mortgage on the Property junior to the lien of the City Mortgage, or other security acceptable to the Authorized Officer

Amount: Not to exceed \$ 2,000,000  
Term: Not to exceed 42 years  
Source: Illinois Housing Development Authority ("IHDA"), or another source acceptable to the Authorized Officer Interest: Not to exceed two percent per annum, or another rate or rates acceptable to the Authorized Officer Security: Mortgage on the Property junior to the lien of the City Mortgage, or other security acceptable to the Authorized Officer

Amount: Amount not to exceed \$850,000  
Term: Not to exceed 42 years  
Source: Montclare Corp, derived from the proceeds of a grant from the Federal Home Loan Bank of Chicago (FHLB) Affordable Housing Program, or another source acceptable to the Authorized Officer  
Interest: Zero percent per annum, or another interest rate acceptable to the Authorized Officer  
Security: Mortgage on the Property junior to the lien of the City Mortgage, Recapture Agreement and/or such other security as may be acceptable to the Authorized Officer

Amount: Approximately \$680,000

Term: Not to exceed 42 years  
Source: Purchaser, derived from proceeds of the Grant made by the City in connection with the transfer of donation tax credits in connection with the Project, or another source or sources acceptable to the Authorized Officer

Zero percent per annum, or another rate or rates acceptable to the Authorized Officer Mortgage on the Property junior to the lien of the City Mortgage, or other security acceptable to the Authorized Officer

Approximately \$100 Manager

**EXHIBIT B**

**LEGAL DESCRIPTION OF PROPERTY**

(SUBJECT TO FINAL SURVEY AND TITLE)

LOTS 12 THROUGH 45 (EXCEPT THAT PART OF LOT 45 LYING NORTH OF A LINE EXTENDING FROM THE NORTHWEST CORNER TO A POINT 18 1/2 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT) IN BLOCK 2 IN LUCY M. GREEN'S ADDITION TO CHICAGO IN SECTION 20, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: Northwest Corner of West 64<sup>th</sup> Street and South Green Street

PINS: 20-20-206-044-0000 20-20-206-027-0000  
20-20-206-002-0000 20-20-206-  
029-0000 20-20-206-043-0000

**EXHIBIT C REDEVELOPMENT AGREEMENT**

(ATTACHED)

**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 ("Agreement") is made on or as of the            day of            , 2017, by and between the CITY OF CHICAGO, an Illinois municipal corporation ("City"), acting by and through its Department of Planning and Development ("DPD"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602, and [MONTCLARE ENGLEWOOD, LLC, an Illinois limited liability company]("Developer").**

**RECITALS**

WHEREAS, the City is the owner of approximately 70,095 square feet of vacant land located at the northwest corner of West 64<sup>th</sup> Street and South Green Street in the Englewood Community Area, as legally described on Exhibit A attached hereto and depicted on the aerial photo attached hereto as Exhibit B (the "Property"); and

WHEREAS, the Property is comprised of five (5) vacant parcels of land, and is bounded on the north by the CTA Green Line tracks, to the east by South Green Street, to the south by West 64<sup>th</sup> Street and to the west by additional City-owned property; and

WHEREAS, the Developer desires to purchase the Property from the City in order to construct an independent senior living facility to be known as Montclare Senior Residences of Englewood consisting of a seven-story building containing 102 rental units, all of which will be affordable to households earning no more than 60 percent of the area median income (as further described below, the "Project"); and

WHEREAS, the City Council, pursuant to an ordinance adopted on            , 2017, and published at pages            through            in the *Journal of the Proceedings of the City Council of the City of Chicago* ("Journal") of such date, approved the rezoning of the Property from RT-4 (Residential Two-Flat, Townhouse and Multi-Unit District) to RM5.5 (Residential Multi-Unit District), and then to a Residential Planned Development (the "PD"); and

WHEREAS, the Property is located in the Englewood Neighborhood Redevelopment Project Area (the "Redevelopment Area"), as created by ordinance adopted on June 27, 2001; and

WHEREAS, the Project is consistent with the redevelopment plan and project for the Redevelopment Area (as amended, the "Redevelopment Plan"); and

WHEREAS, the City has agreed to sell the Property to the Developer for \$1.00 per parcel in consideration of the Developer's obligations to construct the Project in accordance with the terms and conditions, of this Agreement; and

WHEREAS, the estimated cost of the Project is \$26,621,725, as set forth in the preliminary budget attached hereto as Exhibit C; and

WHEREAS, the Project is receiving financing from a variety of funding sources ("Multi-Family Program Funds"), including (i) up to \$6.6 million from the City through its multi-family loan program; (ii) up to \$1.6 million in 9% Low Income Housing Tax Credits, which will generate approximately \$15.7 million in tax credit equity; (iii) up to \$1,300,000 from the City through a Multi-year Affordability Upfront Investment (MAUI) loan; (iv) up to \$850,000 in Federal Home Loan Bank funds; (v) up to \$2 million in loan funds from the Illinois Housing Development Authority; and (vi) donation tax credits; and

WHEREAS, as security for the Developer's completion of construction of the Project and compliance with the use restrictions set forth herein, the Developer has agreed to execute a reconveyance deed in a form acceptable to the City (the "Reconveyance Deed"); and

WHEREAS, the City Council, pursuant to an ordinance (the "Project Ordinance") adopted on \_\_\_\_\_, 2017, and published at pages \_\_\_\_\_ through \_\_\_\_\_ in the Journal of \_\_\_\_\_ such date, authorized the sale of the Property to the Developer, subject to the execution, delivery and recording of this Agreement.

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 foregoing recitals 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. DEFINITIONS AND RULES OF CONSTRUCTION.**

2.1 Defined Terms. For purposes of this Agreement, in addition to the terms defined in the foregoing Recitals, the following terms shall have the following meanings:

"2FM" is defined in Section 22.3(a).

"Actual Residents of the City" means persons domiciled within the City, as set forth in more detail in Section 23.2(c) hereof.

common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any person or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

"Agent(s)", means any agents, employees, contractors, subcontractors, or other persons acting under the control or at the request of the Developer or its contractors or Affiliates.

"Agreement" means this Agreement as may be amended in accordance with the terms hereof.

"Architect" means Worn Jerabek Architects. "Budget" is defined in Section 9. "Bundle" is defined in Section 27.7(a).

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

"Certificate of Completion" is defined in Section 14.

"Change Order" means any modification to the Scope Drawings, Plans and Specifications, or Budget, as described in Sections 9 and 11.

"City" is defined in the Preamble to the Recitals.

"City Contract" is defined in Section 24.1(1).

"City Council" means the City Council of the City of Chicago as defined in the Recitals. "City Hiring Plan" is defined in Section 30.1.

"Claims" means liens (including, without limitation, lien removal and bonding costs), liabilities, obligations, damages, losses, demands, penalties, assessments, payments, fines, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including, without limitation, reasonable, actually-incurred legal fees and expenses and costs of investigation) of any kind and nature whatsoever.

"Closing" means the closing on the conveyance of the Property in accordance with this Agreement.

"Closing Date" is defined in Section 5.

"Commissioner" means the individual holding the office and exercising the responsibilities of the commissioner or acting commissioner of DPD or any successor City department, and any authorized designee.

"Construction Program" is defined in Section 23.3(a).

"Contractors" is defined in Section 27.1.

"Contribution" is defined in Section 27.7(c).

"Corporation Counsel" means the City's Department of Law.

"CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Chicago, Gary, Lake County, IL-IN-WI All Items (Base Year 1982-4 = 100) for the applicable date or period, published by the Bureau of Labor Statistics of the United States Department of Labor.

"Deed" is defined in Section 6.1.

"Developer" is defined in the Preamble to the Recitals.

"Developer Parties" means the Developer, the Developer's Affiliates, and the respective officers, directors, trustees, employees, agents, successors and assigns of the Developer and the Developer's Affiliates.

"Domestic partners" is defined in Section 27.7(d).

"DPD" is defined in the Preamble to the Recitals hereof.

"Draft NFR Letter" means a draft comprehensive "No Further Remediation" Letter issued by the IEPA for the Property, or applicable portions thereof, as determined pursuant to Section 22.3(a), based on TACO Tier I residential remediation objectives, as amended or supplemented from time to time.

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

"Effective Date" means the date upon which this Agreement has been both (a) fully executed, and (b) delivered to the Developer.

"Employer(s)" is defined in Section 23.1.

"Environmental Documents" means all reports, surveys, field data, correspondence and analytical results prepared by or for the Developer or any Affiliate of the Developer (or otherwise obtained by the Developer or any Affiliate of the Developer) regarding the condition of the Property or any portion thereof, including, without limitation, the SRP Documents.

"Environmental Laws" means any and all Laws relating to the regulation and protection of human health, safety, the environment and natural resources now or hereafter in effect, as amended or supplemented from time to time, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances

Control Act, 15 U.S.C. §2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., any and all regulations promulgated under such Laws, and all analogous state and local counterparts or equivalents of such Laws, including, without limitation, the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., and the common law, including, without limitation, trespass and nuisance.

"Equity" means funds of the Developer (other than funds derived from Lender Financing) irrevocably available for the Project, and unencumbered by any other obligation.

"Event of Default" means any event or occurrence as defined in Section 19.2.

"Final NFR Letter" means a final comprehensive "No Further Remediation" letter issued by the IEPA approving the use of the Property for the construction, development and operation of the Project in accordance with the site plan approved by the City and the terms and conditions of the SRP Documents, as amended or supplemented from time to time. The Final NFR Letter shall state that the Property meets TACO Tier 1 remediation objectives for residential properties and the construction worker exposure route as set forth in 35 Ill. Adm. Code Part 742, but may be reasonably conditioned upon use and maintenance of engineered barriers and other institutional or engineering controls acceptable to the IEPA.

"General Contractor" means Ujamaa/ Brown Momen.

"Governmental Approvals" is defined in Section 8.

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

"Human Rights Ordinance" is defined in Section 23.1(a).

"Identified Parties" is defined in Section 27.

"IEPA" means the Illinois Environmental Protection Agency.

"IGO Hiring Oversight" is defined in Section 30.4.

"Indemnitee" and "Indemnitees" have the respective meanings defined in Section 21.

"Laws" means all applicable federal, state, county, municipal or other laws (including common law), statutes, codes, ordinances, rules, regulations, executive orders or other requirements, now or hereafter in effect, as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative orders, consent decrees or judgments.

"Lender(s)" means any provider of Lender Financing approved pursuant to Section 9 hereof, including the City, which shall be limited to funds necessary to construct the Project.

"Lender Financing" means funds borrowed by the Developer from Lenders, available to pay for the costs of the Project (or any portion thereof), including, without limitation, the Multi-Family Program Funds.

"Losses" means any and all debts, liens, claims, causes of action, demands, complaints, legal or administrative proceedings, losses, damages, obligations, liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, interest, fines, penalties, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and expenses, consultants' fees and expenses and court costs).

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

"MBE/WBE Program" is defined in Section 23.3(a).

"Multi-Family Program Funds" is defined in the Recitals.

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

"Other Contract" is defined in Section 27.7(b).

"Outside Closing Date" is defined in Section 5.

"Owners" is defined in Section 27.1.

"Party(ies)" means the City and the Developer.

"PD" is defined in the Recitals.

"Plans and Specifications" means the final construction plans and specifications prepared by the Architect, as submitted to the City as the basis for obtaining Governmental Approvals for the Project, as such plans and specifications may be amended, revised or supplemented from time to time with the prior written approval of the City in accordance with Section 11.2 (Change Orders) hereof.

"Political fundraising committee" is defined in Section 27.7(e).

6

"Project" means a 7-story elevator building designed for seniors with a total of 102 units. The first floor will contain 12 units and floors 2-7 will contain approximately 15 units each. Each unit will include one bedroom with one bathroom. The Project will also include a community room with a kitchen, a library, health screening room, exercise room, computer room, and laundry room.

"Proof of Financing" means proof reasonably acceptable to the City that the Developer has Equity and/or Lender Financing, in amounts adequate to complete the Project and satisfy its obligations under this Agreement. The Proof of Financing shall include binding commitment letters from the Developer's Lenders, if any, and evidence of the Developer's ability to make an equity contribution in the amount of any gap in financing.

"Property" is defined in the Recitals.

"Purchase Price" is defined in Section 3.

"Reconveyance Deed(s)" is defined in the Recitals.

"Redevelopment Area" is defined in the Recitals.

"Redevelopment Plan" is defined in the Recitals.

"Released Claims" is defined in Section 22.4.

"Remediation Costs" means governmental or regulatory body response costs, natural resource damages, property damages, and the costs of any investigation, cleanup, monitoring, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party in connection or associated with the Property or any improvements, facilities or operations located or formerly located thereon.

"Remediation Work" means all investigation, sampling, monitoring, testing, removal, response, disposal, storage, remediation, treatment and other activities necessary to obtain a Final NFR Letter for the Property in accordance with the terms and conditions of the Draft NFR Letter for the Property, the SRP Documents, all requirements of the IEPA and all applicable Laws, including, without limitation, all applicable Environmental Laws.

"Scope Drawings" means the site plan, floor plans and elevations attached hereto as Exhibit D.

"Shakman Accord" is defined in Section 30.1.

"SRP" means the IEPA's Site Remediation Program as set forth in Title XVII of the Illinois Environmental Protection Act, 415 ILCS 5/58 et seq., and the regulations promulgated thereunder.

"SRP Documents" means all documents submitted to the IEPA under the SRP program, as amended or supplemented from time to time, including, without limitation, the

7

Comprehensive Site Investigation and Remediation Objectives Report, the Remedial Action Plan, and the Remedial Action Completion Report.

"Sub-owners" is defined in Section 27.1.

"Survey" means a Class A plat of survey in the most recently revised form of ALTA/ACSM urban survey of the Property dated within 45 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 Project as required by the City or Lender(s) providing Lender Financing.

"TACO" means the Tiered Approach to Corrective Action Objectives codified at 35 Ill. Adm. Code Part 742 et seq.

"Title Company" means Chicago Title Insurance Company.

"Title Commitment" is defined in Section 7.1.

"Title Policy" means a title insurance policy issued by the Title Company in the most recently revised ALTA or equivalent form, showing the Developer as the named insured with respect to the Property, noting the recording of this Agreement and a subordination agreement with respect to any Lender Financing for the Project (as described in Section 10.14 below) as encumbrances against the Property.

"UST(s)" means underground storage tank(s) whether or not subject to Title 16 of the Illinois Environmental Protection Act, including without limitation (i) any underground storage tank as defined in 415 ILCS 5/57.2, (ii) any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes, (iii) any tank used for storing heating oil for consumption on the premises where stored, (iv) any septic tank, (v) any tank that is excluded from the definition in 415 ILCS 5/57.2 based upon the existence of any Hazardous Substance therein, and (vi) any pipes connected to items (i) through (v) above.

"Waste Sections" is defined in Section 29.

2.2 Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

a) The terms defined in this Section 2 and elsewhere in this Agreement include the plural as well as the singular.

b) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.

8

c) The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any Section or other subdivision.

d) The Section and subsection headings herein are for convenience only and shall not affect the construction hereof.

### **SECTION 3. PURCHASE PRICE.**

The City hereby agrees to sell, and the Developer hereby agrees to purchase, upon and subject to the terms and conditions of this Agreement, the Property, for the sum of \$1.00 ("Purchase Price"). Except as specifically provided herein to the contrary, the Developer shall pay all escrow fees and other title insurance fees and closing costs. The Developer acknowledges and agrees that it is receiving a land write-down. The purpose of the land writedown is to facilitate the construction of the Project. The Developer acknowledges and agrees that the City has only agreed to provide the land write-down because the Developer has agreed to execute this Agreement and comply with its terms and conditions, including, without limitation, the use covenants set forth in Section 15.2.

SECTION 4. PERFORMANCE DEPOSIT. Intentionally Deleted.

**SECTION 5. CLOSING.**

The Closing shall take place at the downtown offices of the Title Company within seven (7) Business Days after the Developer has satisfied all conditions precedent set forth in Section 10 hereof, unless DPD, in its sole discretion, waives such conditions (the "Closing Date"); provided, however, in no event shall the Closing Date occur any later than \_\_\_\_\_, 201\_ (the "Outside Closing Date"), unless the Commissioner of DPD, in his or her sole discretion, extends such Outside Closing Date. On or before the Closing Date, the City shall deliver to the Title Company the Deed, all necessary state, county and municipal real estate transfer tax declarations, and an ALTA statement.

**SECTION 6. CONVEYANCE OF TITLE.**

6.1 Form of City 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, the following:

- (a) the Redevelopment Plan for the Redevelopment Area;
- (b) the standard exceptions in an ALTA title insurance policy;
- (c) general real estate taxes and any special assessments or other taxes;
- (d) all easements, encroachments, covenants and restrictions of record and not shown of record;
- (e) such other title defects as may exist; and

any and all exceptions caused by the acts of the Developer or its Agents.

2 Recording. At the Closing, the Developer shall pay to record the Deed, this Agreement, and any other documents incident to the conveyance of the Property to the Developer. This Agreement shall be recorded prior to any mortgage made in connection with any Lender Financing. Upon recording, the Developer shall immediately transmit to the City an executed original of this Agreement showing the date and recording number.

3 Reconveyance Deed. On the Closing Date, the Developer shall execute and deliver a Reconveyance Deed to the City to be held in trust. The Developer acknowledges and agrees that the City shall have the right to record the Reconveyance Deed and revest title to the Property and all improvements thereon in the City in accordance with Section 19 hereof.

**SECTION 7. TITLE AND SURVEY.**

1 Title Commitment and Insurance. Not less than seven (7) Business Days before the Closing, the Developer shall obtain a commitment for an owner's policy of title insurance for the Property, issued by the

Title Company (the "Title Commitment"). The Developer shall be solely responsible for and shall pay all costs associated with updating the Title Commitment (including all search, continuation and later-date fees), and obtaining the Title Policy and any endorsements.

2 Correction of Title. The City shall have no obligation to cure title defects; provided, however, if there are exceptions for general real estate taxes due or unpaid prior to the Closing Date with respect to the Property or liens for such unpaid property taxes, the City shall ask the County to void the unpaid taxes as provided in Section 21-100 of the Property Tax Code, 35 ILCS 200/21-100, or file an application for a Certificate of Error with the Cook County Assessor, or tax injunction suit or petition to vacate a tax sale in the Circuit Court of Cook County. If, after taking the foregoing actions and diligently pursuing the same, the Property remains subject to any 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 terminate this Agreement. If the Developer does not elect to terminate this Agreement as aforesaid, then the Developer shall be deemed to have accepted title subject to all exceptions.

3 Survey. The Developer shall obtain a Survey of the Property at the Developer's sole cost and expense and deliver a copy of the Survey to the City not less than seven (7) Business Days before the Closing.

#### **SECTION 8. BUILDING PERMITS AND OTHER GOVERNMENTAL APPROVALS.**

The Developer represents that it has applied for all necessary building permits and other governmental approvals to construct and operate the Project (collectively, "Governmental Approvals"), and covenants and agrees to pursue the Governmental Approvals in good faith and with all due diligence.

10

#### **SECTION 9. PROJECT BUDGET AND PROOF OF FINANCING.**

The Developer has furnished to DPD, and DPD has approved, a preliminary budget showing total costs for construction of the Project in the amount of \$26,621,725. The Developer hereby certifies to the City that the preliminary budget for the Project attached hereto as Exhibit C is true, correct and complete in all material respects. Not less than seven (7) Business Days prior to the Closing Date, the Developer shall submit to DPD for approval a final budget for the Project (the "Budget") and Proof of Financing. The Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Budget for approval pursuant to Section 11.2 hereof.

#### **SECTION 10. CONDITIONS PRECEDENT TO CLOSING.**

The obligation of the City to convey the Property to the Developer is contingent upon the delivery or satisfaction of each of the following items (unless waived by DPD in its sole discretion) at least seven (7) Business Days prior to the Closing Date, unless another time period is specified below:

1 Budget. The Developer has submitted to DPD, and DPD has approved, the Budget in accordance with the provisions of Section 9 hereof.

2 Proof of Financing: Simultaneous Loan Closing. The Developer has submitted to DPD, and

DPD has approved, the Proof of Financing for the Project in accordance with the provisions of Section 9 hereof. On the Closing Date, the Developer shall simultaneously close all Lender Financing approved pursuant to Section 9.

3 Plans and Specifications. The Developer has submitted to DPD, and DPD has approved, the Plans and Specifications for the Project in accordance with the provisions of Section 11.1 hereof.

4 Governmental Approvals. The Developer has received all Governmental Approvals necessary to construct and operate the Project and has submitted evidence thereof to DPD.

5 Title. On the Closing Date, the Developer shall furnish the City with a copy of the pro forma Title Policy for the Property, certified by the Title Company, showing the Developer as the named insured. The Title Policy shall be dated as of the Closing Date and shall evidence the recording of this Agreement. The Title Policy shall also contain such endorsements as the Corporation Counsel shall request, including, but not limited to, an owner's comprehensive endorsement and satisfactory endorsements regarding contiguity, location, access and survey.

6 Survey. The Developer has furnished the City with a copy of the Survey.

7 Insurance. The Developer has submitted to the City, and the City has approved, evidence of insurance reasonably acceptable to the City for the Property. The City shall be named as an additional insured on all liability insurance policies and as a loss payee (subject to the prior rights of any first mortgagee) on all property insurance policies from the Closing Date through the date the City issues the Certificate of Completion.

11

8 Legal Opinion. The Developer has submitted to the Corporation Counsel, and the Corporation Counsel has approved an opinion of counsel in a form reasonably acceptable to the City of due authorization, execution and enforceability (subject to bankruptcy and creditor's rights) of this Agreement and all other documentation signed by the Developer provided for herein.

9 Resolutions Authorizing Transaction. The Developer has submitted to the Corporation Counsel resolutions authorizing the Developer to execute and deliver this Agreement and any other documents required to complete the transaction contemplated by this Agreement and to perform its obligations under this Agreement.

10 Economic Disclosure Statement. The Developer has provided to the Corporation Counsel an Economic Disclosure Statement in the City's then current form dated as of the Closing Date.

11 MBE/WBE and City Residency Hiring Compliance Plan. The Developer and the Developer's General Contractor and all major subcontractors have met with staff from DPD regarding compliance with the MBE/WBE, city residency hiring and other requirements set forth in Section 23, and DPD has approved the Developer's compliance plan in accordance with Section 23.4.

12 Reconveyance Deed. On the Closing Date, the Developer shall deliver a Reconveyance Deed for the Property to the City for possible recording in accordance with Section 19 below, if applicable.

13 Representations and Warranties. On the Closing Date, each of the representations and warranties of the Developer in Section 24 and elsewhere in this Agreement shall be true and correct.

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

If any of the conditions in this Section 10 have not been satisfied to DPD's reasonable satisfaction within the time periods provided for herein, or waived by DPD, DPD may, at its option, upon thirty (30) days' prior written notice to the Developer, terminate this Agreement at any time after the expiration of the applicable time period, in which event 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, however, that if within said thirty (30) day notice period the Developer satisfies said condition(s), then the termination notice shall be deemed to have been withdrawn. Any forbearance by DPD in exercising its right to terminate this Agreement upon a default hereunder shall not be construed as a waiver of such right.

## **SECTION 11. CONSTRUCTION REQUIREMENTS.**

11.1 Scope Drawings and Plans and Specifications. The Developer has delivered the Scope Drawings for the Project to DPD and DPD has approved the same. Not less than seven

12

(7) days prior to the Closing Date, the Developer shall submit to DPD for approval the final plans and specifications prepared by the Architect for the Project. Any material changes to the Scope Drawings or Plans and Specifications for any portion of the Project shall be submitted to DPD as a Change Order pursuant to Section 11.2 hereof. The Scope Drawings and Plans and Specifications for the Project shall at all times conform to the Redevelopment Plan, the PD and all applicable Laws. The Developer shall submit all necessary documents to the City's Building Department, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire Governmental Approvals for the Project. The Developer shall construct the Project in accordance with the approved Scope Drawings and Plans and Specifications.

2 Change Orders. All Change Orders (and documentation identifying the source of funding therefor) relating to a material change to the Project must be submitted by the Developer to DPD for DPD's prior written approval, which approval shall not be unreasonably delayed. As used in the preceding sentence, a "material change to the Project" means (a) an increase or reduction in the gross or net square footage of the Project by more than 5%; or (b) any changes to the Budget that, individually or in the aggregate, increase or decrease the Budget by more than 10%. The Developer shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Developer of DPD's written approval (to the extent required in this section).

3 Performance and Payment Bonds. Prior to the commencement of construction of any portion of the Project involving work in the public way or work that constitutes a "public work" under applicable state law and is required to be bonded under such state law, the Developer shall require that the General Contractor be bonded for its performance and payment by sureties having an AA rating or better using a bond in a form acceptable to the City. The City shall be named as obligee or co-obligee on any such bonds.

4 Employment Opportunity; Progress Reports. The Developer covenants and agrees to abide by, and contractually obligate and cause the General Contractor and each subcontractor to abide by the terms set forth in Section 23.2 (City Resident Construction Worker Employment Requirement) and Section 23.3 (MBE/WBE Commitment) of this Agreement. The Developer shall deliver to the City written progress reports

detailing compliance with such requirements on a quarterly basis. If any such reports indicate a shortfall in compliance, the Developer shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, the manner in which the Developer shall correct any shortfall.

5 Relocation of Utilities, Curb Cuts and Driveways. The Developer shall be solely responsible for and shall pay all costs associated with: (a) the relocation, installation or construction of public or private utilities, curb cuts and driveways; (b) the repair or reconstruction of any curbs, vaults, sidewalks or parkways required in connection with or damaged as a result of the Developer's construction of the Project; (c) the removal of existing pipes, utility equipment or building foundations; and (d) the termination of existing water or other utility services. The City shall have the right to approve any streetscaping provided by the Developer as part of the Project, including, without limitation, any paving of sidewalks, landscaping and lighting.

6 City's Right to Inspect Property. For the period commencing on the Closing Date and continuing through the date the City issues the Certificate of Completion, any

13

authorized representative of the City shall have access to the relevant portions of the Project and the Property at all reasonable times for the purpose of determining whether the Developer is constructing the Project in accordance with the terms of this Agreement, the PD, the Scope Drawings, the Plans and Specifications, the Budget, and all applicable Laws and covenants and restrictions of record.

7 Barricades and Signs. The Developer shall, at its sole cost and expense, erect and maintain such signs as the City may reasonably require during the Project, identifying the site as a City redevelopment project. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding the Developer, the Property and the Project in the City's promotional literature and communications. Prior to the commencement of any construction activity requiring barricades, the Developer shall install barricades of a type and appearance satisfactory to the City and constructed in compliance with all applicable Laws. DPD shall have the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades. The Developer shall erect all signs and barricades so as not to interfere with or affect any bus stop or train station in the vicinity of the Property.

8 Survival. The provisions of this Section 11 shall survive the Closing.

**SECTION 12. LIMITED APPLICABILITY.**

Any approval given by DPD pursuant to this Agreement is for the purpose of this Agreement only and does not constitute the approval required by the City's Department of Buildings or any other City department, nor does such approval constitute an approval of the quality, structural soundness or safety of any improvements located or to be located on the Property, or the compliance of said improvements with any Laws, private covenants, restrictions of record, or any agreement affecting the Property or any part thereof.

**SECTION 13. COMMENCEMENT AND COMPLETION OF PROJECT.**

The Developer shall commence construction of the Project no later than \_\_\_\_\_, and shall complete the Project (as evidenced by the issuance of the Certificate of Completion) no later than \_\_\_\_\_, 20\_\_\_\_; provided, however, DPD, in its sole discretion, may extend the construction commencement and completion dates by up to six (6) months each (or twelve (12) months in the aggregate). The Developer shall construct The Project in accordance with this Agreement, the PD, the Scope Drawings, the Plans and Specifications, the Budget, and all applicable Laws and

covenants and restrictions of record.

#### **SECTION 14. CERTIFICATE OF COMPLETION OF CONSTRUCTION.**

1 Upon satisfaction of the requirements set forth in this Section 14, and upon the Developer's written request, DPD shall issue to the Developer a certificate of completion for the ("Certificate of Completion") in recordable form certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement.

2 A Certificate of Completion for the Project will not be issued until the following requirements have been satisfied:

14

a) The Project has been fully constructed in accordance with this Agreement, and the Developer has received a Certificate of Occupancy or other evidence acceptable to DPD that the Project is in full compliance with all building permit requirements.

b) The Developer has obtained the Final NFR Letter for the Property.

c) The Developer is in full compliance with all requirements of the PD relating to construction of the Project.

d) The City's Monitoring and Compliance Unit has verified in writing that the Developer is in full compliance with all City requirements set forth in Section 23.2 (City Resident Construction Worker Employment Requirement) and Section 23.3 (MBE/WBE Commitment) with respect to the Project.

e) There exists neither an Event of Default nor a condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default.

14.3 Within ,forty-five (45) days after receipt of a written request by the Developer for a Certificate of Completion, 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 conformity with this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the sole opinion of the City, for the Developer to take or perform in order to obtain the Certificate of Completion. If the City 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 the covenants in this Agreement and the Deed with respect to the Developer's obligations to construct the Project. The Certificate of Completion shall not, however, constitute evidence that the Developer has complied with any Laws relating to the construction of the Project, and shall not serve as any "guaranty" as to the quality of the construction. Nor shall the Certificate of Completion release the Developer from its obligation to comply with the other terms, covenants and conditions of this Agreement, except to the extent otherwise provided by this Agreement.

#### **SECTION 15. RESTRICTIONS ON USE.**

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

1 Compliance with Redevelopment Plan. The Developer shall use the Property in compliance with the Redevelopment Plan.

2 Final NFR Letter. The Developer shall comply with all land use restrictions, institutional controls and other terms and conditions contained in the Final NFR Letter for the Property.

15

15.3 Non-Discrimination. The Developer shall not discriminate on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income in the sale, lease, rental, use or occupancy of the Property or the Project or any part thereof.

The Developer, for itself and its successors and assigns, acknowledges and agrees that the development and use restrictions set forth in this Section 15 constitute material, bargained-for consideration for the City and are intended to further the public policies set forth in the Redevelopment Plan.

## **SECTION 16. PROHIBITION AGAINST SALE OR TRANSFER OF PROPERTY.**

Prior to the issuance of the Certificate of Completion for the Project, the Developer may not, without the prior written consent of DPD, which consent shall be in DPD's sole discretion: (a) directly or indirectly sell, transfer, convey, lease or otherwise dispose of all or any portion of the Property or the Project or any interest therein; or (b) directly or indirectly assign this Agreement (other than to a lender for collateral assignment purposes as permitted under Section 17). The Developer acknowledges and agrees that DPD may withhold its consent under (a) or (b) above if, among other reasons, the proposed purchaser, transferee or assignee (or such entity's principal officers or directors) is in violation of any Laws, or if the Developer fails to submit sufficient evidence of the financial responsibility, business background and reputation of the proposed purchaser, transferee or assignee.

## **SECTION 17. MORTGAGES AND OTHER LIENS.**

1 Limitation upon Encumbrance of Project Site. Prior to the issuance of the Certificate of Completion, the Developer may not, without the prior written consent of DPD, which consent shall be in DPD's sole discretion, engage in any financing or other transaction which would create an encumbrance or lien on the Property, except for the Lender Financing approved pursuant to Section 9, which shall be limited to funds necessary to construct the Project.

2 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 18 and, at the Closing, shall execute a subordination agreement in accordance with Section 10.3. If any such mortgagee or its affiliate succeeds to the Developer's interest in the Property (or any portion thereof) 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 Property (or any portion thereof) to another party, such transferee shall be obligated to complete the Project (or such portion of the Project located on the land so transferred), and shall also be bound by the other covenants running with the land specified in Section 18.

**SECTION 18. COVENANTS RUNNING WITH THE LAND.**

The Parties agree, and the Deed shall so expressly provide, that the covenants, agreements, releases and other terms and provisions contained in Section 13 (Commencement and Completion of Project), Section 15 (Restrictions on Use), Section 16 (Prohibition Against Sale or Transfer of Property), Section 17 (Limitation Upon Encumbrance of Property), and Section 22.4 (Release and Indemnification), touch and concern and shall be appurtenant to and shall run with the Property. Such covenants, agreements, releases and other terms and provisions shall be binding on the Developer and its successors and assigns (subject to the limitation set forth in Section 17 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. Such covenants, agreements, releases and other terms and provisions shall terminate as follows:

<b>Section</b>	<b>Covenant</b>	<b>Termination</b>
§13.1	Completion of Project	Upon issuance of Certificate of Completion
§15.1	Redevelopment Plan Compliance	Upon expiration of Redevelopment Plan
§15.2	NFR Requirements	In accordance with terms of Final NFR Letter
§15.3	Non-Discrimination	No limitation as to time
§16	Sale/Transfer Prohibition	Upon issuance of Certificate of Completion
§17	Limitation on Encumbrances	Upon issuance of Certificate of Completion
§23.4	Environmental Release	No limitation as to time

**SECTION 19. 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 Event of Default. The occurrence of any one or more of the following events or occurrences shall constitute an "Event of Default" under this Agreement:

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

b) the making or furnishing by the Developer of any warranty, representation, statement, certification, schedule or report to the City (whether in this Agreement, an Economic Disclosure Statement, or another document) which is untrue or misleading in any material respect;

c) 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, or the

making or any attempt to make any levy, seizure or attachment thereof;

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

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

3 Cure. If the Developer defaults in the performance of its obligations under this Agreement, the Developer shall have thirty (30) days after written notice of default from the City to cure the default, or such longer period as shall be reasonably necessary to cure such default provided the Developer promptly commences such cure and thereafter diligently pursues such cure to completion (so, long as continuation of the default does not create material risk of damage to the Project or injury to persons using the Project). Notwithstanding the foregoing or any other provision of this Agreement to the contrary, there shall be no notice requirement or cure period with respect to Events of Default described in Section 16 (Prohibition Against Transfer of Property).

4 Default Prior to the Issuance of Certificate. If an Event of Default occurs prior to the issuance of the Certificate of Completion, and the default is not cured in the time period provided for in Section 19.3 above, the City may terminate this Agreement and pursue and secure any available remedy against the Developer in any court of competent jurisdiction by any action or proceeding at law or in equity, including, but not limited to, damages, injunctive relief, the specific performance of the agreements contained herein, and the right to revest title to the Property in the City pursuant to the Reconveyance Deed, provided, however, that the recording of the Reconveyance Deed 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 Property was owned by the Developer, and the Developer shall cause the release of all unpermitted liens or encumbrances placed on the Property during the period of time the Property 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 Property to the City.

5 Resale of the Property. Upon the reconveyance of the Property to the City as provided in Section 19.4. the City may complete the Project at its own cost (if the Project has not been completed) or convey the Property to a qualified and financially responsible party reasonably acceptable to the first mortgagee, who (at its own cost) shall assume the obligation of completing the Project or such other improvements as shall be satisfactory to DPD (if the Project has not been completed), and otherwise comply with the covenants that run with the land as specified in Section 18.

6 Disposition of Resale Proceeds. If the City sells the Property as provided for in Section 19.5, the net proceeds from the sale, after payment of all amounts owed under any

mortgage liens authorized by this Agreement in order of lien priority, shall be utilized to reimburse the City for:

a) the fair market value of the Property as if it were vacant, which fair market value shall be calculated at the time of sale; and

b) costs and expenses incurred by the City (including, without limitation, salaries of personnel) in connection with the recapture, management and resale of the Property (less any income derived by the City from the Property in connection with such management); and

c) all unpaid taxes, assessments, and water and sewer charges assessed against the Property; and

d) any payments made (including, without limitation, reasonable attorneys' fees and court costs) to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer; and

e) any expenditures made or obligations incurred with respect to construction or maintenance of the Project; and

(f) any other amounts owed to the City by the Developer.

The Developer shall be entitled to receive any remaining proceeds.

**SECTION 20. CONFLICT OF INTEREST; CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.**

The Developer represents and warrants that no agent, official or employee of the City has or shall have any personal interest, direct or indirect, in the Developer, this Agreement, the Property or the Project, 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 corporation, partnership, association or other entity in which he or she is directly or indirectly interested. No agent, official, director, officer, trustee or employee of the City or the Developer shall be personally liable in the event of any default under or breach of this Agreement or for any amount which may become due with respect to any commitment or obligation under the terms of this Agreement.

**SECTION 21. INDEMNIFICATION.**

The Developer agrees to indemnify, pay, defend and hold the City, and its elected and appointed officials, employees and agents (individually, an "Indemnitee," and collectively the "Indemnitees") harmless from and against any and all Losses in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitees shall be designated a party thereto, that may be imposed on, suffered, incurred by or asserted against the Indemnitees in any manner relating to or arising out of: (a) the failure of the Developer to comply with any of the terms, covenants and conditions

applicable to the Developer and contained within this Agreement; (b) the failure of the Developer or any Agent of the Developer to pay contractors, subcontractors or material suppliers undisputed amounts owed in connection with the construction and management of the Project; (c) the existence of any material misrepresentation or omission in this Agreement or any other document related to this Agreement that is the result of information supplied or omitted by the Developer or any Agent or Affiliate of the Developer; (d) the Developer's failure to cure any material misrepresentation in this Agreement or any other document relating hereto; and (e) any activity undertaken by the Developer or any Agent or Affiliate of the Developer on the Property prior to or after the Closing. Notwithstanding the foregoing, no Indemnitee, shall be indemnified for claims to the extent arising out of such Indemnitee's breach of this Agreement or gross negligence or willful

misconduct. This indemnification shall survive the Closing and any termination of this Agreement (regardless of the reason for such termination).

**SECTION 22. ENVIRONMENTAL MATTERS.**

1 "AS IS" SALE. THE DEVELOPER ACKNOWLEDGES THAT IT HAS HAD ADEQUATE OPPORTUNITY TO INSPECT AND EVALUATE THE STRUCTURAL, PHYSICAL AND ENVIRONMENTAL CONDITION AND RISKS OF THE PROPERTY AND ACCEPTS THE RISK THAT ANY INSPECTION MAY NOT DISCLOSE ALL MATERIAL MATTERS AFFECTING THE PROPERTY (AND ANY IMPROVEMENTS THEREON). THE DEVELOPER AGREES TO ACCEPT THE PROPERTY IN ITS "AS IS," "WHERE IS" AND "WITH ALL FAULTS" CONDITION AT CLOSING WITHOUT ANY COVENANT, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, AS TO THE STRUCTURAL, PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR ANY PURPOSE WHATSOEVER. THE DEVELOPER ACKNOWLEDGES THAT IT IS RELYING SOLELY UPON ITS OWN INSPECTION AND OTHER DUE DILIGENCE ACTIVITIES AND NOT UPON ANY INFORMATION (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL STUDIES OR REPORTS OF ANY KIND) PROVIDED BY OR ON BEHALF OF THE CITY OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. THE DEVELOPER AGREES THAT IT IS THE DEVELOPER'S SOLE RESPONSIBILITY AND OBLIGATION TO PERFORM ANY ENVIRONMENTAL REMEDIATION WORK AND TAKE SUCH OTHER ACTION AS IS NECESSARY TO PUT THE PROPERTY IN A CONDITION WHICH IS SUITABLE FOR ITS INTENDED USE.

2 Right of Entry. The Developer hereby represents and warrants to the City that it has or will perform a Phase I environmental site assessment of the Property in accordance with the requirements of the ASTM E 1527-05 standard and other environmental studies sufficient to conclude that the Project may be completed and operated in accordance with all Environmental Laws and this Agreement. The Developer agrees to deliver to the City copies of all Environmental Documents. The obligation of the Developer to purchase the Property is conditioned upon the Developer being satisfied with the condition of the Property for the construction, development and operation of the Project. The City shall grant the Developer the right, at its sole cost and expense, to enter the Property to perform the Phase I and any other surveys, environmental assessments, soil tests and other due diligence it deems necessary or desirable to satisfy itself as to the condition of the Property. If the Developer determines that it is not satisfied, in its sole and absolute discretion, with the condition of the Property, it may terminate this Agreement by written notice to the City any time prior to the Closing Date, whereupon this Agreement shall be null and void and, except as otherwise specifically provided,

neither Party shall have any further right, duty or obligation hereunder. If the Developer elects not to terminate this Agreement pursuant to this Section 22.2, the Developer shall be deemed satisfied with the condition of the Property.

3 Environmental Remediation.

a) The City's Department of Fleet and Facilities Management ("2FM") shall have the right to review and approve the sufficiency of the Phase I and any Phase II or other follow-up reports. Upon 2FM's request, the Developer shall perform additional studies and tests for the purpose of determining whether any environmental or health risks would be associated with the development of the Project, including, without limitation, updating or expanding the Phase I and performing initial or additional Phase II testing. If the environmental reports for the Property disclose the presence of contaminants

exceeding residential remediation objectives, the Developer shall enroll the Property (or the applicable portion thereof) in the IEPA's SRP Program and take all necessary and proper steps to obtain a Draft NFR Letter for the Property (or the applicable portion thereof), unless 2FM determines that it is not necessary to enroll the Property in the SRP. If the Developer enrolls (or is required to enroll) the Property in the SRP, the Developer acknowledges and agrees that it may not commence construction on the Property until the IEPA issues, and 2FM approves, a Draft NFR Letter for the Property.

b) After 2FM approves the Draft NFR Letter for the City Property (to the extent required under subsection (a) above), the Developer covenants and agrees to complete the Remediation Work and diligently pursue the Final NFR Letter for the Property using all reasonable means. The City shall have the right to review in advance and approve all SRP Documents and any changes thereto, and the Developer's estimate of the cost to perform the Remediation Work. The Developer shall cooperate and consult with the City at all relevant times (and in all cases upon the City's request) with respect to environmental matters. The Developer shall bear sole responsibility for all aspects of the Remediation Work. The Developer shall promptly transmit to the City copies of all Environmental Documents prepared or received with respect to the Remediation Work, including, without limitation, any written communications delivered to or received from the IEPA or other regulatory agencies. The Developer acknowledges and agrees that the City will not issue a Certificate of Completion or a Certificate of Occupancy for the Project until the IEPA has issued, and the City has approved, a Final NFR Letter for the Property (to the extent required under (a) above), which approval shall not be unreasonably withheld.

4 Release and Indemnification. The Developer, on behalf of itself and the other Developer Parties, or anyone claiming by, through, or under the Developer Parties, hereby releases, relinquishes and forever discharges the City from and against any and all Losses which the Developer or any of the Developer Parties ever had, now have, or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, arising out of or in any way connected with, directly or indirectly (a) any environmental contamination, pollution or hazards associated with the Property or any improvements, facilities or operations located or formerly located thereon, including, without limitation, any release, emission, discharge, generation,

21

transportation, treatment, storage or disposal of Hazardous Substances, or threatened release, emission or discharge of Hazardous Substances; (b) the structural, physical or environmental condition of the Property, including, without limitation, the presence or suspected presence of Hazardous Substances in, on, under or about the Property or the migration of Hazardous Substances from or to other property, unless the Hazardous Substances migrate from property owned by the City to the Property; (c) any violation of, compliance with, enforcement of or liability under any Environmental Laws, including, without limitation, any Losses arising under CERCLA, and (d) any investigation, cleanup, monitoring, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party in connection or associated with this Property or any improvements, facilities or operations located or formerly located thereon (collectively, "Released Claims"). Furthermore, the Developer shall defend, indemnify, and hold the City harmless from and against any and all Losses which may be made or asserted by any third parties arising out of or in any way connected with, directly or indirectly, any of the Released Claims.

5 *Release Runs with the Land. The covenant of release in Section 22.4 shall run with the Property, and shall be binding upon all successors and assigns of the Developer with respect to the Property, including, without limitation, each and every person, firm, corporation, limited liability company, trust or other entity owning, leasing, occupying, using or possessing any portion of the Property under or through the*

*Developer following the date of the Deed. The Developer acknowledges and agrees that the foregoing covenant of release constitutes a material inducement to the City to enter into this Agreement, and that, but for such release, the City would not have agreed to convey the Property to the Developer for the Purchase Price. It is expressly agreed and understood by and between the Developer and the City that, should any future obligation of the Developer, or any of the Developer Parties, arise or be alleged to arise in connection with any environmental, soil or other condition of the Property, neither the Developer, nor any of the Developer Parties, will assert that those obligations must be satisfied in whole or in part by the City because Section 22.4 contains a full, complete and final release of all such claims. i*

6 Survival. This Section 22 shall survive the Closing or any termination of this Agreement (regardless of the reason for such termination).

### **SECTION 23. DEVELOPER'S EMPLOYMENT OBLIGATIONS.**

23.1 Employment Opportunity. The Developer agrees, and shall contractually obligate its various contractors, subcontractors and any Affiliate of the Developer operating on the Property (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, 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, as amended from time to time (the "Human Rights Ordinance"). The 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

22

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 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 (i) present opportunities for training and employment of low and moderate income residents of the City, and (ii) 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), both as amended from time to time, and any regulations promulgated thereunder.

d) The Developer, in order to demonstrate compliance with the terms of this Section 23.1. 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) 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 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 23.1 shall be a basis for the City to pursue remedies under the provisions of Section 19.

## 23.2 City Resident Employment Requirement.

(a) 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 (at least fifty percent); provided, however, that in addition to complying with this percentage, the Developer and each Employer shall be required to make good faith

23

efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

b) 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 in accordance with standards and procedures developed by the chief procurement officer of the City of Chicago.

c) "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.

d) 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 the Project. The Developer and the Employers shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

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

f) The Developer and the Employers shall provide full access to their employment records to the chief procurement officer, DPD, 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.

g) At the direction of DPD, 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.

h) 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 23.2 concerning the worker hours performed by actual Chicago residents.

(i) If the City determines that the Developer or an Employer failed to ensure the fulfillment of the requirements of this Section 23.2 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 23.2.

24

If such non-compliance is not remedied in accordance with the breach and cure provisions of Section 19.3, the parties agree that 1/20 of 1 percent (.05%) of the aggregate hard construction costs set forth in the Budget shall be surrendered by the 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 the Developer and/or the other Employers or employees to prosecution.

(j) 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.

(k) The Developer shall cause or require the provisions of this Section 23.2 to be included in all construction contracts and subcontracts related to the construction of the Project.

23.3 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 (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 23.3. during the course of construction of the Project, at least 25% of the aggregate hard construction costs shall be expended for contract participation by minority-owned businesses and at least 5% of the aggregate hard construction costs shall be expended for contract participation by women-owned businesses.

b) For purposes of this Section 23.3 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) 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.

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

25

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, 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, the Developer shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DPD.

d) The Developer shall deliver quarterly reports to the City's monitoring staff during the construction of 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 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) 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

26

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 the Developer's MBE/WBE commitment as described in this Section 23.3 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code, as applicable.

23.4 Pre-Construction Conference and Post-Closing Compliance Requirements. Not less than seven (7) Business Days prior to the Closing Date, the Developer and the Developer's General Contractor and all major subcontractors shall meet with DPD monitoring staff regarding compliance with all Section 23 requirements. During this pre-construction meeting, the Developer shall present its plan to achieve its obligations under this Section 23. 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 23 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 (if applicable); (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 (if any). 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 23, 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: (x) issue a written demand to the Developer to halt construction of the Project, (y) withhold any further payment of any City funds to the Developer or the General Contractor (if applicable), or (z) seek any other remedies against the Developer available at law or in equity.

## **SECTION 24. REPRESENTATIONS AND WARRANTIES.**

24.1 Representations and Warranties of the Developer. To induce the City to execute this Agreement and perform its obligations hereunder, the Developer represents, warrants and covenants as follows:

a) The Developer is an Illinois [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 Property, 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 Statements submitted to the City by the Developer are true, accurate and complete.

c) The Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement. The Developer's execution, delivery and performance of this Agreement, and

all instruments and agreements contemplated hereby, have been duly authorized by all necessary action, and do not and will not

27

violate the Developer's articles of organization or operating agreement (as amended and supplemented), or any applicable Laws, nor will such execution, delivery and performance, upon the giving of notice or lapse of time or both, result in a breach or violation of, or constitute a default under, or require any consent under, any other agreement, instrument or document to which the Developer, or any party affiliated with the Developer, is a party or by which the Developer or the Property is now or may become bound.

d) No action, litigation, investigation or proceeding of any kind is pending or threatened against the Developer or any party affiliated with the Developer by or before any court, governmental commission, board, bureau or any other administrative agency, and the Developer knows of no facts which could give rise to any such action, litigation, investigation or proceeding, which could: (i) affect the ability of the Developer to perform its obligations hereunder; or (ii) materially affect the operation or financial condition of the Developer.

e) The Developer is now and for the term of the Agreement shall remain solvent and able to pay its debts as they mature.

f) The Developer shall procure and maintain all Governmental Approvals necessary to construct, complete and operate the Project.

g) The Developer is not in default in any material respect with respect to any indenture, loan agreement, mortgage, note or any other agreement or instrument related to the borrowing of money to which the Developer is a party or by which the Developer is bound.

h) The Project will not violate: (i) any applicable Laws, including, without limitation, any zoning and building codes and Environmental Laws; or (ii) any building permit, restriction of record or other agreement affecting the Property.

(i) The Developer has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with this 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 this Agreement or any City Contract with the Developer in violation of Chapter 2-156-120 of the Municipal Code of the City.

(j) Neither the Developer nor any Affiliate of the 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 Laws: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

24.2 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



addresses to which subsequent notices, demands or communications shall be given. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 25 shall constitute delivery.

**SECTION 26. BUSINESS RELATIONSHIPS.**

The Developer acknowledges (a) receipt of a copy of Section 2-156-030 (b) of the Municipal Code, (b) 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), 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 (c) 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 2-145-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

**SECTION 27. PROHIBITION ON CERTAIN CONTRIBUTIONS PURSUANT TO MAYORAL EXECUTIVE ORDER NO. 2011-4.**

1 The Developer agrees that it, any person or entity who directly or indirectly has an ownership or beneficial interest in it of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, its contractors (i.e., any person or entity in direct contractual privity with the 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 (such Owners and all other preceding classes of persons and entities, collectively the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago or to his political fundraising committee (a) after execution of this Agreement by the Developer, (b) while this Agreement or any Other Contract (as hereinafter defined) is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated. This provision shall not apply to contributions made prior to May 16, 2011, the effective date of Executive Order 2011-4.

2 The Developer represents and warrants that from the later of (a) May 16, 2011, or (b) 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.

3 The Developer agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to

the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

4 The 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. 05-1.

5 Notwithstanding anything to the contrary contained herein, the Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Section 27 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, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

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

7 For purposes of this provision:

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

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

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

d) Individuals are "domestic partners" if they satisfy the following criteria:

i) they are each other's sole domestic partner, responsible for each other's common welfare; and

ii) neither party is married; and

iii) the partners are not related by blood closer than would bar marriage in the State of Illinois; and

iv) 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

v) two of the following four conditions exist for the partners:

- 1) The partners have been residing together for at least 12 months.
- 2) The partners have common or joint ownership of a residence.
- 3) The partners have at least two of the following arrangements:
  - A) joint ownership of a motor vehicle;
  - B) joint credit account;
  - C) a joint checking account;
  - D) a lease for a residence identifying both domestic partners as tenants.
- 4) Each partner identifies the other partner as a primary beneficiary in a will.

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

## **SECTION 28. 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. The Developer understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code.

## **SECTION 29. WASTE ORDINANCE PROVISIONS.**

In accordance with Section 11-4-1600(e) of the Municipal Code, the Developer warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code (the "Waste Sections"). During the period while this Agreement is executory, any violation of the Waste Sections by the Developer, its General Contractor or any subcontractor, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the Commissioner of DPD. Such breach and default entitles the City to all remedies under this Agreement, at law or in equity. This section does not limit the duty of the Developer, the General Contractor and any subcontractors to comply with all applicable Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect the Developer's eligibility for future contract awards.

32

## **SECTION 30. SHAKMAN.**

1 The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007 "City of Chicago Hiring Plan" (the "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). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

2 The Developer is aware that City policy prohibits City employees from directing any individual to apply for a position with the Developer, either as an employee or as a subcontractor, and from directing the Developer to hire an individual as an employee or as a subcontractor. Accordingly, the Developer must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by the Developer under this Agreement are employees or subcontractors of the 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 the Developer.

3 The Developer will not condition, base, or knowingly prejudice or affect any term or aspect of 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.

4 In the event of any communication to the Developer by a City employee or City official in violation of Section 30.2 above, or advocating a violation of Section 30.3 above, the 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 ("IGO Hiring Oversight"), and also to the head of the relevant City department utilizing services provided under this Agreement. The Developer will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to the contract.

**SECTION 31. FAILURE TO MAINTAIN ELIGIBILITY TO DO BUSINESS WITH THE CITY.**

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

**SECTION 32. MISCELLANEOUS.**

The following general provisions govern this Agreement:

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

2 Cumulative Remedies. The remedies of any party hereunder are cumulative and the exercise of any one or more of such remedies shall not be construed as a waiver of any other remedy herein conferred upon such party or hereafter existing at law or in equity, unless specifically so provided herein.

3 Date for Performance. If the final date of any time period set forth herein falls on a Saturday,

Sunday or legal holiday under the laws of Illinois or the United States of America, then such time period shall be automatically extended to the next business day.

4 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.

5 Entire Agreement: Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations and discussions. This Agreement may not be modified or amended in any manner without the prior written consent of the parties hereto. No term of this Agreement may be waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party benefited by such term.

6 Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.

7 Force Majeure. Neither the City nor the Developer shall be considered in breach of or in default of its obligations under this Agreement in the event of a delay due to unforeseeable 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, including, without limitation, fires, floods, strikes, shortages of material and unusually severe weather or delays of 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 party relying on this section requests an extension in writing within twenty (20) days after the beginning of any such delay.

8 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.

9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

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

11 Limitation of Liability. No member, official, officer, director, trustee or employee of the City or the Developer shall be personally liable in the event of any default or breach under this Agreement or for any amount which may become due to any other party under the terms of this Agreement.

12 No Merger. The terms 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 terms of this Agreement.

13 No Waiver. No waiver by the City with respect to any specific default by the Developer shall be deemed to be a waiver of the rights of the City with respect to any other defaults of the Developer, nor shall any forbearance by the City to seek a remedy for any breach or default be deemed a waiver of its rights and remedies with respect to such breach or default, nor shall the City be deemed to have waived any of its rights

and remedies unless such waiver is in writing.

14 Severability. If any term of this Agreement or any application thereof is held invalid or unenforceable, the remainder of this Agreement shall be construed as if such invalid part were never included herein and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

15 Successors and Assigns. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall apply to and bind the successors and assigns of the parties.

16 Venue and Consent to Jurisdiction. If there is a lawsuit under this Agreement, each Party 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.

*(Signature Page Follows)*

35

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:  
David L. Reifman  
Commissioner  
Planning and Development

MONTCLARE ENGLEWOOD, LLC, an Illinois limited liability company

By: Montclare Englewood Manager, LLC, an Illinois limited liability company, its Manager

By: Montclare Englewood MM Corp., an Illinois corporation, its Managing Member

By:

Name:

Title:

THIS INSTRUMENT PREPARED BY, AND AFTER RECORDING, PLEASE RETURN TO:

Lisa Misher  
City of Chicago Law Department Real Estate and Land Use Division 121 North LaSalle Street, Suite 600 Chicago, Illinois 60602 (312) 742-3932

36

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 \_\_\_\_\_, the \_\_\_\_\_ of Montclare Englewood MM Corp., an Illinois corporation (the "Company"), as the Managing Member of Montclare Englewood Manager, LLC, an Illinois limited liability company, the Manager of Montclare Englewood, LLC, an Illinois limited liability company, 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 the Company, as her/his free and voluntary act and as the free and voluntary act and deed of the Company, for the uses and purposes therein set forth.

GIVEN under my notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

NOTARY PUBLIC

STATE OF ILLINOIS )



38

**EXHIBIT B DEPICTION OF PROPERTY**

(ATTACHED)

39

**EXHIBIT C**

**PRELIMINARY BUDGET**

The following table identifies the sources and uses of funds for the Project.

**Sources and Uses of Funds**

<u>Sources</u>	<u>Amount</u>	<u>% of total</u>
MF Loan (City)	\$ 6,600,000	24.8%
*MAUI (City)	\$ 650,000	. 2.4%
*IHDA Trust Fund	\$ 1,000,000	3.8%
Construction Bridge Loan	\$ 7,956,245	29.9%
Debt (HUD Loan)	\$ 2,100,000	7.9%
FHLB Grant	\$ 850,000	3.2%
GP Equity	\$ 100	0.0%
<u>Tax Credit Equity</u>	<u>\$ 7,465,380**</u>	<u>28.0%</u>
<b>Total Sources</b>	<b>\$26,621,725</b>	<b>100%</b>

•Additional funds for IHDA (up to \$2M) and MAUI(up to \$1.3M) pending approval, any additional funding sources approved will reduce the City's loan.

"The total tax credit equity amount is \$15.7M; a portion will come in at closing and during construction, and the remaining portion will come in at construction completion to pay down the construction bridge loan and fund reserves and other related costs. -

**Uses**

Land Acquisition (0.00% of TPC)	\$ 5	\$ 0.00 psf
Hard Construction Costs (82.80% of TPC)	\$22,041,819	\$ 243.63 psf

**Soft Costs**

Architect's Fee (2.61% of hard costs)	\$ 575,000	\$ 6.36 psf
Loan Origination Fee (1.82% of loan)	\$ 150,500	\$ 1.66 psf
Legal Fees (0.72% of total costs)	\$ 191,250	\$ 2.11 psf
Marketing (0.60% of total costs)	\$ 158,400	\$ 1.75 psf
Loan Interest (1.88% of total costs)	\$ 500,000	\$ 5.53 psf
Environmental (1.75% of total costs)	\$ 465,100	\$ 5.14 psf
Reserves (1.96% of total costs)	\$ 520,681	\$ 5.76 psf
Developer Fee (3.72% of total costs)	\$ 990,000	\$ 10.94 psf
Other Soft Costs 3.87(% of total costs)	\$ 1,028,970	\$ 11.37 psf
<b><u>Total Soft Costs (17.2% of total costs)</u></b>	<b><u>\$ 4,579,906</u></b>	<b><u>\$ 50.62 psf</u></b>
<b>Total Uses</b>	<b>\$26,621,725</b>	<b>\$294.25 psf</b>

\*Gross building area is 90,471 square feet 'Gross site area is 70,095 square feet

**EXHIBIT D FORM OF RECONVEYANCE DEED**

**(ATTACHED)**

41

EXHIBIT E SCOPE DRAWINGS

(ATTACHED)

42

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OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

March 29, 2017

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 ordinances authorizing the conveyance of city-owned property, together with the execution of multi-family loan agreements.

Your favorable consideration of these ordinances will be appreciated.

Mayor

Very truly yours,

CHICAGO April 19.2017

**To the President and Members of the City Council:**

**Your Committee on Finance having had under consideration**

An ordinance authorizing the Commissioner of the Department of Planning and Development to enter into and execute a Loan Agreement and associated Redevelopment Agreement with Montclare Englewood, LLC.

02017-3050 Amount of Loan  
not to exceed: \$6,600,000

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  
of members of the committee with                      dissenting**

Alderman Burke abstained from voting on this matter pursuant to Rule 14.

**Respectfully submitted**  
**(signed)\_**

**Chairman**