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**RIVER WEST  
REDEVELOPMENT PROJECT AREA**

**METRA MARKET OF CHICAGO, L.L.C.  
REDEVELOPMENT AGREEMENT**

BY AND BETWEEN

THE CITY OF CHICAGO

AND

METRAMARKET OF CHICAGO, L.L.C.

OGILVIE TRANSIT CENTER INVESTOR, INC.

01061271 2 8 9 5W

This agreement was prepared by  
and after recording return to:  
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Chicago, IL 60602

## TABLE OF CONTENTS

	PAGE
SECTION 1. RECITALS .....	3
SECTION 2. DEFINITIONS .....	3
SECTION 3. THE PROJECT .....	10
3.01 <u>The Project</u> .....	10
3.02 <u>Scope Drawings and Plans and Specifications</u> .....	10
3.03 <u>Project Budget</u> .....	10
3.04 <u>Change Orders</u> .....	11
3.05 <u>DPD Approval</u> .....	11
3.06 <u>Other Approvals</u> .....	12
3.07 <u>Progress Reports and Survey Updates</u> .....	12
3.08 <u>Inspecting Agent or Architect</u> .....	12
3.09 <u>Barricades</u> .....	12
3.10 <u>Signs and Public Relations</u> .....	12
3.11 <u>Utility Connections</u> .....	12
3.12 <u>Permit Fees</u> .....	12
SECTION 4. FINANCING .....	13
4.01 <u>Total Project Cost and Sources of Funds</u> .....	13
4.02 <u>Developer Funds</u> .....	13
4.03 <u>City Funds</u> .....	13
4.04 <u>Requisition Form</u> .....	15
4.05 <u>Treatment of Prior Expenditures and Subsequent Disbursements</u> .....	16
4.06 <u>Cost Overruns</u> .....	17
4.07 <u>Execution of Certificate of Expenditure</u> .....	18
4.08 <u>Conditional Grant</u> .....	19
4.09 <u>Cost of Issuance</u> .....	19
SECTION 5. CONDITIONS PRECEDENT .....	19
5.01 <u>Project Budget</u> .....	19
5.02 <u>Scope Drawings and Plans and Specifications</u> .....	19
5.03 <u>Other Governmental Approvals</u> .....	19
5.04 <u>Financing</u> .....	20
5.05 <u>Acquisition and Title</u> .....	20
5.06 <u>Evidence of Clean Title</u> .....	20
5.07 <u>Surveys</u> .....	21
5.08 <u>Insurance</u> .....	21
5.09 <u>Opinion of the Developer's Counsel</u> .....	21
5.10 <u>Evidence of Prior Expenditures</u> .....	21
5.11 <u>Financial Statements</u> .....	21
5.12 <u>Documentation</u> .....	21
5.13 <u>Environmental</u> .....	21
5.14 <u>Corporate Documents; Economic Disclosure Statement</u> .....	21
5.15 <u>Litigation</u> .....	22

SECTION 6. AGREEMENTS WITH CONTRACTORS .....	22
6.01 <u>Bid Requirement for General Contractor and Subcontractors</u> .....	22
6.02 <u>Construction Contract</u> .....	23
6.03 <u>Performance and Payment Bonds</u> .....	23
6.04 <u>Employment Opportunity</u> .....	23
6.05 <u>Other Provisions</u> .....	23
SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION .....	23
7.01 <u>Certificate of Completion of Construction or Rehabilitation</u> .....	23
7.02 <u>Effect of Issuance of Certificate; Continuing Obligations</u> .....	24
7.03 <u>Failure to Complete</u> .....	24
7.04 <u>Notice of Expiration of Term of Agreement</u> .....	25
SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE DEVELOPER.....	25
8.01 <u>General</u> .....	25
8.02 <u>Covenant to Redevelop</u> .....	27
8.03 <u>Redevelopment Plan</u> .....	27
8.04 <u>Use of City Funds</u> .....	27
8.05 <u>Other Bonds</u> .....	27
8.06 <u>Use and Occupancy</u> .....	28
8.07 <u>Employment Opportunity; Progress Reports</u> .....	28
8.08 <u>Employment Profile</u> .....	28
8.09 <u>Prevailing Wage</u> .....	28
8.10 <u>Arms-Length Transactions</u> .....	29
8.11 <u>Conflict of Interest</u> .....	29
8.12 <u>Disclosure of Interest</u> .....	29
8.13 <u>Financial Statements</u> .....	29
8.14 <u>Insurance</u> .....	29
8.15 <u>Non-Governmental Charges</u> .....	29
8.16 <u>Developer's Liabilities</u> .....	30
8.17 <u>Compliance with Laws</u> .....	30
8.18 <u>Recording and Filing</u> .....	30
8.19 <u>Real Estate Provisions</u> .....	31
8.20 <u>Public Benefits Program</u> .....	33
8.21 <u>Job Readiness Program</u> .....	34
8.22 <u>Payments on Capital Event or Termination of Project</u> .....	34
8.23 <u>Survival of Covenants</u> .....	34
8.24 <u>Building Permit</u> .....	34
SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY .....	35
9.01 <u>General Covenants</u> .....	35
9.02 <u>Survival of Covenants</u> .....	35
SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS .....	35
10.01 <u>Employment Opportunity</u> .....	35
10.02 <u>City Resident Construction Worker Employment Requirement</u> .....	36

SECTION 11. ENVIRONMENTAL MATTERS .....	40
SECTION 12. INSURANCE .....	41
SECTION 13. INDEMNIFICATION .....	45
<b>13.01 <u>General Indemnity</u></b> .....	45
SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT .....	46
<b>14.01 <u>Books and Records</u></b> .....	46
<b>14.02 <u>Inspection Rights</u></b> .....	46
SECTION 15. DEFAULT AND REMEDIES .....	46
<b>15.01 <u>Events of Default</u></b> .....	46
<b>15.02 <u>Remedies</u></b> .....	48
<b>15.03 <u>Curative Period</u></b> .....	48
<b>15.04 <u>Occupancy Curative Period</u></b> .....	48
<b>15.05 <u>Occupancy Remedies</u></b> .....	48
SECTION 16. MORTGAGING OF THE PROJECT .....	48
SECTION 17. NOTICE .....	49
SECTION 18. MISCELLANEOUS .....	50
<b>18.01 <u>Amendment</u></b> .....	50
<b>18.02 <u>Entire Agreement</u></b> .....	51
<b>18.03 <u>Limitation of Liability</u></b> .....	51
<b>18.04 <u>Further Assurances</u></b> .....	51
<b>18.05 <u>Waiver</u></b> .....	51
<b>18.06 <u>Remedies Cumulative</u></b> .....	51
<b>18.07 <u>Disclaimer</u></b> .....	51
<b>18.08 <u>Headings</u></b> .....	51
<b>18.09 <u>Counterparts</u></b> .....	51
<b>18.10 <u>Severability</u></b> .....	51
<b>18.11 <u>Conflict</u></b> .....	52
<b>18.12 <u>Governing Law</u></b> .....	52
<b>18.13 <u>Form of Documents</u></b> .....	52
<b>18.14 <u>Approval</u></b> .....	52
<b>18.15 <u>Assignment</u></b> .....	52
<b>18.16 <u>Binding Effect</u></b> .....	52
<b>18.17 <u>Force Majeure</u></b> .....	52
<b>18.18 <u>Exhibits</u></b> .....	53
<b>18.19 <u>Business Economic Support Act</u></b> .....	53
<b>18.20 <u>Venue and Consent to Jurisdiction</u></b> .....	53
<b>18.21 <u>Costs and Expenses</u></b> .....	53
<b>18.22 <u>Business Relationships</u></b> .....	53

## LIST OF EXHIBITS

Exhibit A	*Redevelopment Area
Exhibit B	*Property
Exhibit C	*TIF-Funded Improvements
Exhibit D	Redevelopment Plan
Exhibit E	Construction Contract
Exhibit F	Preliminary TIF Projections - Real Estate Taxes
Exhibit G	*Permitted Liens
Exhibit H-1	*Project Budget
Exhibit H-2	*MBE/WBE Budget
Exhibit I	Approved Prior Expenditures
Exhibit J	Opinion of Developer's Counsel
Exhibit K	*Prohibited Uses
Exhibit L	Requisition Form
Exhibit M-1	*Form of City Note A
Exhibit M-2	*Form of City Note B
Exhibit N	Form of Payment Bond
Exhibit O	*Pre-Approved Tenants and Uses

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

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

### **METRAMARKET OF CHICAGO, L.L.C. REDEVELOPMENT AGREEMENT**

This MetraMarket of Chicago, L.L.C. Redevelopment Agreement (this "**Agreement**") is made as of this 21<sup>st</sup> day of August, 2008, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), MetraMarket of Chicago, L.L.C., an Illinois limited liability company ("**MetraMarket**"), Ogilvie Transit Center Investor, Inc., an Illinois corporation ("**OTCI**"); jointly and severally with MetraMarket, individually and collectively, the "**Developer**").

#### **RECITALS**

**A. Constitutional Authority:** As a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois (the "**State**"), the City has the power to regulate for the protection of the public health, safety, morals and welfare of its inhabitants, and pursuant thereto, has the power to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals.

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

**C. City Council Authority:** To induce redevelopment pursuant to the Act, the City Council of the City (the "**City Council**") adopted the following ordinances on January 10, 2001: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the River West Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the River West Redevelopment Project Area as a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the River West Redevelopment Project Area" (the "**TIF Adoption Ordinance**") (items(1)-(3) collectively referred to herein as the "**TIF Ordinances**"). The redevelopment project area referred to above (the "**Redevelopment Area**") is legally described in **Exhibit A** hereto.

**D. The Project:** The Developer has leased certain property located within the Redevelopment Area at the ground floor of Metra's Ogilvie Transportation Center property bounded by Washington Street on the south, Canal Street on the east, Clinton Street on the west, and Lake Street to the north, and legally described on **Exhibit B** hereto (the "**Property**"), and, within the time frames set forth in **Section 3.01** hereof, shall commence construction and rehabilitation of an approximately 200,000 square foot retail shopping center (the "**Facility**") thereon. The project involves the rehabilitation of the ground floor of Metra's Ogilvie Transportation Center and new construction. The project will contain approximately 99,000 square feet of space designated for restaurants and retail, (a) an approximately 15,000 square foot multi-vendor daily fresh food market including one or more vendors of specialty, high-quality fresh food including produce, cheese, imported foods, baked goods, chocolates, meat, fish and other specialty items and designed to attract and serve customers of specialty, high-quality fresh food from within the Chicago metropolitan area and from outside the Chicago metropolitan area (the "**Market**"), (b) restaurants occupying a total of at least 25,000 square feet ("**Restaurants**"), and (c) food and/or commuter-related retail stores occupying a total of at least 25,000 square feet ("**Retail Stores**"). Approximately 65,000 square feet of space will be designated for approximately 100 parking spaces. The Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on **Exhibit C**) are collectively referred to herein as the "**Project**." The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement. It is anticipated that the Project will be developed in two phases, as described below.

**Phase 1.** The first phase of the Project ("**Phase 1**"), will include the completion of approximately 66,000 rentable square feet in the southern block of the Project bounded by Washington Street on the south, Canal Street on the east, Randolph Street on the north and Clinton Street on the west (the "**Southern Block**") into (a) the Market and (b) Retail and/or Restaurant spaces including selective demolition, the installation of new tenant demising walls, plumbing and conditioning systems, waterproofing, windows and storefronts, interior and exterior lighting, landscaping and signage. Phase 1 may include completion of the two southern corners of the northern block of the Project into Retail and/or Restaurant spaces as described in the preceding sentence. Phase 1 also will include (a) the improvement and operation of the remainder of the north block, to the extent not occupied by completed Retail and/or Restaurant spaces, into a parking facility for the Project, (b) the construction of the HVAC/cooling tower, and (c) the cleaning of, and installation of lighting on, the Randolph Street viaduct.

**Phase 2.** The second phase of the Project ("**Phase 2**"), will include the completion of available areas of the northern block of the Project bounded by Randolph Street on the south, Canal Street on the east, Lake Street on the north and Clinton Street on the west (the "**Northern Block**")

from what is currently primarily a parking area to a reduced parking area with special street-oriented amenities for approximately 33,000 rentable square feet for Retail and/or Restaurant spaces including selective demolition, the installation of new tenant demising walls, plumbing and conditioning systems, waterproofing, windows and storefronts, interior and exterior lighting, landscaping and signage.

**E. Redevelopment Plan:** The Project will be carried out in accordance with this Agreement and the City of Chicago River West Redevelopment Project Area Tax Increment Financing Program Redevelopment Plan (the "**Redevelopment Plan**") attached hereto as **Exhibit D**.

**F. City Financing:** The City agrees to use, in the amounts set forth in **Section 4.03** hereof, the proceeds of the City Note A and City Note B (defined below) to pay for or reimburse the Developer for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement and the City Notes (defined below).

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

## **SECTION 1. RECITALS**

The foregoing recitals are hereby incorporated into this agreement by reference.

## **SECTION 2. DEFINITIONS**

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

**"Act"** shall have the meaning set forth in the Recitals hereof.

**"Actual residents of the City"** shall mean persons domiciled within the City.

**"Affiliate"** shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Developer.

**"Approved Debt Service (City Note A)"** shall mean the amount indicated for the applicable year on **Exhibit F** under the Section headed "Note A" and the column headed "Debt Service".

**"Average Minimum Occupancy"** shall have the meaning set forth in **Section 8.06** hereof.

**"Available Incremental Taxes (City Note A)"** shall mean the lesser of (a) Maximum Incremental Taxes (City Note A) and (b) Approved Debt Service (City Note A).

**"Available Incremental Taxes (City Note B)"** shall have the meaning set forth in **Section 4.03(c)**.



**“Certificate of Expenditure”** shall mean any Certificate of Expenditure referenced in the City Notes pursuant to which the principal amount of the City Notes will be established.

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

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

**“City Council”** shall have the meaning set forth in the Recitals hereof.

**“City Fee”** shall mean the fee described in **Section 4.05(b)** hereof.

**“City Funds”** shall mean the funds paid to the Developer pursuant to the City Notes.

**“City Note A”** shall mean the tax-exempt City of Chicago Tax Increment Allocation Revenue Note (MetraMarket of Chicago, L.L.C. Redevelopment Project), to be in the form attached hereto as **Exhibit M-1**, in the maximum principal amount of \$8,000,000, issued by the City to the Developer as provided herein. City Note A shall bear interest at the City Note A Interest Rate and shall provide for accrued, but unpaid, interest to bear interest at the same annual rate.

**“City Note B”** shall mean the taxable City of Chicago Tax Increment Allocation Revenue Note (MetraMarket of Chicago, L.L.C. Redevelopment Project), to be in the form attached hereto as **Exhibit M-2**, in the maximum principal amount of \$4,000,000, issued by the City to the Developer as provided herein. City Note B shall bear interest at the City Note B Interest Rate and shall provide for accrued, but unpaid, interest to bear interest at the same annual rate.

**“City Notes”** shall mean, collectively, City Note A and City Note B.

**“City Note A Interest Rate”** shall mean an annual rate equal to the median value of the 20-year AAA G.O. Bond rate as published by Bloomberg for 15 business days before City Note A is issued plus 275 basis points, but in no event exceeding eight percent (8.00%) per annum.

**“City Note B Interest Rate”** shall mean an annual rate equal to 275 basis points above the observed median value for the prevailing interest rates for the 10-year United States Treasury constant maturity as published in the daily Federal Reserve Statistical Release for 15 business days before City Note B is issued; provided, however, that the City Note B Interest Rate shall not exceed nine percent (9.00%) per annum.

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

**“Commissioner”** shall mean the Commissioner of the City’s Department of Planning and Development.

**“Commitment Letter”** shall mean the commitment letter dated July 25, 2008 from Camille P. Julmy, Robert A. Wislow and Robert Levin, not personally but solely as Trustee of South Loop Trust u/t/a dated October 25, 1994, addressed to the Developer and the City, and acknowledged by the

Developer and MetraMarket Investor, L.L.C. regarding the commitment and undertaking to provide funding for Phase 2 of the Project in an amount up to \$10,668,000.

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

**“Construction Allowance”** shall mean the construction allowance provided by Metra to the Developer under the MetraMarket Lease.

**“Corporation Counsel”** shall mean the City's Office of Corporation Counsel.

**“Debt Service Difference”** shall mean, for any calendar year, (a) Project Incremental Taxes for such year minus (b) Available Incremental Taxes (City Note A) for such year.

**“Employer(s)”** shall have the meaning set forth in **Section 10** hereof.

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

**“Equity”** shall mean funds of the Developer (other than funds derived from Lender Financing and Construction Allowance) irrevocably available for the Project, in the amount set forth in **Section 4.01** hereof, which amount may be increased pursuant to **Section 4.06** (Cost Overruns).

**“Excess Bond Proceeds”** shall have the meaning set forth in **Section 15** hereof.

**“Event of Default”** shall have the meaning set forth in **Section 15** hereof.

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

**“Final Completion Certificate”** shall mean the certificate of completion that the City may issue with respect to the final completion of the Project pursuant to **Section 7.01** hereof.

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

**“First Year”** with respect to an Occupancy Default shall mean the period commencing on the Receipt Date with respect to such Occupancy Default and ending twelve months after such Receipt Date.

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

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

**“Human Rights Ordinance”** shall have the meaning set forth in **Section 10** hereof.

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

**“Incremental Taxes From a New Project”** shall mean (a) individually, Incremental Taxes generated by the equalized assessed value (**“EAV”**) of the parcel(s) comprising a New Project over and above the initial EAV of such affected parcel(s) as certified by the Cook County Clerk in the certified initial EAV of all tax parcels in the Redevelopment Area and (b) collectively, the sum of Incremental Taxes From a New Project for all New Projects, if there are multiple New Projects.

**“Indemnitees”** shall have the meaning set forth in **Section 13.01** hereof.

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

**“Lock-Out Period”** shall have the meaning set forth in **Section 4.03(b)(i)** hereof.

**“Lock-Out Period Commencement Date”** shall have the meaning set forth in **Section 4.03(b)(i)** hereof.

**“Market”** shall have the meaning set forth in **Recital D** hereof.

**“Market Operator”** shall mean (a) a joint venture between Bensidoun USA, Inc. and an entity controlled by U.S. Equities, Inc. or (b) an entity approved by the City pursuant to **Section 8.06(b)** as a substitute Market Operator.

**“Maximum Incremental Taxes (City Note A)”** shall mean an amount from the Incremental Taxes which are received and that have been deposited in the River West Redevelopment Project Area TIF Fund as of December 31 of a calendar year and which are available for the financing or payment of Redevelopment Project Costs after deducting, (i) the 7.5% City Fee, (ii) \$150,000 per year, (iii) 90% of Incremental Taxes From a New Project pledged or allocated to assist the New Project, and (iv) Incremental Taxes previously allocated or pledged by the City before the date of this Agreement including, without limitation, Incremental Taxes levied with respect to the following property identification numbers: 17-09-301-002, 17-09-301-006, 17-09-501-005 and 17-09-501-007 (Jewel), and the property identification numbers for Blommer and ABN-AMRO listed below:

**Blommer PINs**

17-09-111-008  
17-09-111-009  
17-09-111-012  
17-09-111-014  
17-09-111-015  
17-09-111-016

17-09-107-001  
17-09-107-004  
17-09-107-005  
17-09-107-006  
17-09-107-007  
17-09-107-008  
17-09-107-009  
17-09-107-010  
17-09-107-011  
17-09-107-012

17-09-112-014  
17-09-112-015  
17-09-112-020  
17-09-107-004  
17-09-107-005  
17-09-107-006

17-09-112-019

**ABN AMRO PINs**

17-09-341-001  
17-09-341-002  
17-09-341-003  
17-09-341-004  
17-09-341-005  
17-09-341-006  
17-09-341-007  
17-09-341-008  
17-09-341-009  
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17-09-341-015  
17-09-341-016  
17-09-341-017  
17-09-341-018  
17-09-341-022  
17-09-341-023  
17-09-341-024

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

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

**"Metra"** shall mean the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation.

**"MetraMarket Lease"** shall mean that certain Amended and Restated Lease dated as of August 21, 2008 between MetraMarket and Metra relating to the Facility and the Property together with that certain "Tri-Partite Agreement" regarding TIF funded improvements dated as of August 21, 2008 by and among OTCI, MetraMarket, MetraMarket Investor, L.L.C., an Illinois limited liability company, and Metra.

**"Minimum Configuration"** shall mean, of the approximately 99,000 square feet of space designated for restaurants and retail in the Project, at least the number of square feet specified below will be dedicated to the following uses: (a) Market: 15,000 square feet, (b) Restaurants: 25,000 square feet, and (c) Retail: 25,000 square feet.

**"Minimum Occupancy"** shall mean (a) the occupancy of the Market and (b) the occupancy of 60% of the net rentable area of the Project including the Market, Restaurants and Retail Stores.

**"Municipal Code"** shall mean the Municipal Code of the City of Chicago.

**"New Project"** shall mean a development project (a) for which the related redevelopment agreement is dated on or after the date of this Agreement and (b) which will receive assistance in the form of Incremental Taxes; provided, however, that "New Project" shall not include any development project that is or will be exempt from the payment of ad valorem property taxes.

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

**"Northern Block"** shall have the meaning set forth in **Recital D** hereof.

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

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

**"Phase 1"** shall have the meaning set forth in **Recital D** hereof.

**"Phase 2"** shall have the meaning set forth in **Recital D** hereof.

**"Prohibited Uses"** shall mean the Prohibited Uses set forth in **Exhibit K**.

**"Planned Development"** shall mean the Business Planned Development (BPD #264).

**Plans and Specifications** shall mean construction documents containing a site plan and working drawings and specifications for the Project, as submitted to the City as the basis for obtaining building permits for the Project.

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

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

**Project Budget** shall mean the budget attached hereto as **Exhibit H**, showing the total cost of the Project by line item, furnished by the Developer to DPD, in accordance with **Section 3.03** hereof.

**Project Incremental Taxes** shall mean the Incremental Taxes which are received and that have been deposited in the River West Redevelopment Project Area TIF Fund in a calendar year attributable to the taxes levied on the Property, after deducting the 7.5% City Fee.

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

**Qualified Investor** shall mean a qualified institutional buyer ("QIB") or a registered investment company.

**Receipt Date** shall mean date the City receives an Occupancy Report specifying an Occupancy Default

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

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

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

**Requisition Form** shall mean the document, in the form attached hereto as **Exhibit L**, to be delivered by the Developer to DPD pursuant to **Section 4.04** of this Agreement.

**Restaurants** shall have the meaning set forth in **Recital D** hereof.

**Retail Stores** shall have the meaning set forth in **Recital D** hereof.

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

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

**Second Year** with respect to an Occupancy Default shall mean the period commencing on the Receipt Date with respect to such Occupancy Default and ending twenty-four months after such Receipt Date, or such longer time period as approved by the Commissioner of DPD in her/his sole discretion.

**"Southern Block"** shall have the meaning set forth in **Recital D** hereof.

**"Substantial Completion Certificate"** shall mean the certificate of completion that the City may issue with respect to Phase 1 of the Project pursuant to **Section 7.01** hereof.

**"Survey"** shall mean 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 Facility and related improvements as required by the City or lender(s) providing Lender Financing).

**"Term of the Agreement"** shall mean the period of time commencing on the Closing Date and ending on the date on which the Redevelopment Area is no longer in effect (through and including December 31, 2025).

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

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

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

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

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

**"Title Company"** shall mean Near North National Title LLC.

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

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

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

## SECTION 3. THE PROJECT

**3.01 The Project.** With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of **Section 18.17** hereof: (i) commence construction of Phase 1 no later than February 28, 2007; (ii) complete construction of Phase 1 no later than December 30, 2008; (iii) commence construction of Phase 2 no later than August 31, 2009; and (iv) complete construction of Phase 2 no later than December 31, 2010.

**3.02 Scope Drawings and Plans and Specifications.** The Developer has delivered the Scope Drawings and Plans and Specifications to DPD and DPD has approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DPD as a Change Order pursuant to **Section 3.04** hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan and all applicable federal, state and local laws, ordinances and regulations. 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 building permits and other required approvals for the Project.

**3.03 Project Budget.** The Developer has furnished to DPD, and DPD has approved, a Project Budget showing total costs for the Project in an amount not less than Forty-Three Million Six Hundred Forty-Nine Thousand Dollars (\$43,649,000). The Developer hereby certifies to the City that the City Funds, together with Lender Financing, Construction Allowance and Equity described in **Section 4.02** hereof, shall be sufficient to complete the Project. The Developer hereby certifies to the City that (a) it has Lender Financing, Construction Allowance and Equity in an amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Project Budget for approval pursuant to **Section 3.04** hereof.

**3.04 Change Orders.** All Change Orders (and documentation substantiating the need and 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. As used in the preceding sentence, a "material change to the Project" means (a) an increase in the gross or net square footage of the Facility by more than 10%, individually or cumulatively; (b) a reduction in the net square footage of the Facility by more than 5%, individually or cumulatively; (c) a change to the Minimum Configuration; (d) a change in the use of the Property to a use other than as described in **Recital D** to this Agreement; (e) a delay in the completion of Phase 1 or Phase 2 of the Project by more than 180 days; (f) or Change Orders that, in the aggregate, increase or decrease the Project Budget (whether the total Project Budget or the Project Budget for Phase 1 or Phase 2) 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). The Construction Contract, and each contract between the General Contractor and any subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer.

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



pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

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

**3.07 Progress Reports and Survey Updates.** The Developer shall provide DPD with written monthly progress reports detailing the status of the Project, including a revised completion date, if necessary (with any change in completion date being considered a Change Order, requiring DPD's written approval pursuant to **Section 3.04**). The Developer shall provide three (3) copies of an updated Survey to DPD upon the request of DPD or any lender providing Lender Financing, reflecting improvements made to the Property.

**3.08 Inspecting Agent or Architect.** An independent agent or architect (other than the Developer's agent or architect) approved by DPD shall be selected to act as the inspecting agent or architect, at the Developer's expense, for the Project. The inspecting agent or architect shall perform periodic inspections with respect to the Project, providing certifications with respect thereto to DPD, prior to requests for disbursement for costs related to the Project. If approved by DPD, the inspecting agent or architect may be the same one being used in such role by the lender providing Lender Financing, provided that such agent or architect (a) is not also the Developer's agent or architect and (b) acknowledges in writing to the City that the City may rely on the findings of such agent or architect.

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

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

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

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

## SECTION 4. FINANCING

**4.01 Total Project Cost and Sources of Funds.** The cost of the Project is estimated to be \$43,649,000, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Sources of Funds	Phase 1	Phase 2	Total
Lender Financing	\$25,000,000	\$0	\$25,000,000
Cash Equity (subject to <b>Section 4.06</b> )	\$798,000	\$10,667,000(1)	\$11,465,000
Construction Allowance (2)	\$7,184,000	\$0	\$7,184,000
<b>Total</b>	<b>\$32,982,000</b>	<b>\$10,667,000</b>	<b>\$43,649,000</b>

(1) All or a portion of the \$10,667,000 in funding for this line item required for Phase 2 and described in the Commitment Letter may, if it qualifies under the definition of Lender Financing, be treated as Lender Financing; otherwise, such funding shall be treated as Equity.

(2) Includes (a) \$6,120,000 pursuant to the MetraMarket Lease and (b) \$1,064,000 pursuant to the Past Expense Agreement between the Developer and Metra and the related letter from Metra to the Developer.

City Funds may only be used to pay directly or reimburse the Developer for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. The payment of City Funds, including the timing of payment, is subject to the terms and conditions of this Agreement, including but not limited to **Section 4.03** and **Section 5** hereof.

**4.02 Developer Funds.** Equity, Construction Allowance and/or Lender Financing may be used to pay any Project cost, including but not limited to Redevelopment Project Costs.

### **4.03 City Funds.**

(a) Uses of City Funds. City Funds may only be used to pay directly or reimburse the Developer for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. **Exhibit C** sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to **Sections 4.03(b) and 4.05(d)**), contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this **Section 4.03** and **Section 5** hereof, the City hereby agrees to pay for or reimburse the Developer for the costs of the TIF-Funded Improvements for Twelve Million Dollars (\$12,000,000):

(i) City Note A. Subject to the terms and conditions of this Agreement, including but not limited to this **Section 4.03** and **Section 5** hereof, the City hereby agrees to issue the City Note A to the Developer upon the issuance of the Substantial Completion Certificate. The principal amount of City Note A shall be in an amount equal to the costs of the TIF-Funded Improvements which have been incurred by the Developer and are to be reimbursed by the City through payments of principal

and interest on City Note A, subject to the provisions hereof; provided, however, that the maximum principal amount of City Note A shall be an amount not to exceed Eight Million Dollars (\$8,000,000); provided, further, that the cost of TIF-Funded Improvements shall be certified first to City Note A, up to the maximum principal amount of City Note A, and thereafter to City Note B. Interest on City Note A will accrue at the City Note A Interest Rate from its date of issuance, as more fully described in **Exhibit M-1** attached hereto, and will compound annually. City Note A shall be payable from Available Incremental Taxes (City Note A). Payments of principal and interest on City Note A shall be made in accordance with a debt service schedule approved by DPD and attached to City Note A. The City may not prepay, without the consent of the Developer or the registered owner of City Note A, as applicable, principal of and interest on City Note A for a period of five years (the "**Lock-Out Period**") from the date of issuance of the Substantial Completion Certificate (the "**Lock-Out Period Commencement Date**"). The Developer may sell City Note A at any time after the issuance of the Substantial Completion Certificate, but only to a Qualified Investor with no view to resale and pursuant to an acceptable investment letter and in a manner and on terms, including debt service schedule, otherwise reasonably acceptable to the City.

(ii) City Note B. Subject to the terms and conditions of this Agreement, including but not limited to this **Section 4.03** and **Section 5** hereof, the City hereby agrees to issue City Note B to the Developer upon the issuance of the Final Completion Certificate. The principal amount of City Note B shall be in an amount equal to the costs of the TIF-Funded Improvements which have been incurred by the Developer and are to be reimbursed by the City through payments of principal and interest on City Note B, subject to the provisions hereof; provided, however, that the maximum principal amount of City Note B shall be an amount not to exceed Four Million Dollars (\$4,000,000) provided, further, that the principal amount of City Note B may be reduced in the event that the Project Budget exceeds the Final Project Cost, in which case the principal amount of City Note B shall be reduced by \$.50 for every \$1.00 (or portion thereof) by which the Project Budget exceeds the Final Project Cost. Interest on City Note B will accrue at the City Note B Interest Rate from the date of the issuance of a Final Completion Certificate, as more fully described in **Exhibit M-2** attached hereto, and will compound annually. The City may prepay principal of and interest on City Note B at any time. City Note B shall be payable from the Available Incremental Taxes (City Note B) as defined below, provided that no payments shall be made on City Note B until the issuance of a Final Completion Certificate. Payments of principal and interest on City Note B shall be made only upon Developer's compliance with **Section 8.06** herein and shall not exceed Available Incremental Taxes (City Note B).

(c) Definition; Example of Calculations

(i) Definition. "**Available Incremental Taxes (City Note B)**" shall mean:

(A) if the Debt Service Difference is zero or a positive number, (1) the Debt Service Difference plus (2) the amount indicated for such year on **Exhibit F** under the heading "City Pledge of Areawide Increment"; and

(B) if the Debt Service Difference is a negative number, (1) the amount indicated for such year on **Exhibit F** under the heading "City Pledge of Areawide Increment" minus (2) the absolute value of the Debt Service Difference; provided, however, that if the calculation described in this subsection (c)(i)(B) results in a negative number, the Available Incremental Taxes (City Note B) shall be deemed to be zero;

provided, however, that in each case the City's obligation to use Incremental Taxes other than

Project Incremental Taxes to make payments under City Note B will be limited to the lesser of (x) the result of the calculation from subsection (c)(i)(A) or (B) above, as applicable, and (y) an amount equal to the Maximum Incremental Taxes (City Note A) for such year minus Approved Debt Service (City Note A) for such year.

(ii) Example of Calculations. The following example is presented as an illustration only and shall not override any contrary provisions of this Agreement. The figures provided in this example are for illustration only.

**If, in calendar year 2015,**

"Incremental Taxes which are received and that have been deposited in the River West Redevelopment Project Area TIF Fund as of December 31..." total \$5,000,000

"90% of Incremental Taxes From a New Project pledged or allocated to assist the New Project on or after the date of this Agreement total \$450,000 (90% of \$500,000)

"Incremental Taxes previously allocated or pledged by the City before the date of this Agreement" total \$2,000,000

"Approved Debt Service (City Note A)" is \$795,301 (from **Exhibit J**)

"City Pledge of Areawide Increment" is \$218,249 (from **Exhibit J**)

"Project Incremental Taxes" total \$989,051 (from **Exhibit J**)

The City Fee is \$375,000 (7.5% of \$5,000,000)

**Then, "Maximum Incremental Taxes (City Note A)" would equal \$2,025,000, calculated as follows:**

"... an amount from the Incremental Taxes which are received and that have been deposited in the River West Redevelopment Project Area TIF Fund as of December 31 of a calendar year [**\$5,000,000**] and which are available for the financing or payment of Redevelopment Project Costs after deducting, (i) the 7.5% City Fee [**\$375,000**], (ii) **\$150,000** per year, (iii) 90% of Incremental Taxes From a New Project pledged or allocated to assist the New Project on or after the date of this Agreement [**\$450,000**], and (iv) Incremental Taxes previously allocated or pledged by the City before the date of this Agreement ... [**\$2,000,000**]"

**"Available Incremental Taxes (City Note A)" would equal \$795,301**, the lesser of (a) Maximum Incremental Taxes (City Note A) [**\$2,025,000**] and (b) Approved Debt Service (City Note A) [**\$795,301**].

**"Available Incremental Taxes (City Note B)" would equal \$474,999, calculated as follows:**

The "Debt Service Difference" would equal (a) Project Incremental Taxes for such year [**\$989,051**] minus (b) Available Incremental Taxes (City Note A) for such year [**\$795,301**]. The Debt Service Difference, **\$193,750**, is a positive number

Since the Debt Service Difference is a positive number, "Available Incremental Taxes (City Note B)" would equal (1) the Debt Service Difference [**\$193,750**] plus (2) the amount indicated for such year on **Exhibit F** under the heading "City Pledge of Areawide Increment" [**\$218,249**]. The result is **\$474,999**.

If in this example the Maximum Incremental Taxes (City Note A) had equaled \$1,000,000 instead of \$2,025,000, then pursuant to the limitation described in subsection (c)(i), Available Incremental Taxes (City Note B) would have equaled **\$204,699**, which is equal to Maximum Incremental Taxes (City Note A)(\$1,000,000) minus Approved Debt Service (City Note A) (\$795,301).

**4.04 Requisition Form.** Prior to each October 1 (or such other date as the parties may agree to) thereafter, beginning with the issuance of City Note B and continuing throughout the earlier of (i) the Term of the Agreement or (ii) the date that the Developer has been reimbursed in full under this Agreement, the Developer shall provide DPD with a Requisition Form with respect to City Note B, along with the documentation described therein. Requisition for reimbursement of TIF-Funded Improvements shall be made not more than one time per calendar quarter (or as otherwise permitted by DPD). On each December 1 (or such other date as may be acceptable to the parties), beginning with the issuance of City Note B and continuing throughout the Term of the Agreement, the Developer shall meet with DPD at the request of DPD to discuss the Requisition Form(s) previously delivered.

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

(a) Prior Expenditures. Only those expenditures made by the Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Project Budget, shall be considered previously contributed Equity or Lender Financing hereunder (the "**Prior Expenditures**"). DPD shall have the right, in its sole discretion, to disallow any such expenditure as a Prior Expenditure. **Exhibit I** hereto sets forth the prior expenditures approved by DPD as of the date hereof as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements shall not be reimbursed to the Developer, but shall reduce the amount of Equity and/or Lender Financing required to be contributed by the Developer pursuant to **Section 4.01** hereof.

(b) City Fee. Annually, the City may allocate an amount not to exceed seven and one-half percent (7.5%) of the Incremental Taxes for payment of costs incurred by the City for the administration and monitoring of the Redevelopment Area, including the Project. Such fee shall be in addition to and shall not be deducted from or considered a part of the City Funds, and the City shall have the right to receive such funds prior to any payment of City Funds hereunder.

(c) Allocation Among Line Items. Disbursements for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line, and transfers and reallocations of costs and expenses from one line item to another, shall be permitted without the prior written consent of DPD, provided, that all such transferred and/or reallocated line items qualify as Redevelopment Project Costs.

**4.06 Cost Overruns.** If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to **Section 4.03** hereof, or if the cost of completing the Project exceeds the Project Budget, the Developer shall be solely responsible for such excess cost, and shall hold

the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds and of completing the Project.

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

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

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

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

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

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

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

(g) the Project is In Balance. The Project shall be deemed to be in balance ("**In Balance**") only if the total of the available Project funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project other than fees payable to Developer or its Affiliates that have been (x) irrevocably waived or (y) deferred until not later than the Developer's submission pursuant to **Section 7.01** of the Final Project Cost including such deferred fees, if any, that accompanies the Developer's request for each Certificate. "**Available Project Funds**" as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Construction Allowance, if any; (iv) the undisbursed Equity and (v) any other amounts deposited by the Developer pursuant to this Agreement. The Developer hereby agrees that, if the Project is not In Balance, the Developer shall, within 10 days after a written request by the City, deposit with the escrow agent or will make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require the Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any execution of a Certificate of Expenditure by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Developer. In addition, the Developer shall have satisfied

all other preconditions of execution of a Certificate of Expenditure, including but not limited to requirements set forth in the Bond Ordinance, if any, TIF Bond Ordinance, if any, the Bonds, if any, the TIF Bonds, if any, the TIF Ordinances, this Agreement and/or the construction escrow agreement entered into by the Developer regarding the Lender Financing.

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

**4.09 Cost of Issuance.** The Developer shall be responsible for paying all costs relating to the issuance of the City Notes, including costs relating to the opinion described in **Section 5.09(b)** hereof.

## SECTION 5. CONDITIONS PRECEDENT

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

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

**5.02 Scope Drawings and Plans and Specifications.** The Developer has submitted to DPD, and DPD has approved, the Scope Drawings and Plans and Specifications accordance with the provisions of **Section 3.02** hereof.

**5.03 Other Governmental Approvals.** The Developer has secured all other necessary approvals and permits required by Metra and by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to DPD. On or before the Closing Date, the Developer shall deliver to the City a conditional building permit for Phase 1 of the Project. As required under **Section 8.24**, no later than the date which is 120 days after the Closing Date, the Developer shall deliver to the City a final, unconditional building permit for Phase 1 of the Project. Prior to commencing construction on Phase 2 of the Project, the Developer shall deliver to the City a final, unconditional building permit for Phase 2 of the Project.

**5.04 Financing.** The Developer has furnished proof reasonably acceptable to the City that the Developer has Equity, Construction Allowance and Lender Financing in the amounts set forth in **Section 4.01** hereof to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender Financing or Construction Allowance, the Developer has furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by the Developer as needed and are sufficient (along with the Equity and other sources set forth in **Section 4.01**) to complete the Project. The Developer has delivered to DPD a copy of the construction escrow agreement entered into by the Developer regarding the Lender Financing. Any liens against the Property in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein pursuant to a Subordination Agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of the Developer, with the Office of the Recorder of Deeds of Cook County.

**5.05 Acquisition and Title.** On the Closing Date, the Developer has furnished the City with a copy of the Title Policy for the Property, certified by the Title Company, showing MetraMarket as

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

**5.06 Evidence of Clean Title.** The Developer, at its own expense, has provided the City with searches under the Developer's name (and the following trade names of the Developer: none) as follows:

Secretary of State	UCC search
Secretary of State	Federal tax search
Cook County Recorder	UCC search
Cook County Recorder	Fixtures search
Cook County Recorder	Federal tax search
Cook County Recorder	State tax search
Cook County Recorder	Memoranda of judgments search
U.S. District Court	Pending suits and judgments
Clerk of Circuit Court, Pending suits and judgments	
Cook County	

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

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

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

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

(b) On the date of issuance of City Note A, the City has received an opinion regarding the tax-exempt status and enforceability of City Note A from a nationally recognized bond counsel approved by the City, in form and substance acceptable to Corporation Counsel. The Developer shall pay the expenses of bond counsel relating to the issuance of tax-exempt City Note A.

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



**5.11 Financial Statements.** The Developer has provided Financial Statements to DPD for its most recent fiscal year, and audited or unaudited interim financial statements.

**5.12 Documentation.** The Developer has provided documentation to DPD, satisfactory in form and substance to DPD, with respect to current employment matters of the Developer.

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

**5.14 Corporate Documents; Economic Disclosure Statement.** The Developer has provided a copy of its Articles of Organization or Articles of Incorporation, as applicable, containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of its state of organization and all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; operating agreement or bylaws, as applicable, of the Developer; and such other organizational documentation as the City has requested. The Developer has provided to the City an Economic Disclosure Statement, in the City's then current form, dated as of the Closing Date.

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

## **SECTION 6. AGREEMENTS WITH CONTRACTORS**

**6.01 Bid Requirement for General Contractor and Subcontractors.** (a) Except as set forth in **Section 6.01(b)** below, prior to entering into an agreement with a General Contractor or any subcontractor for construction of the Project, the Developer shall solicit, or shall cause the General Contractor to solicit, bids from qualified contractors eligible to do business with and having an office located in the City of Chicago, and shall submit all bids received to DPD for its inspection and written approval. For the TIF-Funded Improvements, the Developer shall select the General Contractor (or shall cause the General Contractor to select the subcontractor) submitting the lowest responsible bid who can complete the Project in a timely manner. If the Developer selects a General Contractor (or the General Contractor selects any subcontractor) submitting other than the lowest responsible bid for the TIF-Funded Improvements, the difference between the lowest responsible bid and the bid selected may not be paid out of City Funds. The Developer shall submit copies of the Construction Contract to DPD in accordance with **Section 6.02** below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof. The Developer shall ensure that the General Contractor shall not (and shall cause the General Contractor to ensure that the subcontractors shall not) begin work on the Project until the Plans and Specifications have been approved by DPD and all requisite permits have been obtained.

(b) If, prior to entering into an agreement with a General Contractor for construction of the Project, the Developer does not solicit bids pursuant to **Section 6.01(a)** hereof, then the fee of the

General Contractor proposed to be paid out of City Funds shall not exceed 10% of the total amount of the Construction Contract. Except as explicitly stated in this paragraph, all other provisions of **Section 6.01(a)** shall apply, including but not limited to the requirement that the General Contractor shall solicit competitive bids from all subcontractors.

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

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

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

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

## SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION

**7.01 Certificate of Completion of Construction.** Upon completion of construction of the applicable component of the Project in accordance with the terms of this Agreement, and upon the Developer's written request, which shall include a final Project budget detailing the total actual cost of the construction of each phase of the Project (the "**Final Project Cost**"), DPD shall issue to the Developer the Substantial Completion Certificate and the Final Completion Certificate, as applicable (each, a "**Certificate**"), all in recordable form certifying that the Developer has fulfilled its obligation to complete the applicable component of the Project in accordance with the terms of this Agreement. If Developer has deferred the payment of any fees payable to Developer or its Affiliates as described in **Section 4.07(g)**, such fees shall be included in the Final Project Cost submitted in connection with the Developer's request for each Certificate.

(a) The "**Substantial Completion Certificate**" will not be issued until the following requirements have been met:

- (i) The Developer has completed construction of Phase 1 according to the Plans and Specifications for Phase 1, except for tenant improvements for (A) tenants which are not yet in occupancy or (B) space which is not yet leased;
- (ii) Tenant leases have been signed for 60% of the net rentable area in Phase 1 including (A) an operating agreement for the interim parking operation on the north block and (B) a lease with the Market Operator to operate the Market;
- (iii) The Developer has substantially completed construction of the associated improvements in accordance with the requirements of the executed tenants' leases;
- (iv) A temporary Certificate of Occupancy for core and shell has been issued for Phase 1;
- (v) The lender providing Lender Financing has confirmed, in a manner acceptable to the City, that the Developer has complied with any requirements for substantial completion as defined in the agreements for the Lender Financing;
- (vi) There exists neither an Event of Default (after any applicable cure period) which is continuing nor a condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default; and
- (vii) Developer has incurred costs for TIF-Funded Improvements in an amount equal to or higher than \$8,000,000.

(b) The "**Final Completion Certificate**" will not be issued until the following requirements have been met:

- (i) The City has issued the Substantial Completion Certificate;
- (ii) The Developer has completed construction of Phase 1 and Phase 2 except for tenant improvements for (A) tenants which are not yet in occupancy or (B) space which is not yet leased;
- (iii) The Developer has received a Certificate of Occupancy or other evidence acceptable to DPD that the developer has complied with building permit requirements for Phase 1 and Phase 2;
- (iv) Tenant leases have been signed for 75% of the net rentable area in the Project including (A) an operating agreement or lease for the interim parking operation on the north block and (B) a lease with the Market Operator to operate the Market, and at least 60% of the net rentable area in the Project is occupied, including the Market;

- (v) The City's Monitoring and Compliance Unit has verified that the Developer is in full compliance with City requirements set forth in **Section 10** and **Section 8.09** (M/WBE, City Residency and Prevailing Wage) with respect to construction of the Project, and that 100% of the Developer's MBE/WBE Commitment in **Section 10.03** has been fulfilled;
- (vi) Developer has incurred costs for TIF-Funded Improvements in an amount equal to or higher than \$12,000,000; and
- (vii) There exists neither an Event of Default (after any applicable cure period) which is continuing nor a condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default.

(c) DPD shall respond to the Developer's written request for the applicable Certificate within thirty (30) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer in order to obtain the Certificate. The Developer may resubmit a written request for a Certificate upon completion of such measures and the City thereafter shall respond to the Developer's request within thirty (30) days by issuing either the Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed.

**7.02 Effect of Issuance of Certificate; Continuing Obligations.** The Certificate relates only to the construction of the applicable component of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to the Developer's obligation to complete such activities have been satisfied. After the issuance of a Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate shall not be construed as a waiver by the City of any of its rights and remedies pursuant to such executory terms.

Those covenants specifically described at **Sections 8.02, 8.06, 8.19** as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate; provided, that upon the issuance of a Final Completion Certificate, the covenants set forth in **Section 8.02** shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of a Final Completion Certificate shall be binding only upon the Developer or a permitted assignee of the Developer who, pursuant to **Section 18.15** of this Agreement, has contracted to take an assignment of the Developer's rights under this Agreement and assume the Developer's liabilities hereunder.

**7.03 Failure to Complete.** If the Developer fails to complete the Project in accordance with the terms of this Agreement, then the City has, but shall not be limited to, any of the following rights and remedies:

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

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

(c) the right to seek reimbursement of the City Funds previously paid under Note B from the Developer, provided that the City is entitled to rely on an opinion of counsel that such reimbursement will not jeopardize the tax-exempt status of the City Note A, and provided, further, that in no event shall the City have any right pursuant to this **Section 7.03** to seek reimbursement of, withhold or cease to make, any payment of principal or interest paid or otherwise payable with respect to City Note A;

(d) the right to seek any remedies set forth in **Section 15.02**.

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

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

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

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

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

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

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

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

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

(h) the Developer is not in default with respect to the MetraMarket Lease or any indenture, loan agreement, mortgage, deed, 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;

(i) the Financial Statements are, and when hereafter required to be submitted will be, complete, correct in all material respects and accurately present the assets, liabilities, results of operations and financial condition of the Developer, and there has been no material adverse change in the assets, liabilities, results of operations or financial condition of the Developer since the date of the Developer's most recent Financial Statements;

(j) the Developer shall not do any of the following without the prior written consent of DPD which shall be in DPD's sole discretion: (1) prior to the issuance of the Final Completion Certificate, (A) be a party to any merger, liquidation or consolidation; (B) enter into any transaction outside the ordinary course of the Developer's business (except for the leases to the Market Operator and to tenants of the Retail Stores and Restaurants that comply with the requirements of this Agreement); (C) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (D) enter into any transaction that would cause a material and detrimental change to the Developer's financial condition; (2) for a period of five (5) years from the issuance of the Final Completion Certificate, and subject to **Section 18.15**, sell, transfer, convey or lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business (except for the leases to the Market Operator and to tenants of the Retail Stores and Restaurants that comply with the requirements of this Agreement); or (3) at any time during the term of this Agreement, amend the MetraMarket Lease in any way that would reasonably be expected to have a material adverse affect on the Project or the Facility, or on Developer's obligations under this Agreement, including Developer's obligations under **Section 8.22** of this Agreement;

(k) the Developer has not incurred, and, prior to the issuance of a Final Completion Certificate, shall not, without the prior written consent of the Commissioner of DPD, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget;

(l) has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("**City Contract**") as an inducement for

the City to enter into the Agreement or any City Contract with the Developer in violation of Chapter 2-156-120 of the Municipal Code of the City; and

(m) 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 law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (m) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

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

**8.03 Redevelopment Plan.** The Developer represents that the Project is and shall be in compliance with all of the terms of the Redevelopment Plan.

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

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

**8.06 Occupancy and Use; Employment.**

(a) Upon the issuance of the Final Completion Certificate, the Developer shall maintain for the 12 months preceding Developer's delivery of an occupancy progress report to DPD, an average occupancy equal to the Minimum Occupancy (the "**Average Minimum Occupancy**") in order to receive payments on City Note B. Developer shall deliver, with the Developer's requisition for its annual City Note B payments, an occupancy progress report detailing compliance with the requirement to maintain an Average Minimum Occupancy (the "**Occupancy Report**") for the period beginning on January 1st of the preceding year to December 31st of the current year, such request to be submitted each year, through the term of this Agreement. The Developer (i) shall cause the Property to be used as a retail shopping center, including the Market, Retail Stores, Restaurants, and parking, as permitted pursuant to the Redevelopment Plan, the Planned Development and this Agreement; (ii) shall lease to tenants whose operations shall not include any Prohibited Uses set forth in **Exhibit K**, without the consent of the Commissioner, and (iii) shall not include any restriction upon the use and operation of the Property and the Project, other than restrictions relating to Prohibited Uses, in any contract of sale or deed (or similar instrument) of conveyance. Wherever there is a conflict between the permitted uses of the Property and the Project, between this Agreement and the other controlling documents set forth above, the terms of this Agreement shall control. The covenants in this **Section 8.06** shall run with the leasehold estate for the Term of the Agreement and be binding upon any transferee.

The uses and tenants specified on **Exhibit O** shall be deemed to have been pre-approved by the City; provided, however, that (a) uses and tenants listed in Category B of **Exhibit O** and located in the Southern Block shall not exceed twenty-five percent (25%) of the net rentable area (excluding parking) in the Southern Block and (b) uses and tenants listed in Category B of **Exhibit O** and located in the Northern Block shall not exceed fifty percent (50%) of the net rentable area (excluding parking) in the Northern Block.

With respect to Retail Stores and Restaurants, the Developer will use commercially reasonable efforts to secure: (i) Retail Store tenants providing specialty, high-quality fresh food including produce, cheese, imported foods, baked goods, chocolates, meat, fish and other specialty items; (ii) Retail Store tenants having, at the time of execution of the applicable lease, no more than 2 stores in the City of Chicago in addition to the store in the Project; and (iii) Restaurant tenants having, at the time of execution of the applicable lease, no more than 2 restaurants in the City of Chicago in addition to the restaurant in the Project.

(b) The Market shall at all times be operated by a joint venture between Bensidoun USA, Inc. and an entity controlled by U.S. Equities, Inc. or an entity approved by the City as a substitute Market Operator. A proposed substitute Market Operator and the proposed Market are required to meet the following criteria: (i) the proposed Market Operator will provide a multi-vendor Market including one or more vendors of specialty, high-quality fresh food including produce, cheese, imported foods, baked goods, chocolates, meat, fish and other specialty items, (ii) the Market is designed to attract and serve customers of specialty, high-quality fresh food from within the Chicago metropolitan area and from outside the Chicago metropolitan area, (iii) the proposed Market Operator has sufficient operational and management experience and sufficient financial resources, to operate the Market successfully, and (iv) the proposed Market Operator is not disqualified from doing business with the City. The Developer and its Affiliates shall be deemed to have sufficient operational and management experience and sufficient financial resources to operate the Market successfully.



(c) Not less than one hundred sixty-five (165) full-time and part-time permanent jobs shall be created by the Developer within ten (10) years of completion of the Project, at the Facility through the term of this Agreement.

**8.07 Employment Opportunity; Progress Reports.** The Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and each subcontractor to abide by the terms set forth in **Section 10** hereof. The Developer shall deliver to the City written progress reports detailing compliance with the requirements of **Sections 8.09, 10.02 and 10.03** of this Agreement. Such reports shall be delivered to the City when the Project is 25%, 50%, 70% and 100% completed (based on the amount of expenditures incurred in relation to the Project Budget). 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.

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

**8.09 Prevailing Wage.** The Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "**Department**"), to all of their respective employees working on constructing the Project or otherwise completing the TIF-Funded Improvements. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the Developer shall provide the City with copies of all such contracts entered into by the Developer or the General Contractor to evidence compliance with this **Section 8.09**.

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

**8.11 Conflict of Interest.** Pursuant to Section 5/11-74.4-4(n) of the Act, the Developer represents, warrants and covenants that, to the best of its knowledge no member, official, or employee of the City, or of any commission or committee established pursuant to Section 11-74.4-4(k) of the Act exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or the Developer with respect thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in the Developer's business, the Property or any other property in the Redevelopment Area.

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

**8.13 Financial Statements.** The Developer shall obtain and provide to DPD Financial Statements for the Developer's fiscal year ended December 31, 2006 and each December 31 thereafter for the Term of the Agreement. In addition, the Developer shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

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

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

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

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

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

**8.16 Developer's Liabilities.** The Developer shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder or to repay any material liabilities or perform any material obligations of the Developer to any other person or entity. The Developer shall immediately notify DPD of any and all events or actions which may materially affect the Developer's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements.

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

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

**8.19 Real Estate Provisions.**

(a) Governmental Charges.

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

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

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

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

(b) Developer's Failure To Pay Or Discharge Lien. If the Developer fails to pay any Governmental Charge or to obtain discharge of the same, the Developer shall advise DPD thereof in

writing, at which time DPD may, but shall not be obligated to, and without waiving or releasing any obligation or liability of the Developer under this Agreement, in DPD's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which DPD deems advisable. All sums so paid by DPD, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be promptly disbursed to DPD by the Developer. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate the City to pay any such Governmental Charge. Additionally, if the Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require the Developer to submit to the City audited or unaudited Financial Statements at the Developer's own expense.

**8.20 Public Benefits Program.** The Developer agrees to contribute the sum of \$25,000 to the Chicago Park District for the benefit of Erie Park, due and payable on the Closing Date.

**8.21 Job Readiness Program.** The Developer shall undertake, and shall require each operator of a Retail Store that leases at least 12,000 square feet of space to undertake, a job readiness program, to work with the City, through the Mayor's Office of Workforce Development ("MOWD"), to participate in job training programs to provide job applicants for the jobs created by the Project and the operation of the Property. In addition, the Developer shall send a letter (with a copy to DPD) to any tenants to familiarize them with the programs established by the City and available through MOWD for the purpose of helping prepare individuals to work for businesses located within the TIF district.

**8.22 Payments on Capital Event or Termination of Project.** If the Developer receives any "Net Proceeds" of a "Capital Event" or a "Termination Fee" under (and as such terms are defined in) the MetraMarket Lease, then the Developer shall certify to DPD the Developer's internal rate of return (the "Rate of Return") after satisfying all of the Developer's debt and equity obligations set forth in the Project Budget: (a) including the payment of preferred returns to equity investors and fees owed to related and non-related parties, and (b) excluding any amounts paid, returned or reimbursed by the distribution of the Net Proceeds of a Capital Event and/or Termination Fee.

The City shall be entitled to receive the "**Payment Amount**," which shall be equal to 50% of the amount by which the Rate of Return exceeds 20% per annum; provided, however, that the Payment Amount shall not exceed the outstanding balance under City Note B plus the amount of City Funds previously paid by the City under City Note B, in each case calculated as of the date the Payment Amount is calculated. The City shall receive the Payment Amount as follows:

- If the outstanding balance under City Note B equals or exceeds the Payment Amount, then the outstanding balance under City Note B shall be reduced by the Payment Amount. **For example**, if the outstanding balance under City Note B is \$4 million and the Payment Amount is \$2 million, then the outstanding balance under City Note B would be reduced by \$2 million.

- If the Payment Amount exceeds the outstanding balance under City Note B, then: (a) the outstanding balance under City Note B shall be reduced to zero and (b) the Developer shall pay to the City the amount by which the Payment Amount exceeds the outstanding balance under City Note B. **For example**, if the Payment Amount is \$5 million, the outstanding balance under City Note B is \$4 million, and the amount of City Funds previously paid by the City under City Note B is \$1 million, then the outstanding balance under City Note B would be reduced to zero, and the Developer would pay the City \$1 million.

The Developer shall be required, during the term of this Agreement, to notify the City of any event which would trigger the calculation of the Rate of Return, not later than 30 days before the anticipated closing date of such event. The City shall have the right, to be exercised in its sole discretion, to terminate the Agreement and cancel any future payments on the City Note B if the Developer closes the facility or transfers ownership of the Facility other than as permitted under this Agreement.

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

**8.24 Building Permit.** No later than the date which is 120 days after the Closing Date, the Developer shall deliver to the City a final, unconditional building permit for Phase 1 of the Project.

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

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

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

## **SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS**

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

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

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

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

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

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

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

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

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

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

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

The Developer, the General Contractor, and each subcontractor shall provide for the maintenance of adequate employee residency records to show that actual Chicago residents are

employed on the Project. Each Employer shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

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

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

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

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

When work at the Project is completed, in the event that the City has determined that the Developer has failed to ensure the fulfillment of the requirement of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by 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, the General Contractor, and/or the subcontractors to prosecution. **Any retainage to cover contract performance that may become due to the Developer pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether the Developer must surrender damages as provided in this paragraph.**

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

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

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

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

- (1) At least 24 percent by MBEs.
- (2) At least four percent by WBEs.

(b) For purposes of this **Section 10.03** only, 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 of Chicago, as applicable.

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

(d) The Developer shall deliver quarterly reports to the City's monitoring staff during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, *inter alia*, the name and business address of each MBE and WBE solicited by 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 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 Project for at least five years after completion of the Project, and the City's monitoring staff shall have access to all such records maintained by the Developer, on five Business Days' notice, 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 Project.

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

(f) Any reduction or waiver of the Developer's MBE/WBE commitment as described in this Section 10.03 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

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

## SECTION 11. ENVIRONMENTAL MATTERS

The Developer hereby represents and warrants to the City that the Developer has conducted environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Scope Drawings, Plans and Specifications and all amendments thereto and the Redevelopment Plan.

Without limiting any other provisions hereof, the Developer agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws

incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Developer: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from (A) all or any portion of the Property or (B) any other real property in which the Developer, or any person directly or indirectly controlling, controlled by or under common control with the Developer, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by the Developer), or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Developer or any of its Affiliates under any Environmental Laws relating to the Property.

## SECTION 12. INSURANCE

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

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

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

(iii) All Risk Property

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

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

1) Workers Compensation and Employers Liability

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

2) Commercial General Liability (Primary and Umbrella)

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

3) Automobile Liability (Primary and Umbrella)

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

4) Railroad Protective Liability

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

5) All Risk /Builders Risk

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

6) Professional Liability

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

7) Valuable Papers

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

8) Contractors Pollution Liability

When any remediation work is performed which may cause a pollution exposure, the Developer must cause remediation contractor to provide Contractor Pollution Liability covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of work with limits of not less than \$1,000,000 per occurrence.

Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured.

(c) Post Construction:

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

(d) Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

## SECTION 13. INDEMNIFICATION

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

(i) the Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or

(ii) the Developer's or any contractor's failure to pay General Contractors, subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Project improvement; or

(iii) the existence of any material misrepresentation or omission in this Agreement, any offering memorandum or information statement or the Redevelopment Plan or any other

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

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

provided, however, that Developer shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Developer shall contribute the maximum portion that it is permitted to pay and satisfy under the applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this **Section 13.01** shall survive the termination of this Agreement.

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

**14.01 Books and Records.** The Developer shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to the Developer's loan statements, if any, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at the Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at the Developer's expense. The Developer shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by the Developer with respect to the Project.

**14.02 Inspection Rights.** Upon three (3) business days' notice, any authorized representative of the City has access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

#### **SECTION 15. DEFAULT AND REMEDIES**

**15.01 Events of Default.** The occurrence of any one or more of the following events, subject to the provisions of **Section 15.03**, shall constitute an "**Event of Default**" by the Developer hereunder:

(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 or any related agreement;

(b) the failure of the Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer under any other agreement with any person or entity if such failure may have a material adverse effect on the Developer's business, property, assets, operations or condition, financial or otherwise;

(c) the making or furnishing by the Developer to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

(d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

(e) the commencement of any proceedings in bankruptcy by or against the Developer or for the liquidation or reorganization of the Developer, or alleging that the Developer is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of the Developer's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving the Developer; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

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

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

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

(i) the dissolution of the Developer; or

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

(k) without the prior written consent of the City, for a period of five (5) years from the issuance of the Final Completion Certificate, any sale, transfer, conveyance, lease or other disposition of all or substantially all of Developer's assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business, including leases to the Market Operator and to tenants of the Retail Stores and Restaurants that comply with the requirements of this Agreement.

For purposes of **Sections 15.01(i)** and **15.01(j)** hereof, a person with a material interest in the Developer shall be one owning in excess of ten percent (10%) of the Developer's membership interests.

**15.02 Remedies.** Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements, may suspend payments due on City Note B or terminate City Note B and receive reimbursement of any payments made on City Note B. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. Nothing contained herein shall give the City the right to seek reimbursement of, withhold or cease to make, any payment of principal or interest paid or otherwise payable with respect to City Note A.

**15.03 Curative Period.** In the event the Developer shall fail to perform a monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer has failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Developer shall fail to perform a non-monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, the Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured; provided further, that the only cure provisions with respect to the Developer's failure to comply with the occupancy covenant requiring Developer to maintain an Average Minimum Occupancy under **Section 8.06** hereof are contained in **Section 15.04** below.

**15.04 Occupancy Curative Period.**

(a) Notwithstanding any other provision of this Agreement to the contrary, an Event of Default with respect to Developer's obligation to maintain the Average Minimum Occupancy (an "**Occupancy Default**") shall be deemed to have occurred only if an Occupancy Default has occurred and:

- (i) it is the second Occupancy Default to have occurred and the Developer cured the first Occupancy Default within the First Year or the Second Year, as applicable; in this case, an Event of Default shall be deemed to have occurred on the Receipt Date for the second Occupancy Default; or
- (ii) the Developer (A) has failed to cure the Occupancy Default within the First Year or (B) has failed to provide the City, during the First Year, with evidence satisfactory to the City that the Developer has contracted for the Minimum Occupancy to be reached within the Second Year; if either (A) or (B) occurs, then an Event of Default shall be deemed to have occurred on the last day of the First Year; or
- (iii) during the First Year, the Developer has provided evidence satisfactory to the City that the Developer has contracted for the Minimum Occupancy to be reached



within the Second Year, but the Average Minimum Occupancy is not reached within the Second Year; if this occurs, then an Event of Default shall be deemed to have occurred on the last day of the Second Year.

(b) If the Developer submits an Occupancy Report which describes an Occupancy Default, but has maintained the Minimum Occupancy in the thirty (30) days preceding the Receipt Date and has provided the City with evidence that it has contracted for the Minimum Occupancy for the following year, then the Developer will not be deemed to have incurred an Occupancy Default in relation to such Occupancy Report.

(c) If the Developer has cured all Occupancy Defaults, the Developer shall continue to deliver Occupancy Reports and maintain the Average Minimum Occupancy after the 10th anniversary of the issuance of the Final Completion Certificate for the number of years for which the Developer did not report maintaining the Average Minimum Occupancy.

#### **15.05 Occupancy Remedies**

(a) Upon the occurrence of an Occupancy Default which constitutes an Event of Default as described in **Section 15.04(a)**, the City may terminate this Agreement and all related agreements, and may suspend payments of City Note B or terminate City Note B. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performances of the agreements contained herein. Nothing contained herein shall give the City the right to seek reimbursement of, withhold or cease to make, any payment of principal or interest paid or otherwise payable with respect to City Note A.

(b) Upon the occurrence of an Event of Default pursuant to an Occupancy Default under **Section 15.04**, the City may suspend payments due under City Note B, until the Developer reports an Average Minimum Occupancy in an Occupancy Report, and no interest shall accrue on City Note B during the year described in the Occupancy Report with an Occupancy Default or during the First Year. If an Occupancy Default is not cured within the First Year, then no interest shall accrue on City Note B during the years described in the applicable Occupancy Report with an Occupancy Default or for the cure period applicable to such failure. No principal payments shall be made on City Note B while there exists an Occupancy Default.

### **SECTION 16. MORTGAGING OF THE PROJECT**

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

(a) In the event that a mortgagee or any other party shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under a New Mortgage (other than a Permitted Mortgage), whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with **Section 18.15** hereof, the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

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

(c) Prior to the issuance by the City to the Developer of a Certificate pursuant to **Section 7** hereof, no New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of DPD.

(d) If a default occurs under this Agreement, then any mortgagee under an Existing Mortgage or a Permitted Mortgage shall have the same right, but not the obligation, as the Developer has under this Agreement to cure such default, subject to the applicable cure periods described in **Section 15.03** and **Section 15.04**, and the City shall accept such performance by such mortgagee for the account of the Developer and with the same force and effect as if performed by the Developer.

## SECTION 17. NOTICE

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

If to the City: City of Chicago  
Department of Planning and Development  
121 North LaSalle Street, Room 1000  
Chicago, IL 60602  
Fax No.: (312) 744-0759  
Attention: Commissioner

With Copies To: City of Chicago  
Department of Law  
Finance and Economic Development Division  
121 North LaSalle Street, Room 600  
Chicago, IL 60602  
Fax No.: (312) 744-8538

If to the Developer: MetraMarket of Chicago, L.L.C.  
Ogilvie Transit Center Investor, Inc.,  
c/o U.S. Equities Realty  
20 N. Michigan Avenue  
Chicago, Illinois 60602  
Fax No.: (312) 334-7254

With Copies To: Aronberg Goldgehn Davis & Garmisa  
One IBM Plaza, Suite 1700  
Chicago, Illinois 60611-3633  
Fax No. 312-828-9635  
Attention: Henry M. Morris

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

## SECTION 18. MISCELLANEOUS

**18.01 Amendment.** This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement **Exhibit D** hereto without the consent of any party hereto. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "**material**" for the purpose of this **Section 18.01** shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligations of Developer (including those set forth in **Sections 10.02 and 10.03** hereof) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Developer affecting the Project site, the Project, or both, or increases any time agreed for performance by the Developer by more than ninety (90) days. In light of the provision in **Section 3.04(e)**, plus the limitation in this **Section 18.01**, it is acknowledged that if the Developer or its designee wishes to avail itself of the full extension time without City Council approval, (a) the maximum extension time for completion of Phase 1 of the Project is 270 days, and will expire no later than September 26, 2009, and (b) the maximum extension time for completion of Phase 2 of the Project is 270 days, and will expire no later than September 27, 2011.

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

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

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

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

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

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

**18.08 Headings.** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

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

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

**18.11 Conflict.** In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, such ordinance(s) shall prevail and control.

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

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

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

**18.15 Assignment.** The Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City. Any successor in interest to the Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to **Sections 8.02, 8.06 and 8.19** hereof, for the Term of the Agreement. The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

**18.17 Force Majeure.** Neither the City nor the Developer nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in

the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

**18.18 Exhibits.** All of the exhibits attached hereto are incorporated herein by reference.

**18.19 Business Economic Support Act.** Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if the Developer is required to provide notice under the WARN Act, the Developer shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and minority Leader of the Senate of the State, and the Mayor of each municipality where the Developer has locations in the State. Failure by the Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

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

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

**18.22 Business Relationships.** The Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Developer has read such provision and understands that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "**Business Relationship**" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Developer hereby represents and warrants that, to the best

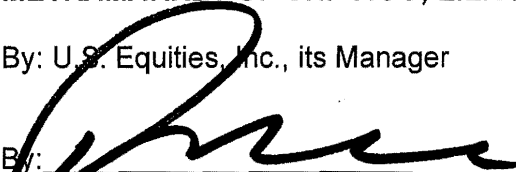
of its knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

**METRAMARKET OF CHICAGO, L.L.C.**

By: U.S. Equities, Inc., its Manager

By:   
Robert A. Wislow, President

**CITY OF CHICAGO**

By: \_\_\_\_\_  
Arnold L. Randall  
Commissioner, Department of Planning and  
Development



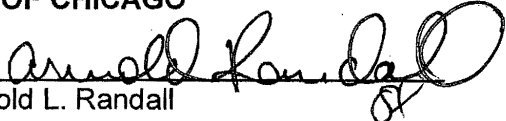
IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed on or as of the day and year first above written.

**METRAMARKET OF CHICAGO, L.L.C.**

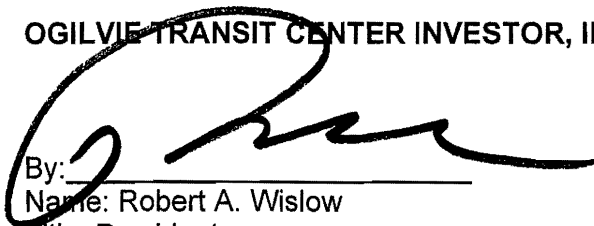
By: U.S. Equities, Inc., its Manager

By: \_\_\_\_\_  
Robert A. Wislow, President

**CITY OF CHICAGO**

By:   
Arnold L. Randall  
Commissioner, Department of Planning and  
Development

OGILVIE TRANSIT CENTER INVESTOR, INC

A large, stylized handwritten signature in black ink, appearing to read 'R. Wislow', is written over a horizontal line. The signature is positioned above the printed name and title.

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

Name: Robert A. Wislow

Title: President



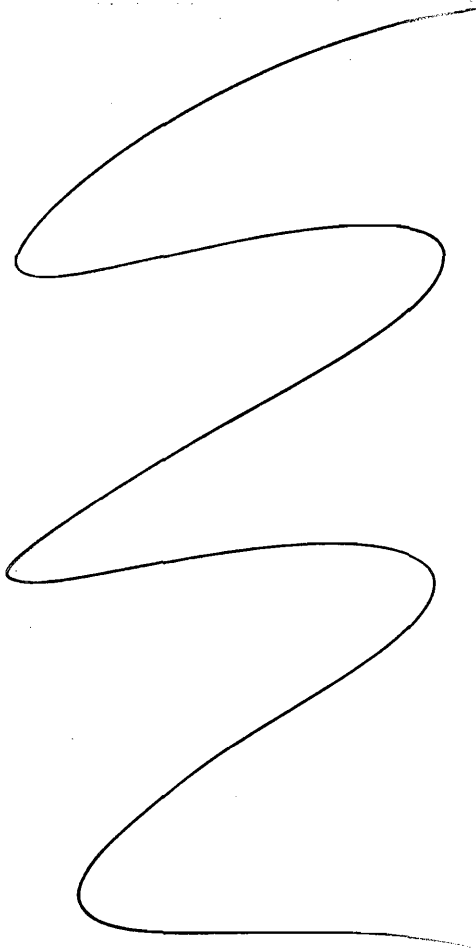




**Exhibit A**

**Redevelopment Area**

Attached.



*Legal Description.*

A tract of land comprised of parts of the southeast quarter of Section 5, the northeast quarter of Section 8, the northwest quarter and the southwest quarter of Section 9 and the northwest quarter of Section 16, all in Township 39 North, Range 14 East of the Third Principal Meridian, more particularly described as follows:

beginning at the intersection of the east line of North Canal Street with the south line of West Kinzie Street in the east half of the southwest quarter of Section 9 aforesaid; thence southward along the east line of said North Canal Street to the north line of the south 275.06 feet (measured perpendicularly) of Block 50 in Original Town of Chicago, according to the plat thereof recorded May 29, 1837; thence westward along said line extended east and west to the east line of North Clinton Street; thence southward along said east line of North Clinton Street to the south line of West Madison Street in the east half of said northwest quarter of Section 16; thence westward along said south line of West Madison Street to the west line of South Jefferson Street; thence northward along said west line (extended south and north) of South Jefferson Street to the north line of West Washington Street; thence eastward along the north line of said West Washington Street to the west line of North Clinton Street aforesaid; thence northward along said west line of North Clinton Street to the south line of West

Randolph Street; thence westward along said south line of West Randolph Street to the west line of an 18 foot wide public alley, west of North Clinton Street; thence north along said west line of a public alley to the south line of West Lake Street; thence eastward along the south line of said West Lake Street to the west line of North Clinton Street aforesaid; thence northward along the west line of said North Clinton Street to the southerly right-of-way line of Metra (formerly C. M. St. P & P Railroad); thence westward along said southerly right-of-way line to the east line of North Jefferson Street aforesaid; thence northward along said east line of North Jefferson Street to the north line of West Carroll Avenue as vacated per Document Number 5507201 and recorded October 6, 1914; thence westward along said north line of vacated West Carroll Avenue to the west line of the west half of the said southwest quarter of Section 9, also being the centerline of North Halsted Street, said point is below the John F. Kennedy Expressway; thence northward along the centerline of said North Halsted Street to the north line (extended east) of West Hubbard Street in the east half of the northeast quarter of said Section 8; thence westward along said north line (extended east) to the west line of North Halsted Street aforesaid; thence northward along the west line of said North Halsted Street across West Grand Avenue, West Ohio Street and continuing along said west line of North Halsted Street following the widening according to Document Number 25274905 recorded December 10, 1979 to the south line of West Erie Street, said point also being the northeast corner of Lot 1 of Block 34 in Ogden's Addition to Chicago according to the plat thereof recorded December 9, 1879 as Document Number 248024; thence westward along the south line of said West Erie Street to the west line (extended south) of Lot 4 of Block 35 in Ogden's Addition to Chicago aforesaid; thence northward along the west line (extended south) of said Lot 4 to the northwest corner of said Lot 4; thence westward along the north lines of Lots 5 and 6 (extended west) of said Ogden's Addition to Chicago, to the west line of North Green Street; thence northward along the west line of said North Green Street to the southerly right-of-way line of C. & N. W. Railroad Company, said point being 169.396 feet south of the northeast corner of Block 10 in Ridgely's Addition to Chicago, according to the plat thereof recorded August 20, 1859 and re-recorded on September 19, 1878 as Document Number 194914; thence westward along said southerly right-of-way line, 36.479 feet; thence northwesterly along the southwesterly line of said C. & N. W. Railroad Company, 64.86 feet; thence westward along the south line of said C. & N. W. Railroad Company, 7.61 feet; thence northwesterly along the southwesterly line of said C. & N. W. Railroad Company, 81.64 feet; thence northward along the west line of said C. & N. W. Railroad Company to the centerline of West Huron



Street; thence westward along said centerline to the east line (extended north) of Lot 1 in Block 11 in Ridgely's Addition to Chicago aforesaid; thence southward along said extended line to the south line of West Huron Street aforesaid; thence westward along the south line of said West Huron Street to the east line (extended south) of Lot 7 of Block 4 in said Ridgely's Addition to Chicago; thence northward along the east line, extended south, of said Lot 7 to the south line of West Superior Street; thence westward along the south line of said West Superior Street to the east line of North Morgan Street; thence southward along east line (extended south) of said North Morgan Street to the south line of West Huron Street aforesaid; thence westward along the south line of said West Huron Street to the southeasterly line of North Morgan Street; thence southwesterly along said southeasterly line of North Morgan Street to the northeasterly line of North Milwaukee Avenue; thence northwesterly along the northeasterly line of said North Milwaukee Avenue to the west line of North Carpenter Street; thence northward along the west line of said North Carpenter Street to the south line of a 7 foot wide strip of land vacated per Document Number 21958575 and recorded on June 29, 1972; thence eastward along said vacated line, 7 feet; thence northward along the east line of said vacated line to the south line (as widened) of West Chicago Avenue, said south line of West Chicago Avenue being 40 feet south of the north line of the west half of the northeast quarter of Section 8 aforesaid; thence westward along the south line of said West Chicago Avenue to the west line (extended south) of 66 foot wide North Carpenter Street aforesaid; thence northward along the west line (extended south) of said North Carpenter Street to the north line of said West Chicago Avenue; thence eastward along the north line of said West Chicago Avenue to the east line of North Sangamon Street; thence northward along the east line of said North Sangamon Street to the southwesterly right-of-way line of C. & N. W. Railroad Company; thence southeasterly along said southwesterly right-of-way line of C. & N. W. Railroad Company to the west line of North Lessing Street; thence southward along said west line of North Lessing Street to the north line of West Chicago Avenue; thence eastward across said West Chicago Avenue to the southwest corner of Lot 10 in J.A. Yale's Resubdivision, according to the plat thereof recorded April 25, 1873 as Document Number 94836; thence eastward along the south line of Lots 7, 8, 9 and 10, said line also being the north line of West Chicago Avenue, to the southeast corner of said Lot 7 in said J.A. Yale's Resubdivision; thence north along the east line of said Lot 7 to the northeast corner of said Lot 7, said corner also being on the south line of a 16 foot wide public alley; thence westward along the south line (extended west) of said 16 foot wide public alley to the west line of North Lessing Street; thence northward along

the west line of said North Lessing Street to the southwesterly right-of-way line of C. & N. W. Railroad Company (north of West Fry Street); thence southeasterly along said southwesterly right-of-way line of C. & N. W. Railroad Company to the north line of West Chicago Avenue aforesaid; thence eastward along the north line of said West Chicago Avenue, crossing North Halsted Street to the east line of North Halsted Street; thence southward along the east line of North Halsted Street to the southwesterly line of C. & N. W. Railroad Company; thence southeasterly along said southwesterly line of C. & N. W. Railroad Company to the east line of North Desplaines Street; thence southward along the east line of said North Desplaines Street to the north line of West Grand Avenue; thence eastward along the north line of said West Grand Avenue to the southwest corner of Lot 15 in Wabansia in Section 9 (ante fire); thence southward across said West Grand Avenue to a point of intersection of the south line of said West Grand Avenue with the east line of North Jefferson Street; thence south along said east line of North Jefferson Street, 88.89 feet; thence southeasterly along the southwesterly line of a property having Permanent Index Number 17-09-112-018 to a jog in said southwesterly line; thence northeasterly along said jog line, 11.38 feet; thence southeasterly along the southwesterly line of said property to the north line of West Kinzie Street; thence eastward along the north line of said West Kinzie Street to the southwesterly line of the north branch of the Chicago River; thence southward to the point of beginning, all in the City of Chicago, Cook County, Illinois.

**Exhibit B**

**Property**

All that part of Block 28, and vacated alley within said Block 28, lying below an inclined plane whose Southern limit is the South line of said Block 28 at an elevation of +33.50 feet and whose Northern limit is the North line of said Block 28 at an elevation of +28.40 feet and lying above a horizontal plane having an elevation of +13.00 feet in relation to the City of Chicago Datum; also

All that part of Block 45, and the vacated alleys in said Block 45, lying Northerly of the North line of the Southerly 20.00 feet thereof, lying below a horizontal plane having an elevation of +34.00 feet and lying above a horizontal plane having an elevation of +13.00 feet in relation to the City of Chicago Datum;

Both in the Original Town of Chicago, being a Subdivision in the South part of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian,

Excepting from the above described property the trestlework, foundations, columns, supports and appurtenances thereto supporting the railroad terminal located above the described horizontal and inclined planes, and also excepting therefrom the Track Level Platform, the Suburban Concourse, the Excepted Areas and the Parking Area (said Parking Area being located solely within Block 28 aforesaid), each as further defined and described in the Lease;

in Cook County, Illinois.

PINs:

17-09-324-005-0000  
17-09-324-007-0000  
17-09-333-007-0000  
17-09-333-008-0000  
17-09-333-009-0000  
17-09-333-010-8001  
17-09-333-010-8002

500 WEST WASHINGTON  
CHICAGO, IL

**Exhibit C**

**TIF-FUNDED IMPROVEMENTS**

<u>Category</u>	<u>Amount</u>
Costs of Rehabilitation	\$27,059,278
Financing Costs	\$991,200
<b>TOTAL</b>	<b>\$28,050,478</b>

Note: Notwithstanding the total dollar amount of TIF-Funded Improvements listed above, the financial assistance to be provided by the City under this Agreement is limited to \$12,000,000, subject to decrease as provided in **Section 4.03**

## EXHIBIT G

### PERMITTED LIENS

1. Liens or encumbrances against the Property:

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

2. Liens or encumbrances against the Developer or the Project, other than liens against the Property, if any: None.

**EXHIBIT H-1**

**PROJECT BUDGET**

<b>Project Costs / Uses of Funds</b>	<b>Phase 1</b>	<b>Phase 2</b>	<b>Total</b>
<b><u>HARD COSTS</u></b>			
Base Building, Block B (Southern Block)	\$12,252,000	\$0	\$12,252,000
Base Building, Block C (Northern Block)	(included in figure above)	3,500,000	3,500,000
Landscaping & Sidewalks	50,000	0	50,000
Waterproofing	1,750,000	0	1,750,000
Other Owner Costs	1,099,000	102,000	1,201,000
Tenant Improvement Allowances	5,593,000	3,272,000	8,865,000
Hard Cost Contingency	1,037,000	910,000	1,947,000
		-	-
<b>Total Hard Costs</b>	<b>\$21,781,000</b>	<b>\$7,784,000</b>	<b>\$29,565,000</b>
<b><u>SOFT COSTS</u></b>			
Design	\$1,200,000	\$350,000	\$1,550,000
Consultants	500,000	275,000	775,000
Professional Fees	3,250,000	350,000	3,600,000
Marketing	199,000	97,000	296,000
Space Planning	67,000	33,000	100,000
Lease Commissions	2,011,000	619,000	2,630,000
Insurance	361,000	129,000	490,000
Financing Fees	900,000	171,000	1,071,000
TIF Financing Fees	180,000	0	180,000
Development Fees	1,319,000	427,000	1,746,000
Permitting Costs	129,000	47,000	176,000
Miscellaneous Soft Costs	101,000	49,000	150,000
Soft Cost Contingency	823,000	337,000	1,160,000
		-	-
<b>Total Soft Costs</b>	<b>\$11,040,000</b>	<b>\$2,884,000</b>	<b>\$13,924,000</b>
		-	-
<b>PROJECT COSTS BEFORE CARRY</b>	<b>\$32,821,000</b>	<b>\$10,668,000</b>	<b>\$43,489,000</b>
Construction Period Interest	\$160,000	\$0	160,000
		-	-

**EXHIBIT H-2**

**MBE/WBE BUDGET**

<b>Hard Costs</b>		<b>Total</b>
Base Building, Block B (South Block)		\$ 12,252,055
Base Building, Block C (North Block)		\$ 3,500,000
Plus: Landscaping & Sidewalks		\$ 50,000
Plus: Waterproofing		\$ 1,750,000
Subtotal		\$ 17,552,055
<b>Soft Costs</b>		
Consultants		\$ 500,000
Professional Fees		\$ 3,250,000
Marketing		\$ 199,185
Subtotal		\$ 3,949,185
<b>Subtotal Hard and Soft Costs</b>		<b>\$ 21,501,240</b>
<b>Minority-Owned Business Enterprise (minimum)</b>	24%	<b>\$ 5,160,298</b>
<b>Women-Owned Business Enterprise (minimum)</b>	4%	<b>\$ 860,050</b>

## EXHIBIT K

### PROHIBITED USES

- Astrology, card-reading, palm-reading or fortune telling in any form
- Auto Accessory Stores
- Currency Exchanges
- Employment Agencies
- Inter-track waging facility
- Laundries/Laundrettes (excluding drop-off dry cleaning facilities)
- Loan Offices (other than a commercial branch bank or an investment brokerage office; provided, however, that only one Bank/Financial Services tenant or use is permitted in each block (Northern Block and Southern Block) of the Project)
- Offices (business and professional), except for commercial enterprises that provide goods and/or services directly to the consumer, where such goods are available for purchase and removal from the premises by the purchaser.
- Pawn Shops
- Pay day loan store
- Plumbing showroom and shops (excluding full-service hardware stores)
- Second hand stores and rummage shops
- Tattoo Parlors
- Adult oriented businesses
- Houses of worship
- Dollar stores
- Bingo parlors
- Game rooms or arcades
- Flea markets
- Junkyard or recycling center
- Automobile, truck, motorcycle, trailer or recreational vehicle sale, display, or repair
- Mortuaries or funeral homes
- Liquidators
- Unless included on **Exhibit O**: Fast food restaurants or regional or national retail or commercial franchises or tenants, without the prior written consent of DPD, which consent shall not be unreasonably withheld but which may be denied if DPD, in its sole discretion, determines that the proposed use would be inconsistent with the character of the Project or inconsistent with City planning objectives.



**EXHIBIT M-1**

FORM OF CITY NOTE A

REGISTERED  
NO. R-1

MAXIMUM AMOUNT  
\$8,000,000

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

**TAX INCREMENT ALLOCATION REVENUE NOTE (METRAMARKET OF CHICAGO, L.L.C.  
REDEVELOPMENT PROJECT), TAX-EXEMPT SERIES A**

Registered Owner: METRAMARKET OF CHICAGO, L.L.C.

Interest Rate: \_\_\_ per annum

Maturity Date: \_\_\_\_\_, \_\_\_\_\_ [twenty years from  
issuance date]

**KNOW ALL PERSONS BY THESE PRESENTS**, that the City of Chicago, Cook County, Illinois (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, on or before the Maturity Date identified above, but solely from the sources hereinafter identified, the principal amount of this Note from time to time advanced by the Registered Owner to pay costs of the Project (as hereafter defined) in accordance with the ordinance hereinafter referred to up to the principal amount of \$8,000,000 and to pay the Registered Owner interest on that amount at the Interest Rate per year specified above from the date of the advance. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. Accrued but unpaid interest on this Note shall also accrue at the interest rate per year specified above until paid.

Principal of and interest on this Note from the Available Incremental Taxes (City Note A) (as defined in the hereinafter defined Redevelopment Agreement) is due February 1 of each year until the earlier of Maturity or until this Note is paid in full. Payments shall first be applied to interest. The principal of and interest on this Note are payable in lawful money of the United States of America, and shall be made to the Registered Owner hereof as shown on the registration books of the City

maintained by the Comptroller of the City, as registrar and paying agent (the "Registrar"), at the close of business on the fifteenth day of the month immediately prior to the applicable payment, maturity or redemption date, and shall be paid by check or draft of the Registrar, payable in lawful money of the United States of America, mailed to the address of such Registered Owner as it appears on such registration books or at such other address furnished in writing by such Registered Owner to the Registrar; provided, that the final installment of principal and accrued but unpaid interest will be payable solely upon presentation of this Note at the principal office of the Registrar in Chicago, Illinois or as otherwise directed by the City. The Registered Owner of this Note shall note on the Payment Record attached hereto the amount and the date of any payment of the principal of this Note promptly upon receipt of such payment.

This Note is issued by the City in the principal amount of advances made from time to time by the Registered Owner up to \$8,000,000 for the purpose of paying the costs of certain eligible redevelopment project costs incurred by the Developer, in connection with the development, construction and rehabilitation of approximately 200,000 square foot retail shopping center (the "Project"), in the River West Redevelopment Project Area (the "Project Area") in the City, all in accordance with the Constitution and the laws of the State of Illinois, and particularly the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.) (the "TIF ACT"), the Local Government Debt Reform Act (30 ILCS 350/1 et seq.) and an Ordinance adopted by the City Council of the City on September 13, 2006 (the "Ordinance"), in all respects as by law required.

The City has assigned and pledged certain rights, title and interest of the City in and to certain incremental ad valorem tax revenues from the Project Area which the City is entitled to receive pursuant to the TIF Act and the Ordinance, in order to pay the principal and interest of this Note. Reference is hereby made to the aforesaid Ordinance and the Redevelopment Agreement for a description, among others, with respect to the determination, custody and application of said revenues, the nature and extent of such security with respect to this Note and the terms and

conditions under which this Note is issued and secured. **THIS NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY, AND IS PAYABLE SOLELY FROM AVAILABLE INCREMENTAL TAXES (CITY NOTE A) AND SHALL BE A VALID CLAIM OF THE REGISTERED OWNER HEREOF ONLY AGAINST SAID SOURCES. THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE REGISTERED OWNER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OR INTEREST OF THIS NOTE.**

The principal of this Note is subject to redemption, as a whole or in part, at a redemption price of 100% of the principal amount thereof being redeemed, on any date after the earlier of (a) \_\_\_\_\_, 20\_\_ (the date which is five years after the date of issuance of the Substantial Completion Certificate (as defined in the hereinafter defined Redevelopment Agreement)) or (b) such other date to which the Registered Owner of this Note may consent. There shall be no prepayment penalty. Notice of any such redemption shall be sent by registered or certified mail not less than five (5) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owner of this Note at the address shown on the registration books of the City maintained by the Registrar or at such other address as is furnished in writing by such Registered Owner to the Registrar.

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

This Note is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the principal office of the Registrar in Chicago, Illinois, but only in the manner

and subject to the limitations provided in the Ordinance, and upon surrender and cancellation of this Note. Upon such transfer, a new Note of authorized denomination of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Registrar shall not be required to transfer this Note during the period beginning at the close of business on the fifteenth day of the month immediately prior to the maturity date of this Note nor to transfer this Note after notice calling this Note or a portion hereof for redemption has been mailed, nor during a period of five (5) days next preceding mailing of a notice of redemption of this Note. Such transfer shall be in accordance with the form at the end of this Note.

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

Pursuant to the Redevelopment Agreement dated as of August \_\_\_\_, 2008 between the City and the Registered Owner (the "Redevelopment Agreement"), the Registered Owner has agreed to construct the Project and to advance funds for the construction of certain facilities related to the Project on behalf of the City. The cost of such acquisition and construction in the amount of \$8,000,000 shall be deemed to be a disbursement of the proceeds of this Note.

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

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

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

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

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

Mayor

(SEAL)  
Attest:

City Clerk

**CERTIFICATE  
OF  
AUTHENTICATION**

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

This Note is described in the within mentioned Ordinance and is the Tax Increment Allocation Revenue Note (River West Redevelopment Project), Tax-Exempt Series A, of the City of Chicago, Cook County, Illinois.

Comptroller  
Date:

**PRINCIPAL PAYMENT RECORD**

DATE OF PAYMENT PRINCIPAL PAYMENT PRINCIPAL BALANCE DUE

(ASSIGNMENT)

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

Dated:

Registered Owner

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

Signature Guaranteed:

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

Consented to by:

CITY OF CHICAGO  
DEPARTMENT OF PLANNING AND DEVELOPMENT

BY:

ITS:



CERTIFICATION OF EXPENDITURE

(Closing Date)

To: Registered Owner

Re: City of Chicago, Cook County, Illinois (the "City")  
\$8,000,000 Tax Increment Allocation Revenue Note  
(MetraMarket of Chicago, L.L.C. Redevelopment Project, Tax-Exempt Series A)  
(the "Redevelopment Note")

This Certification is submitted to you, Registered Owner of the Redevelopment Note, pursuant to the Ordinance of the City authorizing the execution of the Redevelopment Note adopted by the City Council of the City on September 13, 2006 (the "Ordinance"). All terms used herein shall have the same meaning as when used in the Ordinance.

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

IN WITNESS WHEREOF, the City has caused this Certification to be signed on its behalf as of (Closing Date).

CITY OF CHICAGO

By: \_\_\_\_\_  
Commissioner  
Department of Planning and  
Development

AUTHENTICATED BY:

REGISTRAR

**EXHIBIT M-2**

FORM OF CITY NOTE B

REGISTERED  
NO. R-1

MAXIMUM AMOUNT  
\$4,000,000

**UNITED STATES OF AMERICA  
STATE OF ILLINOIS  
COUNTY OF COOK  
CITY OF CHICAGO  
TAX INCREMENT ALLOCATION REVENUE NOTE  
(METRAMARKET OF CHICAGO, L.L.C. REDEVELOPMENT PROJECT),  
TAXABLE SERIES B**

Registered Owner: METRAMARKET OF CHICAGO, L.L.C.

Interest Rate: \_\_\_ per annum

Maturity Date: \_\_\_\_\_, 2026

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

Principal of and interest on this Note from the Available Incremental Taxes (City Note B) (as defined in the hereinafter defined Redevelopment Agreement) is due February 1 of each year until the earlier of Maturity or until this Note is paid in full. Payments shall first be applied to interest. The principal of and interest on this Note are payable in lawful money of the United States of America, and shall be made to the Registered Owner hereof as shown on the registration books of the City

maintained by the Comptroller of the City, as registrar and paying agent (the "Registrar"), at the close of business on the fifteenth day of the month immediately prior to the applicable payment, maturity or redemption date, and shall be paid by check or draft of the Registrar, payable in lawful money of the United States of America, mailed to the address of such Registered Owner as it appears on such registration books or at such other address furnished in writing by such Registered Owner to the Registrar; provided, that the final installment of principal and accrued but unpaid interest will be payable solely upon presentation of this Note at the principal office of the Registrar in Chicago, Illinois or as otherwise directed by the City. The Registered Owner of this Note shall note on the Payment Record attached hereto the amount and the date of any payment of the principal of this Note promptly upon receipt of such payment.

This Note is issued by the City in the principal amount of advances made from time to time by the Registered Owner up to \$4,000,000 for the purpose of paying the costs of certain eligible redevelopment project costs incurred by the Developer, in connection with the development, construction and rehabilitation of an approximately 200,000 square foot retail shopping center (the "Project") in the River West Redevelopment Project Area (the "Project Area") in the City, all in accordance with the Constitution and the laws of the State of Illinois, and particularly the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.) (the "TIF Act"), the Local Government Debt Reform Act (30 ILCS 350/1 et seq.) and an Ordinance adopted by the City Council of the City on September 13, 2006 (the "Ordinance"), in all respects as by law required.

The City has assigned and pledged certain rights, title and interest of the City in and to certain incremental ad valorem tax revenues from the Project Area which the City is entitled to receive pursuant to the TIF Act and the Ordinance, in order to pay the principal and interest of this Note. Reference is hereby made to the aforesaid Ordinance and the Redevelopment Agreement for a description, among others, with respect to the determination, custody and application of said revenues, the nature and extent of such security with respect to this Note and the terms and

conditions under which this Note is issued and secured. **THIS NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY, AND IS PAYABLE SOLELY FROM AVAILABLE INCREMENTAL TAXES (CITY NOTE B), AND SHALL BE A VALID CLAIM OF THE REGISTERED OWNER HEREOF ONLY AGAINST SAID SOURCES. THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE REGISTERED OWNER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OR INTEREST OF THIS NOTE.**

The principal of this Note is subject to redemption on any date, as a whole or in part, at a redemption price of 100% of the principal amount thereof being redeemed. There shall be no prepayment penalty. Notice of any such redemption shall be sent by registered or certified mail not less than five (5) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owner of this Note at the address shown on the registration books of the City maintained by the Registrar or at such other address as is furnished in writing by such Registered Owner to the Registrar.

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

This Note is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the principal office of the Registrar in Chicago, Illinois, but only in the manner and subject to the limitations provided in the Ordinance, and upon surrender and cancellation of this Note. Upon such transfer, a new Note of authorized denomination of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The

Registrar shall not be required to transfer this Note during the period beginning at the close of business on the fifteenth day of the month immediately prior to the maturity date of this Note nor to transfer this Note after notice calling this Note or a portion hereof for redemption has been mailed, nor during a period of five (5) days next preceding mailing of a notice of redemption of this Note. Such transfer shall be in accordance with the form at the end of this Note.

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

Pursuant to the Redevelopment Agreement dated as of August \_\_\_\_, 2008 between the City and the Registered Owner (the "Redevelopment Agreement"), the Registered Owner has agreed to construct the Project and to advance funds for the construction and rehabilitation of certain facilities related to the Project on behalf of the City. The cost of such construction and rehabilitation in the amount of \$4,000,000 shall be deemed to be a disbursement of the proceeds of this Note.

Pursuant to Section 15.02 and Section 15.05 of the Redevelopment Agreement, the City has reserved the right to suspend and/or terminate payments of principal and of interest on this Note upon the occurrence of certain conditions, and the City has reserved the right to offset liquidated damage amounts owed to the City against the principal amount outstanding under this Note. The City shall not be obligated to make payments under this Note if an Event of Default (as defined in the Redevelopment Agreement), or condition or event that with notice or the passage of time or both would constitute an Event of Default, has occurred. Such rights shall survive any transfer of this Note.

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

It is hereby certified and recited that all conditions, acts and things required by law to exist, to

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

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

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

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

Mayor

(SEAL)  
Attest:

City Clerk

**CERTIFICATE  
OF  
AUTHENTICATION**

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

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

Comptroller  
Date:

**PRINCIPAL PAYMENT RECORD**

DATE OF PAYMENT PRINCIPAL PAYMENT PRINCIPAL BALANCE DUE



(ASSIGNMENT)

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

Dated:

Registered Owner

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

Signature      Guaranteed:

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

Consented to by:

CITY OF CHICAGO  
DEPARTMENT OF PLANNING AND DEVELOPMENT

BY:

ITS:

CERTIFICATION OF EXPENDITURE

(Closing Date)

To: Registered Owner

Re: City of Chicago, Cook County, Illinois (the "City")  
\$4,000,000 Tax Increment Allocation Revenue Note  
(MetraMarket of Chicago, L.L.C. Redevelopment Project, Taxable Series B)(the  
"Redevelopment Note")

This Certification is submitted to you, Registered Owner of the Redevelopment Note, pursuant to the Ordinance of the City authorizing the execution of the Redevelopment Note adopted by the City Council of the City on September 13, 2006 (the "Ordinance"). All terms used herein shall have the same meaning as when used in the Ordinance.

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

IN WITNESS WHEREOF, the City has caused this Certification to be signed on its behalf as of (Closing Date).

CITY OF CHICAGO

By:  
Commissioner  
Department of Planning and  
Development

AUTHENTICATED BY:

REGISTRAR

## EXHIBIT O

### Pre-Approved Tenants and Uses

#### Category A

#### Type of Tenant or Use Accessories

##### Name

Zales Jewelers  
Kay Jeweler  
Rogers & Holland's  
Swatch  
Ulta Diamonds  
Free People (Urban Outfitters)  
Watch World  
Montblanc Pen Shop  
Bose  
Sharper Image  
Ten Thousand Villages  
Brookstone  
Tie Rack  
The Knot Shop  
Tumi Luggage Store  
Emporium Luggage Store

#### Lifestyle

Barbara's Best Sellers  
Blockbuster  
Logos Bookstores  
HMS Host  
Little Professor  
Paradies Shops  
Borders Express  
B. Dalton  
CD Warehouse  
Trans World Music  
Brooks Brothers  
Sam Goody  
Street Corner News  
Gateway Newstand  
Hudson News  
Papyrus Cards/Stationery  
Paper Source  
Kate's Paperie  
Carlton Cards  
Paper Weight  
Spice House

Gorilla Gym  
Gold's Gym  
ABC Home Store  
Hallmark Stores  
Nuts on Clark  
Ali's Posey Patch  
LaSalle Florist  
CVS  
HDS Retail North America  
Oakwells The Travelers

**Banks/Financial Services (\*)**

Harris (\*)  
Bank of America (\*)  
National City (\*)  
U.S. Bank (\*)  
Banco Popular (\*)  
MB Financial (\*)  
Cole Taylor (\*)  
Charter One Bank (\*)  
Chase Bank (\*)  
Credit Union One (\*)  
Fifth Third Bank (\*)  
North Community Bank (\*)  
Washington Mutual Bank (\*)

**Cosmetics/Body Care/Fragrances**

H2O Plus  
Aveda  
Origins  
MAC Cosmetics  
Crabtree & Evelyn  
The Body Shop  
L'Occitane  
Bath and Body Works (The Limited Co.)

**Spirits**

ABC Fine Wine & Spirits  
Armanetti Wine Shoppe  
Artisan Cellar  
Bennett Wine Studio  
Best Cellars  
Binny's Beverage Depot  
Brown Derby Stores, Inc.  
Cellar Wines & Spirits, Inc.  
The Connoisseur Franchise Corporation  
Crown Wine & Spirits  
Fine Wine Brokers

Frontier Liquors  
Gold Standard Enterprises, Inc.  
Gomers Fine Wine & Spirits  
Gourmet Grape  
The Great Atlantic & Pacific Tea Company, Inc.  
Hart Davis Hart  
Howard's Wine Shop  
In Fine Spirits  
Just Grapes  
Kafka Wine Store  
Kensington's Fine & Rare Wine Shop  
Knightsbridge Wine Shoppe  
Kork & Keg Liquors  
Lush Wine and Spirits  
Lynfred Winery  
M.G.M. Liquor Stores, Inc.  
Provenance Food & Wine  
Que Syrah Fine Wines  
Randolph Wine Cellar  
Richard's Liquors & Fine Wines  
Sam's Wines & Spirits  
Schaefer's Wines, Foods, & Spirits  
Schoefer's Wines, Foods & Spirits  
Soupleys Wine & Spirits  
Spirits Unlimited  
The Bottle Shop  
Twisted Vine  
Uncork It!  
Wine Discount Center

**Candy/Chocolates/Ice Cream**

Lindt  
Godiva  
Cold Stone Creamery  
Ben & Jerry's  
Häagen-Dazs  
Oberweis Dairy  
Marble Slab Creamery  
Southbend Chocolate  
See's Candies  
Fannie May  
Ritter's Frozen Custard  
Lindy-Gertie  
Ethel's Chocolates  
Bobtail Ice Cream & Coffee Co.  
Bon Bon Chocolates  
Canady Le Chocolatier  
Chocolate Store in Wilmette

Galler Belgian Chocolates  
Haagen-Dazs  
Moonstruck Chocolate Café  
Teuscher Chocolates of Switzerland  
Vosges Haut-Chocolat

**Specialty**

Harry & David  
PGA Tour Shop  
Altitunes  
Thomas Kinkade Galleries  
Private Art Galleries  
The Pen Shop  
The Smoke Shop  
Argo Tea  
Bakery  
Bockwinkels  
CB2  
Dean & DeLuca  
Fox & Obel  
Harley Davidson Store  
Julius Meinl Café  
Marsh Supermarkets  
TeGschwender  
Trader Joe's

**Restaurants and Bars**

1028 N. Rush St. Corp. (Gibson's, Hugo, RL)  
Adam's The Place For Ribs  
Ala Carte Entertainment, Inc. (Fred Hoffman)  
Alan Yu (fast food Chinese)  
Ale House Restaurants  
Aloha Restaurants Inc.  
Ann Sather  
Arirang Hibachi Steakhouse  
Artisanal Fromagerie/Bistro  
Asian Style Restaurant (Howard Davis)  
Atlanta Bread Co.  
Au Bon Pain Corp.  
Aunt Sarah's, LLC  
Aurelio's Pizza, Inc.  
Austin Grills Inc.  
Avila's El Ranchito  
Baja Broiler, Inc.  
Baja Fresh Mexican Grill  
Baker's Burgers, Inc.  
Balducci's  
Bandana's Bar-B-Q

Bandido's Inc.  
Barney's  
Bd's Mongolian Barbeque  
Benihana, Inc.  
Bennett's Pit Bar-B-Q  
Bertucci's Corp.  
Better Nutrition  
The Beverly Hills Café  
Biaggi's Ristorante Italiano  
Big Apple Pizza, Inc.  
Big Bowl  
Big Burrito Restaurant Group  
Bin 36 Restaurant Group  
Bono's Bar-B-Q & Grill  
Boston Beanery Restaurants, Inc.  
Boston Chowda Café  
Boston Pizza Restaurants, Lp  
Bravo Development Group  
Bread & Chocolate  
Bubba Gump Shrimp Co. Restaurants, Inc.  
Buffalo Wild Wings, Inc.  
Bull On The Beach  
Bully's Sports Bar & Grill  
Bungalow Billiards & Brew Company  
Ca'brea  
Café Roma  
Café Rio, Inc.  
California Pizza Kitchen, Inc.  
Carrabba's Italian Grill  
Carson's The Place For Ribs  
Cattlmen  
Champion Billiards & Barstools  
Champps Entertainment, Inc.  
Charlie's Ale House  
Cheddar's Inc.  
Cheeburger Cheeburger Restaurants Inc.  
The Cheesecake Factory Inc.  
China Grill Management  
Chipotle Mexican Grill Inc.  
City Wok  
Claim Jumper Enterprises, Inc.  
Clock Restaurant, Inc.  
Connie's Pizza Inc.  
Copper Cellar Corporation  
Cornerstone Management & Consulting  
Cosi, Inc.  
Cotton Patch Café Inc.  
Crispers  
Dave & Buster's, Inc.  
DaVINCI Group (Vinci and Adobo Grill)

Dick Clark Restaurants  
Dick's Last Resort  
Dixie Restaurants Inc.  
EatZi's Market & Bakery  
Egg Harbor Café  
El Toro Mexican Restaurant  
The Elephant & Castle Group, Inc.  
Emeril's Home Base Inc.  
ESPN Zone  
Family Sports Concepts, Inc.  
Famous Amos Restaurants Inc.  
Famous Sam's Inc.  
Fatburger Corporation  
FiRE & iCE  
First Watch Restaurant  
Flat Top Grill  
Fogo de Chao Churrascaria (Dallas) LLP  
Food, Friends & Company  
FOX Sports Grill  
Francesca Restaurants  
Frasca Hospitality Group  
French Bistro  
Fresh Concepts Inc.  
Friendly Ice Cream Corporation  
Fuddruckers, Inc.  
Fun Factory, Inc.  
Garden Fresh Restaurant Corp.  
Garibaldi's Italian Eatery  
Gastronomy, Inc.  
Giordano's Enterprises, Inc.  
Glory Days Grill  
Goose Island Beer Company  
Gold Coast Restaurants Inc.  
Go Roma  
Gordon Biersch Brewery Restaurant Group Inc.  
Gorin's Homemade Café & Grill  
Grandma Gebhard's  
Grandma's Inc.  
Green Mill Restaurants Inc.  
Hacienda Mexican Restaurants, Inc.  
Hackney's on Lake Inc.  
Hard Rock Café International, Inc.  
Heaven on Seven  
Hillhouse Restaurant Group (Bandera, Houston's)  
Hot Tamales  
Hot Tomato's Restaurant Group  
Houlihan's Restaurants, Inc.  
Hubie Breenwald (Mas, Motel, Pharmacy)  
Il Fornaio (America) Corp.  
Jack's Family Restaurants



Jamba Juice  
Jazz Club  
The Johnny Rockets Group, Inc.  
KDK Group (Jerry Kleiner)  
Kobe Japanese Steak House  
Kona Grill  
La Cucina Mexican Restaurant  
La Strada/J. Randolph's  
Lawry's Restaurants, Inc.  
Le Peep Restaurants LLC  
Legal Seafoods, Inc.  
Leona's Pizzeria, Inc.  
Lettuce Entertain You Enterprises, Inc.  
Levy Restaurants  
Lizard's Thicket  
Logan's Roadhouse, Inc.  
Lone Star Steakhouse & Saloon, Inc.  
Luby's, Inc.  
Lucky Wishbone  
Malnati Organization, Inc.  
Margaritaville  
Market City Café Hospitality Group  
Maverick Steak House  
Max's Restaurants  
McCormick & Schmick's Seafood Restaurants  
The Melting Pot Restaurants, Inc.  
Metrotainment Cafes  
Mexican Restaurant  
Mikata Japanese Steakhouse & Sushi Bar  
Millie's Restaurant & Bakery, Inc.  
Morton's Restaurant Group, Inc.  
Moto Restaurant  
Mrs. Levy Deli  
NASCAR Café  
Noodles & Company  
NYC Steak House (BLT Steak House)  
Old San Francisco Steak House  
Olga's Kitchen  
The Omelet Shoppe, Inc.  
Organic Commissary (Michael Alternberg)  
The Original Pancake House  
Outback Steakhouse, Inc.  
P.F. Chang's China Bistro, Inc.  
Panera Bread  
Papa Romano's  
The Pasta House Co.  
Phil Stefani Signature Restaurants, Inc.  
Phillips Seafood Restaurant  
Piece (pizza)  
Pizza Shoppe & Pub, Inc.

Pizzeria (Got Pizza)  
 Planet Hollywood International, Inc.  
 Po'Boys Creole.Café  
 Pollo Compero  
 Pompei Bakery  
 Potbelly's  
 Qdoba Mexican Grill  
 Ranalli's  
 RA Sushi  
 Roadhouse Grill, Inc.  
 Rock Bottom Restaurants, Inc.  
 Rokit Brand Productions  
 Rosebud Restaurants  
 Ruby Tuesday, Inc.  
 Ruth's Chris Steak House  
 Sakura Steak & Seafood House  
 Saladworks, Inc.  
 Sammy's Wood-Fired Pizza  
 Shula's Steak Houses, L.P.  
 Smith & Wollensky Restaurant Group, Inc.  
 Sopraffina Marketcaffe  
 Spare Time Inc.  
 Sticky Fingers  
 Stir Crazy Enterprises  
 The Mixing Bowl  
 The Rosenthal Group  
 Tiny Lounge  
 Valley Dairy, Inc.  
 Vegetarian Health Conscious Hot Plate Concept  
 Viva Le Crepe  
 Walker Bros. Original Pancake House, Inc.  
 Whiskey Creek Wood Fire Grill  
 Winking Lizard, inc.  
 Wolfgang Puck Worldwide  
 Wow Bao  
 Yard House Restaurants, LLC  
 Zao Noodle Bar  
 Zephyr Ice Cream Shop, Inc.  
 Zesto Snack Shops, Inc.

**Category B**

**Type of Tenant or Use  
Accessories**

**Name**  
 Sunglass Hut  
 Sunglass World

**Services**

Kinko's

Mailboxes Etc.  
UPS Store  
Shoecrafters.com/Sam the Shoe Doctor  
Heel Quik  
Shoe Repair  
Key Shop  
Watch Repair  
Dry cleaner

**Lifestyle**

The Hosiery Shop  
Ritz Camera  
Moto Foto  
GNC  
Vitamin Shoppe  
Wolf Camera

**Specialty**

Prints Plus  
Office Max  
Office Depot  
Staples  
Ace Hardware

**Travel Agencies**

Liberty Travel  
Carlson Travel

(\*) NOTE: only one Bank/Financial Services tenant or use is permitted in each block (Northern Block and Southern Block) of the Project.