

## Contract Summary Sheet

**Contract (PO) Number:** 9683

**Specification Number:** 39737

**Name of Contractor:** 550 ADAMS LLC

**City Department:** PLANNING & DEVELOPMENT

**Title of Contract:** Redevelopment Agreement

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

\$9,750,000.00

**PO Start Date:** 11/8/2004

**PO End Date:** 11/8/2014

**Brief Description of Work:** Redevelopment Agreement

**Procurement Services Contact Person:** THOMAS DZIEDZIC

**Vendor Number:** 50091721

**Submission Date:**

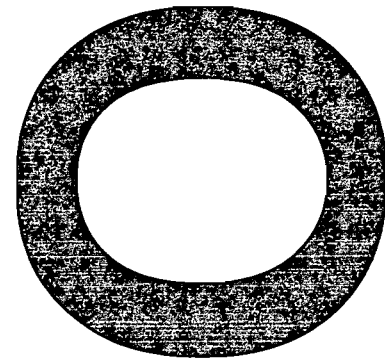
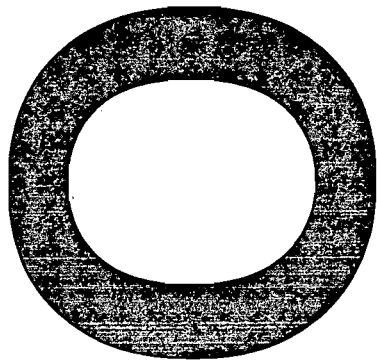
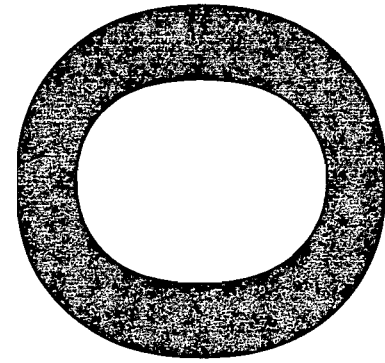
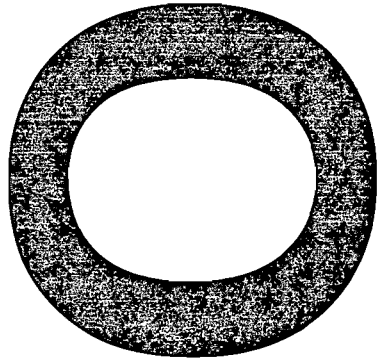
**AUG 31 2009**

**550 ADAMS LLC  
REDEVELOPMENT AGREEMENT  
LIST OF EXHIBITS**

Exhibit A	* Redevelopment Area Legal Description
Exhibit B	* Property Legal Description
Exhibit C	Canal/Congress Redevelopment Plan
Exhibit D	Notice of Proposed Approved Successor
Exhibit E	* Project Budget
Exhibit E-1	* Base Building Improvements Budget
Exhibit E-2	* USG Improvements Budget
Exhibit F	Form of Building Construction Contract
Exhibit G	Form of City Note
Exhibit H	Form of Notice of Proposed Transfer/Refinancing
Exhibit I	Permitted Liens
Exhibit J	TIF-Funded Costs
Exhibit K	City Note Requisition Form
Exhibit L	Estimated TIF-Funded Interest Costs
Exhibit M	TIF-Funded Interest Costs Requisition Form
Exhibit N	Approved Prior Expenditures
Exhibit O	Opinion of Developer's or USG's Counsel
Exhibit P-1	* Building MBE/WBE Budget
Exhibit P-2	* USG MBE/WBE Project Budget

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

8000.307



**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT A**

**REDEVELOPMENT AREA LEGAL DESCRIPTION**

A legal description of the Redevelopment Area is attached to this exhibit cover sheet.

Note: The legal description of the Redevelopment Area is described in an exhibit to the ordinance approving the Redevelopment Plan on November 12, 1998 as corrected by Amendment No. 1 to the Redevelopment Plan adopted June 19, 2002.



Public Act 92-263 also provides in Section 11-74.4-5(c) that:

Changes which do not (1) add additional parcels of property to the proposed redevelopment project area, (2) substantially affect the general land uses proposed in the redevelopment plan, (3) substantially change the nature of the redevelopment project, (4) increase the total estimated redevelopment project cost set out in the redevelopment plan by more than five percent (5%) after adjustment for inflation from the date the plan was adopted, (5) add additional redevelopment project costs to the itemized list of redevelopment project costs set out in the redevelopment plan, or (6) increase the number of low- or very low-income households to be displaced from the redevelopment project area, provided that measured from the time of creation of the redevelopment project area the total displacement of the households will exceed ten (10), may be made without further hearing, provided that the municipality shall give notice of any such changes by mail to each affected taxing district and registrant on the interested parties registry, provided for under Section 11-74.4-4.2, and by publication in a newspaper of general circulation within the affected taxing district. Such notice by mail and by publication shall each occur not later than ten (10) days following the adoption by ordinance of such changes.

The City is making the following change in order to clarify a discrepancy between the Equalized Assessed Valuation (E.A.V.) list and the Maps of the Plan, and the legal description, where parcels of land on the north side of Jackson Boulevard between Jefferson and Clinton are shown on the Maps and listed on the E.A.V. list, but are not included in the legal description. The following text in italics is inserted, and the text in brackets is deleted:

thence south along said east line of Jefferson Street to the north line of *Quincy* [Jackson] Street;

thence east along said north line of [Jackson] *Quincy* Street to the west line of Clinton Street;

06/19/02 CORRECTION  
TO LEGAL DESCRIPTION

Section 8. This resolution shall be effective as of the date of its adoption.

Section 9. A certified copy of this resolution shall be transmitted to the City Council.

Adopted: October 13, 1998.

[(Sub)Exhibit "A" referred to in this Resolution 98-CDC-136 constitutes Exhibit "D" to the ordinance and is printed on page 81974 of this Journal.]

*Exhibit "C".*  
(To Ordinance)

*Legal Description Of Project Boundary.*

Beginning at the point of intersection of the south line of Harrison Street and the west line of Clinton Street; thence north along the west line of Clinton Street to the easterly extension of the north line of the south 9.40 feet of Lot 24 in the subdivision of Block 53 in School's Section Addition to Chicago in the east half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian; thence east along said easterly extension and the north line of the south 9.40 feet of Lot 24 in the subdivision of Block 53 in School's Section Addition to Chicago to a line 113 feet east of and parallel with the east line of Clinton Street; thence north along said line 113 feet east of and parallel with the east line of Clinton Street to the south line of Van Buren Street; thence west along said south line of Van Buren Street to the west line of Clinton Street; thence north along said west line of Clinton Street to the north line of Lot 12 in Gordon S. Hubbard's Subdivision of Blocks 45 and 52 of School Section Addition to Chicago in the east half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian; thence west along said north line of Lot 12 in Gordon S. Hubbard's Subdivision to the west line thereof; thence south along said west line of Lot 12 in Gordon S. Hubbard's Subdivision and the southerly extension thereof to the south line of Van Buren Street; thence west along said south line of Van Buren Street to the east line of Jefferson Street; thence south along said east line of Jefferson Street to the easterly extension of the north line of the south 24 feet of Lot 7 in the subdivision of Block 30 in School's Section Addition to Chicago in the west half of the

11/12/98 Redevelopment  
PROJECT AREA legal  
DESCRIPTION AS CORRECTED  
06/19/02

northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, said easterly extension of the north line of the south 24 feet of Lot 7 being also the south line of Congress Parkway; thence west along said south line of Congress Parkway to the west line of Desplaines Street; thence north along said west line of Desplaines Street to the north line of Lots 17, 18 and 19 in G. F. Blanchard's Subdivision of Block 20 in School Section Addition to Chicago in the west half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, said north line of Lots 17, 18 and 19 being also the south line of Tilden Street; thence west along said south line of Tilden Street to the southerly extension of the east line of the west 1 foot of Lot 14 in said G. F. Blanchard's Subdivision of Block 20 in School Section Addition to Chicago; thence north along said southerly extension and the east line of the west 1 foot of Lot 14 in said G. F. Blanchard's Subdivision of Block 20 in School Section Addition to Chicago to the north line of said Lot 14; thence west along said north line of Lot 14 and along the south line of Lots 4 and 5 in said G. F. Blanchard's Subdivision of Block 20 in School Section Addition to Chicago to the west line of said Lot 5; thence north along the west line of said Lot 5 to the south line of Van Buren Street; thence west along said south line of Van Buren Street to the southerly extension of the east line of the west 28.75 feet of Lot 14 in the subdivision of Block 21 in School Section Addition to Chicago in the west half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian; thence north along said southerly extension and the east line of the west 28.75 feet of Lot 14 in the subdivision of Blocks 4 and 21 in School Section Addition to Chicago and the northerly extension thereof to the north line of Gladys Avenue; thence east along said north line of Gladys Avenue to the west line of Desplaines Street; thence north along said west line of Desplaines Street to the westerly extension of the south line of the northerly 20.08 feet of Lot 5 in the subdivision of Block 28 in School Section Addition to Chicago in the west half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian; thence east along said westerly extension and the south line of the northerly 20.08 feet of Lot 5 in the subdivision of Block 28 in School Section Addition to Chicago to the east line of said Lot 5, said east line of Lot 5 being also the west line of the alley east of Desplaines Street; thence north along said west line of the alley east of Desplaines Street to the south line of the north 7.55 feet of Lot 5 in the subdivision of Lots 8 through 16, inclusive, in the subdivision of the west half of Block 27 in School Section Addition to Chicago in the west half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, said south line of the north 7.55 feet of Lot 5 in the subdivision of Lots 8 through 16, inclusive, in the subdivision of the west half of Block 27 in School Section Addition to Chicago being also the north line of the alley north of Jackson Boulevard; thence west along said north

line of the alley north of Jackson Boulevard and the westerly extension thereof to the west line of Desplaines Street; thence north along said west line of Desplaines Street to the north line of Lot 5 in Block 23 in School Section Addition to Chicago in the west half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, said north line of Lot 5 being also the south line of Marble Place; thence west along said south line of Marble Place to the southerly extension of the east line of Lot 3 in said Block 23 in School Section Addition to Chicago; thence north along said southerly extension and the east line of Lot 3 in said Block 23 in School Section Addition to Chicago to the south line of Monroe Street; thence west along said south line of Monroe Street to the southerly extension of the west line of the east 1.43 feet of Lot 7 in Block 24 in School Section Addition to Chicago; thence north along said southerly extension and the west line of the east 1.43 feet of Lot 7 in Block 24 in School Section Addition to Chicago and the northerly extension thereof to a line 9 feet north of and parallel to the north line of said Lot 7; thence west along said line 9 feet north of and parallel to the north line of said Lot 7 to the southerly extension of the west line of the east 26.81 feet of Lot 2 in said Block 24 in School Section Addition to Chicago; thence north along said southerly extension and the west line of the east 26.81 feet of Lot 2 in said Block 24 in School Section Addition to Chicago to the south line of Madison Street; thence west along said south line of Madison Street to the southerly extension of the west line of Lot 15 in Block 70 in Canal Trustee's Subdivision of lots and blocks in the southwest quarter of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian; thence north along said southerly extension and the west line of Lot 15 in Block 70 in Canal Trustee's Subdivision and the northerly extension thereof to the north line of Warren Avenue; thence east along said north line of Warren Avenue to the east line of Desplaines Street; thence south along said east line of Desplaines Street to the north line of Monroe Street; thence east along said north line of Monroe Street to the west line of Clinton Street; thence south along said west line of Clinton Street to the south line of the north 1.92 feet of Lot 4 in Charles Wesencraft's Subdivision of Lots 3, 4, 5 and 6 in Block 47 of School Section Addition to Chicago in the east half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian; thence west along said south line of the north 1.92 feet of Lot 4 in Charles Wesencraft's Subdivision to the west line of said Lot 4; thence south along said west line of Lot 4 in Charles Wesencraft's Subdivision and along the west line of Lots 5 and 6 in said Charles Wesencraft's Subdivision to the south line of said Lot 6; thence east along said south line of said Lot 6 in Charles Wesencraft's Subdivision to the west line of Clinton Street; thence south along said west line of Clinton Street to the north line of the south 38.9 feet of Lot 8 in said Charles Wesencraft's Subdivision; thence west along said north line of the south 38.9 feet of Lot

8 in said Charles Wesencraft's Subdivision to the west line of said Lot 8; thence south along said west line of said Lot 8 in Charles Wesencraft's Subdivision to the north line of Adams Street; thence west along said north line of Adams Street to the east line of Lot 7 in W. B. Egan's Subdivision of Lots 7 and 8 in Block 47 of School Section Addition to Chicago in the east half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian; thence north along said east line of Lot 7 in W. B. Egan's Subdivision to the north line thereof; thence west along said north line of Lot 7 and along the north line of Lots 8 and 9 in said W. B. Egan's Subdivision and along the westerly extension of the north line of Lots 7, 8 and 9 in said W. B. Egan's Subdivision to the west line of Jefferson Street; thence north along said west line of Jefferson Street to the north line of Lot 5 in Block 26 in School Section Addition to Chicago in the east half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian; thence west along said north line of Lot 5 in Block 26 in School Section Addition to Chicago to the west line of said Lot 5; thence south along said west line of said Lot 5 to the north line of Adams Street; thence east along said north line of Adams Street to the east line of Jefferson Street; thence south along said east line of Jefferson Street to the north line of <sup>QUINCY</sup> Jackson Street; thence east along said north line of <sup>QUINCY</sup> Jackson Street to the west line of Clinton Street; thence north along said west line of Clinton Street to the north line of Adams Street; thence east along said north line of Adams Street to the east line of Canal Street; thence south along said east line of Canal Street to a point 116.45 feet north of the north line of Jackson Boulevard as measured along the west line of Lot 6 in the subdivision of Block 46 of the School Section Addition to Chicago in the east half of the northwest quarter of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian; thence east along a straight line to a point on the east line of said Lot 6 which is 121.21 feet northerly from the north line of Jackson Boulevard as measured along said east line of Lot 6; thence east along a straight line to a point on the east line of Lot 5 in said subdivision of Block 46 of the School Section Addition to Chicago which is 121.88 feet northerly from the north line of Jackson Boulevard as measured along said east line of Lot 5, said point on the east line of Lot 5 being also on the westerly channel line of the south branch of the Chicago River; thence southerly along said westerly channel line of the south branch of the Chicago River to the south line of Jackson Street; thence west along said south line of Jackson Street to the east line of Canal Street; thence south along said east line of Canal Street to the north line of Van Buren Street; thence east along said north line of Van Buren Street to the westerly channel line of the south branch of the Chicago River; thence southerly along said westerly channel line of the south branch of the Chicago River to the south line of Harrison Street; thence west along said south line of Harrison Street to the point of beginning. All in the City of Chicago, Cook County, Illinois.

*Exhibit "D".*  
(To Ordinance)

*Street Location Of The Project Area.*

The Area is generally bounded on the north by West Madison, West Monroe and West Adams Streets; on the south by West Congress Parkway and West Harrison Street; on the east by South Clinton and South Canal Streets and the south branch of the Chicago River; and on the west by the Kennedy Expressway and North Desplaines Street.

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DESIGNATION OF CANAL/CONGRESS REDEVELOPMENT  
PROJECT AREA AS TAX INCREMENT  
FINANCING DISTRICT.

The Committee on Finance submitted the following report:

CHICAGO, November 12, 1998.

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

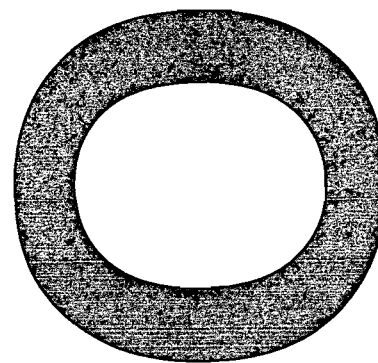
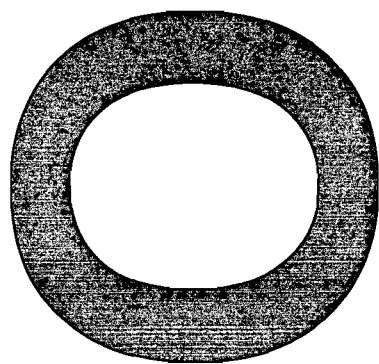
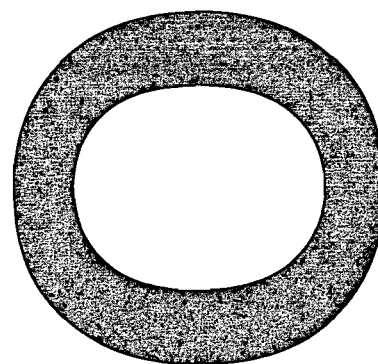
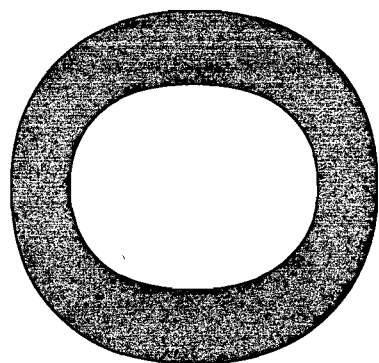
Your Committee on Finance, having had under consideration an ordinance authorizing the designation of the Canal/Congress Tax Increment Financing Redevelopment Area as a redevelopment project area, having had the same under advisement, begs leave to report and recommend that Your Honorable Body *Pass* the proposed ordinance transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the committee.

Respectfully submitted,

(Signed) EDWARD M. BURKE,  
*Chairman.*

(Continued on page 81976)



**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT B**

**PROPERTY LEGAL DESCRIPTION**

A legal description of the parcels comprising the "Property" as defined in this Agreement are attached to this exhibit cover sheet. The PIN number for such parcels are:

17-16-107-028-0000

17-16-107-032-0000

17-16-107-021-0000

If the Property is not separately taxed under its own PINS on the Closing Date, then subsequent to the Closing Date, Developer shall take such actions as are required to cause the Property to be taxed under separate PINs. Only Incremental Taxes from such separate PINs shall give rise to Project Incremental Taxes.



CHICAGO TITLE INSURANCE COMPANY

OWNER'S POLICY (1992)  
SCHEDULE A (CONTINUED)

POLICY NO.: 1401 007954494 D2

5. THE LAND REFERRED TO IN THIS POLICY IS DESCRIBED AS FOLLOWS:

PARCEL 1: (PARCEL 3A.A ON SURVEY)

LOT 7, EXCEPT THE NORTH 18 FEET THEREOF, AND THE NORTH 60 FEET OF LOT 8 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2: (PARCEL 3A.B ON SURVEY)

LOTS 4, 5 AND 6 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 3: (PARCEL 3A.C ON SURVEY)

ALL THAT PART OF THE SOUTH 8 FEET OF LOT 3 LYING EAST OF THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 6 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 4: (PARCEL 3A.D ON SURVEY)

ALL THAT PART OF LOT 9 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO, LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF THE SOUTH 8 FEET OF LOT 3 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 5: (PARCEL 3A.E ON SURVEY)

THE VACATED NORTH-SOUTH 10 FOOT PUBLIC ALLEY LYING EAST OF AND ADJOINING LOT 9, LYING WEST OF AND ADJOINING LOTS 7 AND 8 AND LYING SOUTH OF THE WESTERLY EXTENSION OF THE SOUTH LINE OF THE NORTH 18 FEET OF LOT 7, ALL IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 6: (PARCEL 3B ON SURVEY)

LOT 8, EXCEPT THE NORTH 60 FEET THEREOF, IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

CONTINUED ON NEXT PAGE

THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED.

CHICAGO TITLE INSURANCE COMPANY

OWNER'S POLICY (1992)  
SCHEDULE A (CONTINUED)

POLICY NO.: 1401 007954494 D2

PARCEL 7: (EASEMENT FOR INGRESS AND EGRESS ON SURVEY)

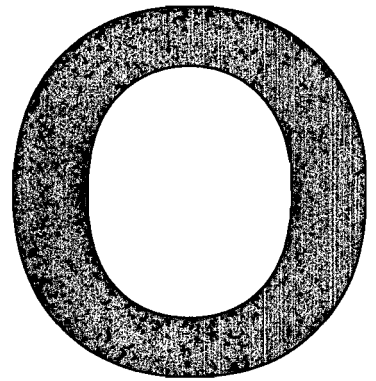
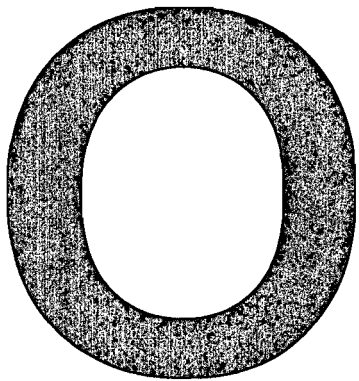
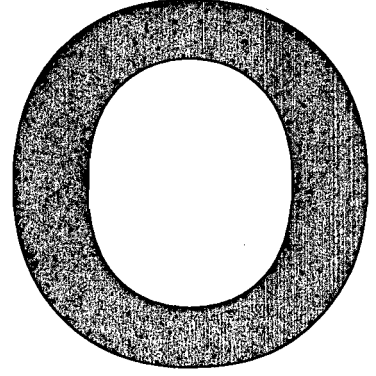
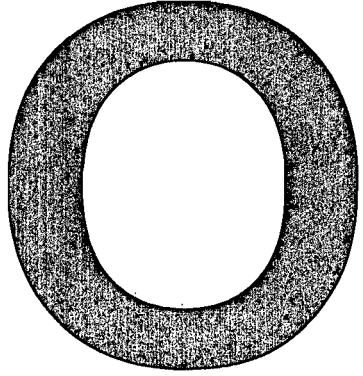
EASEMENT FOR THE BENEFIT OF PARCELS 1 THROUGH 6 FOR INGRESS AND EGRESS TO SOUTH CLINTON STREET AS CREATED BY THE ACCESS EASEMENT AGREEMENT RECORDED AS DOCUMENT 0011134342 OVER THE FOLLOWING DESCRIBED REAL ESTATE:

ALL THAT PART OF LOT 3 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO, AFORESAID, LYING EAST OF THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 6 IN W.B. EGAN'S SUBDIVISION, AND LYING NORTH OF THE NORTH LINE OF THE SOUTH 8 FEET OF SAID LOT 3 IN W. B. EGAN'S SUBDIVISION AND SOUTH OF A LINE 9.55 FEET NORTH OF AND PARALLEL WITH SAID NORTH LINE OF THE SOUTH 8 FEET OF SAID LOT 3 IN W. B. EGAN'S SUBDIVISION, ALL IN LOT 3 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

AND

ALL THAT PART OF LOT 9 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO, LYING NORTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF THE SOUTH 8 FEET OF LOT 3 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16 AFORESAID, AND SOUTH OF A LINE 9.55 FEET NORTH OF AND PARALLEL WITH SAID EASTERLY EXTENSION OF THE NORTH LINE OF THE SOUTH 8 FEET OF LOT 3 IN W. B. EGAN'S SUBDIVISION, ALL IN SAID LOT 9 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED.



**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT C**

**CANAL/CONGRESS REDEVELOPMENT PLAN**

A true and correct copy of the Canal/Congress Redevelopment Project Area, Tax Increment Financing Program, Redevelopment Plan and Project dated August 11, 1998 and passed by City Council on November 12, 1998, and any amendments thereto as of the Closing Date are attached to this exhibit cover sheet.

The Canal / Congress  
Tax Increment Financing  
Redevelopment Project and Plan

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City of Chicago, Illinois

August 11, 1998

Amendment No. 1

May, 2002

City of Chicago  
Richard M. Daley, Mayor

Department of Planning and Development  
Christopher R. Hill, Commissioner

## *Amendment No. 1*

To induce redevelopment pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, as amended (the "Act"), the City Council of the City of Chicago (the "City") adopted three ordinances on November 12, 1998, approving the Canal / Congress Tax Increment Financing Redevelopment Project and Plan (the "Original Plan," and as hereby amended, the "Redevelopment Plan"), designated the Canal / Congress Redevelopment Project Area (the "RPA") as a redevelopment project area under the Act and adopted tax increment allocation financing for the RPA.

The purposes of this Amendment No. 1 are:

- (1) to extend the termination date of the RPA and the date of completion of the Redevelopment Plan in accordance with recent amendments to the Act;
- (2) to add redevelopment project costs to the itemized list of redevelopment project costs set forth in the Redevelopment Plan;
- (3) to correct an error in the legal description of the RPA.

Amendments to the Act are stated in Public Act 92-263, which became effective on August 7, 2001, and in Public Act 92-406, which became effective on January 1, 2002. Pursuant to Section 11-74.4-3(n)(3) of the Act, a redevelopment plan approved by a municipality:

"...establishes the estimated dates of completion of the redevelopment project and retirement of obligations issued to finance redevelopment project costs. Those dates shall not be later than December 31 of the year in which the payment to the municipal treasurer as provided in subsection (b) of Section 11-74.4-8 of this Act is to be made with respect to ad valorem taxes levied in the twenty-third calendar year after the year in which the ordinance approving the redevelopment project area is adopted if the ordinance was adopted on or after January 15, 1981...."

Also, Section 11-74.4-3(n)(9) of the Act provides that:

"(9) For redevelopment project areas designated prior to November 1, 1999, the redevelopment plan may be amended without further joint review board meeting or hearing, provided that the municipality shall give notice of any such changes by mail to each affected taxing district and registrant on the interested party registry, to authorize the municipality to expend tax increment revenues for redevelopment project costs defined by paragraphs (5) and (7.5), subparagraphs (E) and (F) of paragraph (11), and paragraph (11.5) of subsection (q) of Section 11-74.4-3, so long as the changes do not increase the total estimated redevelopment project costs set out in the redevelopment plan by more than 5% after adjustment for inflation from the date the plan was adopted."

Section 11-74.4-3(q)(11)(F) of the Act provides that:

“(F) Instead of the eligible costs provided by subparagraphs (B) and (D) of paragraph (11), as modified by this subparagraph, and notwithstanding any other provisions of this Act to the contrary, the municipality may pay from tax increment revenues up to 50% of the cost of construction of new housing units to be occupied by low-income households and very low-income households as defined in Section 3 of the Illinois Affordable Housing Act. The cost of construction of those units may be derived from the proceeds of bonds issued by the municipality under this Act or other constitutional or statutory authority or from other sources of municipal revenue that may be reimbursed from tax increment revenues or the proceeds of bonds issued to finance the construction of that housing.”

Accordingly, the Canal / Congress Tax Increment Financing Redevelopment Project and Plan is amended by inserting the underlined text and deleting the stricken text, beginning with Section V., F of the Plan, "Redevelopment Project - Redevelopment Project Costs," in Section V., H., "Redevelopment Project - Issuance of Obligations," in Section X., "Phasing and Scheduling," and in Exhibit II, Estimated Redevelopment Project Costs as follows:

## V. REDEVELOPMENT PROJECT

### *F. Redevelopment Project Costs*

The various redevelopment expenditures which are eligible for payment or reimbursement under the Act are reviewed below. Following this review is a list of estimated redevelopment project costs which are deemed to be necessary to implement this Redevelopment Plan (the "Redevelopment Project Costs").

#### 1. Eligible Redevelopment Project Costs

Redevelopment project costs include the sum total of all reasonable or necessary costs incurred, estimated to be incurred, or incidental to this Redevelopment Plan pursuant to the Act. Such costs may include, without limitation, the following:

- 1.) Costs of studies, surveys, development of plans and specifications, implementation and administration of the redevelopment plan including but not limited to, staff and professional service costs for architectural, engineering, legal, marketing, financial, planning or other services (excluding lobbying expenses), provided that no charges for professional services are based on a percentage of the tax increment collected;
- 2.) The costs of marketing sites within the RPA to prospective businesses, developers and investors;
- 3.) Property assembly costs, including but not limited to, acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, site preparation, site improvements that serve as an engineered barrier addressing ground level or below ground environmental contamination, including, but not limited to parking lots and other concrete or asphalt barriers, and the clearing and grading of land;
- 4.) Costs of rehabilitation, reconstruction or repair or remodeling of existing public or private buildings, and fixtures, and leasehold improvements;
- 5.) Costs of the construction of public works or improvements;
- 6.) Costs of job training and retraining projects including the cost of "welfare to work" programs implemented by businesses located within the RPA;
- 7.) Financing costs including, but not limited to, all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued hereunder including interest accruing during the estimated period of construction of any redevelopment project for which such obligations are issued and for a period not exceeding 36 months following completion and including reasonable reserves related thereto;



- 8.) All or a portion of a taxing district's capital costs resulting from the redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the redevelopment plan and project, to the extent the municipality by written agreement accepts and approves such costs;
- 9.) Relocation costs to the extent that the municipality determines that relocation costs shall be paid or is required to make payment of relocation costs by federal or state law;
- 10.) Payment in lieu of taxes as defined in the Act;
- 11.) Costs of job training, advanced vocational education or career education, including but not limited to, courses in occupational, semi-technical or technical fields leading directly to employment, incurred by one or more taxing districts, provided that such costs (i) are related to the establishment and maintenance of additional job training, advanced vocational education or career education programs for persons employed or to be employed by employers located in a redevelopment project area; and (ii) when incurred by a taxing district or taxing districts other than the municipality, are set forth in a written agreement by or among the municipality and the taxing district or taxing districts, which agreement describes the program to be undertaken, including but not limited to, the number of employees to be trained, a description of the training and services to be provided, the number and type of positions available or to be available, itemized costs of the program and sources of funds to pay for the same, and the term of the agreement. Such costs include, specifically, the payment by the community college districts of costs pursuant to Sections 3-37, 3-38, 3-40, and 3-40.1 of the Public Community College Act and by school districts of costs pursuant to Sections 10-22.20a and 10-23.3a of the School Code;
- 12.) Interest costs incurred by a redeveloper related to the construction, renovation or rehabilitation of a redevelopment project provided that:

  - 1.) such costs are to be paid directly from the special tax allocation fund established pursuant to this Act;
  - 2.) such payments in any one year may not exceed 30 percent of the annual interest costs incurred by the redeveloper with regard to the redevelopment project during that year;
  - 3.) if there are not sufficient funds available in the special tax allocation fund to make the payment pursuant to this provision, then the amount so due shall accrue and be payable when sufficient funds are available in the special tax allocation fund; and
  - 4.) the total of such interest payments incurred pursuant to this Act may not exceed 30 percent of the total: (i) costs paid or incurred by the redeveloper for such redevelopment project plus (ii) redevelopment project costs excluding

any property assembly costs and any relocation costs incurred by a municipality pursuant to this Act;

- 5.) Up to 75 percent of the interest cost incurred by a redeveloper for the financing of rehabilitated or new housing for low-income households and very low-income households, as defined in Section 3 of the Illinois Affordable Housing Act.
- 6.) Instead of the eligible costs provided for in subparagraphs (2) and (5) above, the municipality may pay from tax increment revenues up to fifty percent (50%) of the cost of construction of new housing units to be occupied by low- and very low-income households (for ownership or rental) as defined in Section 3 of the Illinois Affordable Housing Act. If the units are part of a residential redevelopment project that includes units not affordable to low- and very low-income households, only the low- and very low-income units shall be eligible for benefits under the Act;
13. An elementary, secondary, or unit school district's increased costs attributable to assisted housing units will be reimbursed as provided in the Act;
14. The costs of daycare services for children of employees from low-income families working for businesses located within the RPA and all or a portion of the cost of operation of day care centers established by RPA businesses to serve employees from low-income families working in businesses located in the RPA. For the purposes of this paragraph, "low-income families" means families whose annual income does not exceed 80 percent of the City, county or regional median income as determined from time to time by the United States Department of Housing and Urban Development;
15. Unless explicitly provided in the Act, the cost of construction of new privately-owned buildings shall not be an eligible redevelopment project cost.

## ***2. Estimated Redevelopment Project Costs***

The estimated eligible costs of this Redevelopment Plan are shown in Exhibit II. The total eligible cost provides an upper limit on expenditures that are to be funded using tax increment revenues (exclusive of capitalized interest, issuance costs, interest, and other financing costs). Within this limit, adjustments may be made in line items without amendment to this Redevelopment Plan. Additional funding in the form of State and Federal grants, private developers' contributions and other outside sources may be pursued by the City as a means of financing improvements and facilities which are of benefit to the general community and the Canal/Congress RPA, but any such funding would not be part of the total redevelopment project costs described in Exhibit II of this Redevelopment Plan. A range of redevelopment activities will be required to implement this Redevelopment Plan. The activities and improvements and their estimated costs are set forth in Exhibit II of this Redevelopment Plan.

~~All estimates are based on 1998 dollars. Funds may be moved from one line item to another or to an eligible cost category described in this Plan.~~

~~—Redevelopment Project Costs described in the Redevelopment Plan are intended to provide an upper estimate of expenditures. Within this upper estimate, adjustments may be made in line items without amending this Redevelopment Plan.~~

## ***H. Issuance of Obligations***

The City may issue obligations secured by Incremental Property Taxes pursuant to Section 11-74.4-7 of the Act. To enhance the security of a municipal obligation, the City may pledge its full faith and credit through the issuance of general obligations bonds. Additionally, the City may provide other legally permissible credit enhancements to any obligations issued pursuant to the Act.

All obligations issued by the City pursuant to this Redevelopment Plan and the Act shall be retired not later than December 31 of the year in which the payment to the municipal treasurer as provided in subsection (b) of Section 11-74.4-8 of this Act is to be made with respect to ad valorem taxes levied in the twenty-third calendar year after the year in which the ordinance approving the redevelopment project area is adopted (such ultimate retirement date occurring on December 31, 2022. ~~within twenty-three (23) years from the adoption of the ordinance approving the Project Area and the Redevelopment Plan, such ultimate retirement date occurring in the year 2021.~~ Also, the final maturity date of any such obligations which are issued may not be later than 20 years from their respective dates of issue. One or more of a series of obligations may be sold at one or more times in order to implement this Redevelopment Plan. Obligations may be issued on a parity or subordinated basis.

In addition to paying Redevelopment Project Costs, Incremental Property Taxes may be used for the scheduled retirement of obligations, mandatory or optional redemptions, establishment of debt service reserves and bond sinking funds. To the extent that Incremental Property Taxes are not needed for these purposes, any excess Incremental Property Taxes shall then become available for distribution annually to taxing districts having jurisdiction over the Project Area in the manner provided by the Act.

## **X. PHASING AND SCHEDULING**

A phased implementation strategy will be utilized to achieve comprehensive and coordinated redevelopment of the Project Area.

It is anticipated that City expenditures for Redevelopment Project Costs will be carefully staged on a reasonable and proportional basis to coincide with Redevelopment Project expenditures by private developers and the receipt of Incremental Property Taxes by the City.

The completion date of the redevelopment project is not later than December 31, 2022. ~~The estimated date for completion of Redevelopment Projects is no later than the year 2021.~~

**EXHIBIT II: Estimated Redevelopment Project Costs**

Eligible Expense	Estimated Costs*
<b>Analysis, Administration, Studies, Surveys, Legal, etc.</b>	\$2,500,000
<b>Property Assembly:</b>	
- Acquisition	\$5,000,000
- Site prep, Demolition and Environmental Remediation	\$10,000,000
<b>Rehabilitation of Existing Buildings</b>	\$37,000,000 <del>\$43,000,000</del>
<b>Public Works or Improvements</b>	
- Streets and Utilities	\$6,000,000
- Parks and Open Spaces	\$9,000,000
<b>Taxing Districts Capital Costs</b>	\$1,200,000
<b>Relocation</b>	\$500,000
<b>Job Training</b>	\$5,000,000
<b>Developer / Interest Subsidy</b>	\$6,500,000
<b>Day Care Services</b>	\$3,000,000
<b>Cost of construction of low- and very low-income housing</b>	\$3,000,000
<b>TOTAL REDEVELOPMENT COSTS</b>	\$88,700,000 <sup>(1)</sup>

[1] Total Redevelopment Project Costs exclude any additional financing costs, including any interest expense, capitalized interest and costs associated with optional redemptions. These costs are subject to prevailing market conditions and are in addition to Total Project Costs. Total Project Costs are inclusive of redevelopment project costs in contiguous redevelopment project areas that are permitted under the Act to be paid from incremental property taxes.

Public Act 92-263 also provides in Section 11 - 74.4-5 (c) that:

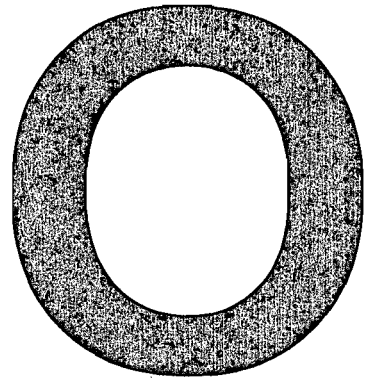
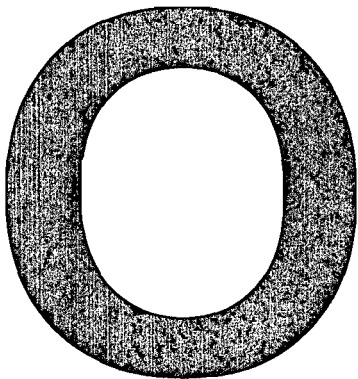
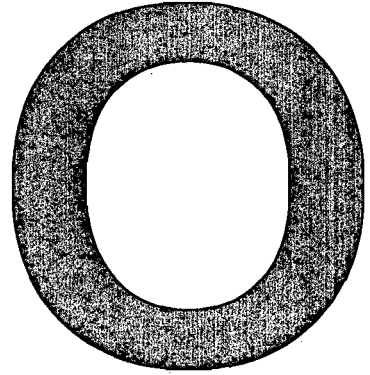
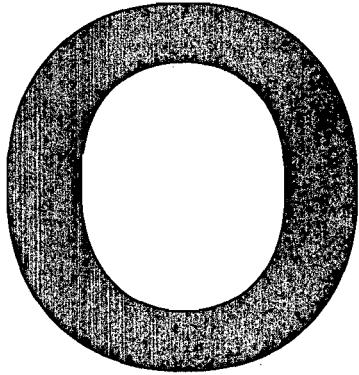
Changes which do not (1) add additional parcels of property to the proposed redevelopment project area, (2) substantially affect the general land uses proposed in the redevelopment plan, (3) substantially change the nature of the redevelopment project, (4) increase the total estimated redevelopment project cost set out in the redevelopment plan by more than 5% after adjustment for inflation from the date the plan was adopted, (5) add additional

redevelopment project costs to the itemized list of redevelopment project costs set out in the redevelopment plan, or (6) increase the number of low or very low income households to be displaced from the redevelopment project area, provided that measured from the time of creation of the redevelopment project area the total displacement of the households will exceed 10, may be made without further hearing, provided that the municipality shall give notice of any such changes by mail to each affected taxing district and registrant on the interested parties registry, provided for under Section 11-74.4-4.2, and by publication in a newspaper of general circulation within the affected taxing district. Such notice by mail and by publication shall each occur not later than 10 days following the adoption by ordinance of such changes.

The City is making the following change in order to clarify a discrepancy between the Equalized Assessed Valuation (EAV) list and the Maps of the Plan, and the legal description, where parcels of land on the north side of Jackson Boulevard between Jefferson and Clinton are shown on the Maps and listed on the EAV list, but are not included in the legal description. The following underlined text is inserted, and the stricken text is deleted:

**THENCE SOUTH ALONG SAID EAST LINE OF JEFFERSON ST. TO THE NORTH LINE OF QUINCY JACKSON STREET;**

**THENCE EAST ALONG SAID NORTH LINE OF JACKSON QUINCY ST. TO THE WEST LINE OF CLINTON STREET;**



WDM-Working  
04/18/02

**THE CANAL/CONGRESS  
TAX INCREMENT FINANCING  
REDEVELOPMENT PROJECT AND PLAN**

---

City of Chicago, Illinois

August 11, 1998

City of Chicago  
Richard M. Daley, Mayor

Department of Planning and Development  
Christopher R. Hill, Commissioner

**THE CANAL/CONGRESS  
TAX INCREMENT FINANCING  
REDEVELOPMENT PROJECT AND PLAN**

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City of Chicago, Illinois  
Department of Planning and Development

This Redevelopment Plan is subject to review  
and comment and may be revised  
after comment and hearing.

Prepared by:  
Trkla, Pettigrew, Allen & Payne, Inc.

August 11, 1998



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**EXHIBIT I:** LEGAL DESCRIPTION OF PROJECT BOUNDARY

**EXHIBIT II:** ESTIMATED REDEVELOPMENT PROJECT COSTS

**EXHIBIT III:** 1996 EQUALIZED ASSESSED VALUATION BY TAX PARCEL

**EXHIBIT IV:** CANAL/CONGRESS PROJECT AREA TAX INCREMENT FINANCING ELIGIBILITY  
STUDY

## I. INTRODUCTION

This document is to serve as a redevelopment plan for an area that is located west the City of Chicago's (the "City") central business district (the "Loop") and is generally bounded on the north by Madison, Monroe and Adams Streets; on the south by Congress Parkway and Harrison Street; on the east by Clinton and Canal Streets and the South Branch of the Chicago River; and on the west by the Kennedy Expressway and Desplaines Street. This area is subsequently referred to in this document as the Canal/Congress Tax Increment Financing Redevelopment Project Area, (the "Project Area"). The Project Area is strategically located directly west of the Loop and is regionally accessible by the adjacent Kennedy, Dan Ryan and Eisenhower Expressways, the commuter and intercity rail lines running in and out of Union and Northwestern Train Stations, and the Chicago River.

Despite its enviable location adjacent to the Loop and its easy accessibility, the Project Area has been developed and expanded over the years on an ad hoc basis with no comprehensive approach. It consists of a mixture of building types, sizes, conditions, and uses. The Project Area lacks overall character and identity, containing older buildings, vacant lots and deteriorating properties. Aware of the Project Area's strategic location, the City recognizes the need to develop this area on a coordinated and comprehensive basis. Recent planning efforts which address the Project Area include the 1973 *Chicago 21 Plan*; the 1985 *Report of The West Loop Task Force*; the 1990 *West Loop Development Plan Executive Summary*; and the November 1993 draft report, *The West Loop Development Plan and Executive Summary*. These plans set forth recommendations for development and redevelopment of the Project Area and, together with the *Downtown Parking Policies*, City of Chicago, 1989; *Chicago River Urban Design Guidelines*, 1990; *Guidelines for Transit-Supportive Development*, Chicago Transit Authority (the "CTA"), 1996; and the *Mayor's Parking Task Force Report*, City of Chicago, 1997 form the basis for many of the recommendations presented in this Redevelopment Plan.

Recognizing the Project Area's potential as an extension of the Loop and as a vital link to the Near West Community Area, the City is taking a proactive step toward the economic renaissance of the Project Area. The City wishes to stabilize and provide cohesion to this portion of the West Loop and support business, retail, institutional, open space, transportation and residential expansion and to encourage private investment and development activity through the use of tax increment financing.

As part of its strategy to encourage managed growth and stimulate private investment within the Project Area, the City engaged Trkla, Pettigrew, Allen & Payne, Inc. ("TPAP") with the assistance from R.M. Chin & Associates ("RMCA") to study whether the Project Area of approximately 41.3 acres qualifies as a "conservation area" or a "blighted area" under the Illinois Tax Increment Allocation Redevelopment Act (65 ILCS 5/11/74.4-3). The Project Area, described in more detail below as well as in the accompanying Eligibility Study, has not been subject to

growth and development through investment by private enterprise and is not reasonably expected to be developed without the efforts and leadership of the City.

While small-scale or piecemeal redevelopment efforts might occur in limited portions of the Project Area, the sheer size and magnitude of several of the existing buildings within the Project Area, coupled with the extensive obsolescence, vacancies and long-term depreciation of physical maintenance of most of the existing buildings, are likely to preclude the revitalization of the Project Area on a scale sufficient to return the Project Area to a long-term sound condition without the intervention of the City.

For instance, located within the Project Area is the historically significant former Chicago Main Post Office at Canal Street and Congress Parkway which is eligible for listing in the National Register of Historic Places. This building was built in two phases between 1921 and 1933 and has been vacant for about four years. Adaptive reuse of this building by private investment alone is impeded by: 1) the sheer magnitude of the building comprising over 2.4 million square feet, which for reference purposes is larger than the Chicago Amoco Building located at 200 E. Randolph Street; 2) the requirement of a substantial investment in preserving the historic and architecturally significant nature of the building; and 3) the substantial investment required to convert the building for one or more different use(s).

Also historically significant within the Project Area is the Union Station built in 1925 and located along Canal and Jackson Streets. For more than 15 years approximately 60% of the building has been vacant and available for lease. However, the above ground floors of the building show an overall depreciation of physical maintenance requiring significant investment and rehabilitation to attract any prospective tenants.

The building located at 444 W. Jackson Street is significant to the Project Area in that it has been vacant for over 10 years, and contains over 80,000 square feet of undeveloped space. This building was completed in 1971 and its intended principal use was to serve as a trading floor area for the Mid - America Commodities Exchange. However, the company vacated the building in 1981 leaving the site undeveloped. Since the building was specifically built to be a trading area, the design of the building does not lend itself to be easily converted into office space. Essentially, the building is an empty shell, obsolete in its design and space due to the excessive ceiling heights and open floors and contains interior components in a partially demolished condition and an obsolete mechanical system. The building's obsolete design, coupled with years of deferred maintenance, require significant investment and rehabilitation to adapt the building for a marketable use.

The City believes that the Project Area should be revitalized on a coordinated, comprehensive and planned basis consistent with the highest quality standards of design and construction for which the downtown is renown and to ensure continuity with the revitalization program of the larger West Loop. A coordinated and comprehensive redevelopment effort will allow the City and other taxing districts to work cooperatively to prepare for the increased service demands

that may arise from the conversion of underutilized land and buildings to more intensive uses. Such a comprehensive redevelopment plan will also encourage job training to prepare residents of surrounding and nearby neighborhoods for newly created job opportunities anticipated within the Project Area.

#### ***A. Canal/Congress Tax Increment Financing Redevelopment Project Area***

The Project Area contains 33 buildings and encompasses a total of approximately 41.3 acres and is adjacent to the west side of the Loop. All areas of the Project Area are improved with buildings or surface parking lots. For a map depicting the boundaries and legal description of the Project Area, see Section II, *Legal Description*.

In general, the Project Area can be described as a "mixed use" area with a variety of land uses, which includes: office, residential, retail, entertainment, institutional, transportation, government and open space.

The Project Area as a whole contains a mix of office, warehouse, and commercial buildings all varying in height and size. Ninety-one percent (91%) of the 33 total buildings are over 35 years old. The Project Area is characterized by aging infrastructure, deteriorated site development, obsolescent buildings, structures below minimum code standards, and vacant and underutilized buildings. Significant to the Project Area is the former Main Post Office located at Canal Street and Congress Parkway. This building has been essentially vacant for approximately four years since the Post Office relocated to a new facility one block south. The Post Office facility contains over 2.4 million square feet of available space. While the size and location of the Post Office lend itself to many redevelopment opportunities, the magnitude, obsolescence, and long-term depreciation of physical maintenance of the complex are likely to seriously limit redevelopment efforts that may occur through private investment.

The considerable physical assets of the Project Area include the following features:

- The "Circle" Interchange enables the Project Area to be accessible to the interstate highway systems. It is located directly west of the Project Area and serves as the entryway to the Kennedy Expressway (I-94), the Dan Ryan Expressway (I-90/94), the Eisenhower Expressway (I-290) and the Loop.
- The Project Area is served by two train stations enabling the Project Area to be regionally and locally accessible. Union Station, located within the Project Area on Canal and Jackson Streets, accommodates both Metra commuter rail service and Amtrak intercity rail service. The Northwestern Station, located a couple blocks outside the Project Area on Madison and Canal Street, accommodates Metra commuter rail service.

- CTA Rapid Transit Station for the O'Hare (Blue) Line within the Project Area at Clinton Street and Congress Parkway connects the Loop to the western suburbs and O'Hare airport.
- Numerous exits off the Kennedy Expressway (I-94) provide convenient access to the Loop.
- The Loop is located directly east of the Project Area which makes the area attractive for new development.
- The Chicago River provides a navigable waterway and an opportunity for community open space along the river.
- Eight CTA bus lines serve the Project Area.

Although the Project Area enjoys strong locational assets, particularly its excellent highway, rail, transit, bus service, water access, and proximity to the Loop, the Project Area is likely to erode without reinvestment as existing properties continue to sit vacant due to deterioration and obsolescence while potential business and residential tenants find more attractive and desirable environments in which to locate.

The Project Area on the whole has not been subject to growth and development through investment by private enterprise. Evidence of this lack of growth and development is detailed in *Section VI* and summarized below.

- Numerous buildings show signs of obsolescence, deterioration, building code violations, excessive vacancies, and an overall depreciation of physical maintenance.
- The majority of the Project Area's infrastructure needs to be repaired. Most of the Project Area's curbs and gutters, street lighting, alleys and sidewalks need repair or replacement.
- Within the last five years, no new buildings have been built in the Project Area. In this same time period, only three of the 33 buildings in the Project Area indicated significant building permit costs. The total building permit activity for these three buildings is \$2,034,080. Seventy-four percent (74%) of the total cost is attributable to interior renovations to the vacant hotel located at Harrison and Canal Streets. Overall, the investment is very limited and scattered having little to no impact on the Project Area.
- Five warehouse structures have been demolished between January 1, 1993 and May 20, 1998 within the Project Area. This indicates a decline in business activity in the Project Area since these demolitions have not been replaced with new construction and the current use of the properties are surface parking lots.
- Between 1991 and 1996, the Assessed Value (the "AV") of the Project Area decreased from \$24,639,359 to \$16,547,330, a decrease of \$8,092,029 or 32.8 percent. Over this same period, the AV of the City as a whole increased by 7.10 percent. The majority of the significant decrease in AV is attributable to two buildings within the Project Area. The first building is the parking garage owned by Amtrak located at Jackson and Canal

Streets which had an AV of \$4,939,999 in 1991 and then later became tax exempt. The AV of the second building, located at 547 West Jackson, was reduced by \$1,767,048 between 1991 and 1996 because it is owned and partially occupied by the public Commuter Rail Division of RTA. Excluding these two buildings from the analysis, the AV of the Project Area between 1991 and 1996 decreased \$1,384,982 or 8.2 percent.

- Between 1991 and 1996, the Equalized Assessed Value (the "EAV") of the Project Area decreased from \$50,567,356 to \$35,604,890, a decrease of \$14,962,467 or 29.6 percent. Over this same period, the EAV of the City as a whole increased by 12.3 percent. As stated in the above paragraph, the majority of the significant decrease in EAV is attributable to two buildings within the Project Area. Excluding these two buildings from the analysis, the EAV of the Project Area between 1991 and 1996 decreased \$1,308,077 or 3.8 percent.
- A significant number of buildings within the Project Area are vacant or underutilized. In particular, the Old Main Post Office has been vacant for almost four years, which represents over 2.4 million square feet of undeveloped space. The building located at 444 West Jackson has been vacant for over 10 years, which totals over 80,000 square feet of undeveloped space. Also, Union Station has been approximately 60 percent vacant for over 15 years. In addition to the above buildings, close to 100,000 square feet of vacant space is reported to exist in six other buildings within the Project Area. This vacant space is evidence of the lack of growth and development within the Project Area.

Without a comprehensive and area-wide effort by the City to promote investment, the Project Area will not likely be subject to sound growth and development through private investment. In spite of existing plans and City programs which support the rehabilitation and improvement of the Project Area, minimal new construction and private investment has occurred in the Project Area. The Project Area developed more than 75 years ago on a parcel-by-parcel basis without the benefit of community planning guidelines and standards. Today, much of the Project Area is characterized by dilapidation, obsolescence, deterioration, structures below minimum code standards, excessive vacancies, lack of light, ventilation, and sanitary facilities, deleterious land-use or layout, depreciation of physical maintenance and an overall lack of community planning.

While small-scale, piecemeal development might occur in limited portions of the Project Area, the City believes that the Project Area should be revitalized on a coordinated, comprehensive and planned basis to ensure continuity with the planning efforts of the greater central area and surrounding neighborhoods. A coordinated and comprehensive redevelopment effort will allow the City and other taxing districts to work cooperatively to prepare for the increased service demands that may arise from the conversion of underutilized land and buildings to more intensive uses. Such a comprehensive redevelopment plan will also encourage job training to assist in putting residents of the neighborhood and the surrounding neighborhoods to work in jobs anticipated to be created within the Project Area.

## ***B. Tax Increment Financing***

In January 1977, Tax Increment Financing ("TIF") was authorized by the Illinois General Assembly through passage of the *Tax Increment Allocation Redevelopment Act*, 65 ILCS 5/11-74.4-1 *et seq.*, as amended (the "Act"). The Act provides a means for municipalities, after the approval of a redevelopment plan and project, to redevelop blighted, conservation, or industrial park conservation areas and to finance eligible "redevelopment project costs" with incremental property tax revenues. "Incremental Property Tax" or "Incremental Property Taxes" are derived from the increase in the current EAV of real property within the redevelopment project area over and above the "Certified Initial EAV" of such real property. Any increase in EAV is then multiplied by the current tax rate which results in Incremental Property Taxes. A decline in current EAV does not result in a negative Incremental Property Tax.

To finance redevelopment project costs, a municipality may issue obligations secured by Incremental Property Taxes to be generated within the project area. In addition, a municipality may pledge towards payment of such obligations any part or any combination of the following: (a) net revenues of all or part of any redevelopment project; (b) taxes levied and collected on any or all property in the municipality; (c) the full faith and credit of the municipality; (d) a mortgage on part or all of the redevelopment project; or (e) any other taxes or anticipated receipts that the municipality may lawfully pledge.

Tax increment financing does not generate tax revenues by increasing tax rates; it generates revenues by allowing the municipality to capture, temporarily, the new tax revenues produced by the enhanced valuation of properties resulting from the municipality's redevelopment program, improvements and activities, various redevelopment projects, and the reassessment of properties. Under TIF, all taxing districts continue to receive property taxes levied on the initial valuation of properties within the redevelopment project area. Additionally, taxing districts can receive distributions of excess Incremental Property Taxes when annual Incremental Property Taxes received exceed principal and interest obligations for that year and redevelopment project costs necessary to implement the redevelopment plan have been paid. Taxing districts also benefit from the increased property tax base after redevelopment project costs and obligations are paid.

## ***C. The Redevelopment Plan for the Canal/Congress Tax Increment Financing Redevelopment Project Area***

As evidenced in *Section VI*, the Project Area as a whole has not been subject to growth and development through private investment. Furthermore, it is not reasonable to expect that the Project Area as a whole will be redeveloped without the use of TIF.

TPAP and RMCA have prepared the Canal/Congress Tax Increment Financing Redevelopment Plan and Project (the "Redevelopment Plan") and the related eligibility study with the understanding that the City would rely on (i) the findings and conclusions of the Redevelopment Plan



and the related eligibility study in proceeding with the designation of the Redevelopment Plan, and (ii) the fact that TPAP and RMCA have obtained the necessary information so that the Redevelopment Plan and the related eligibility study will comply with the Act.

This Redevelopment Plan has been formulated in accordance with the provisions of the Act and is intended to guide improvements and activities within the Project Area in order to stimulate private investment in the Project Area. The goal of the City, through implementation of this Redevelopment Plan, is that the entire Project Area be revitalized on a comprehensive and planned basis to ensure that private investment in rehabilitation and new development occurs:

1. On a coordinated rather than piecemeal basis to ensure that land use, access and circulation, parking, public services and urban design are functionally integrated and meet present-day principles and standards; and
2. On a reasonable, comprehensive and integrated basis to ensure that the factors of blight and conservation are eliminated; and
3. Within a reasonable and defined time period so that the Project Area may contribute productively to the economic vitality of the City.

Redevelopment of the Project Area will constitute a large and complex endeavor, and presents challenges and opportunities commensurate with its scale. The success of this redevelopment effort will depend to a large extent on the cooperation between the private sector and agencies of local government. Adoption of this Redevelopment Plan will make possible the implementation of a comprehensive program for redevelopment of the Project Area. By means of public investment, the Project Area will become a stable environment that will again attract private investment. Public investment will set the stage for area-wide redevelopment by the private sector. Through this Redevelopment Plan, the City will serve as the central force for directing the assets and energies of the private sector to ensure a unified and cooperative public-private redevelopment effort.

This Redevelopment Plan sets forth the overall "Redevelopment Project" to be undertaken to accomplish the City's above-stated goal. During implementation of the Redevelopment Project, the City may, from time to time: (i) undertake or cause to be undertaken public improvements and activities; and (ii) enter into redevelopment agreements with private entities to construct, rehabilitate, renovate or restore private improvements on one or several parcels (collectively referred to as "Redevelopment Projects").

This Redevelopment Plan specifically describes the Project Area and summarizes the conservation area factors which qualify the Project Area as a "conservation area" as defined in the Act.

Successful implementation of this Redevelopment Plan requires that the City utilize Incremental Property Taxes and other resources in accordance with the Act to stimulate the comprehensive and coordinated development of the Project Area. Only through the utilization of TIF will the Project Area develop on a comprehensive and coordinated basis, thereby eliminating

the existing and threatened blight and conservation area conditions which have limited development of the Project Area by the private sector.

The use of Incremental Property Taxes will permit the City to direct, implement and coordinate public improvements and activities to stimulate private investment within the Project Area. These improvements, activities and investments will benefit the City, its residents, and all taxing districts having jurisdiction over the Project Area. These anticipated benefits include:

- An increased property tax base arising from new business and residential development and the rehabilitation of existing buildings.
- An increased sales tax base resulting from new and existing retail development.
- An increase in construction, business, retail, commercial, and other full-time employment opportunities for existing and future residents of the City.
- The construction of an improved system of roadways, utilities and other infrastructure which better serves existing businesses and adequately accommodates desired new development.

## II. LEGAL DESCRIPTION AND PROJECT BOUNDARY

The boundaries of the Project Area have been drawn to include only those contiguous parcels of real property and improvements substantially benefited by the proposed Redevelopment Project to be undertaken as part of this Redevelopment Plan. The boundaries of the Project Area are shown in Figure 1, *Project Boundary*, and are generally described below:

The Project Area is generally bounded on the north by Madison, Monroe and Adams Streets; on the south by Congress Parkway and Harrison Street; on the east by Clinton and Canal Streets and the South Branch of the Chicago River; and on the west by the Kennedy Expressway and Desplaines Street.

The boundaries of the Project Area are legally described in Exhibit I at the end of this report.

### III. ELIGIBILITY CONDITIONS

The results summarized in this section are more fully described in a separate report which presents the definition, application and extent of the conservation and blight factors in the Project Area. The report, prepared by RMCA with assistance from TPAP is entitled "Canal/Congress Tax Increment Financing Eligibility Study," is attached as Exhibit IV to this Redevelopment Plan.

Based upon surveys, inspections and analyses of the Project Area, the Project Area qualifies as a "conservation area" within the requirements of the Act. Fifty percent (50%) or more of the buildings in the Project Area have an age of 35 years or more, and the Project Area is characterized by the presence of a combination of three or more of the conservation factors listed in the Act, rendering the Project Area detrimental to the public safety, health and welfare of the citizens of the City. The Project Area is not yet a blighted area, but it may become a blighted area. Specifically,

- Of the 33 buildings in the Project Area, 30 buildings (91 %) are 35 years of age or older.
- Of the remaining 14 factors set forth in the Act for conservation areas, nine factors are found to be present.
- Six of the nine factors found to be present are found to be present to a major extent and are reasonably distributed throughout the Project Area. These factors include: obsolescence, deterioration, structures below minimum code, excessive vacancies, depreciation of physical maintenance and lack of community planning.
- Three of the nine factors found to be present area found to be present to a limited extent. These factors include: dilapidation, lack of light, ventilation and sanitary facilities, and deleterious land use or layout.
- All blocks within the Project Area show the presence of conservation factors.
- The Project Area includes only real property and improvements thereon substantially benefited by the proposed redevelopment project improvements.

#### *A. Surveys and Analyses Conducted*

The conservation and blight factors found to be present in the Project Area are based upon surveys and analyses conducted by RMCA and TPAP. The surveys and analyses conducted for the Project Area include:

1. Exterior survey of the condition and use of each building;

2. Interior building survey of the interior condition and use of 24 of the 32 buildings (interior access for 9 buildings was not available);
3. Site surveys of streets, alleys, sidewalks, curbs and gutters, lighting, parking facilities, landscaping, fences and walls, and general property maintenance;
4. Analysis of existing uses and their relationships;
5. Comparison of interior and exterior building conditions to property maintenance codes of the City;
6. Analysis of current parcel configuration and building size and layout;
7. Analysis of vacant sites and vacant buildings;
8. Analysis of building floor area and site coverage;
9. Analysis of building permits issued for the Project Area from January 1993 to May 1998;
10. Analysis of building code violations for the Project Area from January 1993 to May 1998; and
11. Review of previously prepared plans, studies, policies and data.

## IV. REDEVELOPMENT GOALS AND OBJECTIVES

Comprehensive and coordinated area-wide investment in new public and private improvements and facilities is essential for the successful redevelopment of the Project Area and the elimination of conditions that have impeded redevelopment of the Project Area in the past. Redevelopment of the Project Area will benefit the City through improvements in the physical environment, an increased tax base, and additional employment opportunities.

This section identifies the general goals and objectives adopted by the City for redevelopment of the Project Area. Section V presents more specific objectives for development and design within the Project Area and the redevelopment activities the City plans to undertake to achieve the goals and objectives presented in this section.

### *A. General Goals*

Listed below are the general goals adopted by the City for redevelopment of the Project Area. These goals provide overall focus and direction for this Redevelopment Plan.

1. An improved quality of life in the Project Area and the surrounding community.
2. Elimination of the influences and manifestations of physical and economic deterioration and obsolescence within the Project Area.
3. An environment which will contribute more positively to the health, safety and general welfare of the Project Area and the surrounding community.
4. An environment which will preserve or enhance the value of properties within and adjacent to the Project Area.
5. An increased real estate and sales tax base for the City and other taxing districts having jurisdiction over the Project Area.
6. The retention and enhancement of sound and viable existing businesses and industries within the Project Area.
7. The attraction of new business, commercial, retail, light industrial, institutional and residential development and the creation of new job opportunities within the Project Area.
8. Employment of residents within the Project Area and within the adjacent communities in jobs in the Project Area and in adjacent redevelopment project areas. When appropriate, developers and businesses should avail themselves to local community groups and training institutions to identify, pre-screen and provide pre-employment training to local residents.

## ***B. Redevelopment Objectives***

Listed below are the redevelopment objectives which will guide planning decisions regarding redevelopment within the Project Area.

1. Reduce or eliminate those conditions which qualify the Project Area as a conservation area. These conditions are described in detail in Exhibit IV to this Redevelopment Plan.
2. Strengthen the economic well-being of the Project Area by increasing taxable values.
3. Assemble or encourage the assembly of land into parcels of appropriate shape and sufficient size for redevelopment in accordance with this Redevelopment Plan.
4. Create an environment which stimulates private investment in the upgrading and expansion of existing businesses and the construction of new business, residential and commercial facilities.
5. Encourage visually attractive buildings, rights-of-way and open spaces and encourage high standards of design, including river edge amenities where appropriate.
6. Rehabilitate and enhance historically significant buildings within the Project Area.
7. Provide needed improvements and facilities in proper relationship to the projected demand for such facilities and in accordance with present-day design standards for such facilities.
8. Provide needed incentives to encourage a broad range of improvements in business retention, rehabilitation and new development.
9. Establish job readiness and job training programs to provide residents within the Project Area and within the surrounding adjacent communities with the skills necessary to secure jobs in the Project Area and in adjacent redevelopment project areas.
10. Secure commitments from employers in the Project Area and adjacent redevelopment project areas to interview graduates of the Project Area's job readiness and job training programs.
11. Create new job opportunities for City residents utilizing first source hiring programs and appropriate job training programs.
12. Provide opportunities for women and minority businesses to share in the redevelopment of the Project Area.

## V. REDEVELOPMENT PROJECT

This section presents the Redevelopment Project anticipated to be undertaken by the City and by private entities on behalf of the City in furtherance of this Redevelopment Plan. Several previous plans and policies, including the 1973 *Chicago 21 Plan*; the 1985 *Report of The West Loop Task Force*; the 1990 *West Loop Development Plan Executive Summary*; the November 1993 draft report, *The West Loop Development Plan and Executive Summary*; *Downtown Parking Policies*, City of Chicago, 1989; *Guidelines for Transit-Supportive Development*, CTA, 1996; and the *Mayor's Parking Task Force Report*, City of Chicago, 1997 have been reviewed and form the basis for many of the recommendations presented in this Redevelopment Plan.

The Redevelopment Project described in this Redevelopment Plan and pursuant to the Act includes: a) the overall redevelopment concept, b) the land use plan, c) improvement and development recommendations for planning subareas, d) development and design objectives, e) a description of redevelopment improvements and activities, f) estimated redevelopment project costs, g) a description of sources of funds to pay estimated redevelopment project costs, h) a description of obligations that may be issued, and i) identification of the most recent EAV of properties in the Project Area and an estimate of future EAV.

### A. Overall Redevelopment Concept

The Project Area should be redeveloped as a cohesive and distinctive business and residential district that functions as part of the central business district and serves as a link between the Loop and the Near West Side Communities. It should consist of residential and business uses offering a range of site development opportunities; commercial uses that serve and support surrounding neighborhoods and employment centers; and a range of public facilities, open spaces and pedestrian amenities. The river's edge should be improved and enhanced as an open space amenity and river walkway.

The Project Area should be redeveloped as a mixed use district. Within the Project Area, viable existing businesses should be retained and enhanced, and new business, institutional, government, transportation, residential, and retail development should be undertaken in the existing vacant or underutilized properties within the Project Area.

The entire Project Area should be marked by improvements in safety and infrastructure, retention and expansion of jobs and businesses, new business and residential development, and enhancement of the area's overall image and appearance. Improvement projects should include:



the rehabilitation and reuse of existing office, warehouse, industrial and commercial buildings; new office, residential and commercial construction; street and infrastructure improvements; creation of open space, landscaping and other appearance enhancements; and the provision of new amenities which both businesses and residents expect to find in a contemporary mixed use urban neighborhood.

The Project Area should have good accessibility and should be served by a street system and public transportation facilities that provide safe and convenient access to and circulation within the Project Area.

The Project Area should be characterized by a planned network of open spaces and public amenities which will organize and provide focus to the Project Area. An open space network should be created which links business centers, retail, residential development, open spaces, the river front, landscaped streets and surrounding amenities.

The Project Area should have a coherent overall design and character. Individual developments should be visually distinctive and compatible. The Project Area should respect the City's traditional downtown business district form which is characterized by a grid pattern of streets with buildings facing the street and located at or very near the front property line.

## ***B. Land Use Plan***

Figure 2 presents the Land-Use Plan that will be in effect upon adoption of this Redevelopment Plan.

The Project Area's strategic location directly west of the Loop and east of Greek Town and the Kennedy and Eisenhower Expressways, creates an environment suitable for a mix of land uses. As indicated in Figure 2, the mix of land uses include: office, retail, residential, entertainment, cultural, government, institutional, open space and transportation. Several key factors have contributed to the appropriateness of the mixed use district within the Project Area and are listed below.

1. Adjacency to the Loop allows for an incremental expansion of the Loop while maintaining the compactness of the central business district.
2. Proximity to the expressways, commuter rail lines, numerous CTA bus routes, CTA Subway Station and the Loop has made the Project Area attractive for residential development, loft conversions, office and institutional developments.
3. Retail, entertainment, restaurants and open spaces are requisites for creating a viable urban neighborhood and attracting prospective residents and office tenants.

The combination of all the above uses creates a viable urban district full of energy and life, enabling a smooth transition between the densely developed Loop and the less dense Near West Side. A mixed-use district will establish a gradual functional and physical transition from the Loop's office towers to the surrounding neighborhoods.

The Land Use Plan highlights numerous opportunities for mixed use improvement, enhancement and new development within the Project Area. The Plan is focused on maintaining and enhancing sound and viable existing businesses, and promoting new business and residential development at selected locations.

Recommended land use strategies for specific subareas are presented in the following section of this Redevelopment Plan.

### ***C. Planning Subareas***

The Project Area has been subdivided into five (5) subareas, each of which would be suitable for a different mix of uses and intensity of development, and each of which warrants a different approach to improvement and redevelopment (See Figure 3).

It should be emphasized that the boundaries of these subareas and the specification of uses within the subareas are for guidance only, and are subject to refinement and modification as a part of the City's planned development process.

Key recommendations for individual subareas are highlighted below. More specific development and design objectives for the Project Area are presented in a following section of this Redevelopment Plan.

#### *Subarea A*

Subarea A encompasses the northern portion of the Project Area and is generally bounded by the Kennedy Expressway on the west, Jefferson Street on the east, the alley south of Washington Street and Monroe Street on the north, and Adams Street on the south. The existing land uses include surface parking lots, a wall-paper distribution facility, and a restaurant.

As additional residential development occurs within and near the Project Area, open space, park facilities, a community center and educational institutions will be needed to serve the growing residential population. Subarea A is recommended for such uses. Currently there are no park facilities or community facilities within the Project Area or surrounding neighborhoods. Open space is designated in Figure 2: *Land Use Plan* for the block bounded by Monroe Street on the north, Adams Street on the south, Desplaines Street on the west and Jefferson Street on the east. In the event that an alternative location is developed as

open space, the designated block may be developed according to the land uses recommended for adjacent properties within the Mixed-Use District illustrated in Figure 2.

The current use of surface parking could be easily converted to open space and public uses. New facilities in this location would be easily accessible to the adjacent residences in Presidential Towers, St. Patrick's School, existing office buildings, and future residential and office developments. Also, if future development increases the demand for community facilities and services, Subarea A could serve as a possible development site for a community center.

Because Subarea A is adjacent to exits off the Kennedy Expressway, it is encouraged that long-term parking facilities be maintained and improved. Locating parking for downtown commuters on the periphery of downtown will help prevent heavy traffic congestion within the Loop.

#### *Subarea B*

Subarea B encompasses three areas within the Project Area. The first area is located at the northern end of the Project, and is generally bounded by Monroe Street on the north, Jefferson Street on the west, Adams Street on the south and Clinton Street on the east. The second area is the central portion of the Project Area, and is generally bounded by Adams Street on the north, Desplaines Street on the west, Harrison Street on the south, and Canal Street on the east. The third area includes the vacant building located at the northeast corner of Canal and Jackson Streets.

Subarea B currently contains a mix of uses. Major existing uses include a number of office buildings ranging from one to ten stories, warehouse activity, several restaurants, various business service operations, a parking garage, a furniture outlet store, a barber, and surface parking lots. The Clinton/Harrison "Blue" Line Subway Station is located under Congress Parkway; this facility should be maintained and upgraded and more attractive passenger access should be provided from the north and south. The existing underground pedway system within the subarea should be extended to connect major transit facilities and future development within the surrounding area, providing access during inclement weather.

Subarea B is an older, established business area which has good regional accessibility and visibility, as well as access to the rail and public transit systems. While it is essentially built up, it does include several relatively large office buildings that are vacant or are not fully occupied and there are several surface parking lots within the subarea that should eventually be redeveloped into a higher use. However, since the surface parking lots located underneath Congress Parkway and the interchange utilize undevelopable space, they should be maintained and upgraded. In addition, there also are several marginal, obsolete and severely deteriorated properties that should be redeveloped.

Subarea B is recommended for a mix of uses including office, retail, entertainment, residential, hotels, institutional and open space. Retail and entertainment should be located on the first and second floors of the buildings to create a pedestrian-oriented environment and to help activate the street. If underutilized buildings are not needed for office or warehouse use, loft conversion is recommended.

### *Subarea C*

Subarea C encompasses Union Station and is bounded by Adams Street on the north, Canal Street on the east, Clinton Street on the west, and Jackson Street on the south.

Union Station has been highlighted as a separate subarea because it serves a distinct purpose and possesses significant development potential. Union Station is a transportation hub for Amtrak and Metra rail lines and is the destination and departure point for thousands of commuters and intercity travelers on a daily basis. However, most of this activity is taking place on the underground levels of Union Station while the upper levels are predominantly vacant and poorly maintained. If sufficiently rehabilitated, Union Station represents a significant redevelopment opportunity.

Possible uses for Subarea C include retail, entertainment, cultural uses, transportation, restaurants, office, and hotel facilities. Union Station should be rehabilitated and maintained because it contributes to the architectural character of the Project Area and surrounding area. The rehabilitation of Union Station should take into consideration the future needs of both Amtrak and Metra passengers. Sufficient space for passenger facilities should be identified.

### *Subarea D*

Subarea D encompasses the central west portion of the Project Area and is generally bounded by Gladys Street on the north, the Kennedy and Eisenhower Expressways on the west, Congress Parkway on the south, and Desplaines Street on the east. The existing uses are a pump house, vacant land, a fire station, a parking lot for an auto dealer, and a vacant substandard building.

The majority of Subarea D is poorly maintained and contains vacant land and marginal properties. These properties should be redeveloped for new business use, open space, a gateway to the West Loop, parking, CTA bus terminals or bus turnarounds to discourage bus queuing on surrounding streets. The existing fire station should be upgraded and maintained to sufficiently serve existing and future development within the Project Area and surrounding area. Because of the presence of the adjacent expressway, the majority of the property in Subarea D has limited size and a challenging configuration which lends itself to open space, a gateway to the West Loop, parking, and small-scale development.

### *Subarea E*

Subarea E encompasses the former Main Post Office and is generally bounded by Van Buren Street on the north, Canal Street on the west, Harrison Street on the south, and the Chicago River on the east.

After postal operations relocated to a new facility at Canal Street and Polk Street, the former Main Post Office has been vacant for about four years. This architecturally significant building which was built between 1921 and 1933, offers over 2.4 million square feet of space which is available for reuse or redevelopment. Because of the sheer magnitude of the this property, it is recommended that the building be redeveloped as a mixed-use development since no one single use is likely to effectively utilize the available space. Within this mixed use framework, a multitude of uses would be appropriate including: office, retail, residential, entertainment, cultural, transportation, warehousing, institutional and government. The feasibility of a new entrance to the Clinton/Congress rapid transit station should be considered in future plans.

Track level platforms beneath the Post Office should be retained to provide sufficient capacity for the future growth in commuter rail and intercity service. Portions of the Post Office building, especially the former Post Office lobby, could be used for future passenger facilities if proposals by Illinois and other Midwestern states for expanded intercity rail service are realized. An interagency task force should be formed to recommend a comprehensive approach to rail terminal issues and their relation to development plans.

The enhancement of the Chicago River corridor in this subarea should be encouraged. Possible amenities should include a river walkway and a river gateway park at dock level.

### ***D. Development And Design Objectives***

Listed below are the specific Development and Design Objectives which will assist the City in directing and coordinating public and private improvement and investment within the Project Area in order to achieve the general goals and objectives identified in *Section IV* of this Redevelopment Plan.

The Development and Design Objectives are intended to help attract a variety of desirable uses such as new business, institutional, commercial and residential development; foster a consistent and coordinated development pattern; and create an attractive urban identity for the Project Area.

**a) Land Use**

- Promote comprehensive, area-wide redevelopment of the Project Area as a planned mixed-use district, allowing a wide range of business, residential, retail, commercial services, public and institutional uses.
- Promote business retention and new employment development throughout the Project Area.
- Encourage the clustering of similar and supporting commercial uses to promote cumulative attraction and multi-stop shopping.
- Promote convenience retail and service uses that can provide for the day-to-day needs of nearby residents, employees and business patrons.

**b) Building and Site Development**

- Where feasible, repair and rehabilitate existing buildings in poor condition.
- Where rehabilitation is not feasible, demolish deteriorated existing buildings to allow for new development.
- Reuse vacant buildings in serviceable condition for new businesses, residential uses, or mixed-use development.
- Ensure that the design of new buildings is compatible with the surrounding building context.
- Preserve buildings with historic and architectural value where appropriate.
- Locate building service and loading areas away from front entrances and major streets where possible.
- Encourage parking, service, loading and support facilities which can be shared by multiple businesses.
- Encourage retail, entertainment, and restaurants on the first and second floors of buildings to create a pedestrian-oriented environment.
- Improve the design and appearance of commercial storefronts, including facade treatment, color, materials, awnings and canopies, and commercial signage.

**c) Transportation and Infrastructure**

- Ensure safe and convenient access to and circulation within the Project Area for pedestrians, bicyclists, autos, trucks and public transportation.

- Alleviate traffic congestion along arterial routes through limited driveways, shared loading zones, efficient bus stop spacing and traffic management improvements.
- Improve the street surface conditions, street lighting, and traffic signalization.
- Promote “transit-friendly” developments that incorporate transit facilities into their design.
- Create small “arrival” places or mini-plazas at the entrances to transit subway stations.
- Provide well-defined, safe pedestrian connections between developments within the Project Area and nearby destinations.
- Promote the development of river edge amenities and provide a continuous pedestrian corridor along the river.
- Extend the underground pedway system to connect major transit facilities, providing access during inclement weather.
- Upgrade public utilities and infrastructure as required.
- Protect passenger rail infrastructure and maintain flexibility to allow for growth in intercity and commuter rail transportation; develop plans that have flexibility to meet future needs.
- Protect track and platform capacity under Union Station and the old Post Office for expanded rail operations, including high - speed rail service.

#### **d) Parking**

- Ensure that all commercial/retail businesses are served by an adequate supply of conveniently located parking.
- Maintain curb parking on selected streets to serve the retail and commercial businesses.
- Promote shared parking through cooperative arrangements between businesses which would permit existing parking lots to be used by neighboring businesses during off-peak periods.
- Ensure that parking lots are attractively designed and adequately maintained.
- Promote the use of ground floor space within parking structures for retail or service businesses.

**e) Urban Design**

- Provide new pedestrian-scale lighting in areas with intense pedestrian activity.
- Provide new street trees and accent lighting where space permits.
- Promote high quality and harmonious architectural and landscape design within the mixed use district.
- Enhance the appearance of the Project Area by landscaping the major street corridors.
- Provide distinctive design features, including landscaping and signage, at the major entryways into the Project Area.
- Install streetpole banners throughout the Project Area to signal revitalization and reinvestment.
- Clean-up and maintain vacant land, particularly in highly visible locations; where possible, use vacant lots for open space or pocket parks.
- Promote the development of “public art” at selected locations.

**f) Landscaping and Open Space**

- Promote the use of landscaping to screen dumpsters, waste collection areas, and the perimeter of parking lots and other vehicular use areas.
- Use landscaping and attractive fencing to screen loading and service areas from public view.
- Promote a continuous landscaped open space area along the river corridor.
- Promote the development of shared open spaces within the Project Area, including courtyards, eating areas, recreational areas, etc.
- Ensure that all open spaces are designed, landscaped and lighted to achieve a high level of security.
- Ensure that all landscaping and design materials comply with the City of Chicago Landscape Ordinance.

***E. Redevelopment Improvements and Activities***

The City proposes to achieve its redevelopment goals and objectives for the Project Area through the use of public financing techniques including, but not limited to, tax increment fi-



nancing, to undertake some or all of the activities and improvements authorized under the Act, including the activities and improvements described below. The City also maintains the flexibility to undertake additional activities and improvements authorized under the Act, if the need for activities or improvements change as redevelopment occurs in the Project Area.

The City may enter into redevelopment agreements with public or private entities for the furtherance of this Redevelopment Plan. Such redevelopment agreements may be for the assemblage of land; the construction, rehabilitation, renovation or restoration of improvements or facilities; the provision of services; or any other lawful purpose. Redevelopment agreements may contain terms and provisions which are more specific than the general principles set forth in this Redevelopment Plan and which include affordable housing requirements as described below.

It is City policy to require that developers who receive TIF assistance for market rate housing set aside 20 percent of the units or commit to an alternative affordable housing option pursuant to Department of Housing Guidelines to meet affordability criteria established by the City's Department of Housing. Generally, this means the affordable for-sale units should be priced at a level that is affordable to persons earning no more than 120 percent of the area median income, and affordable rental units should be affordable to persons earning no more than 80% of the area median income.

## 1. Property Assembly

To meet the goals and objectives of this Redevelopment Plan, the City may acquire and assemble property throughout the Project Area. Land assemblage by the City may be by purchase, exchange, donation, lease or eminent domain and may be for the purpose of (a) sale, lease or conveyance to private developers, or (b) sale, lease, conveyance or dedication for the construction of public improvements or facilities. Furthermore, the City may require written redevelopment agreements with developers before acquiring any properties.

Figure 4, *Land Acquisition Overview Map*, indicates the area currently proposed to be acquired for clearance and redevelopment in the Project Area. Figure 4a: *Land Acquisition by Block & Parcel Identification Number* illustrates the acquisition properties in more detail.

In connection with the City exercising its power to acquire real property not currently identified on the following Acquisition Map, including the exercise of the power of eminent domain, under the Act in implementing the Redevelopment Plan, the City will follow its customary procedures of having each such acquisition recommended by the Community Development Commission (or any successor commission) and

authorized by the City Council of the City. Acquisition of such real property as may be authorized by the City Council does not constitute a change in the nature of this Plan.

Land acquisition activities pursuant to the Land Acquisition Map will be initiated by the City within five years of the date of adoption of the Plan by the City.

As appropriate, the City may devote acquired property to temporary uses until such property is scheduled for disposition and redevelopment. The City may demolish improvements, remove and grade soils and prepare sites with soils and materials suitable for new construction. Clearance and demolition will, to the greatest extent possible, be timed to coincide with redevelopment activities so that tracts of land do not remain vacant for extended periods and so that the adverse effects of clearance activities may be minimized.

The City may (a) acquire any historic structure (whether a designated City or State landmark or on, or eligible for, nomination to the National Register of Historic Places); (b) demolish any non-historic feature of such structure; and (c) incorporate any historic structure or historic feature into a development on the subject property or adjoining property.

## **2. Relocation**

In the event that active businesses or other occupants are displaced by the public acquisition of property, they may be relocated and may be provided with financial assistance and advisory services. Relocation services in conjunction with property acquisition will be provided in accordance with City policy.

## **3. Provision of Public Works or Improvements**

The City may provide public improvements and facilities that are necessary to service the Project Area in accordance with this Redevelopment Plan and the comprehensive plan for development of the City as a whole. Public improvements and facilities may include, but are not limited to, the following:

### ***a) Streets and Utilities***

A range of individual roadway, utility and related improvement projects, from repair and resurfacing to major construction or reconstruction, may be undertaken.

**b) *Parks and Open Space***

Improvements to existing or future parks, river walkways, open spaces and public plazas may be provided, including the construction of pedestrian walkways, stairways, lighting, landscaping and general beautification improvements may be provided for the use of the general public.

**c) *Transportation Infrastructure***

Improvements and/or expansion of the existing CTA Transit Subway Station at Harrison Street and Clinton Street may be provided to support the increased demand resulting from future development within the Project Area.

Extension of the underground pedway system to connect major transit facilities within the Project Area, providing access during inclement weather, may be undertaken.

**4. *Rehabilitation of Existing Buildings***

The City will encourage the rehabilitation of buildings that are basically sound and/or historically significant, and are located so as not to impede the Redevelopment Project.

**5. *Job Training and Related Educational Programs***

Separate or combined programs designed to increase the skills of the labor force to meet employers' hiring needs and to take advantage of the employment opportunities within the Project Area may be implemented.

**6. *Taxing Districts Capital Costs***

The City may reimburse all or a portion of the costs incurred by certain taxing districts in the furtherance of the objectives of this Redevelopment Plan.

**7. *Interest Subsidies***

Funds may be provided to redevelopers for a portion of interest costs incurred by a redeveloper related to the construction, renovation or rehabilitation of a redevelopment project provided that:

- (a) such costs are to be paid directly from the special tax allocation fund established pursuant to the Act;
- (b) such payments in any one year may not exceed 30 percent of the annual interest costs incurred by the redeveloper with respect to the redevelopment project during that year;

- (c) if there are not sufficient funds available in the special tax allocation fund to make the payment, then the amounts so due shall accrue and be payable when sufficient funds are available in the special tax allocation fund; and
- (d) the total of such interest payments paid pursuant to the Act may not exceed 30 percent of the total (i) costs paid or incurred by a redeveloper for a redevelopment project plus (ii) redevelopment project costs excluding any property assembly costs and any relocation costs incurred by the City pursuant to the Act.

**8. Analysis, Administration, Studies, Surveys, Legal, etc.**

The City may undertake or engage professional consultants, engineers, architects, attorneys, etc. to conduct various analyses, studies, surveys, administration or legal services to establish, implement and manage this Redevelopment Plan.

***F. Redevelopment Project Costs***

The various redevelopment expenditures which are eligible for payment or reimbursement under the Act are reviewed below. Following this review is a list of estimated redevelopment project costs which are deemed to be necessary to implement this Redevelopment Plan (the "Redevelopment Project Costs").

**1. Eligible Redevelopment Project Costs**

Redevelopment project costs include the sum total of all reasonable or necessary costs incurred, estimated to be incurred, or incidental to this Redevelopment Plan pursuant to the Act. Such costs may include, without limitation, the following:

- 1) Costs of studies, surveys, development of plans and specifications, implementation and administration of the redevelopment plan including but not limited to, staff and professional service costs for architectural, engineering, legal, marketing, financial, planning or other services, provided that no charges for professional services are based on a percentage of the tax increment collected;
- 2) Property assembly costs, including but not limited to, acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, and the clearing and grading of land;
- 3) Costs of rehabilitation, reconstruction or repair or remodeling of existing public or private buildings and fixtures;
- 4) Costs of the construction of public works or improvements;
- 5) Costs of job training and retraining projects;

- 6) Financing costs including, but not limited to, all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued hereunder accruing during the estimated period of construction of any redevelopment project for which such obligations are issued and for a period not exceeding 36 months following completion and including reasonable reserves related thereto;
- 7) All or a portion of a taxing district's capital costs resulting from a redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the redevelopment plan and project to the extent the municipality by written agreement accepts and approves such costs;
- 8) Relocation costs to the extent that a municipality determines that relocation costs shall be paid or is required to make payment of relocation costs by federal or state law;
- 9) Payment in lieu of taxes as defined in the Act;
- 10) Costs of job training, advanced vocational education or career education, including but not limited to, courses in occupational, semi-technical or technical fields leading directly to employment, incurred by one or more taxing districts, provided that such costs (i) are related to the establishment and maintenance of additional job training, advanced vocational education or career education programs for persons employed or to be employed by employers located in a redevelopment project area; and (ii) when incurred by a taxing district or taxing districts other than the municipality, are set forth in a written agreement by or among the municipality and the taxing district or taxing districts, which agreement describes the program to be undertaken including but not limited to, the number of employees to be trained, a description of the training and services to be provided, the number and type of positions available or to be available, itemized costs of the program and sources of funds to pay for the same, and the term of the agreement. Such costs include, specifically, the payment by community college districts of costs pursuant to Sections 3-37, 3-38, 3-40, and 3-40.1 of the Public Community College Act and by school districts of costs pursuant to Sections 10-22.20a and 10-23.3a of the School Code;
- 11) Interest cost incurred by a redeveloper related to the construction, renovation or rehabilitation of a redevelopment project provided that:
  1. such costs are to be paid directly from the special tax allocation fund established pursuant to this Act;
  2. such payments in any one year may not exceed 30 percent of the annual interest costs incurred by the redeveloper with regard to the redevelopment project during that year;

3. if there are not sufficient funds available in the special tax allocation fund to make the payment pursuant to this provision, then the amount so due shall accrue and be payable when sufficient funds are available in the special tax allocation fund; and
  4. the total of such interest payments incurred pursuant to this Act may not exceed 30 percent of the total: (i) costs paid or incurred by the redeveloper for such redevelopment project plus (ii) redevelopment project costs excluding any property assembly costs and any relocation costs incurred by a municipality pursuant to this Act.
- 12) Unless explicitly provided in the Act, the cost of construction of new privately-owned buildings shall not be an eligible redevelopment project cost.

If a special service area has been established pursuant to the Special Service Area Tax Act, 35 ILCS 235/0.01 *et. seq.* then any tax increment revenues derived from the tax imposed pursuant to the Special Service Area Tax Act may be used within the redevelopment project area for the purposes permitted by the Special Service Area Tax Act as well as the purposes permitted by the Act.

## 2. **Estimated Redevelopment Project Costs**

A range of redevelopment activities and improvements will be required to implement this Redevelopment Plan. The activities and improvements and their estimated costs are set forth in Exhibit II of this Redevelopment Plan. All estimates are based on 1998 dollars. Funds may be moved from one line item to another or to an eligible cost category described in this Plan.

Redevelopment Project Costs described in this Redevelopment Plan are intended to provide an upper estimate of expenditures. Within this upper estimate, adjustments may be made in line items without amending this Redevelopment Plan.

## ***G. Sources of Funds to Pay Redevelopment Project Costs***

Funds necessary to pay for Redevelopment Project Costs and secure municipal obligations issued for such costs are to be derived primarily from Incremental Property Taxes. Other sources of funds which may be used to pay for Redevelopment Project Costs or secure municipal obligations are land disposition proceeds, state and federal grants, investment income, private financing and other legally permissible funds the City may deem appropriate. The City may incur redevelopment project costs which are paid for from funds of the City other than incremental taxes, and the City may then be reimbursed from such costs from incremental taxes. Also, the City may permit the utilization of guarantees, deposits and other forms of security made available by private sector developers. Additionally, the City may utilize revenues, other

than State sales tax increment revenues, received under the Act from one redevelopment project area for eligible costs in another redevelopment project area that is either contiguous to, or is separated only by a public right-of-way from, the redevelopment project area from which the revenues are received.

The Project Area is contiguous to the River South TIF and is separated only by a public right of way from the Near West Tax Increment Financing Redevelopment Project Area and may, in the future, be contiguous or separated by only a public right of way to other redevelopment project areas created under the Act. The City may utilize net incremental property taxes received from the Project Area to pay eligible redevelopment project costs, or obligations issued to pay such costs, in other contiguous redevelopment project areas or project areas separated only by a public right of way, and vice versa. The amount of revenue from the Project Area made available to support such contiguous redevelopment project areas or those separated only by a public right of way, when added to all amounts used to pay eligible Redevelopment Project Costs within the Project Area, shall not at any time exceed the total Redevelopment Project Costs described in this Redevelopment Plan.

The Project Area may become contiguous to, or be separated only by a public right of way from, redevelopment project areas created under the Industrial Jobs Recovery Law (65 ILCS 5/11-74.6-1, et seq.). If the City finds that the goals, objectives and financial success of such contiguous redevelopment project areas or those separated only by a public right of way are interdependent with those of the Project Area, the City may determine that it is in the best interests of the City and in furtherance of the purposes of the Redevelopment Plan that net revenues from the Project Area be made available to support any such redevelopment project areas. The City therefore proposes to utilize net incremental revenues received from the Project Area to pay eligible redevelopment project costs (which are eligible under the Industrial Jobs Recovery Law referred to above) in any such areas and vice versa. Such revenues may be transferred or loaned between the Project Area and such areas. The amount of revenue from the Project Area so made available, when added to all amounts used to pay eligible Redevelopment Project Costs within the Project Area or other areas as described in the preceding paragraph, shall not at any time exceed the total Redevelopment Project Costs described in Table 1 of this Redevelopment Plan.

## *H. Issuance of Obligations*

The City may issue obligations secured by Incremental Property Taxes pursuant to Section 11-74.4-7 of the Act. To enhance the security of a municipal obligation, the City may pledge its full faith and credit through the issuance of general obligation bonds. Additionally, the City may provide other legally permissible credit enhancements to any obligations issued pursuant to the Act.

All obligations issued by the City pursuant to this Redevelopment Plan and the Act shall be retired within 23 years from the adoption of the ordinance approving the Project Area and the Re-

## **VI. LACK OF GROWTH AND DEVELOPMENT THROUGH INVESTMENT BY PRIVATE ENTERPRISE**

As described in *Section III* of this Redevelopment Plan, the Project Area as a whole is adversely impacted by the presence of numerous conservation and blight factors, and these factors are reasonably distributed throughout the Project Area. Conservation and blight factors within the Project Area are widespread and represent major impediments to sound growth and development.

The decline of and the lack of private investment in the Project Area are evidenced by the following:

### **Physical Condition of the Project Area**

- The Project Area is characterized by age (91% of the buildings are 35 years or older), obsolescence, deterioration, structures below minimum code specifications, excessive vacancies, depreciation of physical maintenance, and an overall lack of community planning .
- In over five years between January 1993 and May 1998 the City's Building Department issued 18 building code violations to 18 different buildings within the Project Area. This is 56% of the total buildings within the Project Area.
- A majority of the Project Area's infrastructure (i.e. streets, alleys, curbs and gutters, street lighting and sidewalks) needs major repair or replacement.

### **Lack of New Construction and Renovation by Private Enterprise**

- Within the last five years, no new buildings have been built in the Project Area. In this same time period, only three of the 32 buildings in the Project Area indicated significant building permit costs. The total building permit cost for these three buildings is \$2,034,080. Seventy-four percent (74%) of the total cost is attributable to interior renovations to the vacant hotel located at Harrison Street and Canal Street. Overall, the investment is very limited and scattered having little to no impact on the Project Area.
- Five warehouse structures have been demolished between January 1, 1993 and May 20, 1998 within the Project Area. This indicates a decline in business activity in the Project Area since these demolitions have not been replaced with new construction and the current use of the properties are surface parking lots.



- The costs associated with the adaptive reuse of the former Main Post Office which have historically been distribution in nature are prohibitive, especially for its size and magnitude of the historic buildings. These extraordinary costs rule out private investment by most developers.
- The costs associated with the adaptive reuse of the vacant building located at 444 W. Jackson Street are also prohibitive due to the design of the building. Since the building was specifically built to be a trading area, the design of the building does not lend itself to be easily converted into office space. Essentially, the building is an empty shell, obsolete in its design and space due to the excessive ceiling heights and open floors and contains interior components in a partially demolished condition and an obsolete mechanical system. The building's obsolete design, coupled with years of deferred maintenance, requires significant investment and rehabilitation to adapt the building for a marketable use.
- The architecturally and historically significant former Main Post Office facility will require substantial investment to preserve the structures, including the renovation and restoration of the exterior facades, replacement of windows, doors, masonry and all other exterior elements.
- Extensive sidewalk repairs, street lighting, landscaping and other infrastructure improvements are necessary to transform the Project Area into a pedestrian-friendly environment.

In summary, the Project Area is not yet a blighted area, but is deteriorating and declining and may become a blighted area. The Project Area on the whole has not been subject to growth and development through investment by private enterprise. The Project Area would not reasonably be anticipated to be developed without the adoption of this Redevelopment Plan for the Project Area.

## VII. FINANCIAL IMPACT

Without the adoption of the Redevelopment Plan and TIF, the Project Area is not reasonably expected to be redeveloped by private enterprise. In the absence of City-sponsored redevelopment initiatives, there is a prospect that conservation and blight factors will continue to exist and spread, and the Project Area on the whole and adjacent properties will become less attractive for the maintenance and improvement of existing buildings and sites. In the absence of City-sponsored redevelopment initiatives, erosion of the assessed valuation of property in and outside of the Project Area could lead to a reduction of real estate tax revenue to all taxing districts.

*Section V* of this Redevelopment Plan describes the comprehensive, area-wide Redevelopment Project proposed to be undertaken by the City to create an environment in which private investment can occur. The Redevelopment Project will be staged over a period of years consistent with local market conditions and available financial resources required to complete the various redevelopment improvements and activities as well as Redevelopment Projects set forth in this Redevelopment Plan. Successful implementation of this Redevelopment Plan is expected to result in new private investment in rehabilitation of buildings and new construction on a scale sufficient to eliminate problem conditions and to return the area to a long-term sound condition.

The Redevelopment Project is expected to have significant short- and long-term positive financial impacts on the taxing districts affected by this Redevelopment Plan. In the short-term, the City's effective use of TIF can be expected to stabilize existing assessed values in the Project Area, thereby stabilizing the existing tax base for local taxing agencies. In the long-term, after the completion of all redevelopment improvements and activities, Redevelopment Projects and the payment of all Redevelopment Project Costs and municipal obligations, the taxing districts will benefit from the enhanced tax base which results from the increase in EAV caused by the Redevelopment Projects.

## VIII. DEMAND ON TAXING DISTRICT SERVICES

The following major taxing districts presently levy taxes against properties located within the Project Area:

Cook County. The County has principal responsibility for the protection of persons and property, the provision of public health services and the maintenance of County highways.

Cook County Forest Preserve District. The Forest Preserve District is responsible for acquisition, restoration and management of lands for the purpose of protecting and preserving open space in the City and County for the education, pleasure and recreation of the public.

Metropolitan Water Reclamation District of Greater Chicago. This district provides the main trunk lines for the collection of waste water from cities, villages and towns, and for the treatment and disposal thereof.

Chicago Community College District 508. This district is a unit of the State of Illinois' system of public community colleges, whose objective is to meet the educational needs of residents of the City and other students seeking higher education programs and services.

Board of Education of the City of Chicago. General responsibilities of the Board of Education include the provision, maintenance and operations of educational facilities and the provision of educational services for kindergarten through twelfth grade. No public schools are located in the Project Area.

Chicago Park District. The Park District is responsible for the provision, maintenance and operation of park and recreational facilities throughout the City and for the provision of recreation programs. There are no parks located within the Project Area.

Chicago School Finance Authority. The Authority was created in 1980 to exercise oversight and control over the financial affairs of the Board of Education.

City of Chicago. The City is responsible for the provision of a wide range of municipal services, including: police and fire protection; capital improvements and maintenance; water supply and distribution; sanitation service; building, housing and zoning codes, etc. A fire station is located within the Project Area and is illustrated in Figure 5, *Surrounding Community Facilities*.

City of Chicago Library Fund. General responsibilities of the Library Fund include the provision, maintenance and operation of the City's library facilities.

In addition to the major taxing districts summarized above, the Chicago Urban Transportation District, and the City of Chicago Special Service Area 12 have taxing jurisdiction over part or all of the Project Area. The Chicago Urban Transportation District (formerly a separate taxing district from the City) no longer extend tax levies, but continues to exist for the purpose of receiving delinquent taxes.

#### ***A. Impact of the Redevelopment Project***

The replacement of vacant and underutilized properties with business, residential, and other development may cause increased demand for services and/or capital improvements to be provided by the Metropolitan Water Reclamation District, the City, the Board of Education and the Chicago Park District. The estimated nature of these increased demands for services on these taxing districts are described below.

Metropolitan Water Reclamation District of Greater Chicago. The replacement of vacant and underutilized properties with new development may cause increased demand for the services and/or capital improvements provided by the Metropolitan Water Reclamation District.

City of Chicago. The replacement of vacant and underutilized properties with new development may increase the demand for services and programs provided by the City, including police protection, fire protection, sanitary collection, recycling, etc.

Board of Education. The addition of new households with school-aged children to the Project Area may increase the demand for services and programs provided by the Board of Education. No public schools are located within the boundaries of the Project Area. The nearest public schools are the William Jones Metropolitan High School, the Andrew Jackson Language Academy, Skinner Elementary School and the Whitney Young Magnet High School, the closest of which is located approximately one mile outside the boundaries of the Project Area. The locations of these schools are illustrated in Figure 5, *Surrounding Community Facilities*.

A survey was recently completed of seven former industrial buildings in the greater South and West Loop areas which have been rehabilitated and converted to loft-type, residential developments (three rental buildings and four condominiums). Of the seven buildings surveyed, three contained households with children and four consisted solely of households with no children. Of the 655 total units within these seven buildings, only thirteen (2.0 percent) contained households with children. This preliminary survey did not identify the number of school-age children within the units that contained children. As these developments are believed to consist of units which are similar to the type proposed for the former warehouse and office buildings within the Project Area, it is expected that the households that may be added to the Project Area will contain few school-age children and that the impact of the Redevelopment Project on the Board of Education may be minimal.

Chicago Park District. The replacement of vacant and underutilized properties with residential, business and other development may increase the demand for services, programs and capital improvements provided by the Chicago Park District within and adjacent to the Project Area. These public services or capital improvements may include, but are not necessarily limited to, the provision of additional open spaces and recreational facilities by the Chicago Park District. Currently, there are no parks located within the Project Area. The nearest parks are Dearborn Park and Grant Park located approximately one mile east of the Project Area and Sheridan Park and Skinner Park located approximately one mile west of the Project Area. The locations of these parks are illustrated in Figure 5, *Surrounding Community Facilities*.

***B. Program to Address Increased Demand for Services or Capital Improvements***

The following activities represent the City's program to address increased demand for services or capital improvements provided by the impacted taxing districts.

- It is expected that any increase in demand for treatment of sanitary and storm sewage associated with the Project Area can be adequately handled by existing treatment facilities maintained and operated by the Metropolitan Water Reclamation District. Therefore, no special program is proposed for the Metropolitan Water Reclamation District.
- It is expected that any increase in demand for City services and programs associated with the Project Area can be adequately handled by existing City, police, fire protection, sanitary collection and recycling services and programs maintained and operated by the City. Therefore, no special programs are proposed for the City.

- It is expected that the households that may be added to the Project Area will contain few school-aged children and, at this time, no special program is proposed for the Board of Education. The City and the Board of Education, will attempt to ensure that any increased demands for the services and capital improvements provided by the Board of Education are addressed in connection with any particular residential development in the Project Area.
- It is expected that the households and businesses that may be added to the Project Area may generate additional demand for recreational services and programs and may create the need for additional open spaces and recreational facilities operated by the Chicago Park District. The City intends to monitor development in the Project Area and, with the cooperation of the Chicago Park District, will attempt to ensure that any increased demands for the services and capital improvements provided by the Chicago Park District are addressed in connection with any particular residential and business development. One or more open space facilities will be provided to secure the needs of a rapidly expanding residential population and existing and future employees of the Project Area and nearby areas.
- It is expected that any increase in demand for Cook County, Cook County Forest Preserve District, and the Chicago Community College District 508's services and programs associated with the Project Area can be adequately handled by services and programs maintained and operated by these taxing districts. Therefore, at this time, no special programs are proposed for these taxing districts. Should demand increase so that it exceeds existing service and program capabilities, the City will work with the affected taxing district to determine what, if any, program is necessary to provide adequate services.

Exhibit II to this Redevelopment Plan illustrates the preliminary allocation of Redevelopment Project Costs.

## **IX. CONFORMITY OF THE REDEVELOPMENT PLAN FOR THE PROJECT AREA TO LAND USES APPROVED BY THE PLANNING COMMISSION OF THE CITY**

This Redevelopment Plan and the Redevelopment Project described herein include land uses which will be approved by the Chicago Plan Commission prior to the adoption of the Redevelopment Plan.

## **X. PHASING AND SCHEDULING**

A phased implementation strategy will be utilized to achieve comprehensive and coordinated redevelopment of the Project Area.

It is anticipated that City expenditures for Redevelopment Project Costs will be carefully staged on a reasonable and proportional basis to coincide with Redevelopment Project expenditures by private developers and the receipt of Incremental Property Taxes by the City.

The estimated date for completion of Redevelopment Projects is no later than the year 2021.



## **XI. PROVISIONS FOR AMENDING THIS REDEVELOPMENT PLAN**

This Redevelopment Plan may be amended pursuant to the Act.

## **XII. COMMITMENT TO FAIR EMPLOYMENT PRACTICES AND AFFIRMATIVE ACTION PLAN**

The City is committed to and will affirmatively implement the following principles with respect to this Redevelopment Plan:

- A) The assurance of equal opportunity in all personnel and employment actions, including, but not limited to: hiring, training, transfer, promotion, discipline, fringe benefits, salary, employment working conditions, termination, etc., without regard to race, color, religion, sex, age, handicapped status, national origin, creed or ancestry.
- B) This commitment to affirmative action will ensure that all members of the protected groups are sought out to compete for all job openings and promotional opportunities.
- C) Redevelopers will meet City of Chicago standards for participation of Minority Business Enterprises and Woman Business Enterprises and the City Resident Construction Worker Employment Requirements as required in Redevelopment Agreements.

In order to implement these principles, the City shall require and promote equal employment practices and affirmative action on the part of itself and its contractors and vendors. In particular, parties engaged by the City shall be required to agree to the principles set forth in this section.

**EXHIBIT IV:**

**Canal/Congress Project Area Tax Increment  
Financing Eligibility Study**

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**CANAL/CONGRESS  
REDEVELOPMENT PROJECT AREA  
ELIGIBILITY STUDY**

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Prepared for the  
Department of Planning and Development  
City of Chicago

Prepared by:  
R. M. Chin & Associates, Inc.  
and  
Trkla, Pettigrew, Allen & Payne, Inc.

August 11, 1998

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## I. EXECUTIVE SUMMARY

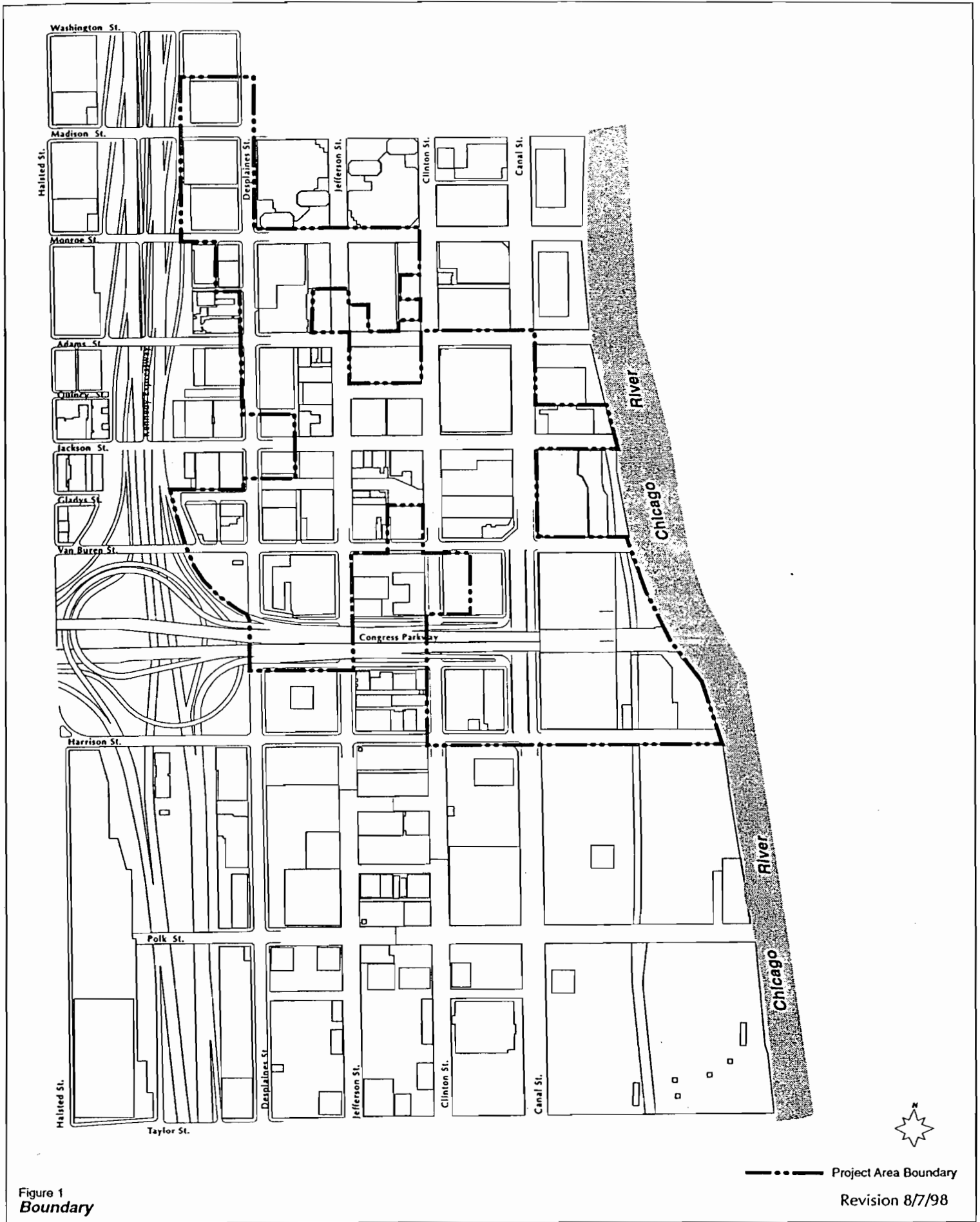
The purpose of this study entitled *Canal/Congress Redevelopment Project Area Eligibility Study* (the "Eligibility Study") is to document the conservation factors that are present within the Canal/Congress Redevelopment Project Area (the "Project Area"), and to determine whether the Project Area qualifies for designation as a "conservation area" within the definitions set forth in the Illinois *Tax Increment Allocation Redevelopment Act* 65 ILCS 5/11-74.4, *et. seq.*, as amended (the "Act").

The Project Area is located west of the City of Chicago's (the "City") central business district (the "Loop"), contains approximately 41.3 acres within seventeen (17) whole and partial blocks, and is generally bounded on the north by Madison, Monroe and Adams Streets; on the south by Congress Parkway and Harrison Street; on the east by Clinton and Canal Streets and the South Branch of the Chicago River; and on the west by the Kennedy Expressway and Desplaines Street. The boundary of the Project Area is illustrated in Figure 1, *Project Area Boundary*. A more detailed description of the Project Area is presented in the Redevelopment Plan and Project.

The determination of whether the Project Area qualifies for designation as a redevelopment project area and for use of tax increment financing pursuant to the Act is made by the City following careful review and consideration of the conclusions contained in the Redevelopment Plan and Eligibility Study. The conclusions contained in the Eligibility Study are based on an analysis of conditions and conservation factors found to be present within the Project Area. The documentation, analysis and conclusion of conservation factors are based on surveys and analyses conducted by R. M. Chin & Associates, Inc. ("RMCA") and Trkla, Pettigrew, Allen & Payne, Inc. ("TPAP") during May, June, and July 1998.

The basis for designating an area as a redevelopment project area and adopting the use of tax increment financing is described in Section II, *Basis for Redevelopment*, and summarized briefly below. The summary which follows is limited to a discussion of the eligibility criteria for a conservation area.

As set forth in the Act, a "redevelopment project area" must be not less than 1½ acres, and the municipality must make a finding that there exist conditions which cause the area to be classified as a conservation area. A "conservation area" means any improved area within the boundaries of a redevelopment project area in which 50 percent or more of the structures in the area have an age of 35 years or more. Such an area is not yet a blighted area but because of a combination of 3 or more of the following factors--dilapidation; obsolescence; deterioration; illegal use of



**Canal / Congress**

Tax Increment Financing Redevelopment Project Area

**Chicago, Illinois**

Prepared By: Trkla, Pettigrew, Allen, & Payne, Inc.



individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; or lack of community planning--is detrimental to the public safety, health, morals or welfare and such an area may become a blighted area.

While it may be concluded that the mere presence of the minimum number of the stated factors in the Act may be sufficient to make a finding that there exist conditions which cause the area to be classified as a conservation area, the conclusions contained in the Eligibility Study are made on the basis that the conservation factors must be present to an extent which would lead reasonable persons to conclude that public intervention is appropriate or necessary. Secondly, the conservation factors must be reasonably distributed throughout the Project Area so that basically good areas are not arbitrarily found to be conservation areas simply because of proximity to areas which are found to be conservation areas.

On the basis of this approach, the Project Area is found to be eligible as a conservation area within the conservation area definition set forth in the Act. Specifically:

- Ninety-one (91) percent of the 33 buildings in the Project Area are 35 years of age or older.
- Of the 14 conservation area factors set forth in the Act, nine factors are found to be present. These factors include dilapidation, obsolescence, deterioration, structures below minimum code standards, excessive vacancies, lack of light, ventilation, and sanitary facilities, deleterious land-use or layout, depreciation of physical maintenance and lack of community planning.
- All blocks within the Project Area show the presence of conservation factors.
- Six of the factors present within the Project Area are found to be present to a major extent and are reasonably distributed throughout the Project Area. These factors are obsolescence, deterioration, structures below minimum code, excessive vacancies, depreciation of physical maintenance and lack of community planning.
- Three of the factors present within the Project Area are found to be present to a limited extent and are not widely distributed throughout the Project Area. These factors are dilapidation, lack of light, ventilation and sanitary facilities, and deleterious land use or layout.
- All blocks within the Project Area are not yet blighted, but because of the combination of conservation factors present within the Project Area, are detrimental to the public safety, health, morals or welfare and may become blighted.
- The Project Area includes only real property and improvements that will be substantially benefited by the proposed redevelopment project improvements.

The conclusions of the eligibility analyses indicate that the Project Area is in need of revitalization and guided growth to ensure that it will contribute to the long-term physical, economic, and social stability of the City. The analyses indicate that all blocks within the Project Area are not yet blighted areas, but are deteriorating and declining and may become blighted areas. The combination of factors present indicate that the Project Area as a whole has not been subject to growth and development through investment by private enterprise, and would not reasonably be anticipated to be developed without public action, including designating the Project Area as a redevelopment project area pursuant to the Act and adopting the use of tax increment financing to stimulate private investment.

Section III, *Eligibility Analysis and Conclusions*, contains a summary of the physical surveys conducted within the Project Area and the conclusions of the eligibility analyses undertaken to assist the City in determining whether the Project Area qualifies for designation as a redevelopment project area and use of tax increment financing pursuant to the Act.

## II. BASIS FOR REDEVELOPMENT

The Illinois General Assembly made two key findings in adopting the Act:

1. That there exists in many municipalities within the State blighted and conservation areas; and
2. That the eradication of blighted areas and the treatment and improvement of conservation areas by redevelopment projects are essential to the public interest.

These conclusions were made on the basis that the presence of blight or conditions which lead to blight are detrimental to the safety, health, welfare and morals of the public.

To ensure that the exercise of these powers is proper and in the public interest, the Act also specifies certain requirements which must be met before a municipality can proceed with implementing a redevelopment project. One of these requirements is that the municipality must demonstrate that a prospective redevelopment project qualifies either as a "blighted area" or as a "conservation area" within the definitions for each set forth in the Act (in Section 11-74.4-3). These definitions are listed below.

As set forth in the Act, a "redevelopment project area" means an area designated by the municipality which is not less in the aggregate than 1½ acres, and in respect to which the municipality has made a finding that there exist conditions which cause the area to be classified as an industrial park conservation area or a blighted area or a conservation area, or a combination of both blighted and conservation areas. The Project Area exceeds the minimum acreage requirements of the Act.

### ELIGIBILITY OF A BLIGHTED AREA

A blighted area may be either improved or vacant. If the area is improved (*e.g.*, with industrial, commercial and residential buildings or improvements), a finding may be made that the area is blighted because of the presence of a combination of five or more of the following fourteen factors:

- Age
- Dilapidation
- Obsolescence

- Deterioration
- Illegal use of individual structures
- Presence of structures below minimum code standards
- Excessive vacancies
- Overcrowding of structures and community facilities
- Lack of ventilation, light, or sanitary facilities
- Inadequate utilities
- Excessive land coverage
- Deleterious land-use or lay-out
- Depreciation of physical maintenance
- Lack of community planning.

If the area is vacant, it may be found to be eligible as a blighted area based on the finding that the sound growth of the taxing districts is impaired by one of the following criteria:

- A combination of two or more of the following factors: obsolete platting of the vacant land; diversity of ownership of such land; tax and special assessment delinquencies on such land; flooding on all or part of such vacant land; deterioration of structures or site improvements in neighboring areas adjacent to the vacant land.
- The area immediately prior to becoming vacant qualified as a blighted improved area.
- The area consists of an unused quarry or unused quarries.
- The area consists of unused railyards, rail tracks or railroad rights-of-way.
- The area, prior to the area's designation, is subject to chronic flooding which adversely impacts on real property which is included in or in proximity to any improvement on real property which has been in existence for at least five years and which substantially contributes to such flooding.
- The area consists of an unused disposal site, containing earth, stone, building debris or similar material, which were removed from construction, demolition, excavation or dredge sites.
- The area is not less than 50 nor more than 100 acres and 75% of which is vacant, notwithstanding the fact that such area has been used for commercial agricultural purposes within five years prior to the designation of the redevelopment project area, and which area meets at least one of the factors itemized in the first bullet item above for a vacant blighted area, and the area has been designated as a town or village center by ordinance or comprehensive plan adopted prior to January 1, 1982, and the area has not been developed for that designated purpose.

## ELIGIBILITY OF A CONSERVATION AREA

A conservation area is an improved area in which 50 percent or more of the structures in the area have an age of 35 years or more and there is a presence of a combination of three or more of the fourteen factors listed below. Such an area is not yet a blighted area, but because of a combination of three or more of these factors, the area may become a blighted area.

- Dilapidation
- Obsolescence
- Deterioration
- Illegal use of individual structures
- Presence of structures below minimum code standards
- Abandonment
- Excessive vacancies
- Overcrowding of structures and community facilities
- Lack of ventilation, light, or sanitary facilities
- Inadequate utilities
- Excessive land coverage
- Deleterious land-use or lay-out
- Depreciation of physical maintenance
- Lack of community planning.

While the Act defines a blighted area and a conservation area, it does not define the various factors for each, nor does it describe what constitutes the presence or the extent of presence necessary to make a finding that a factor exists. Therefore, reasonable criteria should be developed to support each local finding that an area qualifies as either a blighted area or as a conservation area. In developing these criteria, the following principles have been applied:

1. The minimum number of factors must be present and the presence of each must be documented;
2. For a factor to be found present, it should be present to a meaningful extent so that a local governing body may reasonably find that the factor is clearly present within the intent of the Act; and
3. The factors should be reasonably distributed throughout the redevelopment project area.

It is also important to note that the test of eligibility is based on the conditions of the Project Area as a whole; it is not required that eligibility be established for each and every property in the Project Area. While it may be concluded that the mere presence of the minimum number of the stated factors may be sufficient to make a finding of conservation or blight, the evaluation contained in the

Eligibility Study was made on the basis that the conservation or blighting factors must be present to an extent which would lead reasonable persons to conclude that public intervention is appropriate or necessary. Secondly, the distribution of conservation or blighting factors throughout the Project Area must be reasonable so that basically good areas are not arbitrarily found to be conservation areas or blighted simply because of proximity to areas which are conservation or blighted areas.

### III. ELIGIBILITY ANALYSIS AND CONCLUSIONS

RMCA and TPAP conducted various surveys within the Project Area of existing conditions and land uses. Figure 2, *Existing Land Uses*, illustrates the various existing land uses within the Project Area. In conducting the surveys, Project Area conditions were documented and tabulated by the types of conservation factors listed in the Act. An analysis was made of each of the conservation area factors to determine the locations and extent to which each of the factors are present in the Project Area. Listed below are the types of surveys and analyses conducted by RMCA and TPAP.

1. Exterior survey of the condition and use of each building;
2. Interior building survey of 24 of the 33 buildings within the Project Area (interior access for 9 buildings was not available);
3. Site surveys of streets, alleys, sidewalks, curbs and gutters, lighting, parking facilities, landscaping, fences and walls, and general property maintenance;
4. Analysis of existing uses and their relationships;
5. Comparison of interior and exterior building conditions to property maintenance codes of the City;
6. Analysis of current parcel configuration and building size and layout;
7. Analysis of vacant sites and vacant buildings;
8. Analysis of building permits issued for the Project Area from January 1993 through May 1998;
9. Analysis of code violations recorded for the Project Area from January 1993 through May 1998; and
10. Review of previously prepared plans, transportation policies, studies and data.

Figure 3, *Interior/Exterior Survey Form*, presents the survey form used to record building conditions. An exterior survey was conducted on all 33 buildings located within the Project Area and an interior inspection was conducted on 24 buildings which RMCA and TPAP were able to gain sufficient access to conduct interior surveys.

### BUILDING CONDITION SURVEY FORM

<b>A. NAME OF ESTABLISHMENT/ OCCUPANTS</b>	<b>B. PROJECT CLIENT/NAME</b>	BLOCK NO	PARCEL	BLDG. NO.	HEIGHT	CONST	BUILDING NAME
	<b>OWNER/OCCUPANT/CONTACT</b>	<b>ADDRESS</b>				<b>DATE OF SURVEY</b>	<b>SURVEYOR(S)</b>

C. STRUCTURAL DEFECTS - DEGREE AND LOCATION				
FLR(S)	NO. UNITS	NO. OCC.	ACTIV.	
1				LOOSE MATERIAL TYPE OF MATERIAL
2				MISSING MATERIAL LOCATION
3				HORN WEATHERED LOCATION
4				SPALLING WEATHERED LOCATION
				CRACKING LOCATION
				CRACKS LOCATION
				HOLES LOCATION
				WATER PENETRATION LOCATION
				SETTLING LOCATION
				OUT-OF-PLUMB LOCATION
				BOWING LOCATION
				SAGGING LOCATION
				WEAKS LOCATION
				LACK OF SUPPORT LOCATION
				SLOPING LOCATION
				HEAVING LOCATION
				FIRE DAMAGED LOCATION
				IMPROPERLY DAMAGED LOCATION
				INFESTATION LOCATION
				CONST.(SIZE) LOCATION
				DETERIORATING LOCATION
				COMPONENT RATING LOCATION
U				

PRIMARY COMPONENTS									
EXTERIOR WALLS AND STRUCTURE									
EXTERIOR FOUNDATION A/G									
EXTERIOR ROOF-STRUCTURE									
EXTERIOR COLUMNS									
INTERIOR FOUNDATION									
INTERIOR LOAD-BEARING WALLS/COLUMNS									
INTERIOR FLOORS/STRUCTURE									
INTERIOR ROOF STRUCTURE									
SECONDARY COMPONENTS									
DOORS, FRAMES, SILLS, HEADERS, TRIM									
WINDOWS, STOREFRONTS, SASH, FRAMES, SILLS, TRIM									
EXTERIOR STAIRS, STEPS, FIRE ESCAPES, STRUCTURES									
EXTERIOR CEILINGS, CANOPIES									
CHIMNEYS, STACKS									
GUTTERS, DOWNSPOUTS									
CORNICE, APPURTENANCES, DECORATIVE TRIM									
INTERIOR FLOOR COVERING									
INTERIOR NON-BEARING WALLS, CEILINGS									
INTERIOR STAIRS, RAILINGS, BANISTERS									

Figure 3a  
Interior/ Exterior Survey



D. MECHANICAL SYSTEMS DEFECTS - DEGREE AND LOCATION														E. CODE RELATED CONDITIONS - COMPLIANCE			CODES			
OBsolete FIXTURES	LACKING IN AREAS	INADEQUATE SERVICE	MISSING PARTS	LEAKING	CORROSION/RUSTING	LOCATION EXPOSED	ROOF DISTRIBUTION	IMPROPER CONNECT	IMPROPER LOCATION	DETERIORATING	LOCATION	RATING								
PLUMBING														TRAVEL, EXITS, STAIRS						
-DRAINAGE														ROOM LAYOUT, CEILING HEIGHT						
-WATER SUPPLY														LIGHT/VENT						
-FIXTURES														FIRE SAFETY						
ELECTRICAL														SANITARY CONDITIONS						
-SERVICE/SUPPLY														ELECTRICAL						
-WIRING														PLUMBING						
-FIXTURES/OUTLETS														HEATING						
HEATING/HVAC														SPRINKLERS						
-FURNACE/BOILER/COMPR.														F. FINAL BUILDING RATING		TABULATION OF DEFECTS		1	2	3
-DUCTS/PIPING/VENTS														SOUND		PRIMARY COMPONENTS				
-DISTRIBUTION														DEFICIENT-MINOR REPAIR		SECONDARY COMPONENTS				
ELEVATORS														DEFICIENT-MAJOR REPAIR		MECHANICAL SYSTEMS				
-MECHANICAL EQUIPMENT														STRUCT. SUBSTANDARD		TOTAL				
-TYPE/SIZE/ADEQUACY														FIELD EVALUATION		ACCESS. BLDG(S)				
G. ELIGIBILITY FACTORS														EXTERIOR SURVEY		OFF STR. PARKING				
AGE														INCOMPL. SURVEY		LOADING				
														PHOTOS - COMMENTS - SKETCHES						
1. DILAPIDATION														YES	NO	EXTENT				
2. OBSOLESCENCE																				
3. DETERIORATION																				
4. ILLEGAL USE OF INDIVIDUAL STRUCTURES																				
5. PRESENCE OF STRUCTURES BELOW MINIMUM CODE STANDARDS																				
6. ABANDONMENT																				
7. EXCESSIVE VACANCIES																				
8. OVERCROWDING OF STRUCTURES OR COMMUNITY FACILITIES																				
9. LACK OF VENTILATION, LIGHT OR SANITARY FACILITIES																				
10. INADEQUATE UTILITIES																				
11. EXCESSIVE LAND COVERAGE																				
12. DELETERIOUS LAND-USE OR LAYOUT																				
13. DEPRECIATION OF PHYSICAL MAINTENANCE																				
14. LACK OF COMMUNITY PLANNING																				

Figure 3b  
Interior/ Exterior Survey

Summarized below are a summary of the physical surveys conducted within the Project Area, and a summary of the eligibility analyses conducted for each of the 14 conservation area factors listed in the Act. The conditions that exist and the relative extent to which each factor is present in the Project Area are described. A factor noted as not present indicates either that no information was available or that no evidence could be documented as part of the various surveys and analyses. A factor noted as present to a limited extent indicates that conditions exist which document that the factor is present, but that the distribution or impact of the conservation or blight condition is limited. Finally, a factor noted as present to a major extent indicates that conditions exist which document that the factor is present throughout major portions of the block, and that the presence of such conditions has a major adverse impact or influence on adjacent and nearby development.

#### **A. AGE**

Age is a prerequisite factor in determining an area's qualification for designation as a conservation area. Age presumes the existence of problems or limiting conditions resulting from normal and continuous use of structures over a period of years. Since building deterioration and related structural problems can be a function of time, temperature, moisture and level of maintenance over an extended period of years, structures which are 35 years or older typically exhibit more problems and require greater maintenance than more recently constructed buildings. Furthermore, a serious concern exists for the presence of asbestos containing materials (ACM) and lead-based paint (LBP). Any thermal system insulation or surfacing material, such as floor and ceiling tiles, present in a building constructed before 1981 (17 years old) is likely to contain asbestos, and any building constructed before 1978 (20 years old) is likely to contain lead-based paint.

#### **Conclusion**

Of the 33 buildings within the Project Area, 30, or 91 percent, are 35 years of age or older. The Project Area meets the conservation area prerequisite that more than 50 percent of the structures are 35 years of age or older.

Figure 4, *Age*, illustrates the location of all buildings in the Project Area which are more than 35 years of age. This factor is widely distributed throughout the Project Area.

## B. DILAPIDATION

Dilapidation refers to advanced disrepair of buildings and site improvements. Webster's New Collegiate Dictionary defines "dilapidate," "dilapidated" and "dilapidation" as follows:

- *Dilapidate*, "... to become or cause to become partially ruined and in need of repairs, as through neglect."
- *Dilapidated*, "... falling to pieces or into disrepair; broken down; shabby and neglected."
- *Dilapidation*, "... dilapidating or becoming dilapidated; a dilapidated condition."

To determine the existence of dilapidation, an assessment was undertaken of all buildings within the Project Area. The process used for assessing building conditions, the standards and criteria used for evaluation, and the findings as to the existence of dilapidation are presented below.

The building condition analysis is based on exterior building inspections undertaken during May, June, and July of 1998. In addition, interior surveys of 24 buildings were conducted.

### 1. Building Components Evaluated.

During the field survey, each component of a building was examined to determine whether it was in sound condition or had minor, major, or critical defects. Building components examined were of three types:

#### Primary Structural

These include the basic elements of any building: foundation walls, load bearing walls and columns, roof and roof structure.

#### Secondary Components

These components are generally secondary to the primary structural components and are necessary parts of the building, including porches and steps, windows and window units, doors and door units, chimneys, gutters and downspouts.

#### Mechanical Components

The mechanical systems found in a building include plumbing, electrical, heating and elevator systems. Although less frequently encountered in buildings in residential areas, air conditioning and ventilation, and fire protection systems are also building systems. Since the functions of the mechanics in any building are unlike the functions of primary or secondary structural components and have dissimilar defects, the building systems are evaluated in terms of ten common deficiencies. The ten common defects used for evaluation are; lacking (non-existence of a building system), inadequate service, obsolete, missing parts, leaking, exposed (unprotected surfaces), poor distribution, improper location, improper connections, and deterioration.

Each primary, secondary, and mechanical component (when possible) was evaluated separately as a basis for determining the overall condition of individual buildings. This evaluation considered the relative importance of specific components within a building, and the effect that deficiencies in the various components have on the remainder of the building.

## **2. Building Rating Classifications**

Based on the evaluation of building components, each building was rated and classified into one of the following categories:

### Sound

Buildings which contain no defects, are adequately maintained, and require no treatment outside of normal maintenance as required during the life of the building.

### Deficient

Buildings which contain defects (loose or missing material or holes and cracks) over either limited or widespread areas which may or may not be correctable through the course of normal maintenance (depending on the size of the building or number of buildings in a large complex). Deficient buildings contain defects which, in the case of limited or minor defects, clearly indicate a lack of or a reduced level of maintenance. In the case of major defects, advanced defects are present over widespread areas, perhaps including mechanical systems, and would require major upgrading and significant investment to correct.

### Dilapidated

Buildings which contain major defects in primary and secondary components and mechanical systems over widespread areas and within most of the floor levels. The defects are so serious and advanced that the building is considered to be substandard, requiring improvements or total reconstruction which may either be infeasible or difficult to correct.

## **Conclusion**

Of the 33 buildings within the Project Area, one (1) building is in a substandard (dilapidated) condition. The factor of dilapidation of buildings is present to a limited extent in the Project Area. Figure 5, *Dilapidation*, illustrates the location of the substandard building in the Project Area.

Site improvement dilapidation is limited to the west border of the Project Area, including instances of major dilapidation. Major dilapidation of site improvements is generally located in two of the seventeen (17) blocks within the Project Area. Considerable improvement, including total reconstruction, is required in these blocks to eliminate dilapidation.

## C. OBSOLESCENCE

Webster's New Collegiate Dictionary defines "obsolescence" as "being out of use; obsolete." "Obsolete" is further defined as "no longer in use; disused" or "of a type or fashion no longer current." These definitions are helpful in describing the general obsolescence of buildings or site improvements in a proposed redevelopment project area. In making findings with respect to buildings, it is important to distinguish between functional obsolescence, which relates to the physical utility of a structure, and economic obsolescence, which relates to a property's ability to compete in the market place.

### Functional Obsolescence

Historically, areas have been platted and structures have been built for specific uses or purposes. The design, location, height, and space arrangement are intended for a specific occupant at a given time. Sites and buildings become obsolete when they contain characteristics or deficiencies which limit their use and marketability after the original use ceases. The characteristics may include loss in value to a property resulting from an inherent deficiency existing from poor design or layout, the improper orientation of the building on its site, *etc.*, which detracts from the overall usefulness or desirability of a property.

### Economic Obsolescence

Economic obsolescence is normally a result of adverse conditions which cause some degree of market rejection and, hence, depreciation in market values.

Site improvements, including sewer and water lines, public utility lines (gas, electric and telephone), roadways, parking areas, parking structures, sidewalks, curbs and gutters, lighting, *etc.*, may also evidence obsolescence in terms of their relationship to contemporary development standards for such improvements. Factors of obsolescence may include inadequate utility capacities, outdated designs, *etc.*

Obsolescence as a factor should be based upon the documented presence and reasonable distribution of buildings, parcels and site improvements evidencing such obsolescence.

### **1. Obsolete Building Types**

Functional or economic obsolescence in buildings, which limits their long-term use or reuse, is typically difficult and expensive to correct. Deferred maintenance, deterioration and vacancies often result, which can have an adverse effect on nearby and surrounding development and detract from the physical, functional and economic vitality of the area.

Functional obsolescence of buildings is present throughout the Project Area. The Project Area contains buildings characterized by obsolescence in 13 of the 17 blocks, fourteen blocks of which contain buildings. Characteristics observed in the obsolete buildings include the following:

- Small, narrow buildings with limited floor plates;
- Single purpose buildings designed for a specific use which are not easily adaptable or suited to other uses;
- Buildings where stairs, elevators and common hall areas occupy an excessive amount of floor space;
- Buildings with inadequate column spacing or floor plans which limit space divisions;
- Buildings with inefficient or outdated mechanical systems, including the lack of central air conditioning, small elevators or the lack of freight elevators and limited lighting;
- Buildings which lack or have limited fire and life safety provisions, and which would be difficult to upgrade to code compliance;
- Lack of or inadequate loading facilities;
- Buildings with single-pane windows and limited insulation, resulting in high energy loss;
- Lack of ADA (American with Disabilities Act) access provisions at entry areas, elevators and in bathrooms.

## 2. Obsolete Platting

The Project Area was originally platted before the turn of the century, and is characterized by obsolete platting. Examples include: small, narrow lots; oddly configured parcels, streets and alleys; parcels of inadequate size or shape to allow development of buildings that meet present-day development standards and market conditions; lack of off-street parking, loading and service areas; and lack of set-back provisions to permit exterior landscaping. Some blocks may still contain their original obsolete platting. However, as a result of consolidation of parcels by one owner, some problems of obsolete platting are reduced. Nevertheless, there remains nine of the nineteen blocks impacted by obsolete platting.

### Conclusion

Thirty (30) of the 33 buildings in the Project Area (91 percent) are impacted by obsolescence which limits their functional or economic use. Six (6) of the seventeen (17) blocks (or 35 percent) are impacted by obsolete platting. Overall, obsolescence is present to a limited extent in three (3) of the seventeen (17) blocks and to a major extent in eleven (11) of the seventeen (17) blocks. Obsolescence as a factor is present to a major extent in the Project Area.

Figure 6, *Obsolescence*, illustrates the location of obsolete buildings and obsolete platting in the Project Area.

## **D. DETERIORATION**

Deterioration refers to any physical deficiencies or disrepair in buildings or site improvements requiring treatment or repair.

- Deterioration may be evident in basically sound buildings containing minor defects, such as lack of painting, loose or missing materials, or holes and cracks over limited areas. This deterioration can be corrected through normal maintenance.
- Deterioration which is not easily correctable and cannot be accomplished in the course of normal maintenance may also be evident in buildings. Such buildings may be classified as minor deficient or major deficient buildings, depending upon the degree or extent of defects. Minor deficient and major deficient buildings are characterized by defects in the secondary building components (e.g., doors, windows, fire escapes, gutters and downspouts, fascia materials, etc.), and defects in primary building components (e.g., foundations, exterior walls, floors, roofs, etc.), respectively.

It should be noted that all buildings and site improvements classified as dilapidated are also deteriorated.

### **Deterioration of Alleys**

Alleys within the Project Area, specifically near the northern boundary, are badly deteriorated. Alley deterioration is characterized by broken, potholed and uneven surfaces, as well as cobblestone surfaces in disrepair, with eroding asphalt patches.

### **Deterioration of Street Pavement, Curbs and Gutters.**

Streets and sidewalks vary in their condition throughout the Project Area. The entire Project Area is spotted by conditions of deterioration. Several streets along the northern border of the Project Area require total reconstruction. Resurfacing of several streets is required throughout the Project Area.

### **Deterioration of Buildings**

The analysis of building deterioration is based on the survey methodology and criteria described in the preceding section on "Dilapidation." Twenty-eight (28) of the thirty-three (33) buildings in the Project Area, or 85 percent, are classified as deteriorating or deteriorated, including one (1) that is dilapidated.

## **Conclusion**

Deterioration as a factor is present to a major extent in the Project Area. Twenty-eight (28) buildings, or 85 percent of the buildings within the Project Area are classified as deteriorating or deteriorated. Deterioration of site improvements is found in alleys and streets, and parking lots within the Project Area. Curbs, gutters and sidewalks are similarly deteriorated. Three blocks within the Project Area have alleys characterized as deteriorated. Nearly all alleys within the surveyed area lack adequate storm sewer drainage and 31 of 32 blocks (97%) within the Project Area contain some form of deterioration. Overall, deterioration is present to a limited extent in five (5) of the seventeen (17) blocks and to a major extent in ten (10) of the seventeen (17) blocks.

Table 1, *Summary of Building Deterioration*, summarizes building deterioration within the blocks containing buildings in the Project Area. Figure 7, *Deterioration*, illustrates the location of deterioration within the Project Area.

### **E. ILLEGAL USE OF INDIVIDUAL STRUCTURES**

Illegal use of individual structures refers to the presence of uses or activities which are not permitted by law.

## **Conclusion**

No illegal uses of individual structures were evident from the field surveys conducted.

### **F. PRESENCE OF STRUCTURES BELOW MINIMUM CODE STANDARDS**

Structures below minimum code standards include all structures which do not meet the standards of subdivision, building, housing, property maintenance, fire, or other governmental codes applicable to the property. The principal purposes of such codes are to require buildings to be constructed so that they will be strong enough to support the loads expected, to be safe for occupancy against fire and similar hazards, and/or to establish minimum standards essential for safe and sanitary habitation. Structures below minimum code are characterized by defects or deficiencies which threaten health and safety.

Determination of the presence of structures below minimum code standards was based upon an exterior survey of all 33 buildings and interior surveys of 24 buildings for which TPAP and RMCA could gain sufficient access. Twenty-seven (27) of the 33 buildings surveyed were found to be below minimum code standards either on the basis of code related defects on the interior, or in combination with the exterior with regards to access into the buildings.



**Table 1: Summary of Building Deterioration**

<b>Project Area</b>		<b>Building Condition</b>		
<b>Tax Block No.</b>	<b>No. Of Buildings</b>	<b>Sound</b>	<b>Deteriorated/ Deteriorating</b>	<b>Substandard/ Dilapidated</b>
339	0	0	0	0
100	0	0	0	0
105	2	1	1	0
106	1	0	1	0
107	0	0	0	0
111	7	1	6	0
113	1	0	2	0
114	1	0	1	0
115	1	0	1	0
117	2	0	1	1
118	2	0	2	0
119	8	1	7	0
120	1	1	0	0
122	1	0	1	0
126	1	0	1	0
129	2	1	1	0
130	2	0	2	0
<b>Project Area Total</b>	<b>33</b>	<b>5</b>	<b>27</b>	<b>1</b>
<b>Percent</b>	<b>100.0</b>	<b>15.2</b>	<b>81.8</b>	<b>3.0</b>

The following non-compliance conditions are examples of code violations found to be present within the Project Area:

- Lack of ADA (Americans with Disabilities Act) accessibility requirements, including accessibility into buildings, lobbies and elevators; undersized vestibules, elevators; elevators without floor identification for the visually impaired; and restrooms without proper access width and special hardware; alarms; signage; and etc.
- Ceilings in habitable areas lower than 8 feet, and exposed ceilings in fire-rated areas.
- Improper wiring, exposed wiring and junction boxes, extension cords, and old brittle cloth-cased wiring.
- Open stairs or enclosed stairs without proper B-label fire rated doors or lack of panic hardware and closers.
- Lack of or inoperable sprinkler or fire alarm systems.
- Unsanitary conditions, dusty conditions, and flammable storage in vacant or underutilized areas.
- Lack of exit signs and/or other life safety appurtenances.

The presence of code violations is further supported by code violation records maintained by the City. Information with respect to code compliance for the Project Area was provided to TPAP by the City of Chicago, Department of Buildings on buildings for which the City had issued violations during the period January 1, 1993 through May 1998. During this period, building code violations were listed by address and street name. Of the 33 buildings in the Project Area, 18, or 55 percent, were identified as being in violation of code standards.

## **Conclusion**

The factor of structures below minimum code standards is present to a major extent within the Project Area. A total of twenty-seven (27) buildings, or 82 percent of the 33 buildings in the Project Area are below minimum code standards. Overall, the presence of structures below minimum code is present to a limited extent in four (4) of the seventeen (17) blocks and to a major extent in nine (9) of the seventeen (17) blocks.

Figure 8, *Structures Below Minimum Code*, illustrates the location of buildings and site improvements which are below minimum code standards.

## G. ABANDONMENT

Abandonment as a factor applies only to conservation areas. Webster's New Collegiate Dictionary defines "abandon" as "to give up with the intent of never again claiming one's right or interest"; or "to give over or surrender completely; to desert."

### Conclusion

Based on the analysis of properties within the Project Area, abandonment as a factor is not found to be present.

## H. EXCESSIVE VACANCIES

Excessive vacancies as a factor refers to the presence of buildings or sites which are either unoccupied or not fully utilized, and which exert an adverse influence on the surrounding area because of the frequency or duration of vacancies. Excessive vacancies include properties for which there is little expectation for future occupancy or utilization.

Excessive building vacancies are found throughout the Project Area. Vacancies are especially prevalent in older, poorly maintained buildings, and buildings characterized by obsolescence. Information regarding vacancies in individual buildings was obtained from interior and exterior building surveys conducted by TPAP and RMCA.

### Conclusion

The factor of excessive vacancies is present to a major extent in the Project Area. Nineteen (19) buildings, or 58 percent of the total buildings in the Project Area contain vacancies of 20 percent or greater. In addition, there are five (5) buildings of the total 33 buildings which are totally vacant in the Project Area. Overall, excessive vacancies is present to a limited extent in seven (7) of the seventeen (17) blocks and to a major extent in five (5) of the seventeen (17) blocks.

Figure 9, *Excessive Vacancies*, illustrates the location of buildings in the Project Area which are 20 percent or more vacant.

## I. OVERCROWDING OF STRUCTURES AND COMMUNITY FACILITIES

Overcrowding of structures and community facilities refers to the utilization of public or private buildings, facilities, or properties beyond their reasonable or legally permitted capacity. Overcrowding is frequently found in buildings originally designed for a specific use and later converted to accommodate a more intensive use without adequate regard for minimum floor area requirements, privacy, ingress and egress, loading and services, capacity of building systems, etc.

### Conclusion

No conditions of overcrowding of structures and community facilities have been documented as part of the exterior or interior surveys undertaken within the Project Area.

## J. LACK OF VENTILATION, LIGHT, OR SANITARY FACILITIES

Lack of ventilation, light, or sanitary facilities refers to substandard conditions which adversely affect the health and welfare of building occupants, e.g., residents, employees, or visitors. Typical requirements for ventilation, light, and sanitary facilities include:

- Adequate mechanical ventilation for air circulation in spaces/rooms without windows, i.e., bathrooms, and rooms that produce dust, odor or smoke;
- Adequate natural light and ventilation by means of skylights or windows, proper window sizes, and adequate room area to window area ratios; and
- Adequate sanitary facilities, i.e., garbage storage/enclosure, bathroom facilities, hot water, and kitchens.

### Conclusion

The factor of lack of ventilation, light, or sanitary facilities is present to a minor extent in the Project Area. A total of 5 buildings, or 15 percent of the 33 buildings in the Project Area are below ventilation, light, and/or sanitary standards. Overall, lack of ventilation, light, or sanitary facilities is present to a limited extent in one (1) of the seventeen (17) blocks and to a major extent in two (2) of the seventeen (17) blocks.

Figure 10, *Lack of Ventilation, Light, or Sanitary Facilities*, illustrates the location of buildings in the Project Area which exhibit this factor.

## **K. INADEQUATE UTILITIES**

Inadequate utilities refers to deficiencies in the capacity or condition of utilities which service a property or area, including, but not limited to, storm drainage, water supply, electrical power, streets, sanitary sewers, gas and electricity.

### **Conclusion**

No determination of existing utilities and conditions of inadequate utilities has been documented as part of the surveys and analyses undertaken within the Project Area.

## **L. EXCESSIVE LAND COVERAGE**

Excessive land coverage refers to the over-intensive use of land by buildings or facilities than can reasonably be accommodated by the site and supporting public infrastructure. Excessive land coverage can be manifested by various physical factors including, but not limited to, improperly situated buildings, parcels of inadequate size or shape, inadequate provisions for off-street parking, loading and service areas, and inadequate ingress/egress. One or several of these factors can result in insufficient provision for light and air, increased threat of the spread of fires due to close proximity of buildings, traffic circulation conflicts along public rights-of-way, improperly parked or illegally parked vehicles, and excessive vacancies due to inadequate loading and service areas for tenants.

While existing lot sizes, lot coverages, off-street parking and loading provisions, and building setback and yard requirements may not comply with the current zoning practices of the City, the Project Area developed prior to existing zoning requirements, and are similar to other older, developed sections of the downtown area.

### **Conclusion**

No determination of excessive land coverage has been documented as part of the survey and analyses undertaken within the Project Area. However, many of the blighting factors that often result from excessive land coverage are found to be present throughout the Project Area.

## M. DELETERIOUS LAND-USE OR LAYOUT

Deleterious land-uses include all instances of incompatible land-use relationships, buildings occupied by inappropriate mixed uses, and uses which may be considered noxious, offensive or otherwise environmentally unsuitable.

Deleterious layout includes oddly configured buildings by themselves or in relation to other buildings. Also, deleterious layout includes improper or obsolete platting of the land, inadequate street layout, and parcels of inadequate size or shape to allow development of buildings that meet present-day development standards and market conditions, including the provision of off-street parking, floor areas and internal circulation to accommodate modern office configurations, off-street loading and service areas and landscape provisions.

### Conclusion

The factor of deleterious land use or layout is present to a minor extent in the Project Area. A total of 10 buildings, or 30 percent of the 33 buildings in the Project Area are found to be deleterious in land use. A total of seven (7) blocks, or 47 percent of the seventeen (17) full or partial blocks contained in the Project Area are impacted by deleterious layout. The factor of deleterious layout is present to a major extent in four blocks and to a minor extent in three blocks. Overall, deleterious land use or layout is present to a limited extent in eight (8) of the seventeen (17) blocks.

Figure 11, *Deleterious Land-Use or Layout*, illustrates the location of the presence of deleterious land-use and layout.

## N. DEPRECIATION OF PHYSICAL MAINTENANCE

Depreciation of physical maintenance refers to the deferred maintenance of buildings, parking areas and public improvements such as alleys, sidewalks and streets.

The presence of this factor within the Project Area includes:

- Buildings. Of the 33 buildings in the Project Area, 18 suffer from deferred maintenance of windows, doors, store fronts, exterior walls, cornices, fire escapes, steps, loading docks, fascias or mechanical systems.
- Streets, alleys, sidewalks, curbs and gutters. Depreciation of physical maintenance of streets, alleys, sidewalks, curbs and gutters is located throughout the Project Area, with the greatest concentration in the western portion of the Project Area.
- Parking surface and site surface areas. Depreciation of physical maintenance of parking surface and site surface areas is located throughout the Project Area, with the greatest concentrations in the western portion of the Project Area.

## **Conclusion**

The depreciation of physical maintenance of buildings and site improvements as a factor is present to a major extent in the Project Area. Eighteen (18) or 55 percent of buildings and approximately 50 percent of site improvements suffer from deferred maintenance. Overall, depreciation of physical maintenance is present to a limited extent in three (3) of the seventeen (17) blocks and to a major extent in nine (9) of the seventeen (17) blocks.

Figure 12, *Depreciation of Physical Maintenance*, illustrates the location of the presence of depreciation of physical maintenance in the Project Area.

## **O. LACK OF COMMUNITY PLANNING**

With very few exceptions, most of the blocks were platted and buildings were constructed in the Project Area prior to the existence of the City's plans which are referenced in the Redevelopment Plan, to which this Eligibility Study is attached. The Project Area was originally platted and developed on a parcel-by-parcel and building-by-building basis, with little evidence of coordination and planning among buildings and adjacent land-use activities. Lack of community planning prior to development has contributed to some of the problem conditions which characterize the overall Project Area.

The overall Project Area is characterized by blocks containing a mix of building sizes, configurations and types which were constructed during different time frames. Blocks with oddly configured structures and parcels have created under-utilized areas, oddly configured alleys and parking surfaces, inadequate loading and service areas, and inadequate placement or provisions of parking and community facilities.

## **Conclusion**

The factor of lack of community planning is present to a major extent throughout the Project Area.

## IV. DETERMINATION OF PROJECT AREA ELIGIBILITY

### CONSERVATION AREA

The Project Area meets both the minimum size and building age requirements of the Act for designation as a "conservation area." The Project Area contains approximately 41.3 acres which exceeds the minimum size requirement of 1 and 1/2 acres. Additionally, 30 of the 33 buildings (or 91 percent) in the Project Area are 35 years or older, thereby exceeding the 50 percent requirement contained in the Act.

In addition to age, nine (9) of the fourteen (14) factors are present in the Project Area and six (6) of those factors are present to a major extent and are reasonably distributed throughout the Project Area. The nine (9) factors present within the Project Area are listed below, and those that are present to a major extent and reasonably distributed are indicated by an asterisk.

1. Dilapidation
2. Obsolescence \*
3. Deterioration \*
4. Structures below minimum code standards \*
5. Excessive vacancies \*
6. Lack of light, ventilation, and sanitary facilities
7. Deleterious land-use
8. Depreciation of physical maintenance \*
9. Lack of Community Planning \*

*\* Indicates that the conservation factor is present to a major extent and reasonably distributed throughout the Project Area.*

None of the blocks within the Project Area are blighted. However, they are deteriorating and declining and may become blighted. A summary of conservation factors by block is contained in Table 2, *Distribution of Conservation Factors* and in Figure 13, *Summary of Conservation Factors*.

The eligibility findings indicate that the Project Area is in need of revitalization and guided growth to ensure that it will contribute to the long-term physical, economic, and social well-being of the City. The Project Area is deteriorating and declining. All factors indicate that the Project Area as a whole has not been subject to growth and development through investment by private enterprise, and would not reasonably be anticipated to be developed without public action.



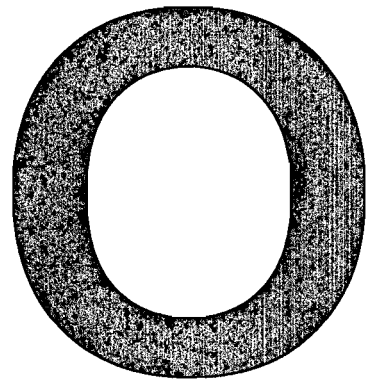
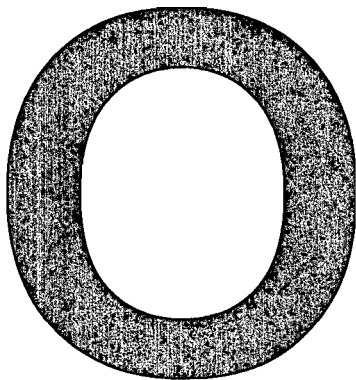
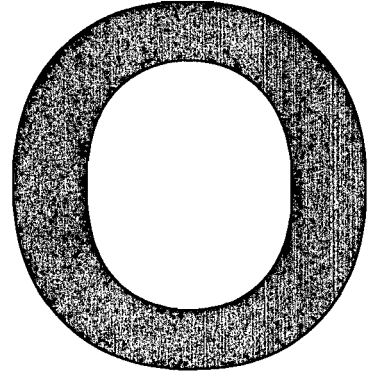
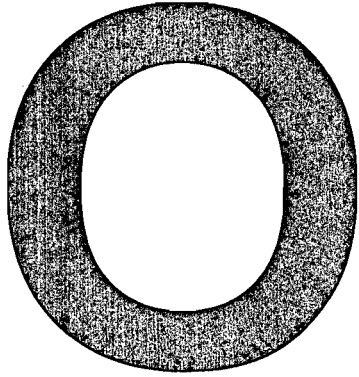
**Table 2: Distribution of Conservation Factors**

<u>Conservation Factors</u>	<u>BLOCK NUMBERS</u>								
	<u>100</u>	<u>105</u>	<u>106</u>	<u>107</u>	<u>111</u>	<u>113</u>	<u>114</u>	<u>115</u>	<u>117</u>
<b>Age</b>		■	■		■	■	■		■
<u>Other Factors</u>									
1. Dilapidation									□
2. Obsolescence	□	■	■	■	■	■	■	■	■
3. Deterioration	□	□	■	□	■	■	■	■	■
4. Illegal use of individual structures									
5. Structures below minimum code		■	■		■	■	■	□	■
6. Abandonment									
7. Excessive vacancies		□	■		□	■	■	■	□
8. Overcrowding of structures and community facilities									
9. Lack of ventilation, light or sanitary facilities						■			
10. Inadequate utilities									
11. Excessive land coverage									
12. Deleterious land-use or layout	□		□	■	□				
13. Depreciation of physical maintenance	□		■	□	□	■	■	■	■
14. Lack of community planning	■	■	■	■	■	■	■	■	■
Not present or not examined □ Present to a limited extent ■ Present to a major extent									

Continued

**Table 2: Distribution of Conservation Factors**

<u>Conservation Factors</u>	<u>BLOCK NUMBERS</u>							
	<u>118</u>	<u>119</u>	<u>120</u>	<u>122</u>	<u>126</u>	<u>129</u>	<u>130</u>	<u>339</u>
Age		■	■			■	■	■
<u>Other Factors</u>								
1. Dilapidation								□
2. Obsolescence		■	■		□	■	□	■
3. Deterioration		■	■		■	□	□	■
4. Illegal use of individual structures								
5. Structures below minimum code		■	■	□		□	□	■
6. Abandonment								
7. Excessive vacancies		□	□	□			□	■
8. Overcrowding of structures and community facilities								
9. Lack of ventilation, light or sanitary facilities			□					■
10. Inadequate utilities								
11. Excessive land coverage								
12. Deleterious land-use or layout			□		□		□	
13. Depreciation of physical maintenance		■	■		■			■
14. Lack of community planning		■	■	■	■	■	■	■
<p>Not present or not examined</p> <p>□ Present to a limited extent</p> <p>■ Present to a major extent</p>								



550 ADAMS LLC

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT D**

**NOTICE OF PROPOSED APPROVED SUCCESSOR  
[FORM OF NOTICE OF PROPOSED APPROVED SUCCESSOR]  
[USG'S LETTERHEAD]  
[DATE]**

BY MESSENGER

City of Chicago  
Department of Planning and Development  
121 North LaSalle Street, Room 1000  
Chicago, IL 60602  
Attention: Commissioner

City of Chicago  
Department of Law  
Finance and Economic Development Division  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

Re: Notice of Proposed Approved Successor  
550 West Adams Street Project Redevelopment Agreement

Dear Commissioners:

This letter is written pursuant to the 550 West Adams Street Project Redevelopment Agreement dated \_\_\_\_\_, 2004 (the "Agreement") and constitutes the written notice of USG Corporation ("USG") of an impending [[merger]] [[consolidation]] [purchase of all or substantially all of the assets or stock] involving USG and [[INSERT NAME OF OTHER PARTY]]. Upon the completion of such [[merger]] [[consolidation]] [[purchase]], [[INSERT NAME OF PROPOSED APPROVED SUCCESSOR]] shall have succeeded to all or a majority of the business or assets of USG (or both). A summary of the principal terms of the proposed [[merger]] [[consolidation]] [[purchase]], as contained in information available in publicly-available filings, is attached hereto as Schedule 1. If the City has further questions concerning the proposed [[merger]] [[consolidation]] [[purchase]], such questions should be directed to [INSERT NAME, ADDRESS, AND PHONE NUMBER OF PERSON TO BE CONTACTED].

Sincerely yours,  
[USG SIGNATURE BLOCK]

**Schedule 1**

**[Attach Summary of Principal Terms]**

**Schedule 2 to Exhibit I**

[FORM OF CERTIFICATION BY PROPOSED APPROVED SUCCESSOR]

[LETTERHEAD OF PROPOSED APPROVED SUCCESSOR]

[DATE]

BY MESSENGER

City of Chicago  
Department of Planning and Development  
121 North LaSalle Street, Room 1000  
Chicago, IL 60602  
Attention: Commissioner

City of Chicago  
Department of Law  
Finance and Economic Development Division  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

Re: 550 West Adams Street Project Redevelopment Agreement  
Certification by Proposed Approved Successor

Dear Commissioners:

This letter is written pursuant to the 550 West Adams Street Project Redevelopment Agreement dated \_\_\_\_\_, 2004 (the "Agreement") and constitutes the written certification of the undersigned, that, with the consummation of the [[merger]] [[consolidation]] [[purchase of all or substantially all of the assets or stock]] involving USG Corporation and [[INSERT NAME OF OTHER PARTY]], it has succeeded to all or a majority of the business or assets of USG (or both). A summary of the principal terms of the proposed [[merger]] [[consolidation]] [[purchase]], as contained in information available in publicly-available filings, is attached hereto.

Pursuant to the Redevelopment Agreement, and with the understanding that the City will be relying upon such certifications, the undersigned hereby certifies as follows:

(1) it has received and reviewed a true, correct and complete copy of the Agreement and the Redevelopment Plan, including the Limited Joinder executed by USG (collectively, the "**TIF Agreements**");

(2) it acknowledges and agrees that it shall be bound by, and hereby covenants to comply with, the terms, conditions, covenants, representations and warranties set forth in the TIF Agreements which, by their terms, are binding upon USG;

(3) neither the undersigned, nor any affiliated person or entity controlling, controlled by or under common control with the undersigned, nor any person identified in the organizational chart depicting the undersigned's ownership being delivered to the City simultaneously herewith<sup>1</sup> (the "**Successor Parties**"), is (a) in violation of any City laws, regulations and requirements (including, without limitation, any "anti-scofflaw" laws); (b) in default under any other written agreements between any such person or entity and the City, or (c) delinquent in the payment of any amounts due to the City or the State of Illinois;

(4) the undersigned is qualified to do business in the State of Illinois and has obtained all qualifications, licenses and approvals required by the City of Chicago and State of Illinois in order to do business;

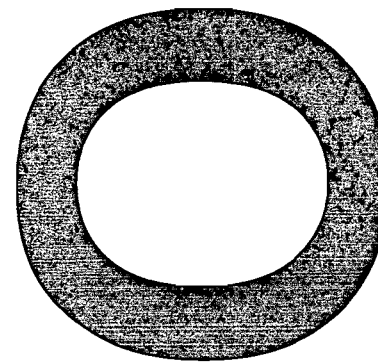
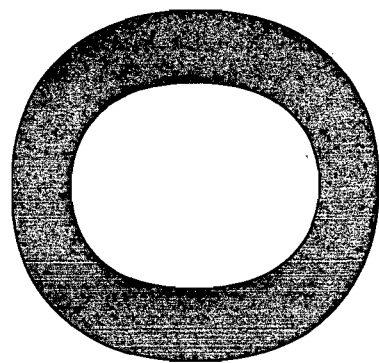
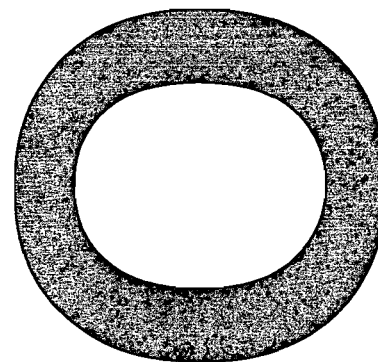
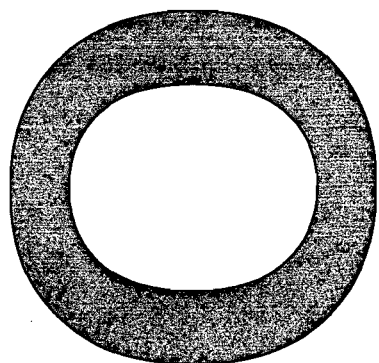
(5) not less than 500 FTEs (as defined in the Redevelopment Agreement) are employed in the City (and not less than 450 FTEs are employed at the Building) in corporate office jobs in the City accordance with the terms of the Agreement.

If the City has further questions, such questions should be directed to [INSERT NAME, ADDRESS, AND PHONE NUMBER OF PERSON TO BE CONTACTED].

[SIGNATURE BLOCK]

---

<sup>1</sup> If the undersigned is a publicly-traded entity, such chart need only identify legal entities that own 10% or more of such entity's ownership interests, and the certification in clause (3) shall only apply to such 10% owners.





**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT E**

**PROJECT BUDGET**

A project budget is attached to this exhibit cover sheet.

EXHIBIT E  
PROJECT BUDGET

LAND	
Land Cost	7,500,000
Sub-Total	7,500,000
LAND & BUILDING DEVELOPMENT COSTS	
Site & Building Costs - GMP	46,677,118
Multi-Tenant Corridors	140,000
Owners Hard Costs	320,000
Miscellaneous	100,000
Sub-Total	47,237,118
TENANT INSTALLATION BUDGET	
USG Office Space	35,642,916
Sub-Total	35,642,916
SOFT COSTS/INTEREST/CONTINGENCY	
Construction Loan Interest	7,909,764
Mezzanine Loan Interest	3,684,771
Developer Fee	2,691,800
Architects & Engineers	2,100,000
Project Contingency	2,180,000
Construction Mgmt. Fee	769,086
Fees/Permits	375,000
Misc/ Testing & Consultants	325,000
Legal Fees - Ownership Closing/Loan/Zoning	325,000
Construction Insurance	250,000
Construction Taxes	225,000
Working Capital/Pre-Closing Interim Deficits	200,000
Closing Costs - Construction Loan	170,000
Joint Venture Partner Closing Costs	150,000
Post Completion Deficit Funding Req.	(912,999)
Sub-Total	20,442,422
TOTAL BASE BUILDING IMPROVEMENTS BUDGET	110,822,456

**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT E-1**

**BASE BUILDING IMPROVEMENTS BUDGET**

A base building improvements budget is attached to this exhibit cover sheet.

## EXHIBIT E-1

## BASE BUILDING IMPROVEMENTS BUDGET

LAND	
Land Cost	7,500,000
Sub-Total	<u>7,500,000</u>
LAND & BUILDING DEVELOPMENT COSTS	
Site & Building Costs - GMP	46,677,118
Multi-Tenant Corridors	140,000
Owners Hard Costs	320,000
Miscellaneous	100,000
Sub-Total	<u>47,237,118</u>
SOFT COSTS/INTEREST/CONTINGENCY	
Construction Loan Interest	7,909,764
Mezzanine Loan Interest	3,684,771
Developer Fee	2,691,800
Architects & Engineers	2,100,000
Project Contingency	2,180,000
Construction Mgmt. Fee	769,086
Fees/Permits	375,000
Misc/ Testing & Consultants	325,000
Legal Fees - Ownership Closing/Loan/Zoning	325,000
Construction Insurance	250,000
Construction Taxes	225,000
Working Capital/Pre-Closing Interim Deficits	200,000
Closing Costs - Construction Loan	170,000
Joint Venture Partner Closing Costs	150,000
Post Completion Deficit Funding Req.	(912,999)
Sub-Total	<u>20,442,422</u>
TOTAL BASE BUILDING IMPROVEMENTS BUDGET	<u><u>75,179,540</u></u>

**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT E-2**

**USG IMPROVEMENTS BUDGET**

A USG Improvements budget is attached to this exhibit cover sheet.

EXHIBIT E-2

USG IMPROVEMENTS BUDGET

HARD COSTS

Office Build Out	11,835,563
Hard Cost Contingency	2,346,378
Conference/Training Rooms	2,100,000
Base Building	1,862,000
Food Service and Cafeteria	1,525,000
IT/Computer (incl. supplemental HVAC)	448,600
Mail/File/Storage (incl. structural steel)	403,760
Exterior Signage	250,000
Hoisting	200,000
Subtotal	20,971,301

SOFT COSTS

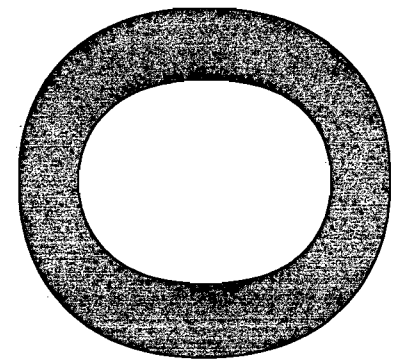
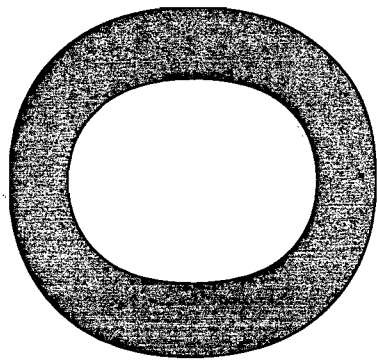
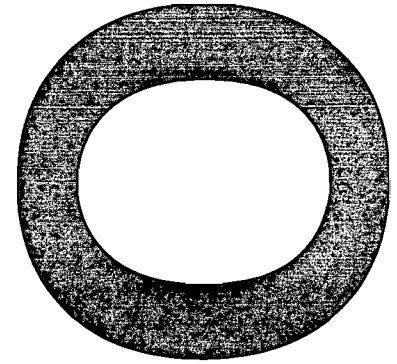
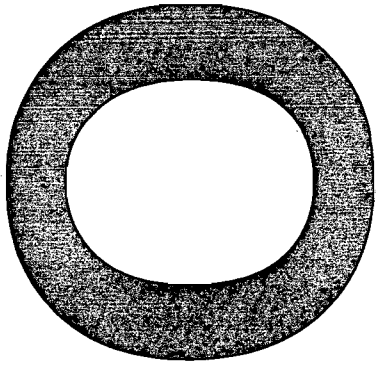
Architectural Design Services	455,800
Engineering - MEP	307,539
Landlord Fees Allowance	246,031
Project Management	221,428
Soft Cost Contingency	211,364
Permit	166,517
Reimbursables	144,860
Engineering - Structural	86,111
Subtotal	1,753,539

FF & E

Furniture	7,759,240
FF & E Contingency	1,943,202
Audio/Visual	1,500,000
Phone System	1,300,000
Security System	196,825
Kitchen Equipment - Executive Area	145,000
Signage - new	73,809
Subtotal	12,918,076

TOTAL USG IMPROVEMENTS BUDGET

35,642,916



**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT F**

**FORM OF BUILDING CONSTRUCTION CONTRACT**

A true and correct copy of the Construction Contract by and between Developer and the Building General Contractor dated October 21, 2004, together with all amendments, supplements and exhibits as of the Closing Date is attached to this exhibit cover sheet.



## CONSTRUCTION CONTRACT

**THIS CONSTRUCTION CONTRACT** (hereinafter referred to as the "Construction Contract") is made as of October 21, 2004.

BETWEEN the Owner: 550 ADAMS LLC  
c/o Fifield Realty Corp.  
20 North Wacker Drive, Suite 3200  
Chicago, Illinois 60606

and the Contractor: POWER CONSTRUCTION COMPANY, LLC  
2360 North Palmer Drive  
Schaumburg, Illinois 60173-3819.

The Project is: Construction of a new, 18-story office  
tower at 550 West Adams Street,  
Chicago, Illinois

the Architect is: DeStafano and Partners Ltd.  
455 East Illinois Street, Suite 250  
Chicago, Illinois 60610

On the basis of the foregoing and in connection with the terms and conditions hereof and other good and valuable consideration, the Owner and Contractor agree as set forth below. All capitalized terms not herein defined shall have the meanings set forth in the General Conditions of the Contract attached hereto as Exhibit "B" (hereinafter referred to as the "General Conditions of the Contract") which are by this reference incorporated herein.

### ARTICLE 1 THE CONTRACT DOCUMENTS

- 1.1 The Contract Documents consist of (i) this Construction Contract, (ii) the General Conditions of the Construction Contract; (iii) the Plans, (iv) other documents listed in Article 16 hereof; and (v) Modifications issued after execution of this Construction Contract. All of said documents form a part of the Construction Documents as if attached to this Construction Contract or repeated herein. The Construction Documents represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If any of the Contract Documents are inconsistent, this Construction Contract shall govern.

### ARTICLE 2 THE WORK OF THIS CONTRACT

- 2.1 The Contractor shall execute the entire Work as required and as can be reasonably inferred from the Contract Documents for the completed construction of an 18-story steel frame office building with a gross floor area of approximately 512,485 square feet to be constructed on the real estate described in Exhibit A attached hereto and incorporated herein.

**ARTICLE 3  
RELATIONSHIP OF THE PARTIES**

- 3.1 The Contractor accepts the relationship of trust and confidence established by this agreement and covenants with the Owner to cooperate with the Architect and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner, to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise reasonable commercial efforts to enable the Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with requirements of the Contract Documents.

**ARTICLE 4  
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 4.1 The Work shall be commenced, provided permits have been issued, no later seven (7) days after the date stipulated in the Owner's written Notice to Proceed.
- 4.2 The Contractor shall achieve Substantial Completion of the entire Work not later than nineteen (19) months after the date on which the Work is commenced as provided in Paragraph 4.1 and shall (hereinafter referred to as the "Completion Date"), subject to adjustments of the Completion Date as provided in the Contract Documents and shall Substantially Complete the First Phase, as defined in that certain Lease dated April 23, 2004, between Christiana Investors, L.L.C., and USG CORPORATION (hereinafter referred to as "USG "), which is by this reference incorporated herein (said Lease is hereinafter referred to as the "USG Lease") on or before January 1, 2006 (hereinafter referred to as the "First Phase Date ") and shall complete the Second Phase as defined in the USG Lease on or before March 1, 2006 (hereinafter referred to as the "Second Phase Date"). In addition to the foregoing, Contractor shall prosecute the work in accordance with the Construction Schedule attached as Exhibit G.
- 4.2.1 If Contractor fails to achieve Substantial Completion of the entire Work on or before the Completion Date, or if Contractor shall fail to achieve Substantial Completion of the First Phase on or before the First Phase Date, or if Contractor shall fail to achieve Substantial Completion of the Second Phase on or before the Second Phase Date Owner shall be entitled to retain or recover from Contractor, as the case may be, as liquidated damages (and not as a penalty) a sum equal to: (a) Five Thousand and No/100 Dollars (\$5,000.00) per day for each day that the Work is not complete commencing Sixty (60) days after the Completion Date, the First Phase Date or the Second Phase Date, as applicable and continuing for the next succeeding thirty (30) days thereafter, plus (b) a sum equal to Ten Thousand and No/100 Dollars (\$10,000.00) per day for each day that the Work, the First Phase or the Second Phase is not complete commencing on the ninety-first (91st) day after the Completion Date the First Phase Date or the Second Phase Date, as applicable and continuing until the actual date that the Contractor actually achieves Substantial Completion of the Work, the First Phase or the Second Phase, as applicable.
- 4.2.2 Owner may deduct the liquidated damages described in Subparagraph 4.2.1 above from any unpaid amounts then or thereafter due or which may thereafter become due

Contractor hereunder. Any liquidated damages not so deducted or retained by Owner shall be paid by Contractor to Owner promptly upon the demand by Owner together with interest from the date of demand at the rate set forth in Paragraph 13.6 of the General Conditions. Contractor shall indemnify and hold Owner harmless from and against any attorneys' fees and litigation incurred in successfully recovering any liquidated damages under this Paragraph 4.2

- 4.2.3 The liquidated damages described in Subparagraph 4.2.1 are hereby agreed to be a reasonable pre-estimate of damages arising out of the costs and expenses that Owner will incur as a result of a delay in achieving Substantial Completion of the Work by the Completion Date, which would be difficult or impossible to ascertain with certainty at the present time or at the time suit may be brought, and are further agreed not to constitute a penalty. Nothing contained in this Paragraph 4.2 shall in any way limit or waive any rights of Owner against Contractor with respect to the amount of any other special or consequential damages recoverable from Contractor that arise from the failure of Contractor to comply with the terms of the Contract Documents other than a failure of the Contractor to complete the Project by the Completion Date. In no event shall the terms and conditions of this Paragraph 4.2 be construed as a waiver by Owner, or limitation, of any other claim or right of action against Contractor under this Construction Contract, at law or in equity.

## **ARTICLE 5 CONTRACT SUM**

- 5.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Construction Contract the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Contractor's Fee determined as follows.
- 5.2 The maximum cost to the Owner to fully complete the Project, including, but not limited to, the Cost of the Work (of which one component is the General Conditions Items referred to in Paragraph 5.4) plus the Contractor's Fee is guaranteed not to exceed the sum of Forty Eight Million Two Hundred Fifty Nine Thousand Three Hundred Sixty Five Dollars and No Cents (\$48,259,365.00) (hereinafter referred to as the "Guaranteed Maximum Cost"). The Guaranteed Maximum Cost is based upon and subject to the Clarifications attached hereto as Exhibit "F". The Guaranteed Maximum Cost includes a contingency in the amount of Seven Hundred Thousand Dollars and No Cents (\$700,000.00) (hereinafter referred to as the "Contingency"). The Contingency may be used by the Contractor for cost overruns in the purchasing of Subcontracts, costs incurred to repair defective, damaged or nonconforming work executed by Contractor or any Subcontractor which are otherwise not reimbursable hereunder and other costs which are properly reimbursable as Costs of the Work, provided however any portion of the Contingency so expended shall be deemed a Cost of the Work. The Contingency may be expended only after not less than three (3) days notice to Owner of Contractor's intent to so expend such portion of the Contingency. The Guaranteed Maximum Cost includes all costs and expenses required to complete the Work in full accordance with the Contract Documents.
- 5.3 The Guaranteed Maximum Cost shall be increased or decreased as agreed to in writing by both Owner and Contractor for Changes in the Work affecting either or both of the Cost of the Work and the Contractor's Fee, as provided in Article 6. The Guaranteed Maximum Cost (nor either component thereof) shall not be increased as a result of any default or failure to perform by Contractor or any Subcontractor.

- 5.4 The Guaranteed Maximum Cost includes an amount for "General Conditions Items" as listed on Exhibit 'E'. Change Orders shall not increase the cost of the General Conditions Items unless such Change Order materially increases the Work and/or extends the Completion Date, in which event the cost of the General Conditions Items may be adjusted as same is agreed by Owner and Contractor in writing.
- 5.5 A summary of the breakdown of the components of the Guaranteed Maximum Cost is set forth in the "Project Budget" attached hereto as Exhibit 'F'. The breakdown of costs in the Project Budget is for convenience only and is not to be considered as establishing a maximum amount with respect to any individual item set forth therein.
- 5.6 Owner and Contractor agree that reimbursement for the General Conditions Items will be billed by the Contractor and paid by the Owner on the basis of actual costs, in accordance with Article 7 hereof; provided, however, that the General Conditions Items shall not be subject to retainage.
- 5.7 The Contractor's Fee (hereinafter referred to as the "Contractor's Fee") shall be One Million Two Hundred Seventy Nine Thousand Seventy Eight Dollars and No Cents (\$1,279,078.00) subject to any adjustments as set forth in Paragraph 5.9.
- 5.8 The Contractor shall be paid ninety percent (90%) of the proportional amount of the Contractor's Fee with each progress payment until the Work has been completed. The balance of the Contractor's Fee shall be paid at the time of final payment, in accordance with the provisions of Paragraph 13.1.
- 5.9 In the event of Changes in the Work causing a net increase in the Cost of the Work, if the net increase in the Cost of the Work (not including General Conditions Items) is less than One Hundred Thousand and No/100 Dollars (\$100,000.00) the Contractor's Fee shall not be adjusted. In the event that the net increase in the Cost of the Work (not including General Conditions Items) is greater than One Hundred Thousand and No/100 Dollars (\$100,000.00), the Contractor's Fee shall be adjusted upward by: (i) Three Percent (3%) of the amount by which said net increase which is not payable by USG under the USG Lease exceeds One Hundred Thousand Dollars and No Cents (\$100,000.00), or (ii) Five Percent (5%) of the amount by which the portion of said net increase which is payable by USG under the USG Lease exceeds One Hundred Thousand Dollars and No Cents (\$100,000.00).
- 5.10 In the event the Contractor has a achieved Substantial Completion on or before the Completion Date and the final Cost of the Work plus the Contractor's Fee is less than the Guaranteed Maximum Cost (as adjusted by Change Orders or by other provisions hereof, but excluding any savings in the "Owner's Design Contingency" line item in the budget), such savings (hereinafter referred to as the "Savings") shall be distributed as follows: (i) Fifty Percent (50%) to Owner and Fifty Percent (50%) to Contractor, until such time as the Contractor has received Five Hundred Thousand Dollars and No Cents (\$500,000.00) under this section; and (ii) Seventy-Five percent (75%) to Owner and Twenty-Five percent (25%) to Contractor of any remaining Savings (i.e., Savings in excess of One Million Dollars and No Cents (\$1,000,000.00)). The Contractor shall be paid its share of the Savings, if any, at the time of final payment. Reductions in the Cost of the Work as a consequence of Change Orders shall not be "Savings" hereunder and the Guaranteed Maximum Cost shall be reduced by the amount of such reductions for the purpose of determining Savings..

**ARTICLE 6  
CHANGES IN THE WORK**

- 6.1 The Owner may make changes in the Work as provided in the Contract Documents. The Contractor shall be reimbursed for changes in the Work on the basis of Cost of the Work as defined in Article 7.
- 6.2 The Contractor's Fee for changes in the Work shall be as set forth in Paragraph 5.9.

**ARTICLE 7  
COSTS TO BE REIMBURSED**

- 7.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

7.1.1 Labor Costs.

7.1.1.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior written agreement, at off-site workshops.

7.1.1.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed full-time at the site and devoted to the Work with the Owner's prior written agreement; and a fair and reasonable allocation of the wages, salaries and other employment costs of the Project Manager and the Project Accountant, based on the time devoted by the Project Manager and the Project Accountant and the to the Work, whether or not the Project Manager or the Project Accountant, or both are stationed full-time at the site.

7.1.1.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at the request of and with the prior written consent of Owner at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

7.1.1.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 7.1.1.1 through 7.1.1.3.

7.1.2 Subcontract Costs.

7.1.2.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts, which subcontracts shall be subject to the Owner's approval as required in the Contract Documents.

7.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction.

7.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

7.1.4 Transportation, rental and other costs.

7.1.4.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items owned by the Contractor shall be in accordance with Subparagraph 7.3.6 of the General Conditions.

7.1.4.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be in accordance with Subparagraph 7.3.6 of the General Conditions, and shall be subject to the Owners prior written approval.

7.1.4.3 Cost of removal of debris from the site.

7.1.4.4 Costs of telegrams and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.1.4.5 That portion of the reasonable travel and subsistence expenses of the Contractors personnel incurred at the request of and with the prior written consent of Owner while traveling in discharge of duties connected with the Work.

7.1.5 Miscellaneous Costs.

7.1.5.1 That portion directly attributable to this Construction Contract of premiums for Contractor's insurance and performance or payment bonds (or Subgard Policy) required by the Owner pursuant to the Contract Documents.

7.1.5.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Contractor is liable and which are paid by Contractor.

7.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.1.5.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Paragraph 13.5.3 of the General Conditions or

other provisions of the Contract Documents and which do not fall within the scope of Subparagraph 7.2.2 below.

7.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's written consent provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Contractor's Fee or of the Guaranteed Maximum Cost and provided that such royalties, fees and costs are not excluded by the last sentence of Paragraph 3.16.1 of the General Conditions or other provisions of the Contract Documents.

7.1.5.6 Deposits lost for causes other than the Contractor's, any Subcontractor's or Material Supplies fault or negligence.

7.1.6 Other Costs.

7.1.6.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

7.2 Emergencies: Repairs to Damaged, Defective or Nonconforming Work.

The Cost of the Work shall also include costs described in Paragraph 7.1 which are incurred by the Contractor:

7.2.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.3 of the General Conditions, unless caused by fault or neglect of the Contractor or any Subcontractor.

7.2.2 In repairing damaged Work provided such damage did not result from the fault or negligence of the Contractor or the Contractor's personnel, or any Subcontractor, and only to the extent that the cost of such repairs is not recoverable by the Contractor from others and the Contractor is not compensated therefor by insurance or otherwise.

**ARTICLE 8  
COSTS NOT TO BE REIMBURSED**

8.1 The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 7.1.1.2 and 7.1.1.3.

8.1.2 Expenses of the Contractor's principal office and offices other than the site office, including, without limitation, the services of the Contractor's purchasing, estimating and accounting departments and clerical staff, sales, legal, labor relations, safety,

insurance and tax departments and all other costs of doing business, services, and related expenses required or desired to maintain and operate such offices.

- 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.
- 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- 8.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 7.1.4.2.
- 8.1.6 Costs due to the fault or negligence of the Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- 8.1.7 Any cost not specifically and expressly described in Article 7.
- 8.1.8 Costs which would cause the Guaranteed Maximum Cost to be exceeded.

#### **ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS**

- 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (i) a prepayment or deposit is required to obtain such discount, the Owner is so advised and the Owner has deposited funds with the Contractor with which to make payments; or (ii) if no prepayment or deposit is required or the Owner is not advised of same. In circumstances other than (i) or (ii) above, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.
- 9.2 Amounts which accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### **ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS**

- 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain a minimum of three (3) bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Contractor which bid(s) will be accepted. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids; however, the Owner may not prohibit the Contractor from obtaining bids from others. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection, and should Contractor not so object in writing to Owner to any such subcontractor or material supplier so designated by Owner within thirty (30) days of such designation by



Owner, such subcontractor or material supplier shall be deemed acceptable to Contractor for all purposes.

- 10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Owner and Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may, prior to the applicable award of subcontract, require, by written notice to the Owner that a Change Order be issued to adjust the Guaranteed Maximum Cost by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
- 10.3 Subcontracts or other agreements shall conform to the requirements of the Contract Documents and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner.
- 10.4 With respect to the construction of the Project, the Contractor shall employ only Subcontractors subject to collective bargaining agreements with unions affiliated with the AFL-CIO Building Trades Department (or any successor organization).
- 10.5 In the performance of the Work, Contractor shall use its best efforts to comply with the requirements applicable to the Work of the Redevelopment Agreement for 550 West Adams Street Project dated as of October \_\_, 2004 by and between Owner, with a Limited Joinder by USG, which Redevelopment Agreement is hereby incorporated herein by this reference and each contract with any Subcontractor shall contain provisions required under Section 3.04 (Change Orders), Section 8.08 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Employment Requirement), Section 12 (Insurance) and Section 14.01 (Books and Records) thereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Costs must be provided to the Department of Planning and Development of the City of Chicago (hereinafter referred to as the "DPD") within ten (10) business days of the execution thereof. All costs of compliance incurred by Contractor shall be deemed a Cost of the Work. As a material inducement to Owner to enter into this Construction Contract, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Contractor, Contractor hereby warrants and guarantees, at its sole cost and expense to comply with the Developer's MBE/WBE Commitment as set forth in Section 10.03 of the Redevelopment Agreement. Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (hereinafter referred to as the "MBE/WBE" Program"), Section 2-92-420 et seq., Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this said Section 10.03, during the course of the construction of the Work, Contractor shall maintain at least the percentages of the Building MBE/WBE Project Budget, which shall not be less than Twenty Eight Million One Hundred Fifty One Thousand Four Hundred Thirty Nine Dollars and No Cents (\$28,151,439.00), as required in the Redevelopment Agreement required to be expended for contract participation by MBE or WBE. Contractor hereby agrees to indemnify and hold Owner harmless from and against any and all liability, claims, damages, costs and expenses incurred by Owner caused by or related to the failure of Contractor to comply with the provisions of this Section 10.5, which agreement shall survive final Substantial Completion and final payment hereunder. In pursuance of the forgoing, but not in limitation thereof:

- 10.5.1 Contractor and each Subcontractors shall pay, the prevailing wage rate as ascertained by the Illinois Department of Labor, as amended from time to time to all employees engaged in the performance of the Work and all Subcontracts 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 contracts.
- 10.5.2 Contractor agrees and shall cause all Subcontractors to agree in any Subcontract, that any Change Orders that individually or in aggregate permanently decrease the Guaranteed Maximum Cost by more than five percent (5%) percent or reduce the net rentable square footage of the Project by more than five (5%) must be submitted to and be approved by DPD for DPD's prior written approval and must state in all boldface, capitalized type: **“THIS CHANGE ORDER SEEKS AN APPROVAL FROM DPD WHICH, IF NOT APPROVED OR DISAPPROVED WITHIN 15 DAYS OF DPD’S RECEIPT, SHALL RESULT IN THE DEEMED APPROVAL OF THE CHANGE REQUESTED.”**
- 10.5.3 Contractor and all Subcontractors shall comply with the Employment Opportunity requirements of the aforesaid Redevelopment Agreement and each Subcontract shall contractually obligate each Subcontractor to so comply.
- 10.5.4 Contractor agrees and shall contractually obligate all 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 and shall make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions. Nothing contained in this Section 10.5 shall obligate Contractor or any Subcontractor to pay any fine or penalty for failure to comply with the provisions of this Section 10.5.4.

## **ARTICLE 11 ACCOUNTING RECORDS**

- 11.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s accountants shall be afforded access to the Contractor’s records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Construction Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. The Owner shall have the right to perform, or cause to be performed and, additionally, the City of Chicago shall have the right to perform, an audit of the Contractor’s accounting records during the term of this Construction Contract or during the aforesaid three-year period. Contractor shall cooperate fully with all reasonable reporting requirements of the Lender(s) and the City of Chicago.

## **ARTICLE 12 PROGRESS PAYMENTS**

- 12.1 Based upon approved Applications for Payment submitted to the Owner and the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make

progress payments, less retainage as provided in the Contract Documents, on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

- 12.2 The period covered by each approved Application for Payment shall be one calendar month ending on the last day of the month.
- 12.3 Provided an approved Application for Payment conforming with the requirements of Paragraph 12.4 is received by the Owner and the Architect not later than the seventh (7th) day of a month, the Owner shall make payment to the Contractor not later than the seventh (7th) day of the following month. If an Application for Payment is received by the Owner and the Architect after the application date noted above, payment shall be made by the Owner not later than forty-five (45) days after the Owner and the Architect receives the approved Application for Payment.
- 12.4 With each Application for Payment the Contractor shall submit the documents required pursuant to Section 9.2 of the General Conditions, and any other evidence required by the Owner, the City of Chicago, Architect and any party loaning funds to Owner in connection with the Project (hereinafter referred to as the "Lender"), all in form and substance reasonably satisfactory to Owner, showing in complete detail all moneys paid out or costs incurred by him on account of the Cost of the Work during the previous month for which he is to be reimbursed under Article 5.
- 12.5 The procedures for progress payments to the Contractor and other provisions concerning payments are set forth Article 9 of the General Conditions.
- 12.6 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
- 12.7 In taking action on the Contractor's Applications for Payment, the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to signify that the Architect or Owner have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Paragraph 12.4 or other supporting data; or that the Architect or Owner have made exhaustive or continuous on-site inspections; or that the Architect or Owner have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Construction Contract.

### **ARTICLE 13 FINAL PAYMENT**

- 13.1 The procedures for final payment to the Contractor are set forth in Article 9 of the General Conditions.

### **ARTICLE 14 MISCELLANEOUS PROVISIONS**

- 14.1 Where reference is made in this Construction Contract to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

- 14.2 Payments due hereunder not paid within fifteen (15) days of notice from Contractor to Owner that such payment is at least thirty (30) days past due shall bear interest from the date payment was due at a per annum rate equal to the prime rate of Bank One, Chicago, Illinois for 90-day unsecured loans, provided, however, that such rate shall in no event exceed the highest lawful rate of interest payable by the Contractor.
- 14.3 All payments under this agreement will be made after issuance of a current title endorsement to Owner's title insurance policy and/or any Lender's title insurance policy by the title insurance company issuing said policy(s) (hereinafter referred to as the "Title Company"). The Contractor will comply and will cause all Subcontractors to comply with all reasonable Contractor and Subcontractor requirements of the Title Company, any Lender, including, without limitation, waivers and sworn statements of Subcontractors, to enable the issuance of interim title endorsements, except in no case will Subcontractor waivers be issued on a current date basis. The Contractor agrees to submit to the Title Company all financial statements, indemnities or other undertakings necessary to obtain loan extended coverage against mechanics lien claims of the Contractor and all Subcontractors. Without limitation of the foregoing, the Contractor shall submit a sworn statement of persons furnishing material and labor before any payments are required to be made to Contractor. Failure of Title Company to issue a title endorsement on account of liens filed by persons other than Contractor, Subcontractors or persons employed by them shall not relieve Owner of its payment obligations to Contractor.
- 14.4 Contractor acknowledges that payments due hereunder may be provided by a Lender pursuant to the terms of a construction loan agreement(s). Neither this Paragraph 14.4, nor any other provision of this agreement, shall be deemed to create any contractual relationship between Contractor and any Lender except to the extent provided in the Contractor's Consent and Agreement, attached as Exhibit 'I'. Contractor agrees to comply with all reasonable requirements of Lender with respect to reports of construction and, to the extent not materially inconsistent herewith, conditions of payment and to consent to the assignment of this Agreement to Lender and execute such acknowledgments and other documents as any Lender may reasonably require, including, but not limited to, the Contractor's Consent and Agreement attached as Exhibit 'I'; however, the Contractor shall not be required to comply with any such additional requirement or execute such additional documents, where such additional requirement or the execution of such additional document would be materially inconsistent with the express terms and provisions of the Contract Documents, or any agreement attached as an Exhibit hereto. The Contractor shall fully cooperate with and provide all construction reports and notices required by the Architect or any architectural consultant of any Lender.
- 14.5 The amount by which any subcontract or purchase order is less than or greater than the amount established in the Project Budget for such sub-contract or purchase order shall be correspondingly credited to or deducted from "Buy-out Savings". The net Buy-out Savings shall be available to the Contractor to pay for items necessary for the proper performance of the Work and which have not previously been included in any subcontract or material purchase order. Contractor shall keep a separate accounting of the Buy-out Savings and shall promptly notify and obtain the approval of the Owner as to the proposed application by Contractor of portions of the Buy-out Savings. The approval of the Owner with respect to the proposed application of the Buy-out Savings shall not be unreasonably withheld. The Buy-out Savings shall not be used to pay for increases in the Cost of the Work caused by the fault or neglect of Contractor or any Subcontractor. The entire unexpended portion of the Buy-out Savings shall be included in the determination of the Savings in accordance with Paragraph 5.10 and shall be distributed accordingly. Under no circumstances shall the

Guaranteed Maximum Cost be increased as a result of any deficit or distribution of the Buy-out Savings.

- 14.6 Notwithstanding anything to the contrary contained in the Contract Documents, no progress payment (when aggregated with all previous progress payments) shall exceed, as determined on a percentage basis, the percentage of the Work that has been completed as of the date of such progress payment.
- 14.7 Contractor shall employ a Project Executive, Project Manager, Construction Superintendent and necessary assistants who shall each have sufficient experience and competence to perform their responsibilities. The Project Executive shall be available to Owner at all times during the progress of the Work. The Project Manager, Construction Superintendent and necessary assistants shall be in attendance at the Site at all necessary times during the progress of the Work, shall attend meetings as the Owner reasonably requests, shall report to the Owner on the progress of the Work and shall be available to consult with the Owner and Architect.

The Project Executive, Project Manager and Construction Superintendent are deemed "Key Personnel" to the proper completion of the Work, and shall not be replaced, except with the written Consent of Owner, unless they prove to be unsatisfactory to Contractor or cease continuously to be in its employ. Any of the Key Personnel shall be promptly replaced if they become unsatisfactory to Owner and any replacement of any of said individuals shall be subject to Owner's prior written approval and Contractor shall be deemed in default hereunder in the event a satisfactory replacement is not immediately available. The Key Personnel shall be: Project Manager - Chris Goray; and Construction Superintendent - Seth Gudeman Project- Executive Dwight Blake.

The Key Personnel shall represent Contractor and all communication given to or commitments made by any of the Key Personnel shall be binding on the Contractor. Contractor shall be represented in all meetings with the Owner and Architect by a person with authority to make, on that person's judgment, decisions and commitments on Contractors behalf.

- 14.8 The Guaranteed Maximum Cost includes the allowances and clarifications, if any, indicated on Exhibit 'F'.
- 14.9 Contractor shall coordinate to the fullest extent necessary the requirements of this Work with the requirements of any work to be performed by Separate Contractors.
- 14.10 Upon (and as a condition to) Substantial Completion of the Work, Contractor shall execute and deliver to CB Richard Ellis Strategic Partners III, L.P. and Key Bank N.A. or any other party designated by Owner that provides equity or debt financing to Owner, the Construction Indemnity and Assignment Agreement in a form reasonably proscribed by said parties.
- 14.11 Until further notice is given by Owner to Contractor, the Owner's Representative for purposes of this Agreement shall be Fifield Realty Corporation who shall act through Douglas Grover or such other individual as designated from time to time by Fifield Realty Corporation.

**ARTICLE 15  
TERMINATION OR SUSPENSION**

- 15.1 The Construction Contract may be terminated by the Contractor as provided in the Contract Documents.
- 15.2 In addition to Owner's right to terminate the Construction Contract pursuant to Section 14.2 of the General Conditions, the Construction Contract may be terminated by Owner at any time for Owner's convenience. If the Owner terminates the Construction Contract for Owner's convenience and not pursuant to Section 14.2 of the General Conditions, then Owner shall pay Contractor a termination fee of One Hundred Thousand Dollars and No Cents (\$100,000.00), and reimburse the Contractor for any unpaid Cost of the Work due the Contractor under Article 5, plus (1) the unpaid balance of the Fee computed upon the Cost of the Work to the date of termination at the rate of the percentage named in Article 5, or (2) if the Contractor's Fee be stated as a fixed sum, such an amount as will increase the payments on account of his Fee to a sum which bears the same ratio to the said fixed sum as the Cost of the Work at the time of termination bears to the adjusted Guaranteed Maximum Cost. The Owner shall also pay to the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of the Construction Contract for Owner's convenience the Owner, if Owner elects to proceed with the Work, shall further assume and become liable for the liabilities of Contractor under the Subcontracts (including any contracts for the supply of materials or agreement with respect to the leasing of equipment to be used solely in connection with the Work). The Contractor shall, as a condition of receiving the payments referred to in this Article 15, execute and deliver all such papers and take all such steps, including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in himself the rights and benefits of the Contractor under such obligations or commitments.

**ARTICLE 16  
ENUMERATION OF CONTRACT DOCUMENTS**

- 16.1 The Contract Documents, except for Modifications issued after execution of this agreement, are enumerated as follows:
1. This Construction Contract and addendum issued prior to execution.
  2. The Legal Description, attached as Exhibit A.
  3. General Conditions of the Contract, attached as Exhibit B.
  4. Specifications enumerated on Exhibit C.
  5. Drawings enumerated on Exhibit D.
  6. General Condition Items, attached as Exhibit E.
  7. The Project Budget and Contractor's Clarifications and Alternates attached as Exhibit F.
  8. Construction Schedule, attached as Exhibit G.
  9. Contractor's Consent and Agreement, attached as Exhibit H

All the foregoing exhibits are hereby incorporated into this Construction Contract by this reference.

This Agreement is entered into as of the day and year first written above and is executed in three original copies of which one is to be delivered to the Contractor, and two to the Owner.

**OWNER**

550 ADAMS LLC, a Delaware limited liability company

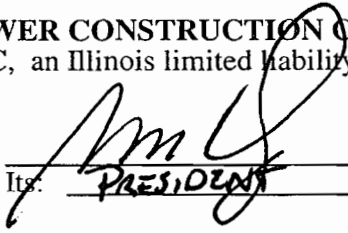
By: Fifield Manager LLC, a Delaware limited liability company

By:   
Steven D. Fifield

Its: Manger

**CONTRACTOR**

POWER CONSTRUCTION COMPANY LLC, an Illinois limited liability company

By:   
Its: PRESIDENT

**GUARANTY**

The undersigned POWER CONTRACTING AND ENGINEERING CORPORATION, a Delaware Corporation and POWER CONSTRUCTION COMPANY, an Illinois Corporation (hereinafter collectively and individually referred to as "Guarantor") acknowledge that they have received good and valuable consideration to provide this Guaranty and, as an inducement to Owner to enter into this Construction Contract, do hereby execute this Construction Contract to unconditionally and absolutely guaranty the due and punctual performance, payment and observance by Contractor of all of the obligations, terms, covenants and conditions of this Construction Contract. All obligations of Guarantor hereunder shall be joint and several. The guaranty contained herein is a continuing guaranty and shall run for the benefit of the Owner and its successors and assigns. This guaranty may be enforced against the Guarantor, or either of them, without first resorting to, or exhausting any other remedy which Owner or its successors and assigns may have against Contractor or any other party. The Guarantor's obligation hereunder shall be binding and enforceable against the Guarantor notwithstanding any assignment or subcontract by Contractor and shall not be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of the Contractor or of any Guarantor or its applicable estate in bankruptcy resulting from the operation of any present or future provision of the Bankruptcy Code or any similar statute or from the decision of any court, including, without limitation, any proceedings with respect to the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, the marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of Guarantor or other creditors, reorganization, arrangement, imposition or readjustment of all other similar proceedings affecting Contractor or either Guarantor or any of its assets, it being understood and agreed that no such proceeding shall affect, modify, limit or discharge the liability or obligation of either Guarantor.

Guarantor agrees that: (a) in the event it is necessary for the Owner to place this Guaranty in the hands of any attorney for enforcement, the Guarantor will reimburse Owner for expenses incurred in the enforcement hereof and of the Construction Contract, including reasonable attorney's fees; (b) this Guaranty shall inure to the benefit of and may be enforced by the Owner and any subsequent assignee of the Construction Contract, and shall be binding upon and enforceable against each Guarantor, their heirs, successors and legal representatives; (c) Contractor shall not be required to pursue or exhaust any other remedies before invoking the benefits of this Guaranty; however, any pursuit of any such remedies shall in no manner impair or diminish the rights of Owner under this Guaranty; (d) Owner may bring any action under this Guaranty against either or both of the parties

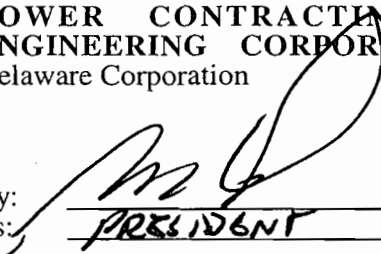


comprising Guarantor; (e) this is a continuing guaranty, and shall apply to and cover this Construction Contract including any extensions, replacements and/or renewals thereof hereinbefore described; and (f) this Guaranty shall be binding upon and enforceable against the Guarantor, notwithstanding the occurrence of any assignment of the Construction Contract by the Contractor

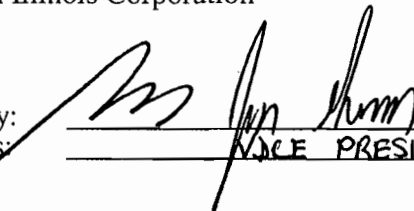
Guarantor expressly waives: (i) any claim by Guarantor against Owner for subrogation, indemnification, reimbursement or contribution until all obligations of the Guarantor to Owner have been paid and performed; (ii) notice of the acceptance by Owner of this Guaranty; (iii) notice of the existence, creation, payment or nonpayment of the indebtedness evidenced by the Construction Contract; (iv) presentment, demand, notice of dishonor, protest, and all other notices whatsoever; (v) any failure by Owner to inform Guarantor of any facts Owner may now or hereafter know about Contractor, it being understood and agreed that Owner has no duty so to inform and that Guarantor is fully responsible for being and remaining informed by Contractor of all circumstances bearing on the existence or creation, or the risk of nonperformance of the obligations of Contractor.

GUARANTOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS GUARANTY AND GUARANTOR AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

**POWER CONTRACTING AND  
ENGINEERING CORPORATION** a  
Delaware Corporation

By:   
Its: PRESIDENT

**POWER CONSTRUCTION COMPANY,**  
an Illinois Corporation

By:   
Its: VICE PRESIDENT



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROJECT SITE**

PARCEL 1: (PARCEL 3A.A ON SURVEY)

LOT 7, EXCEPT THE NORTH 18 FEET THEREOF, AND THE NORTH 60 FEET OF LOT 8 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: (PARCEL 3A.B ON SURVEY)

LOTS 4, 5 AND 6 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: (PARCEL 3A.C ON SURVEY)

ALL THAT PART OF THE SOUTH 8 FEET OF LOT 3 LYING EAST OF THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 6 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4: (PARCEL 3A.D ON SURVEY)

ALL THAT PART OF LOT 9 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO, LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF THE SOUTH 8 FEET OF LOT 3 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5: (PARCEL 3A.E ON SURVEY)

THE VACATED NORTH-SOUTH 10 FOOT PUBLIC ALLEY LYING EAST OF AND ADJOINING LOT 9, LYING WEST OF AND ADJOINING LOTS 7 AND 8 AND LYING SOUTH OF THE WESTERLY EXTENSION OF THE SOUTH LINE OF THE NORTH 18 FEET OF LOT 7, ALL IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6: (PARCEL 3B ON SURVEY)

LOT 8, EXCEPT THE NORTH 60 FEET THEREOF, IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 7: (EASEMENT FOR INGRESS AND EGRESS ON SURVEY)

EASEMENT FOR THE BENEFIT OF PARCELS 1 THROUGH 6 FOR INGRESS AND EGRESS TO SOUTH CLINTON STREET AS CREATED BY THE ACCESS EASEMENT AGREEMENT RECORDED AS DOCUMENT 0011134342 OVER THE FOLLOWING DESCRIBED REAL ESTATE:

ALL THAT PART OF LOT 3 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO, AFORESAID, LYING EAST OF THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 6 IN W.B. EGAN'S SUBDIVISION, AND LYING NORTH OF THE NORTH LINE OF THE SOUTH 8 FEET OF SAID LOT 3 IN W. B. EGAN'S SUBDIVISION AND SOUTH OF A LINE 9.55 FEET NORTH OF AND PARALLEL WITH SAID NORTH LINE OF THE SOUTH 8 FEET OF SAID LOT 3 IN W. B. EGAN'S SUBDIVISION, ALL IN LOT 3 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AND

ALL THAT PART OF LOT 9 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO, LYING NORTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF THE SOUTH 8 FEET OF LOT 3 IN W. B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16 AFORESAID, AND SOUTH OF A LINE 9.55 FEET NORTH OF AND PARALLEL WITH SAID EASTERLY EXTENSION OF THE NORTH LINE OF THE SOUTH 8 FEET OF LOT 3 IN W. B. EGAN'S SUBDIVISION, ALL IN SAID LOT 9 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## EXHIBIT B

### GENERAL CONDITIONS OF THE CONTRACT

#### Article 1 GENERAL PROVISIONS

- 1.1 Definitions.** Wherever and whenever the following words, or pronouns used in their stead, occur in the Contract Documents, they shall have the respective meanings here given.
- 1.1.1 The term "Addenda" shall mean written or graphic instruments issued prior to the execution of the Construction Contract which modify or interpret the Drawings and Specifications, by additions, deletions, clarification or corrections.
- 1.1.2 The term "Architect" shall mean the person(s) or firm(s) so designated in the Construction Contract. The term "Architect" means the Architect or the Architect's authorized representative.
- 1.1.3 The terms "as required", "as directed", "as permitted", and words of like import shall mean that requirements, direction, or permission of the Architect and Owner are intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", "acceptable to" or "satisfactory to" the Architect and Owner.
- 1.1.4 The term "Beneficial Occupancy" shall have the meaning set forth in Paragraph 9.8.1 hereof.
- 1.1.5 The term "Bulletins" shall mean drawings issued by the Architect concerning clarifications, proposed changes, or changes.
- 1.1.6 The term "Completion Date" shall have the meaning set forth in Paragraph 4.2 of the Construction Contract.
- 1.1.7 The term "Contract Documents" shall mean (i) the Construction Contract, (ii) the General Conditions of the Construction Contract; (iii) the Plans, (iv) other documents listed in Article 16 of the Construction; and (v) Modifications issued after execution of the Construction Contract
- 1.1.8 The term "Contract Sum" shall have the meaning ascribed in the Construction Contract.
- 1.1.9 The term "Contractor" shall mean the person(s) or firm(s) so designated in the Construction Contract.
- 1.1.10 The term "Contractor's Fee" shall have the meaning ascribed in the Construction Contract.
- 1.1.11 The words "Contractor shall" are implied and shall be so understood wherever a direction or instruction is stated in the imperative mood and wherever the direction "provide" is used.
- 1.1.12 The term "Construction Contract" shall mean the Construction Contract entered into between Owner and Contractor for the Construction of the Project to which these General Conditions of the Contract are attached as Exhibit "B" thereto.

- 1.1.13 The term “Cost of the Work” shall have the meaning ascribed in the Construction Contract.
- 1.1.14 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.
- 1.1.15 The term “Drawings” shall mean the graphical and pictorial documents produced by the Architect showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, and diagrams.
- 1.1.16 The term “Furnish” means to obtain and deliver to the site but does not mean to install. Materials or items to be furnished shall be consigned to the Contractor and delivered to the site.
- 1.1.17 The term “Final Completion” shall have the meaning set forth in Paragraph 9.9.1 hereof.
- 1.1.18 The term “General Conditions of the Contract” means these General Conditions of the Contract.
- 1.1.19 The term “Guaranteed Maximum Cost” shall have the meaning set forth in Paragraph 5.2 of the Construction Contract.
- 1.1.20 The term “Indemnitees” shall have the meaning set forth in Paragraph 3.16.1 hereof.
- 1.1.21 The term “Install” shall mean to unload, store, protect and install materials or items furnished by others but does not mean to furnish. Such materials or items shall be received at the site, unloaded, stored, protected, and installed in place, including connections, auxiliary items, and other work required for a complete and functioning installation, unless any such work is specifically excluded.
- 1.1.22 The terms “knowledge”, “recognize” and “discover”, their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill and diligence required by the Contract Documents. The expression “reasonably inferable” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.
- 1.1.23 The term “Lender” means any party loaning funds to Owner in connection with the Project
- 1.1.24 The term “Modifications” shall mean modifications or amendments to the Contract Documents agreed to between Owner and Contractor or required hereby.
- 1.1.25 The term “Notice to Proceed” shall have the meaning set forth in Paragraph 8.1.2 hereof.
- 1.1.26 The term “Owner” means the party identified in the Construction Contract.
- 1.1.27 The term “Owner’s Representative Sum shall mean Fifield Realty Corp.
- 1.1.28 The term “Plans” shall mean all architectural and engineering Drawings, Specifications, descriptions, diagrams and instructions describing the Work and shall include, but not be

limited to, the Drawings and Specifications identified in Exhibits "C" and "D" attached to the Construction Contract and Addenda thereto.

- 1.1.29 The term "Product" includes materials, systems and equipment.
- 1.1.30 The term "Project" means all buildings, facilities and other improvements necessary to construct a first-class office building hotel on the real estate described in Exhibit "A" to the Construction Contract as shown on, or which are reasonably inferable from the Plans.
- 1.1.31 The term "Provide" shall mean to furnish, fabricate, complete, transport, deliver, install, erect and construct including all labor, material, equipment, apparatus, approximation and all expenses necessary to complete in place, ready for operation or use to the extent provided in the Contract Documents.
- 1.1.32 The term "Punch List Items" means a list approved by the Owner's Representative and the Architect minor items that do not impede Owner's intended use of the Project which are uncompleted or uncorrected Work.
- 1.1.33 The term "Separate Contract" means an agreement between Owner and an individual or entity other than the Contractor for the construction or furnishing of a portion of the Project and such individual or entity is referred to herein as the "Separate Contractor(s)."
- 1.1.34 The term "Site" shall mean the location or Project site hereon, under, over or across which work under this Construction Contract is to be performed.
- 1.1.35 The term "Specifications" shall mean the documents produced by the Architect describing the requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- 1.1.36 The term "Subcontractor(s)" shall mean any persons(s) or firm(s), other than an employee of the Contractor, who is engaged by the Contractor or by another Subcontractor to furnish labor, material, analysis or other services with respect to a portion of the Work.
- 1.1.37 The term "Substantial Completion shall have the meaning set forth in Paragraph 9.7.1 hereof.
- 1.1.38 The term "Surety" shall mean any person, firm or corporation acceptable to Owner that has executed as surety the Contractor's Performance and Payment Bonds securing the performance of this Construction Contract or that has issued a Subgard Policy of insurance with respect to payment and performance of the Work.
- 1.1.39 Reference made in the Plans to standard specifications, codes, or test methods of ASTM, ACI, AISC, UL, NFPA and other similar organizations and associations is intended to refer to the latest revision of such standard, as of 180 days prior to the date of the Plans containing said reference unless specifically indicated to the contrary. The Architect will give no consideration to any claimed ignorance as to what a cited standard contains, since each Contractor is considered to be experienced and familiar with his own trade's generally accepted, published standards of quality and workmanship.
- 1.1.40 The term "Title Company" shall have the meaning set forth in Paragraph 14.3 of the Construction Contract.

1.1.41 The term "Work" shall mean the furnishing of labor and materials necessary for the Final Completion of the Project in accordance with the requirements of the Contract Documents and includes, but is not limited to, all materials, tools, methods, labor, overtime labor and standby labor as may be required to maintain construction progress, equipment, supplies, services, supervision, transportation, power, fuel, water and other items, facilities and services of every kind necessary to perform and complete the Project for use as a first-class office building in strict compliance with the requirements of the Contract Documents.

1.2 **Execution, Correlation and Intent.**

1.2.1 Execution of the Construction Contract by the Contractor is a representation that the Contractor has examined the site, become familiar with local conditions, laws, codes, ordinances, rules and regulations under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.1.1 The Contractor and each of his Subcontractors shall satisfy themselves as to the condition of the Project site and existing work or items thereon, and the conditions under which they would be obligated to operate in performing their Work, or portion thereof, or that would in any manner affect the Work under the Construction Contract including, without limitation (i) the location, condition, layout and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools and equipment and (v) other similar issues, but not including conditions which are not visible or reasonably discoverable or inferable from the Contract Documents by an experienced contractor or subcontractor unless such conditions were disclosed in a report delivered to Contractor prior thereto or are of a usual nature or do not differ materially from those ordinarily encountered in construction work of the type and scope set forth in the Contract Documents. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Subparagraph 10.1.2, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. No allowance will be made by the Owner for any error or negligence in this regard.

1.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.2.1 Should there be a conflict or inconsistency between the Contract Documents which is not resolved specifically in the Contract Documents, said documents shall be interpreted in the following order of priority: (1) The Construction Contract, (2) the General Conditions of the Contract, (3) the Plans.

1.2.2.2 All work shall conform to the Contract Documents. No change therefrom shall be made by the Contractor without first having received permission from the Owner and Architect, in writing, to make such a change.

- 1.2.2.3 The Contract Documents are intended to include or imply all items required for the proper execution and completion of the Work. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by the Contractor as if shown or mentioned in both. The Drawings and Specifications indicate the scope of the Project in terms of the architectural design concept, quality level of the Project in general, the dimensions of the building, the type of structural, mechanical, electrical and utility systems and the major architectural elements of construction. The Drawings and Specifications do not necessarily indicate or describe all Work required for the full performance and completion of the Work. This Construction Contract, the Contractor's subcontracts and material agreements will be let on the basis of such documents with the understanding that the Contractor and Subcontractors are to furnish items required for proper completion of the Work without adjustment to the Guaranteed Maximum Cost. It is intended that the Work be of first class construction and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described or implied in the portion of the Work to be performed by them.

Generally, the Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications which can be adequately shown on the Drawings, nor to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown thereon. All materials or labor for Work which is shown on the Drawings or is reasonably inferable therefrom as being necessary to produce a finished job shall be provided by the Contractor whether or not the Work is expressly covered in the Specifications.

In the event there is an inconsistency between the various Contract Documents, the inconsistency shall be resolved as herein provided. If the difference is between the requirements of the Drawings and Specifications or differences within the Drawings or the Specifications themselves, then they shall be submitted to the Owner's Representative, who shall decide which of the conflicting requirements shall govern and the Contractor or his Subcontractor doing such Work shall perform the Work in accordance with such decision and without any change in the Guaranteed Maximum Cost.

- 1.2.2.4 Full-size or large-scale details or drawings shall take precedence over small-scale drawings which they are intended to amplify. Computed dimensions shall take precedence over scale dimensions. Dimensions shall be figured rather than determined by scale or rule.
- 1.2.3 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Architect assumes no responsibility for the establishment of subcontract limits.
- 1.2.3.1 Instructions and methods of work described in the Specifications, and in particular to prefabricated or prefinished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict

with such work agreements, the work agreements shall be followed, but items shall be provided and finished as specified, with the work being performed on the Project site instead of at the shop, if necessary, by appropriate labor, and in accordance with the requirements of the Plans.

- 1.2.3.2 Whenever a product is specified in accordance with a Federal Specification, ASTM Standard, a United States Standard Specification, or other Association standard, the Contractor shall present an affidavit from the manufacturer when requested by the Architect or required in the Specifications, certifying that the product complies with the particular standard specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance.
- 1.2.3.3 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to award of any contract or accepted as a change to the Work in accordance with Paragraphs 3.3.4, 3.3.5 and 3.3.6. Where two or more products are shown or specified, the Contractor has his option of which of those shown or specified to use, provided the product used meets all requirements of the Specifications.
- 1.2.4 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in Contract Documents in accordance with such recognized meanings.
- 1.2.5 Where a typical or representative detail is shown on the Plans, such detail shall constitute the standard of workmanship and materials throughout corresponding portions of the Work. Where necessary, the Contractor shall adopt such detail for use in said corresponding portions of the Work in a manner that is satisfactory to the Architect. Before ordering any materials or doing any Work, the Contractor and each of his Subcontractors shall verify measurements at the Project site to the extent possible and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Plans. Any difference which may be found shall be submitted to the Architect for resolution before proceeding with the Work.
- 1.2.6 If change due to actual field conditions is found necessary, Contractor shall submit detailed drawings of such departure for the written approval of the Architect before making the change.

### **1.3 Ownership and Use of Architects Drawings, Specifications and Other Documents.**

- 1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and, pursuant to the agreement for Architectural/Engineering Services between the Architect and Owner, the Owner shall retain all common law, statutory and other reserved rights, in addition to the copyright. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are



not to be used by the Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

- 1.3.2 Unless he receives specific written authorization from the Architect or the Owner, the Contractor shall do no Work without first having Drawings and Specifications therefor.

The Architect will furnish to the Contractor for the entire Work one reproducible of Drawings together with one set of Specifications. Additional sets of Drawings or parts thereof will be furnished upon request or Contractor may arrange for reproduction itself. It shall be understood, however, that the cost to cover the printing and handling of such additional prints shall be paid by the Contractor plus mailing or delivery charges.

- 1.3.3 Drawings issued by the Architect concerning clarifications, proposed changes, or changes (hereinafter referred to as the "Bulletins") will be in the form of a reproducible print of each such Drawing. The Contractor, at his expense, shall do all printing or duplication and distribution of such reproducible prints as necessary for the proper performance of the Work.

- 1.3.4 **Proprietary Interests.** Notwithstanding anything to the contrary contained in this Contract Documents, Contractor agrees that all reports, studies, plans, specifications, drawings, shop drawings, surveys, samples, product data and any other information or data of any type relating to its activities hereunder (including, without limitation, all such reports, studies, plans, specifications, drawings, shop drawings, surveys, samples, product data and other information and documents prepared by the Subcontractors) whether or not any of the same is accepted or rejected by Owner, is and shall remain the property of Owner and shall not be used or published by Contractor or any other party without the express written consent of Owner. In implementation of the foregoing, (i) Contractor hereby grants and assigns to Owner all rights and claims of whatever nature, and whether now or hereafter arising, in and to any and all such reports, studies, plans, specifications, drawings, shop drawings, samples, product data and any other information or data and shall cooperate fully with Owner in any steps Owner may take to obtain copyright, trademark or like protections with respect thereto; and (ii) Owner shall require the Subcontractors to agree and provide a similar grant to Owner in each agreement between Contractor and its Subcontractors.

#### **1.4 Capitalization.**

- 1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, or (2) the titles of numbered articles and identified references to paragraphs, subparagraphs and clauses in the document.

#### **1.5 Interpretation.**

- 1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an" but the fact that a modifier or an article

is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

## **1.6 Confidentiality.**

- 1.6.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except: (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of the Construction Contract, (iii) information which becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law.
- 1.6.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.
- 1.6.3 The Contractor shall specifically cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment for the Work to warrant and represent all items set forth in this Section 1.6.
- 1.6.4 The representations and warranties contained in this Section 1.6 shall survive the complete performance of the Work or earlier termination of the Construction Contract.

## **Article 2 OWNER**

### **2.1 Information and Services Required of the Owner.**

- 2.1.1 The Owner or its Agent shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.
- 2.1.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 2.1.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.1.4 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

### **2.2 Owner's Right to Stop the Work.**

- 2.2.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been

eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Paragraph 6.1.3. This right shall be in addition to and not in restriction or derogation of the Owner's rights under Section 14.2 hereof.

### **2.3 Owner's Right to Carry out the Work.**

2.3.1 If the Contractor defaults or neglects to carry out the Work, or any portion thereof in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after such seven-day period, and without prejudice to other remedies the Owner may have, correct such deficiencies by whatever method the Owner deems expedient. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architects additional services and expenses made necessary by such default neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, at the Owner's option, the excess shall be deducted from any payment thereafter due or shall be paid by the Contractor immediately upon demand of the Owner.

### **2.4 Additional Rights.**

2.4.1 The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

2.4.2 The Owner reserves the right to occupy any portion of the Project site at any time after Substantial Completion of such portion. Subject to the foregoing and to Paragraph 11.3.5, it is understood and agreed that the right to use the Project site is of the essence of the Construction Contract, and that the Contractor shall proceed with the Work in such a manner as may be directed and shall cooperate with the Owner to endeavor to limit interruptions to normal operations and routine of the Owner as much as possible.

2.4.3 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

## **Article 3 CONTRACTOR**

### **3.1 Review of Contract Documents and Field Conditions by Contractor.**

3.1.1 The Contractor shall carefully examine and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2 and shall at once report to the Architect errors, inconsistencies or omissions discovered therein, or any variance he may discover from applicable laws, statutes, ordinances, building codes, rules, regulations or any lawful orders of any governmental body, or public or quasi-public authority. The Contractor shall not be liable to the Owner or Architect for loss, costs, or damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity

knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

- 3.1.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.
- 3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.10.
- 3.1.4 The Contractor shall carefully examine the Contract Documents and the existing conditions of the Project site to ascertain the full amount of Work involved. No additional compensation will be allowed or entertained for such work or materials not shown or specified, but which are reasonably inferable by an experienced contractor and are required to complete the Work.
- 3.1.5 The Contractor shall satisfy himself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of his work with existing or other work, he shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by him without increase in the Guaranteed Maximum Cost.
- 3.1.6 Except as to any reported errors, inconsistencies or omissions, and to concealed or unknown conditions defined in Paragraph 4.3.5, by executing the Construction Contract, the Contractor represents the following:
  - 3.1.6.1 The Contract Documents are sufficiently complete and detailed for the Contractor to (i) perform the Work required to produce the results intended by the Contract Documents and (ii) comply with all the requirements of the Contract Documents.
  - 3.1.6.2 The Work performed by the Contractor (and its Sub-Contractors), including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (i) good and sound practices within the construction industry; (ii) generally prevailing and accepted industry standards applicable to the Work; (iii) requirements of any warranties applicable to the Work; and (iv) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the Work.

## **3.2 Supervision and Construction Procedures.**

- 3.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Construction Contract.

- 3.2.1.1 The Owner and Architect will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner and Architect will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors or any of their agents or employees, or any other persons performing any of the Work.
- 3.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and any other persons performing portions of the Work under a contract with the Contractor or a Subcontractor or claiming by, through or under the Contractor and for any damages, losses, costs and expenses resulting from such acts or omissions.
  - 3.2.2.1 Without limitation of any provision of the Contract Documents the Contractor shall be responsible for his own, his employees' and his Subcontractor's Work and materials and every part thereof or in connection therewith against risks of any and every kind (except to the extent such risk is covered by insurance carried by Owner under Article 11) until the work and materials are integrated into the Project.
- 3.2.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Construction Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.
- 3.2.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Construction Contract to determine that such portions are in proper condition to receive subsequent Work.
- 3.2.5 The Contractor shall be responsible to determine the procedures of construction, and to provide safe and adequate scaffolding, ladders, stages, hoists, temporary supports and other facilities or methods as he may determine are required for safety and for the execution and completion of the Work.
- 3.2.6 Measurements establishing property lines and grades shall be taken from the surveyors marks on the property as referred to on the plat of survey provided by the Owner. After exact property lines and grades have been established, the Contractor shall proceed to locate the Work in accordance with the Plans. Any discrepancies shall be reported immediately to the Architect for resolution.
- 3.2.7 The Contractor shall be responsible for locating and maintenance of the building lines, column centers and establishing all levels, floors, grades, etc., in accordance with the Plans.
- 3.2.8 The Contractor shall have direct control and management of all construction operations and be responsible for the satisfactory overall performance of his Subcontractors in order that the entire Work is properly coordinated and supervised.

### **3.3 Labor and Materials.**

- 3.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 3.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Construction Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall employ only Subcontractors on the Project subject to collective bargaining agreements with unions affiliated with the AFL-CIO Building Trades Department (or any successor organization).
- 3.3.3 The Contractor shall only employ labor on the Project or in connection with the Work who (i) are capable of working harmoniously with all trades, crafts and any other individuals associated with the Project, and (ii) are members of unions affiliated with the AFL-CIO Building Trades Department (or any successor organization). The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 3.3.3.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or increase in the Guaranteed Maximum Cost and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall be or not be included in the work of any particular trade.
- 3.3.3.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided.
- 3.3.4 If, after execution of the Construction Contract and prior to submittal of applicable shop drawings, the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor may do so in writing and setting forth the following:
- 3.3.4.1 Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.
- 3.3.4.2 Reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable.
- 3.3.4.3 The adjustment, if any, in the Guaranteed Maximum Cost, in the event the substitution is acceptable.

- 3.3.4.4 The adjustment, if any, in the Completion Date and the Construction Schedule in the event the substitution is acceptable.
  - 3.3.4.5 An affidavit stating that (i) the proposed substitution conforms and meets all the requirements of the Plans, and (ii) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.
- 3.3.5 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions:
- 3.3.5.1 Required for compliance with interpretation of code requirements or insurance regulations then existing.
  - 3.3.5.2 Unavailability of specified products, through no fault of the Contractor.
  - 3.3.5.3 Subsequent information disclosing inability of specified products to perform properly or to fit in designated space.
  - 3.3.5.4 Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required.
  - 3.3.5.5 When, in the judgment of the Owner and the Architect, a substitution would be substantially to the Owner's best interests, in terms of cost, time, or other considerations.
- 3.3.6 Whether or not any proposed substitution is accepted by the Owner or the Architect, the Owner may require that Contractor reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

### **3.4 Warranty.**

- 3.4.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Construction Contract will be of first-class quality and new, that the Work will be free from defects and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 3.4.2 The Contractor agrees to assign to the Owner at the time of Final Completion of the Work, any and all manufacturers warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

**3.5 Taxes.**

- 3.5.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted, whether or not yet effective or merely scheduled to go into effect.

**3.6 Permits, Fees and Notices.**

- 3.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Construction Contract.

- 3.6.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, lawful orders and all other requirements of public authorities bearing on performance of the Work. The Contractor shall procure and obtain all bonds required of the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the Surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

- 3.6.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations unless such laws, statutes, ordinances, building codes and rules and regulations bear upon the performance of the Work. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

- 3.6.4 If the Contractor performs Work contrary to laws, statutes, ordinances, building codes, and rules and regulations the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

- 3.6.5 The Contractor hereby binds himself and shall require each Subcontractor to indemnify, protect and save harmless the Architect and the Owner during the execution of Work from all damages, suits, or claims arising from violations of public ordinances and requirements of the governing authorities because of his methods of execution of Work specified in the Plans, and to pay all costs to defend the Architect and the Owner against such suits or claims.

- 3.6.6 All permits, certificates of inspection and similar documents shall be delivered to the Owner upon completion of the Project.

**3.7 Allowances.**

- 3.7.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.



- 3.7.2 Unless otherwise provided in the Contract Documents:
- 3.7.2.1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
  - 3.7.2.2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
  - 3.7.2.3 Contractor's costs for unloading and handling at the site, labor, installation cost, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances, unless the Work is specifically stated to be installed;
  - 3.7.2.4 whenever costs are more than or less than allowances, the Guaranteed Maximum Cost shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances under Clause 3.7.2.2. The Contractor's Fee shall be adjusted in accordance with Paragraph 5.9 of the Construction Contract.

### **3.8 Contractor's Construction Schedules.**

- 3.8.1 The Construction Schedule attached to the Construction Contract designates the dates of the commencement and completion of the various stages of construction consistent with the requirements of the Contract Documents and shall be revised as required by the conditions of the Work, but only after review and approval of any material revisions by the Owner and the Architect.
- 3.8.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Construction Schedule and allows the Architect reasonable time to review submittals.
- 3.8.3 The Contractor shall comply with the most recent Construction Schedule.
- 3.8.4 In the event that the progress of the Work is delayed, the Contractor shall propose an affirmative plan to correct the delay, including overtime and additional labor, as necessary.
- 3.8.5 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents and the Construction Schedule, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment and facilities and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents and the Construction Schedule. The Owners right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule and is in addition to any other rights or remedies granted to the Owner relating to delays in the progress of the Work.
  - 3.8.5.1 The Contractor shall not be entitled to an adjustment in the Guaranteed Maximum Cost in connection with Extraordinary Measures required by the Owner under or pursuant to this Paragraph 3.8.5.

3.8.5.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Paragraph 3.8.5 as frequently as the Owner deems necessary to ensure that the Contractors performance of the Work will comply with any milestone date or completion date set forth in the Contract Documents.

### **3.9 Documents and Samples at the Site.**

3.9.1 The Contractor shall maintain at the site for the Owner one record copy of the Plans, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.9.2 Plans and sections of all concealed work particularly concealed piping and conduit, and deviations from conditions shown on the Plans, shall be shown and dimensioned on the Record Drawings by the Contractor. Contractor shall develop layout drawings for all concealed work that is schematically indicated on the Plans.

3.9.3 The Contractor and his Subcontractors shall maintain an accurate record of deviations and changes from the Contract Documents which occur in the work; shall indicate all such deviations and changes on the Contract Documents; and shall turn over to the Architect upon completion of the work all such documents and information, such as final shop drawings and sketches, marked prints and similar data indicating the as-built conditions. Plumbing, HVAC and electrical Subcontractors shall record all changes or deviations in their work from what appears on the Contract Documents. The reproducible transparencies of the Contract Documents shall be furnished by the Architect. The cost of recording the changes or deviations shall be included in the Guaranteed Maximum Cost for the respective work. The Record Drawings shall be delivered by the Contractor to the Architect prior to the final acceptance of the Project and issuance of final payment.

3.9.4 The Contractor shall cause each mechanical and electrical Subcontractor to provide the Contractor with three (3) copies of all operating manuals at the time of delivery of each major piece of equipment.

### **3.10 Shop Drawings, Product Data and Samples.**

3.10.1 Shop Drawings are drawings, diagrams, schedules and other data specialty prepared for the Work by the Contractor or a Subcontractor to illustrate some portion of the Work.

3.10.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.10.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.10.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Paragraph 4.2.7.

- 3.10.5 The Contractor shall review, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.
- 3.10.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.
- 3.10.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 3.10.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.
- 3.10.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.
- 3.10.10 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.
- 3.10.11 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information on the relevant performance requirements and on the conditions under which the materials, systems, or equipment will be expected to operate at the Project site. The certifications shall be based on performance under the operating conditions at the Project site. The Architect and Owner shall be entitled to rely upon the accuracy and completeness of such certifications.
- 3.10.12 All shop drawings for any architectural, structural, mechanical or electrical work must be submitted to, and approved by, the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Contract Documents or applicable law, by a licensed engineer.
- 3.10.13 Owner shall use its reasonable efforts to cause Architect to review and act upon Shop Drawings, Product Data, Samples or similar submittals within 14 days after receipt.

**3.11 Use of Site.**

- 3.11.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
- 3.11.2 Only material and equipment which is to be used directly in the construction of the Project shall be brought to and stored on the job site by the Contractor so as not to interfere with any work to be performed by Owner or Separate Contractors or the duties to be performed by Architect. After equipment is no longer needed on the Project, it shall be promptly removed from the job site. Protection of all construction material and equipment stored at the job site from weather damage or any other condition is the sole responsibility of the Contractor.
- 3.11.3 The Work shall be performed, to the full extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debits, building materials and equipment likely to cause hazardous conditions.

**3.12 Cutting and Patching.**

- 3.12.1 The Contractor shall be responsible for cutting, fitting and patching required to complete the Work and to make its parts fit together property.
- 3.12.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or Separate Contractor except with prior written consent of the Owner and of such Separate Contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from Owner or a Separate Contractor the Contractor's consent to cutting or otherwise altering the Work.
- 3.12.3 Cutting and patching required for the installation of (mechanical, electric work and other trades involved in the Work shall be done by the Contractor and paid for by the trade responsible (including a Separate Contractor) except that small openings may be done by a Subcontractor using appropriate tools and equipment. Such cutting and patching, however, shall be done under the supervision of the Contractor and subject to the approval of the Architect. All cutting shall be done promptly and all repairs shall be made as necessary to leave the entire work in good condition, including all cutting, fitting and drilling of masonry, concrete, metal, wood, plaster, and other materials as specified or required for proper assembly, fabrication, installation and completion of all work under the Construction Contract and including any patching as may be necessary. Permission to patch any areas or items of work shall not constitute a waiver of the Owner's or Architect's right to require complete removal and replacement of said areas or items or work, if, in the Owner's or Architect's opinion, said patching does not satisfactorily restore quality and appearance of same.

Structural members shall not be cut except by the prior written authority of the Architect. Work done contrary to such authority is at the Contractors sole risk, subject to replacement at his sole cost and expense, and without reimbursement under this Construction Contract.

### **3.13 Cleaning up.**

- 3.13.1 The Contractor shall keep the Project site and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Construction Contract. The Contractor shall, not less than two times each week, clean up after his operation, removing rubbish, including old and surplus materials. The Contractor shall use its best efforts to prevent dust. The Contractor shall be responsible for the overall cleanliness and neatness of Work and shall be responsible for keeping the Project site (including the outside areas and streets) free of rubbish, debris and waste material of every kind at all times during the performance of the Work, regardless of whether such material accumulates in consequence of his own or his Subcontractor's operations. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.
- 3.13.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor who shall pay such cost immediately upon demand of the Owner.
- 3.13.3 Work in place, including glass, broken or damaged during construction shall be replaced at the expense of the Contractor or the Subcontractors responsible for the breakage or damage.
- 3.13.4 It shall be the responsibility of the Contractor to carefully remove droppings, and/or traces of lime, plaster, mortar, paint or other adhering materials from interior and exterior surfaces of glass. Extreme care shall be taken to prevent scratching of glass. The Contractor shall immediately remove any material that may cause etching of glass.
- 3.13.5 Concrete floors and stairs shall be swept clean with a sweeping compound which will not stain the surfaces.

### **3.14 Access to Work.**

- 3.14.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### **3.15 Royalties and Patents.**

- 3.15.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss (including but not limited to attorney's fees and expenses) on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **3.16 Indemnification.**

- 3.16.1 To the fullest extent permitted by law, the Contractor and all Subcontractors shall indemnify, defend and hold harmless the Owner, DeStafano and Partners Ltd., Fifield Realty Corp., Key Bank N.A., CB Richard Ellis Strategic Partners III, L.P., Fifield Manager LLC, the City of Chicago and any parent, subsidiary or affiliate corporations of the Owner

and any other person or entity designated by the Owner and having an insurable interest in the Project site, and the officers, directors, partners, members, agents and employees of each of them, and the Architect and their agents and employees and consultants (hereinafter collectively referred to as the "the Indemnitees") from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees and expenses, arising out of or resulting from or in connection with the performance of the Work, provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom or (2) is caused in whole or in part by any negligent or wrongful act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in the Contract Documents. The Contractor's indemnity obligations under this Paragraph 3.16.1 shall, but not by way of limitation, specifically include all claims and judgments which may be made against the Indemnitees arising from violation of public ordinances and requirements of governing authorities due to the Contractor's or Subcontractors' method of execution of the Work.

- 3.16.2 In any and all claims against any of the Indemnitees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 3.16.3 The obligations of the Contractor under this Section 3.16 shall not extend to the liability of the Architect, its consultants and their officers, directors, agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, its consultants and their officers, directors, agents or employees provided such giving or failure to give is the primary cause of the injury or damage.
- 3.16.4 None of the foregoing provisions shall deprive the Owner of any action, right or remedy otherwise available to it at law or in equity or deprive the Architect of any action, right or remedy (if any) otherwise available to it at law or in equity.

### **3.17 Representations and Warranties.**

- 3.17.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute the Construction Contract which representations and warranties shall survive the execution and delivery of the Construction Contract and the Final Completion of the Work:

3.17.1.1 that he and his Subcontractors are financially solvent and authorized to do business in the State of Illinois and property licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over him and over the Work and the site of the Project;

- 3.17.1.2 that his execution of the Construction Contract and his performance thereof is within his duly authorized powers;
- 3.17.1.3 that his duly authorized representative has examined the site of the Work, familiarized himself with the local conditions and the laws, ordinances, rules and regulations under which the Work is to be performed and correlated his observations with the requirements of the Contract Documents; and
- 3.17.1.4 Contractor and his Subcontractors possess a high level of expertise, skill and experience in the type of work each is to perform in connection with this Project.
- 3.17.1.5 Contractor represents that there is no litigation pending or threatened (including proceedings under Title 11 of U.S. Code) against Contractor (except personal injury and property damage litigation fully covered by insurance) which have not been disclosed in writing to the Owner and approved by the Owner as not materially and adversely affecting the completion of the Project.

**3.18 Conduct of Labor.**

- 3.18.1 The Contractor shall monitor the efforts of the Subcontractors and coordinate the Work with the activities and responsibilities of the Owner and the Architect to complete the Work in accordance with all of the requirements of the Contract Documents, including, without limitation, the Plans. The Contractor shall have the ultimate responsibility for requiring all Subcontractors to perform and complete their portion of the Work in accordance with the Owners objectives of cost, time and quality and in accordance with the terms of their Subcontract. The Contractor further agrees to require all Subcontractors to perform and complete their portions of the Work in accordance with the Contract Documents and by means and methods of construction that comply with all applicable laws and ordinances.
- 3.18.2 The Owner reserves the right to request the removal from the Project of the Contractors superintendent and any workmen or Subcontractor who, in the reasonable discretion of the Owner, is not properly performing his duties in the best interests of the Owner or is interfering with the operations of any facility adjacent to the site of the Work.

**3.19 Compliance with Laws.**

Contractor and his Subcontractors shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority of which Contractor has knowledge relating to the terms and conditions of employment of any employee who is employed in connection with the work to be performed under the Construction Contract, including without limitation by reason of specification, the applicable provisions of the Fair Labor Standards Act, the Fair Employment Practices Law and the Equal Pay Act. Contractor or his Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin, and shall take affirmative action to afford equal employment opportunities without discrimination because of race, creed, color, sex or national origin. Such action shall be taken with respect, but not limited, to recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off, termination rates of pay or other forms of compensation and selection for training including apprenticeship or on-the-job training.



**3.20 Compliance with OSHA Regulations.**

Contractor and his Subcontractors shall comply with regulations of OSHA, which compliance shall include as may be relevant appealing decisions, performing corrective work on the Work within abatement periods, appealing from or requesting extensions on abatement periods when work has been done by Subcontractors and furnishing such supporting information or material as may be necessary to fully protect the rights of Owner and Subcontractors on pending or prospective violation orders.

**3.21 Contractor's Consultants.**

- 3.21.1 The Contract Documents may require the Contractor to provide design, engineering or other services prior to or during construction. The providing of these services shall not create any contractual obligation between the Architect and Owner and the Contractor's consultants, nor shall the actions or lack of action by the Contractor or his consultants imply a responsibility on the Architect and Owner; provided, however, that the agreements between the Contractor and each Subcontractor performing any design Work pursuant to Article 14 of the Construction Contract shall specifically provide that the Owner is a third-party beneficiary thereof, shall have the right to enforce the same, and shall be a named issued on the professional liability insurance maintained by the Subcontractor thereunder.
- 3.21.2 The Contractor and each of his consultants shall be responsible to review and coordinate their design, engineering and other services with that of the Architect, the Owner's consultants and each other.
- 3.21.3 The Contractor shall, and shall cause his consultants to, perform their services in a timely fashion so as not to impede the progress of the Work. The Contractor and his consultants shall be available for consultation on request from the Architect and the Owner's consultants. The Contractor and his consultants shall be totally responsible for their own work.

**Article 4 ADMINISTRATION OF THE CONTRACT**

**4.1 Architect.**

- 4.1.1 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and Architect.
- 4.1.2 In case of termination of employment of the Architect, the Owner shall appoint an architect whose status under the Contract Documents shall be that of the former architect.

**4.2 Architect's Administration of the Contract.**

- 4.2.1 The Architect will provide administration of the Construction Contract as described in the Contract Documents. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Construction Contract.



- 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with progress and quality of the completed Work and to determine in general that the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections for the benefit of the Contractor to check quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress and quality of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work. Neither the presence nor the absence of the Architect on the site shall relieve the Contractor of the responsibility to comply with the requirements of the Contract Documents, nor from responsibility for the removal and replacement of work not in conformance therewith.
- 4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Section 3.2. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 4.2.4 Communications by and with the Architects consultants shall be through the Architect. Communications by and with Subcontractors shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner.
- 4.2.5 Based on the Architects observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- 4.2.6 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Paragraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor. Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.
- 4.2.7 The Architect will review and approve the design documents to be prepared by the Subcontractors to confirm compatibility and conformance with the general requirements for the Project and the "scope" design documents prepared by the Architect. The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architects action will be taken with such reasonable promptness as to cause no delay in the Work or in the access of the Owner, Contractor or Separate Contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment

or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architects review of the Contractors submittals shall not relieve the Contractor of the obligations under Sections 3.2, 3.4 and 3.10. The Architects review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Architects approvals of a specific item shall not indicate approval of an assembly of which the item is a component.

- 4.2.8 Contractor will prepare Change Orders. Architect will prepare Construction Change Directives and may authorize minor changes in the Work as provided in Section 7.4.
- 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Construction Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.
- 4.2.11 The Architect will initially interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made for them. The Architect shall not have the authority to make modifications to the Contract Documents, to direct additional work not required thereby, nor to waive any requirements of the Contract Documents.
- 4.2.12 Initial interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such initial interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.
- 4.2.13 The Architect's decisions on matters relating to aesthetic effect in connection with administration of the Construction Contract will be final if reasonably inferable from the Contract Documents as being necessary to produce the intended results.

#### **4.3 Claims and Disputes.**

- 4.3.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Construction Contract terms, payment of money, extension of time or other relief with respect to the terms of the Construction Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

- 4.3.2 All claims, including but not limited to, those alleging an error or omission by the Architect, shall be referred initially to the Owner's Representative for action, subject to the provisions of Section 4.4.
- 4.3.3 Claims by either party must be made within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later whether or not any impact in time and money has been determined, provided, however, that the claimant shall use its best efforts to furnish the Owner's Representative, the Architect and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is discovered, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. Failure to make any Claim within the forgoing time period shall be deemed a waiver of any such Claim. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered.
- 4.3.4 Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Construction Contract and the Owner shall continue to make payments in accordance with the Contract Documents except as otherwise provided in the Contract Documents.
- 4.3.5 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions (including obstructions to foundation installation) which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Owner's Representative will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Guaranteed Maximum Cost or Completion Date, or both. If the Owner's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Construction Contract is justified, the Owner's Representative shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within seven (7) days after the Owner's Representative has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Guaranteed Maximum Cost or Completion Date, the adjustment shall be determined by the Owner's Representative, subject to further proceedings pursuant to Paragraph 4.4.
- 4.3.6 If the Contractor wishes to make Claim for an increase in the Guaranteed Maximum Cost, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Construction Contract by the Owner, (6) Owner's suspension

or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

4.3.7 Claims for an adjustment to the Completion Date, may be made only if Contractor gives the Owner written notice within five (5) days after Contractor becomes aware of the condition causing the delay and elects, by giving the Owner an additional written notice within five (5) days after the conclusion of any claimed delay. The Completion Date shall be extended only for causes due to a delay in the performance of the Work which affects the critical path of the performance of the Work and would logically require an extension of the time necessary to complete the Work and which is caused by: (i) acts of nature (excepting normal climatic conditions); (ii) fire or other casualty; (iii) unusual and unforeseeable obstructions in transportation; (iv) unavoidable casualties, labor disputes, stoppage of the Work by order of any court or other public authority through no act or fault of Contractor, anyone employed by Contractor or any Subcontractor; and (v) the acts or omissions of Owner, Owner's Representative, Architect, Separate Contractors or anyone employed by any of the aforesaid parties which continue for in excess of ten (10) days from the date of Contractor's notification to Owner of same. No extension of the Completion Date shall be granted if, in the opinion of the Owner's Representative, the delay is not of a nature so as to entail the necessity of additional time to complete the Work. Each notice required to be given within five (5) days of the Contractor's knowledge of commencement of any delay shall contain the probable duration and a reasonable explanation and justification of the delay occasioned thereby. Any extension of the Completion Date shall be for a period of time equal to the additional time required to complete the Work caused by such delay; provided, however, in the event that such causes occur concurrently, the actual time of the delay shall be the time elapsed while such causes exist. Notwithstanding anything to the contrary contained herein the Completion Date shall not be extended because of normal climatic conditions. The extension of the Completion Date pursuant to the provisions of this Paragraph 4.3.7 shall in no way relieve Contractor of an obligation to make every reasonable effort (without incurring additional cost to Contractor) to reduce or, if possible, eliminate any delay. Except as specifically provided in this Paragraph 4.3.7 to the contrary, the Contractor agrees not to make, and hereby waives, any claim for damages, including those resulting from increased labor or material costs, on account of any delay, obstruction or hindrance for any cause whatsoever, including but not limited to, the aforesaid causes, and agree that the sole right and remedy therefor shall be an extension of time subject to the limitations as herein provided. In the event of a delay which would cause the extension of the Completion Date pursuant to this Paragraph 4.3.7, the Contractor shall be entitled to an increase in the Guaranteed Maximum Price equal to the Cost of the Work incurred resulting from a delay described in clauses (i) through (v) above.

4.3.8 If either party to the Construction Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 4.3.6 or 4.3.7.

#### **4.4 Resolution of Claims and Disputes.**

4.4.1 The Owner's Representative will initially review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a receipt of Claim: (1)

request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Owner's Representative expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. The Owner's Representative may also, but is not obligated to, notify the Surety, if any, of the nature and amount of the Claim.

- 4.4.2 If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Owner's Representatives preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Owner's Representative, (2) modify the initial Claim or (3) notify the Owner's Representative that the initial Claim stands and allow the Owner's Representative ten (10) days to review it's decision .
- 4.4.3 All decisions of the Owner's Representative rendered pursuant to the Contract Documents shall be final if not appealed within twenty-one (21) days of the issuance thereof. All such appeals shall be made only as provided for in Paragraph 4.4.4 below. The authority of the Owner's Representative contained herein shall be deemed to be an independent covenant of the Contract Documents. In the event that any decision of the Owner's Representative is materially inconsistent with the Contract Documents, any party damaged by such decision may appeal such decision pursuant to Paragraph 4.4.4 hereof; provided, however, it is understood and agreed that, unless such decision is appealed as provided in Paragraph 4.4.4 hereof, all other rights and remedies available to any such party, including, but not limited to, the right to a mechanic's or materialman's lien afforded by any laws applicable to the Work, are hereby waived. Unless otherwise agreed to in writing, the Contractor, all Subcontractors and the Architect shall maintain the progress of the Work during the pendency of any such arbitration proceeding or any action at law and the Owner shall continue to make all required and undisputed payments pursuant to the Contract Documents.
- 4.4.4 Any party may appeal a decision of the Owner's Representative within twenty-one (21) days of such decision (or may appeal if the Owner's Representative fails to render a decision in the time set out above) or enforce the provisions of the Contract Documents by bringing a suit at law or equity in a court of competent jurisdiction or by filing for arbitration in accordance with the provisions of this Paragraph 4.4.4. Absent any such appeal or enforcement, the decision of the Owner's Representative shall be deemed binding upon all parties and not subject to appeal by arbitration, court proceeding or otherwise. Upon the written agreement of Contractor and Owner to submit a dispute to arbitration, such dispute shall be settled by arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. In the event such dispute involves the act or omission of Architect or a Separate Contractor, such applicable party shall be a party to the arbitration, provided such party shall have first agreed to such arbitration. Any arbitration proceeding initiated pursuant to the foregoing shall be held at a place mutually agreeable to the parties; provided that, in the absence of agreement, such proceeding shall be held at the office of the American Arbitration Association nearest to the location of the Project.
- 4.4.5 The Contractor and the Owner shall not be obligated to resolve any Claim or dispute related to the Contract by arbitration, except as expressly provided in Paragraph 4.4.4.

## Article 5 SUBCONTRACTORS

### 5.1 Definitions.

5.1.1 The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or subcontractors of a Separate Contractor.

### 5.2 Award of Subcontracts and Other Contracts for Portions of the Work.

5.2.1 Unless otherwise required by the Contract Documents the Contractor prior to the award of the Construction Contract, shall furnish to the Owner and the Architect in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Architect and the Owner will reply to the Contractor in writing within thirty (30) days stating whether or not the Owner or the Architect, after due investigation, has any objection to any such proposed person or entity. Failure of the Owner or Architect to reply within said period shall constitute notice of no objection. Additional names of firms as desired by the Owner and Architect shall be included.

5.2.2 The Contractor shall not contract with any proposed person or entity to whom the Owner or the Architect has made objection under the provisions of Paragraph 5.2.1. The Contractor shall not be required to contract with anyone to whom the Contractor has a reasonable objection.

5.2.3 If the Owner or the Architect has objection to any proposed person or entity, the Contractor shall submit a substitute to whom the Owner and the Architect have no objection.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or Architect makes objection to such substitution.

5.2.5 All portions of the Work that Contractor does not perform with its own forces shall be performed under Subcontracts or by other appropriate agreement with Contractor. Contractor shall request bids from Subcontractors and shall deliver such bids as provided in the Contract Documents. All Subcontracts shall conform to the requirements of the Contract Documents, including specifically Section 5.3. Subcontracts awarded on the basis of the cost of such work plus a fee shall also be subject to the provisions of the Contract Documents insofar as applicable.

5.2.6 Owner shall have the right to approve the form of all subcontracts and sub-subcontracts, each of which shall incorporate all applicable obligations and requirements contained in the Contract Documents. All Subcontracts and Sub-Subcontracts shall specifically provide that Owner is an intended third party beneficiary thereunder.

5.2.7 Contractor shall not permit any Subcontractor to assign the subcontract or material supply contract nor sublet it as a whole, or in major part, nor assign any monies due or to become due to it under the subcontract or material supply contract without the prior written consent of Contractor and Owner and each subcontract and material supply contract shall provide that any assignment of any subcontract or material supply contract or of monies due under any subcontract or material supply contract, made without the written consent of Contractor



shall be void and the assignees in such case shall acquire no rights in such subcontract, material purchase order or monies.

- 5.2.8 The Contractor shall deliver to the Owner a copy of each of the Subcontracts as finally executed within ten (10) days after receipt thereof.

### **5.3 Subcontractual Relations.**

- 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner and Architect. Each subcontract shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each of its Subcontractor to enter into similar agreements with their Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Subcontractors.

- 5.3.2 Nothing contained in the Contract Documents shall be deemed to create any contractual relationship between the Owner and any Subcontractor. Any part of the Work performed for the Contractor by a Subcontractor shall be pursuant to a written Subcontract between the Contractor and such Subcontractor, which shall conform with the requirements of the Contract Documents.

### **5.4 Contingent Assignment of Subcontracts.**

- 5.4.1 As an inducement to the Owner to execute the Construction Contract, the Contractor hereby conditionally assigns to the Owner all Subcontracts executed by the Contractor in connection with the Work and in accordance with the requirements of the Contract Documents, subject to the following terms and conditions:

5.4.1.1 Owner shall not notify any Subcontractors of such conditional assignment until Owner terminates the Construction Contract pursuant to Section 14.2.

5.4.1.2 This assignment shall become an effective and present assignment only upon a termination of the Construction Contract pursuant to Section 14.2 and only as to those Subcontracts which the Owner has previously approved in accordance with the provision of the Contract Documents and at such time, the Owner shall assume all obligations under such Subcontracts.

5.4.1.3 The Owner shall assume only those assigned Subcontracts which it accepts, as provided herein and shall become liable only for the obligations thereunder which accrue after the date such assignment becomes effective.

5.4.2 Paragraph 5.4.1 shall serve as the instrument of assignment at such time as the assignment becomes effective pursuant to the terms hereof. The Contractor agrees, however, upon the Owner's request, to execute whatever instruments the Owner may request to confirm such assignments and Contractor covenants and agrees that this assignment is permitted under the Subcontracts.

5.4.3 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

**5.5 Payments to Subcontractors by the Contractor.**

5.5.1 The Contractor shall pay each Subcontractor, upon receipt of payment from the Owner, an amount proportionate to the amount paid to the Contractor on account of such Subcontractor's Work as more fully set forth in Article 9. The Contractor shall also require each Subcontractor to make similar payments to its Subcontractors.

**5.6 Payments to Subcontractors by the Owner.**

5.6.1 If the Contractor commits a default under the Contract Documents, after notice and the expiration of any applicable grace period therefor, the Owner may pay each Subcontractor directly, less the amount to be retained under his Subcontract. Any amount so paid by the Owner shall be credited against the Cost of the Work or repaid to the Owner by the Contractor in the manner set forth in Section 2.3.

5.6.2 The Owner shall have no obligation to pay, or to see to the payment of, any monies to any Subcontractor. Nothing contained in Section 5.6 shall be deemed to create any contractual relationship between the Owner and any Subcontractor or to create any rights in any Subcontractor against the Owner.

5.6.3 The Contractor shall promptly advise the Owner in writing of any Claim or demand by a Subcontractor claiming any amount in excess of those amounts properly due such Subcontractor or claiming any default by the Contractor in any of its obligations to such Subcontractor.

**Article 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**6.1 Owners Right to Perform Construction and to Award Separate Contracts.**

6.1.1 The Owner reserves the right to perform construction or operations related to the Project or any other construction or other work at the site of the Project with the Owner's own forces, and to award Separate Contracts in connection with other portions of the Project or other construction or operations on the site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

6.1.2 When Separate Contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Separate Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor agreement.



6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Separate Contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors and the Owner until subsequently revised.

## **6.2 Mutual Responsibility.**

6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.1.1 Work shall be installed in sequence with the other trades without unnecessary delay in the completion of any part or parts of Work.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or Separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

6.2.4 The Contractor shall promptly remedy damage and loss caused by the Contractor to completed or partially completed construction or to property of the Owner or Separate Contractors as provided in Paragraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Contractor and a Separate Contractor shall be subject to the provisions of Section 4.3 provided the Separate Contractor has reciprocal obligations.

6.2.6 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.12.

## **6.3 Owner's Right to Clean up.**

6.3.1 If a dispute arises among the Contractor, Separate Contractors and the Owner as to the responsibility under their respective Separate Contracts for maintaining the Project site and surrounding area free from waste materials and rubbish as described in Section 3.13, the Owner may clean up and allocate the cost among those responsible as the Owner's Representative determines to be just.

## **Article 7 CHANGES IN THE WORK**

### **7.1 Changes.**

- 7.1.1 Changes in the Work may be accomplished after execution of the Construction Contract, and without invalidating the Construction Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- 7.1.2 A Change Order shall be based upon written agreement among the Owner and Contractor; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work not involving adjustment in the Guaranteed Maximum Cost or extension of the Completion Date may be issued by the Architect alone.
- 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.
- 7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.
- 7.1.5 Changes in the Work involving adjustment in the Guaranteed Maximum Cost or extension of the Completion Date shall not be executed until authorized by a Change Order or Construction Change Directive. This requirement is of the essence hereof. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any change in the Work, whether or not there is in fact any such unjust enrichment to the Work, shall be the basis for any claim to an increase in the Guaranteed Maximum Cost or extension of the Completion Date.
- 7.1.6 In cases where instructions accompanying any issue of revised Plans request estimates of cost involved, such estimates shall be prepared and submitted promptly in order not to unduly affect the progress of the Work.
- 7.1.7 Whether or not the same are initiated by the Owner, the Contractor or the Architect, all proposals for change orders shall be drafted by the Contractor in the number requested and submitted to the Architect with a copy to the Owner. The Contractor and Subcontractors shall furnish an itemized detailed breakdown of the quantities and prices used in computing the value of each change.

### **7.2 Change Orders.**

- 7.2.1 A Change Order is a written instrument signed by the Owner and Contractor, stating their agreement upon all of the following:
  - 7.2.1.1 a change in the Work;
  - 7.2.1.2 the amount of the adjustment in the Guaranteed Maximum Cost, if any; and

- 7.2.1.3 the extent of the adjustment in the Completion Date, if any.
- 7.2.2 Methods used in determining adjustments to the Guaranteed Maximum Cost shall be limited to those listed in Paragraph 7.3.3.
- 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Guaranteed Maximum Cost and the Completion Date. In the event a Change Order increases the Guaranteed Maximum Cost, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.
- 7.3 Construction Change Directives.**
- 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect directing a change in the Work and stating a proposed basis for adjustment, if any, in the Guaranteed Maximum Cost or Completion Date, or both. The Owner may by Construction Change Directive, without invalidating the Construction Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Guaranteed Maximum Cost and Completion Date being adjusted accordingly.
- 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- 7.3.3 If the Construction Change Directive provides for an adjustment to the Guaranteed Maximum Cost, the adjustment shall be based on one of the following methods:
- 7.3.3.1 mutual acceptance of a lump sum property itemized and supported by sufficient substantiating data to permit evaluation;
- 7.3.3.2 unit prices stated in the Contract Documents or subsequently agreed upon;
- 7.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- 7.3.3.4 as provided in Paragraph 7.3.6.
- 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and, within five (5) days of receipt of the Construction Change Directive advise the Owners Representative of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Guaranteed Maximum Cost or Completion Date, failing which Contractor shall be deemed to have agreed thereto.
- 7.3.5 A Construction Change Directive signed by the Contractor or deemed agreed to by the Contractor pursuant to Paragraph 7.3.4, indicates the agreement of the Contractor therewith, including adjustment in Guaranteed Maximum Cost and Completion Date or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

- 7.3.6 If the Contractor does not make a Claim pursuant to Paragraph 7.3.8 within ten (10) days with the method for adjustment in the Guaranteed Maximum Cost or the Completion Date, the method and the adjustment shall be determined by the Owner's Representative on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including a reasonable allowance for Subcontractors overhead and profit and the additional time impact the change in the Work will have upon achievement of Substantial Completion on or before the Completion Date. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present in such form as the Owner's Representative may prescribe, an itemized accounting together with appropriate supporting data. Allowance for Subcontractor overhead and profit shall not exceed a reasonable and customary percentage of the cost of work performed by Subcontractor's own forces and by its Subcontractors. Allowance for the Contractors overhead and profit shall be determined as provided elsewhere in the Contract Documents. Unless otherwise established in the Construction Contract (i) the rental value of the Contractors own equipment shall be not more than seventy-five percent (75%) of the rates in the current edition of "Compilation of Rental Rates for Construction Equipment" prepared by Associated Equipment Distributors, Oak Brook, Illinois, and (ii) the aggregate amounts charged to the Owner for such equipment shall not exceed seventy-five percent (75%) of the fair market value. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:
- 7.3.6.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;
  - 7.3.6.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
  - 7.3.6.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
  - 7.3.6.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
  - 7.3.6.5 additional costs of supervision and field office personnel directly attributable to the change except as otherwise provided in the Contract Documents.
- 7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Guaranteed Maximum Cost shall be actual net cost as confirmed by the Architect, including a reasonable allowance for Subcontractors overhead and profit. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change, except as otherwise provided in the Contract Documents.
- 7.3.8 If the Contractor objects within ten (10) days to the determination, if any, of an increase in the Guaranteed Maximum Price or extension of the Completion Date, Contractor shall, within ten (10) days after the issuance of any Construction Charge Directive, make a Claim pursuant to Section 4.4 hereof. Contractor shall be deemed to have waived all objections to the applicable Construction Change Directive.

7.3.9 When the Owner and Contractor agree with any determination concerning the adjustments in the Guaranteed Maximum Cost and Completion Date, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

**7.4 Minor Changes in the Work.**

7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Guaranteed Maximum Cost or extension of the Completion Date and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

**7.5 Overtime.**

7.5.1 Overtime, when specifically authorized by the Owner and not as an Extraordinary Measure, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

**Article 8 TIME**

**8.1 Progress and Completion.**

8.1.1 Time limits stated in the Contract Documents are of the essence. By executing the Construction Contract, the Contractor confirms that the Completion Date is a reasonable date for performing the Work.

8.1.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice from Owner to the Contractor to commence the Work (hereinafter referred to as a "Notice to Proceed") given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.1.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion by the Completion Date.

8.1.4 The Contractor and Subcontractors will not be entitled to additional compensation for work performed outside of regular working hours, except as otherwise expressly authorized in writing by the Owner.

**8.2 Delays and Extensions of Time.**

8.2.1 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

- 8.2.2 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. The Contractor shall not be entitled to payment of costs associated with any delay which fails to qualify for an extension of time pursuant to Section 4.3. The Contractor shall also not be entitled to payment for costs associated with any delay caused in whole or in part by any act or neglect of the Contractor or any Subcontractor.
- 8.2.3 If the Contractor, but for a delay not within its control, would have completed the Work prior to the time set forth in the project schedule, the Contractor shall not be entitled to any recovery of damages arising out of any event of delay which prevented such early completion of the Work.
- 8.2.4 The Completion Date includes full consideration of the effect of normal climatic conditions during the construction period.
- 8.2.4.1 The Owner's Representative will decide that an extension of time is justified only if the actual weather encountered is materially more severe than the normal weather conditions over the previous ten years as evidenced by official weather bureau records.

## Article 9 PAYMENTS AND COMPLETION

### 9.1 Schedule of Values.

- 9.1.1 Before the first application for Payment, the Contractor shall submit to the Architect and the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect and the Owner may require. This schedule, unless objected to by the Architect and the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.
- 9.1.2 Prior to commencement of the Work, the Contractor shall deliver to the Architect and the Owner a contractor's sworn statement duly executed and acknowledged and in form satisfactory to the Owner, listing all awarded Subcontracts and the amount of each such subcontract.

Each Subcontractor and the Contractor for any of the Work performed by his company shall prepare a schedule of values on a uniform standardized form for the Work, as approved by the Architect and Owner. The form shall show in sufficient detail by convenient units:

- (a) Description of Work (listing labor and material separately)
- (b) Original subcontract amount
- (c) Total Value based upon the subcontract sum, including Subcontractor change orders
- (d) Percentage of Work completed to date
- (e) Value of Work completed to date
- (f) Previous amount billed
- (g) Percentage completed this request
- (h) Value of Work completed this request
- (i) Balance due

A schedule of values which does not include sufficient detail or exhibits unbalancing or "front loading" of the value of the Work shall be rejected. Notwithstanding that a schedule

of values had been initially approved and subsequently used, but later found improper for any reason, sufficient funds will be withheld (without accruing interest thereon) from future requests for payment to insure adequate reserve including retentions) to complete the Work. Any reserve shall be disbursed at the same time as the remaining retention hereunder.

## **9.2 Applications for Payment.**

9.2.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors, and reflecting retainage if provided for elsewhere in the Contract Documents.

9.2.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.2.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason.

9.2.1.3 With each Application for Payment, the Contractor shall furnish to the Architect and Owner's Representative a Sworn Statement by the Contractor, in form and substance satisfactory to the Owner, giving the names of all Subcontractors and suppliers furnishing materials and labor and the amounts previously paid and the amounts due to each as of the end of the month immediately preceding the month covered by said Application for Payment.

9.2.1.4 The first payment request shall be accompanied by the Contractor's Partial Waiver of Lien for the full amount of the payment. All waivers of lien shall be in form and substance satisfactory to Owner and in compliance with all applicable laws, rules, ordinances, regulations and codes. Each subsequent monthly payment request shall be accompanied by the Contractors partial waiver and the partial waivers of Subcontractors, who were included in the immediate preceding payment request, to the extent of that payment, (i.e., the Contractor must submit its partial waivers on a current basis, but Subcontractors and Suppliers may be not more than one payment late with their partial waivers and sworn statements). Should the Title Company not approve (or revoke approval of) the above "delayed waiver procedure", the Contractor and Subcontractors shall be required to submit waivers in full prior to the current requested payment.

9.2.1.5 Each Application for Payment shall be in the same form as the Schedule of Values and shall indicate the percentage and dollar value completed.

9.2.1.6 The amounts certified by the Architect for each progress payment with respect to the Contractor or such Subcontractor will be on the basis of ninety percent (90%) of the value of labor, materials and equipment satisfactorily incorporated in the Work through the stage of such progress payment and ninety percent (90%) of the cost of materials and equipment stored at the Site but not incorporated in the work for which the Contractor is entitled to payment under the Contract Documents through the stage of such progress payment, until the conditions set forth in Section 9.9 have been satisfied whereupon the Owner shall take all necessary

steps to pay the Contractor the total amount retained from the Contractor on the aforesaid percentage basis. Owner shall have the option of adjusting amounts of retention from time to time for Contractor and any of the Subcontractors. Notwithstanding the forgoing, payment for materials stored at the Site shall be made in excess of an aggregate amount not to exceed One Hundred Thousand Dollars and No Cents (\$100,000.00) or such greater amount as is approved by Owner. Any request for materials stored at the Site must be accompanied by evidence reasonably satisfactory to Owner that (a) such stored materials are included within the coverages of insurance policies carried by Owner or Contractor, (b) the ownership of such materials is vested in Owner free of any liens and claims of third parties, (c) such materials are properly insured and protected against theft or damage, (d) the stored materials are not commodity items but are uniquely fabricated for the Work, and (e) the stored materials are physically secured and can be incorporated into the Work within forty five (45) days. Owner may require separate Uniform Commercial Code financing statements to cover any such stored materials as a condition to payment therefore.

9.2.1.7 Upon giving ten (10) days notice in writing by the Owner and Architect to the Contractor and to the Subcontractors then still working on the Project, the full contact retainage may be reinstated and the retention restored to the basis established in Subparagraph 9.2.1.6 if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and Architect and the performance of the Work within seven (7) days thereafter has not become satisfactory.

9.2.1.8 Remaining unpaid balances of retentions and reserves with respect to the portion of the Work performed by a Subcontractor shall be paid in accordance with Sections 9.7 and 9.9. Remaining unpaid balance due Contractor for his portion of the Work or Subcontractors still working on the Project at the time of completion of the Work shall be paid in accordance with the requirements of Final Payment per Section 9.9. If a Subcontractor's work encompasses more than one trade, no disbursement of the retainage shall be made to such Subcontractor until the final portion of the Work to be performed by such Subcontractor is completed. When the Work is fifty (50%) percent complete, further retainage from progress payments may be eliminated for specific Subcontractors with Owner's agreement.

9.2.2 No disbursement or payment under the Construction Contract shall be made for materials not yet installed or incorporated into the Project without the Owner's prior approval of the conditions under which such materials are purchased and stored. In no event shall such disbursement or payments be made unless the materials involved have been delivered to the Project or stored in a bonded warehouse with satisfactory evidence of security, insurance and suitable storage. Contractor shall provide the Owner in connection with such materials when same are paid for by owner, a certificate of insurance for such materials and a copy of a bill-of-sale or other evidence of title together with a copy of U.C.C. statements against the Contractor and warehousemen, if applicable, indicating no liens or claims which may affect such materials.

9.2.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security



interests or encumbrances in favor of the Contractor, Subcontractors, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

- 9.2.3.1 The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Paragraph 9.2.3). Owner shall have the right to control its own defense, name its own defense counsel and approve any settlement. The Contractor hereby agrees to indemnify and hold Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.
- 9.2.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security or a lien bond which is in form and substance satisfactory to the Owner and Title Company. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Paragraph 9.2.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to the Guaranteed Maximum Cost.
- 9.2.3.3 Notwithstanding the foregoing, Owner reserves the right to settle any disputed mechanics' or materialmen's lien claim by payments to the lien claimant or by such other means as the Owner, in Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made.

### **9.3 Certificates for Payment.**

- 9.3.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Paragraph 9.4.1.
- 9.3.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents.

The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site

inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Guaranteed Maximum Cost.

#### **9.4 Decisions to Withhold Certification.**

9.4.1 The Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Paragraph 9.3.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Paragraph 9.3.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss because of any of the following and the Owner's Representative may withhold payment for any of the following:

- 9.4.1.1 defective Work not remedied;
- 9.4.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- 9.4.1.3 failure of the Contractor to make payments to Subcontractors or for labor, materials or equipment;
- 9.4.1.4 reasonable evidence that the Work cannot be completed for the Guaranteed Maximum Cost;
- 9.4.1.5 damage to the Owner or another contractor;
- 9.4.1.6 reasonable evidence that the Work will not be completed by the Completion Date, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- 9.4.1.7 failure to carry out the Work in accordance with the Contract Documents.

The Owner shall not be deemed in default by reason of withholding payment while any of the above grounds remain uncured.

9.4.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

#### **9.5 Progress Payments.**

9.5.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents minus such sums necessary to protect the Owner from loss due to the items listed in Section 4.1 as the Owner's Representative may determine. Should the Contractor disagree with any amounts

so withheld, Contractor's sole remedy shall be to pursue a Claim pursuant to Section 4.3 hereof.

9.5.1.1 Actual payment may be made by Owner's Title Company upon approval of General Contractor's, Owner's and Architect's certification of and receipt of necessary documentation prescribed herein.

9.5.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractors portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Subcontractors in similar manner. Notwithstanding anything in this Paragraph 9.5.2 to the contrary, the Owner may elect, in the Owner's sole discretion, to make any payment requested by Contractor on behalf of a Subcontractor jointly payable to Contractor and such Subcontractor. Contractor and such Subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a Subcontractor, (ii) obligations from the Owner to such Subcontractor, or (iii) rights in such Subcontractor against the Owner.

9.5.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

9.5.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.5.5 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

## **9.6 Failure of Payment.**

9.6.1 If within forty-five (45) days after receipt of the Contractor's Application for Payment in the form herein required, the Owner does not pay the Contractor the amount certified by the Architect minus same withheld to protect Owner for loss due to these items listed in Paragraph 9.4.1 hereof, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Completion Date shall be extended appropriately and the Guaranteed Maximum Cost shall be increased by the amount of the Contractors reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.

9.6.2 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (i) deduct an amount equal to that

which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Guaranteed Maximum Cost by an amount equal to that which the Owner is entitled.

## **9.7 Substantial Completion.**

- 9.7.1 Substantial Completion of the Work or designated portion thereof occurs when: (i) the Architect certifies that the Work is sufficiently complete, in accordance with the Contract Documents, so that the Owner could beneficially occupy and utilize the Work or designated portion thereof for the use for which it is intended without relieving the Contractor of any of his responsibilities under the Construction Contract, subject to completion of Punch List Items; and (ii) all permits and certificates necessary for such occupancy or utilization have been obtained. Additionally, it shall be a requirement of Substantial Completion of the First Phase and the Second Phase that: (i) the Shell and Core Work, as defined in the USG Lease, shall be completed to the extent required in order for USG to commence and proceed with the Tenant Work, as defined in the USG Lease with respect to such floor of in an orderly progression to completion without interference or delay on account of condition of, or failure of completion of, the Shell and Core Work (including, without limitation, installation of all metal decking and concrete flooring; installation of elevator doors and frames; and installation of all perimeter glass, with the possible exception of perimeter glass that has not been installed because the opening is being used for the hoist); (ii) the installation of the mechanical, electrical, plumbing and fire protection components of the Shell and Core Work shall be substantially completed on each applicable floor (provided such systems need not be operational until necessary to avoid delays in USG's performance of the Tenant Work, but in no event earlier than sixty (60) days after Substantial Completion of Phase One and Phase Two, as applicable; and (iii) the floors shall be broom clean and Contractor shall remove all debris.
- 9.7.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Contractor shall prepare and submit to the Architect and the Owner's Representative a comprehensive list of minor items to be completed or corrected which shall be subject to approval by the Owner's Representative and the Architect. Upon such approval the Contractor shall diligently proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is Substantially Complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate and shall identify all non-conforming, defective and incomplete Work. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to

them in such Certificate and the date of Substantial Completion shall be the date that said certificate is accepted by both Owner and Contractor.

9.7.3 Within thirty (30) days of Substantial Completion of the Work and upon application by the Contractor and certification by the Architect, the Owner shall make payment in an amount requested, provided however, that the retainage held following such payment shall be in an amount equal to one hundred fifty percent (150%) of the cost of finally completing the Work, or designated portion thereof, as determined by the Architect.

9.7.3.1 With the Application for Final Payment the Contractor shall furnish to the Architect proper full and final waivers of lien from the Contractor and Subcontractors for the entire amount of each of their contracts, as modified by approved Change Orders, all in accordance with the applicable Mechanics' Lien Law. The Contractor shall also furnish to the Architect the written consent of Surety, or applicable insurance company, to the payment of the balance due for all Subcontractors that have furnished payment and performance bonds, or a Subgard Policy of insurance in accordance with Section 11.4.

## **9.8 Partial Occupancy or Use.**

9.8.1 The Owner shall have the privilege to occupy or use any designated area or areas within the Project, prior to Substantial Completion (hereinafter referred to as "Beneficial Occupancy") for itself or for any tenant of the Project. The Owner shall further have the privilege to install Finish Work in advance of Substantial Completion provided: (i) In the opinion of the Owner's Representative, the Owner's occupancy and use of such spaces shall not unduly interfere with the construction operations or unduly delay completion of the entire Work, (ii) the Owner secures endorsement from the insurance carrier, if required, and consent of the Surety, if any, permitting occupancy of the Project, and (iii) a partial (temporary) certificate of occupancy, if required, has been issued by local government authorities. Contractor or Subcontractor shall, at the election of the Owner and under written authorization, promptly obtain any requisite certificate of occupancy from local government authorities required as a condition precedent to such Beneficial Occupancy by Owner. In the event that the Owner desires to exercise the privilege of Beneficial Occupancy prior to Substantial Completion as provided above, the Contractor shall cooperate with the Owner or Owner's Representative in making available for the Owner's use such building services as heating, ventilation, cooling, water, lighting, power, elevator and telephone for the portion of the Project to be occupied. If the equipment required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid space or spaces, the Contractor shall make every reasonable effort to complete the same as soon as possible to the extent that the necessary equipment can be put into operation and use.

9.8.2 During such Beneficial Occupancy at any time prior to Substantial Completion, mutually acceptable arrangements shall be made regarding the operation and cost of the necessary heating, ventilating, cooling, water, lighting, power, elevator and telephone services and any other additional expenses caused by such partial occupancy. The Owner shall assume proportionate and reasonable responsibility for the operation of the equipment and utilities required to provide the above services, in part or in total, including proportionate and reasonable expenses of operation incidental thereto. Mutually acceptable arrangements shall be made as to the guarantee affecting all Work associated therewith. The Owner shall be responsible for any damage occurring during such partial occupancy to the Work caused solely by Owner or its agents or employees without fault of Contractor.

- 9.8.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**9.9 Final Completion and Final Payment.**

- 9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment the Architect and Owner's Representative will promptly make such inspection and, when the Architect and the Owner's Representative find the Work finally complete and acceptable under the Contract Documents and the Construction Contract fully performed, including all Punch List Items, the Work will be deemed Finally Complete and the Architect will promptly issue a final Certificate for Payment to be acknowledged by the Owner's Representative stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Paragraph 9.9.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

- 9.9.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner, in form and substance reasonably satisfactory to Owner (1) a final Application for Payment and a final accounting for the Cost of the Work, (2) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (3) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (4) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (5) consent of Surety, if any, to final payment (6) other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Construction Contract, to the extent and in such form as may be designated by the Owner, (7) final prints for record drawing use marked by Contractor with record information as set forth in the Contract Documents, (8) a final Contractor's sworn statement from the Contractor, duly executed and acknowledged, showing all Subcontractors to be fully paid, and similar final sworn statements from Subcontractors, (9) all written guarantees required by the Contract Documents, and (10) satisfactory proof that all claims, including liens and taxes, growing out of the Work which shall have been filed or recorded have been released or bonded.

If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall promptly pay to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

- 9.9.3 The Owner's accountants will review and report in writing on the Contractor's final accounting of the Cost of the Work to the Architect. Based upon such Cost of the Work



as the Owner's accountants report to be substantiated by the by Contractor's final accounting, and provided the conditions of Paragraph 9.9.2 have been met, the Architect will within seven (7) days after receipt of the report of the Owner's accountant either issue to the Owner a final Certificate for Payment, with a copy to the Contractor, for such amount as the Owner's accountant has determined is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Paragraph 9.4.1.

- 9.9.4 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Construction Contract make payment of the balance due for that portion of the Work fully completed and accepted provided, however, that the retainage held following such payment shall be in an amount equal to one hundred fifty percent (150%) of the cost of finally completing the Work, as determined by the Architect if the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents; and if bonds or Subgard Insurance have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 9.9.5 Acceptance of final payment by the Contractor or a Subcontractor shall constitute a waiver of claims by that payee.
- 9.9.6 Final Payment constituting the entire unpaid balance of the amount due hereunder except as provided in Paragraph 9.9.4 shall be paid by the Owner to the Contractor thirty (30) days after: (a) Final Completion of the Work covered by the Construction Contract has been achieved, (b) a final Certificate for Payment has been issued by the Architect in accordance with the terms of the Construction Contract, (c) all of the requirements of the Contract Documents have been completed, (d) all certificates of occupancy for general occupancy have been issued and such other certificates required to be issued by all municipal authorities to evidence completion of the Work have been issued, and (e) the Title Company has issued a current title commitment against lien claims for coverage for all payments made for Work under the Construction Contract.
- 9.9.7 No certificate, nor payment, nor any provision in the Contract Documents, nor use or occupancy of the Project, or any part thereof, by Owner shall relieve the Contractor of responsibility for faulty materials or building component systems, equipment or workmanship and, unless otherwise specified, the Contractor shall remedy any defects thereto, and pay for any damage to other Work resulting therefrom which shall appear either beyond or within the guaranteed period. The Owner shall give written notice of such observed defects with reasonable promptness after discovery.

## **Article 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 Safety Precautions and Programs.**

- 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Construction Contract.

- 10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and is at levels which are not in compliance with OSHA standards for the construction industry. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when levels are in compliance with OSHA standards for the construction industry, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect.
- 10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).
- 10.1.4 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

**10.2 Safety of Persons and Property.**

- 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- 10.2.1.1 employees on the Work and other persons who may be affected thereby;
  - 10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Subcontractors; and
  - 10.2.1.3 other property at the site or adjacent thereto, whether such property belongs to the Owner or to an adjoining landowner or other party, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Wherever required by law or for the safety of the Work or property adjoining thereto, the Contractor shall shore up, brace, underpin and protect as may be necessary all foundations and other parts of existing structures on, adjacent to or adjoining the site, which are in anyway affected by his operations.

- 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. Whenever any notice is required to be given by the Owner or by the Contractor to any adjoining or adjacent landowner or other party before commencement of any work, such notice shall be given by the Contractor.
- 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Construction Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of property qualified personnel.



- 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the sole negligence of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.16.
- 10.2.6 The Contractor shall designate a Project Safety Person for the site whose duty shall be the prevention of accidents. This individual shall have the training and experience and perform the duties described in Paragraph 11.1.8 below.
- 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger the safety of persons or property.
- 10.2.8 The Contractor shall promptly report in writing to the Owner and the Architect all accidents arising out of or in connection with the Work which cause death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious personal injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.
- 10.2.9 When all or a portion of the Work is to be suspended for any reason, the Contractor and each Subcontractor shall cover over and securely fasten down all coverings to protect such work as may be liable to sustain injury from any cause.
- 10.2.10 The Contractor shall extend the permanent fire protection, if same is to be provided in the Work, within the structure at the earliest date feasible. The Contractor shall at all times provide an adequate number of fire extinguishers or other approved devices during construction. Each fire extinguisher shall be conspicuously displayed and clearly marked with instructions for use.
- 10.2.11 Roof surfaces shall not be subjected to traffic nor shall they be used for storage of material. Where some activity must take place on the roof in order to perform the Work, adequate protection shall be provided.

### **10.3 Emergencies.**

- 10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

## **Article 11: INSURANCE AND BONDS**

### **11.1 Contractor's Insurance.**

- 11.2.1 Contractor shall maintain the following insurance in amounts not less than those specified below written by an insurance company having a Best's rating of A-VIII or better and

licensed to do business in the State of Illinois. Insurance coverage shall include Severability of Interests and Cross Liability Clauses in form and substance satisfactory to Owner and clauses providing that each insurer shall waive its rights of subrogation against the additional insureds. All policies shall be written on an occurrence basis.

11.2.1.1 Workers' Compensation in the statutory amount in accordance with the laws of the State with jurisdiction, and Employers Liability in an amount not less than Five Million Dollars and No Cents (\$5,000,000.00).

11.2.1.2 Comprehensive General Liability

- (a) Bodily Injury Liability in an amount not less than Ten Million Dollars (\$10,000,000) each occurrence and in the aggregate.
- (b) Property Damage Liability in an amount not less than Ten Million Dollars (\$10,000,000) each occurrence and in the aggregate.
- (c) Above to include Blanket Contractual Liability applicable to Contractor's obligations under this Construction Contract (exclusion for operations within 50 feet of railroad track deleted), elevator liability Completed Operations (for a period of two (2) years following the date of Final Completion), Broad Form Property Damage, Independent Contractors, Personal Injury Liability (employees exclusion deleted), and "X", "C" and "U" exclusions deleted. When any work is to be done adjacent to or on railroad or transit property, Contractor shall provide Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy shall have limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Six Million Dollars (\$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.
- (d) Such insurance shall be primary, without right of contribution which may be in effect, and shall not be invalidated by the acts or omissions of other insureds. Umbrella or excess liability insurance shall be in following form and shall provide that if the underlying aggregate is exhausted, the excess will drop down as primary insurance.
- (e) If such insurance is subject to an aggregate limit, such limit shall not be less than Ten Million Dollars (\$10,000,000), and shall be by endorsement apply separately to this Project.

11.2.1.3 Comprehensive Automobile Liability

- (a) Combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence.
- (b) Above to include Employers Owned, Non-Owned and Hired Car Coverage.

- (c) Such insurance shall be primary, without right of contribution which may be in effect, and shall not be invalidated by the acts or omissions of other insureds.

11.2.2 Contractor, before commencing Work, will supply Owner with certified copies of policies or Certificates of Insurance in the form of ACORD 27 or such other form acceptable to Owner, evidencing compliance with the minimum requirements listed above. Contractor shall supply a certified copy of any related Insurance Policy, if requested by Owner. Each Certificate shall state that the insurance evidenced by such certificate will not be canceled, materially changed or not renewed without thirty (30) days prior written notice to the Owner (except in the case of cancellation for non-payment of premium, in which case cancellation shall not take effect without at least ten (10) days prior written notice to the Owner).

11.2.3 Contractor shall maintain a file of Certificates of Insurance received from each Subcontractor.

11.2.4 The Contractor shall have the following manuscript endorsement specifically endorsed to their Comprehensive General Liability and a Automobile Liability policies as required in Subparagraphs 11.2.1.2 and 11.2.1.3, and to any Umbrella Liability or Excess Liability policies covering this Project:

“It is hereby agreed that 550 Adams, Fifield Realty Corp., DeStafano and Partners Ltd., Key Bank N.A., CB Richard Ellis Strategic Partners III, L.P., Fifield Manager LLC, the City of Chicago and their officers, directors, partners, members, agents, employees, elected officials and consultants are hereby added as additional insureds. The coverage afforded the additional insureds under this policy shall be primary insurance to any other valid and collectible insurance of the additional insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

It is further agreed that the coverage afforded to each of the additional insureds shall not apply to the sole negligence of that additional insured. The sole negligence of an additional insured shall not invalidate the coverage afforded the remaining additional insureds.”

11.2.5 Each subcontract and/or sub-subcontract of any tier will provide that each Subcontractor will maintain the following insurance in an amount not less than those specified below written by an insurance company having a Best's rating of A-VIII or better and licensed to do business in the State of Illinois. Insurance coverage shall include Severability of Interests and Cross Liability Clauses in form and substance satisfactory to Owner and clauses providing that each insurer shall waive its rights of subrogation against the additional insureds. All policies shall be written on an occurrence basis.

11.2.5.1 Workers' Compensation in the statutory amount in accordance with the laws of the state with jurisdiction, and Employers Liability in an amount not less than One Million Dollars (\$1,000,000).

11.2.5.2 Comprehensive General Liability

- (a) Bodily Injury Liability in an amount not less than One Million Dollars (\$1,000,000) each occurrence and in the aggregate, unless the Owner's

Representative requires an amount not less than Two Million Dollars (\$2,000,000) each occurrence and in the aggregate.

- (b) Property Damage Liability in an amount not less than One Million Dollars (\$1,000,000) each occurrence and in the aggregate, unless the Owner's Representative requires an amount not less than Two Million Dollars (\$2,000,000) each occurrence and in the aggregate.
- (c) Above to include Blanket Contractual Liability (exclusion for operations within 50 feet of railroad track deleted), Products/Completed Operations, Independent Contractors, Broad Form Property Damage, Personal Injury Elevator Liability, (employees exclusion deleted), and "X", "C" and "U" exclusions deleted.
- (d) Such insurance shall be primary, without right of contribution which may be in effect, and shall not be invalidated by the acts or omissions of other insureds. Umbrella or excess liability insurance shall be in following form and shall provide that if the underlying aggregate is exhausted, the excess will drop down as primary insurance.

#### 11.2.5.3 Comprehensive Automobile Liability

- (a) Combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence, unless the Owner's Representative requires an amount not less than Two Million Dollars (\$2,000,000) each occurrence and in the aggregate.
- (b) Above to include Employers Owned, Non-Owned and Hired Car Coverage.
- (c) Such insurance shall be primary, without right of contribution which may be in effect, and shall not be invalidated by the acts or omissions of other insureds.

#### 11.2.5.4 Errors and Omissions/Professional Liability Insurance (for Subcontractors performing design Work pursuant to Article 14 of the Construction Contract and other design professionals)

- (a) Combined single limit of not less than Two Million Dollars and No Cents (\$2,000,000.00).
- (b) Such insurance shall be maintained for at least one (1) year after issuance of Certificate of Substantial Completion.
- (c) Such insurance shall be primary, without right of contribution which may be in effect, and shall not be invalidated by the acts or omissions of other insureds.

11.2.6 Each Subcontractor of any tier shall have the following manuscript endorsement specifically endorsed to their Comprehensive General Liability and Automobile Liability policies as required in Subparagraphs 11.2.5.2 and 11.2.5.3, and to any Umbrella Liability or Excess Liability policies covering this project:

“It is hereby agreed that 550 Adams, Fifield Realty Corp., DeStafano and Partners Ltd., Key Bank N.A., CB Richard Ellis Strategic Partners III, L.P., Fifield Manager LLC, the City of Chicago and their officers, directors, partners, members, agents, employees, elected officials and consultants are hereby added as additional insureds. The coverage afforded the additional insureds under this policy shall be primary insurance to any other valid and collectible insurance of the additional insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.”

- 11.2.7 Each Subcontractor of any tier shall furnish Contractor before commencing Work, Certificates of Insurance in the form of ACORD 27 or such other form acceptable to Owner evidencing compliance with the minimum requirements listed above, and Contractor shall promptly furnish copies of such Certificates of Insurance or certified copies of the applicable policies to Owner upon request. Each certificate shall state that the insurance evidenced by such certificate will not be canceled, materially changed or not renewed without thirty (30) days prior written notice to the Contractor (except in the case of cancellation for non-payment of premium, in which case cancellation shall not take effect without at least ten (10) days prior written notice to the Owner).
- 11.2.8 If the Contractor fails to purchase or maintain or require to be purchased and maintained the liability insurance required under this Article, the Owner may (but shall not be obligated to) purchase such insurance on the Contractor's behalf and shall be entitled to be repaid for any premiums paid therefor by the Contractor upon demand.

The Contractor shall, not less than thirty (30) days prior to the expiration or renewal date for the insurance, supply the Owner with updated replacement Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage, as was provided by the Certificates and amendatory riders or endorsements originally supplied.

- 11.2.9 In no event shall any failure of the Owner to receive certified copies of policies or certificates of insurance required under Paragraphs 11.2.2 and 11.2.7 or to demand receipt of such certified copies or certificates prior to the Contractor commencing the Work be construed as a waiver by the Owner or the Architect of the Contractor's obligations to obtain insurance pursuant to this Section 11.2. The obligation to procure and maintain any insurance required by this Section 11.2 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance.
- 11.2.10 Contractor and all Subcontractors agrees that insurers with respect to the insurance required in this Section 11.0 shall waive rights of subrogation against the City of Chicago, 550 Adams, Fifield Realty Corp., DeStafano and Partners Ltd., Key Bank N.A., CB Richard Ellis Strategic Partners III, L.P., Fifield Manager LLC their employees, elected officials, agents, officers, directors, partners, members, and representatives. Contractor and all Subcontractors expressly understand and agree that any coverages and limits furnished by Contractor or any Subcontractor shall in no way limit such parties liabilities and responsibilities specified within this Construction Contract or by law.

### 11.3 **Property Insurance.**

- 11.3.1 The Owner shall purchase and maintain property insurance upon the entire Work at the site to the full replacement cost thereof with such deductibles and other provisions as Owner

deems commercially reasonable. This property insurance shall be written on the standard completed value form. This insurance shall include the interests of the Owner, Contractor and each Subcontractor in the Work and shall insure against Fire, Extended Coverage and All Risk perils.

- 11.3.2 The Owner may file a copy of the policy with the Contractor before an exposure to loss may occur.
- 11.3.3 The Owner, Contractor, and Subcontractors waive all rights against each other for damage caused by fire or other perils to the extent covered by any property insurance policy (and allowed by the carrier providing such insurance) provided under Paragraph 11.3.1, except such rights as they may have to the proceeds of such insurance.
- 11.3.4 Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interest may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 11.3.6.
- 11.3.5 In the event of early occupancy of all or any part of the Project site pursuant to Section 2.4, the property insurance carrier and the Surety under the payment and performance bond or Subgard Policy of insurance carried by Contractor pursuant to the terms of the Contract Documents shall be notified by the Contractor and their approval of same in writing (to the extent required by such insurance policy or bond) prior to occupancy shall be obtained.
- 11.3.6 The Owner shall have power to adjust and settle any loss with the Insurers unless one of the parties in interest shall object in writing within five (5) days after the occurrence of loss to the Owner and if such objection be made, arbitrators shall be chosen. The Owner shall, in that case, make settlement with the insurers in accordance with the directions of such arbitrations. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution.
- 11.3.7 The Owner shall not be responsible for nor shall he insure the property of the Contractor, or Subcontractors, including but not limited to, tools and equipment located at the job site which is not intended to be incorporated into the Work. The Contractor, and Subcontractors shall be responsible for providing Fire, Theft or other insurance to protect their interests and the interest of the Owner in materials in transit or in storage off the site, until such materials are brought on site, whereupon the responsibility of insurance shall be upon Owner.

#### 11.4 **Performance and Payment Bonds.**

- 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds or Subgard insurance pursuant to Paragraph 11.4.3 in form and substance satisfactory to Owner with coverage provided by a Surety satisfactory to Owner covering faithful performance of the Construction Contract and payment of obligations arising thereunder as required in the Contract Documents.
- 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds or Subgard Policy of insurance covering payment of obligations arising under the Construction Contract, the Contractor shall promptly furnish a copy of the bonds or applicable insurance policy or shall permit a copy to be made.

- 11.4.3 Contractor warrants that its financial condition is sound and that it is and shall at all times be capable of obtaining any payment and performance bonds or other instruments, as required by Section 11.4. Contractor shall be deemed to be in default of its obligations hereunder should a material adverse change in its financial condition cause any revocation of any bond or result in the failure of Contractor to obtain any bond required by this Article 11. Contractor shall obtain performance and labor and material payment bonds or a Subgard Insurance policy satisfactory to Owner, and any Lender covering the Work to be performed by each Subcontractor with a Subcontract of One Hundred Thousand Dollars and No Cents (\$100,000.00) or more, except those for which Owner's Representative agrees in writing to waive the requirement. Such bonds or insurance shall name 550 Adams LLC, Fifield Realty Corp., CB Richard Ellis Strategic Partners III, L.P., Key Bank N.A., Fifield Manager LLC and the City of Chicago, as multiple obligees therein, or named insured, as applicable. All such bonds or insurance, as applicable shall be in form and substance satisfactory to Owner and shall be delivered to Owner within ten (10) days after request therefor. Unless and until each Subcontractual assignment as set forth in Section 5.4 hereof becomes effective, Owner, upon demand of Contractor, will execute any and all consents, reassignments, endorsements or other instruments which may be necessary to permit Contractor acting alone and without the joinder of Owner, to enforce all rights of the obligees under said bonds or insurance policies and to collect any and all amounts payable to the obligees thereunder. Owner agrees with Contractor that no act or omission by Owner will release or impair the rights of Contractor under such Subcontractor bonds or insurance. Contractor shall be deemed in default under the Construction Contract if Contractor: (i) fails to secure the bonds or insurance, or any of them required to be obtained pursuant to the terms of Section 11.4, or (ii) fails to increase the face amount of any bonds or insurance thereto secured after an increase in the Guaranteed Maximum Cost or an increase in the amount of any Subcontract is approved by Owner in accordance with the terms of the Contract Documents. Contractor shall be fully responsible for and shall hold Owner harmless from, all loss, cost, damage, and expense (including, without limitation, attorneys fees and expenses) incurred by Owner as a result of Contractor's failure to perform as aforesaid with respect to the procurement of bonds or the increasing of the face amount of the bonds and such costs and expenses as Contractor may incur as a result of said default shall not be deemed a Cost of the Work.
- 11.4.4 The Contractor shall keep the Surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to, or waiver of: (i) notice of changes in the Work; (ii) request for reduction or release of retention; (iii) request for final payment and (iv) any other material required by the Surety. The Owner shall be notified by the Contractor, in writing, of all communications with the Surety. The Owner may, in the Owner's sole discretion, inform Surety of the progress of the Work and obtain consents as necessary to protect the Owners rights, interests, privileges and benefits under and pursuant to any bond or Subgard Policy issued in connection with the Work.

## **Article 12 UNCOVERING AND CORRECTION OF WORK**

### **12.1 Uncovering of Work.**

- 12.1.1 If a portion of the Work is covered contrary to the requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's observation and be replaced without change in the Guaranteed Maximum Cost or Completion Date.



12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a Separate Contractor in which event the Owner or such Separate Contractor shall be responsible for payment of such costs.

12.2 **Correction of Work.**

12.2.1 The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby if, prior to the date of Substantial Completion, the Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like-new" condition at no expense to the Owner.

12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 3.4, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly at Contractor's sole expense after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Paragraph 12.2.2 shall survive acceptance of the Work under the Construction Contract and termination of the Construction Contract and Final Completion of the Work. The Owner shall give such notice promptly after discovery of the condition.

12.2.2.1 The warranty shall cover any repairs or replacement related to the basic defect.

12.2.2.2 Warranties shall be assembled and delivered to the Owner's Representative by the Contractor.

12.2.2.3 The execution of the warranty shall bind the Contractor to repair or replace, without expense to the Owner, when ordered to do so by the Owner in writing, any work which has developed defects of materials and workmanship which fails to conform to the requirements of the Contract Documents within the limits of the warranty.

12.2.2.4 The Contractor shall, within a reasonable time after receipt of written notice thereof, make good any defects in materials and workmanship to its work which fail to conform to the Contract Documents which may develop within periods for which said materials and workmanship are guaranteed, and also make good any damage to other work caused by the repairing of such defects at his own expense, and without reimbursement under the Construction Contract. The foregoing



remedies shall not deprive the Owner of any action, right or remedy otherwise available to it for breach of any of the provisions of the Contract Documents by the Contractor and the periods referred to above, or such longer time as may be specified elsewhere, shall not be construed as a limitation on the time in which the Owner may pursue such other action, right or remedy against Contractor.

- 12.2.2.5 Neither the final certificate, nor payment nor any provisions in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, the Contractor shall remedy any defects due thereto which fail to conform to the Contract Documents and pay for any damage to other work resulting therefrom which shall appear either beyond or within the guaranteed period. The Owner shall give written notice of such observed defects with reasonable promptness.
- 12.2.2.6 Contractor shall cooperate with Owner with respect to the enforcement of any and all warranties given with respect to any equipment.
- 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- 12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 2.3. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (18) days after written notice, the Owner may sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby, including attorneys fees and expenses. If such proceeds of sale do not cover costs which the Contractor should have borne, the Guaranteed Maximum Cost shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner immediately upon demand.
- 12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or Separate Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- 12.2.6 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents including warranties set forth in the Contract Documents. Establishment of the time period of one year as described in Paragraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 **Acceptance of Nonconforming Work.**

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Guaranteed Maximum Cost will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**Article 13 MISCELLANEOUS PROVISIONS**

13.1 **Governing Law.**

13.1.1 The Construction Contract shall be governed by the laws of the State of Illinois.

13.2 Successors and Assigns.

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Construction Contract shall assign the Construction Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent that party shall nevertheless remain legally responsible for all obligations under the Construction Contract. Notwithstanding the foregoing, Owner (i) may transfer Ownership of the Project to an affiliated company or joint venture without consent of Contractor, and (ii) assign the Construction Contract or its rights thereunder to any Lender without consent of the Contractor.

13.3 **Written Notice.**

13.3.1 All notices and other communications given under the Contract Documents shall be in writing and shall be deemed properly served upon delivery, or upon refusal of delivery if delivery is refused, if delivered in person or by messenger or overnight courier service, the United States mail, if sent postage prepaid by United States registered or certified mail, return receipt requested addressed as follows:

(a) If to the Owner: 550 Adams LLC  
c/o Fifield Realty Corp.  
20 North Wacker Drive, Suite 3200  
Chicago, Illinois 60606  
Attn: Steven D. Fifield

With a copy to: Fifield Realty Corp.  
20 North Wacker Drive, Suite 3200  
Chicago, Illinois 60606  
Attn: Douglas Grover

And with a copy to: Randall & Kenig LLP  
455 North Cityfront Plaza Drive, Suite 31600  
Chicago, Illinois 60611  
Attn: Benjamin J. Randall

- (b) If to the Contractor: Power Construction Company LLC  
2360 North Palmer Drive  
Schaumburg, Illinois 60173-1372  
Attn: Jeffrey A. Karp
- (c) If to the Architect: DeStafano and Partners Ltd.  
455 East Illinois Street, Suite 250  
Chicago, Illinois 60610  
Attn: James DeStafano

or to such other address or addressee as any party entitled to receive notice hereunder shall designate to all other parties in the manner provided herein for the service of notice. Notices shall be deemed given upon receipt or, if delivery is refused, upon such attempted delivery.

#### 13.4 **Rights and Remedies.**

- 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available at law or in equity.
- 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Construction Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach thereunder, except as specifically provided herein.
- 13.4.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the Owner or the Contractor except as specifically provided herein.

#### 13.5 **Tests and Inspections.**

- 13.5.1 If the Contract Documents, or any laws, statutes, ordinances, building codes, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction over the Work or the site of the Project require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Architect and the Owner timely notice of its readiness to do so, so that the Architect and the Owner or both, may observe such inspection, testing or approval. All costs of such inspections, tests or approvals, except where the Contract Documents specifically provide that they are to be paid for separately by the Owner, shall be a Cost of the Work.
- 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear such costs except as provided in Paragraph 13.5.3.
- 13.5.3 If such procedures for testing, inspection or approval under Paragraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure

including those of repeated procedures and compensation for the Architect's and/or Engineer's services and expenses. The cost of testing required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing related to remedial operations performed to correct deficiencies in the Work shall be a Cost of the Work.

- 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect and Owner.
- 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.
- 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.
- 13.5.7 Neither the observations of the Owner or the Architect, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents or, to the extent required by the Contract Documents, with any laws, statutes, ordinances, building codes, rules, regulations or orders of any governmental body of public or quasi-public authority.

13.6 **Interest.**

- 13.6.1 Payments due and unpaid for sixty (60) days under the Contract Documents shall bear interest from the date which is seven (7) days after notice that such payment is past due at the Prime Rate of interest designated by Bank One, Chicago, Illinois (or such other comparable institution designated by Owner) for 90-day unsecured loans.

13.7 **Gender, Number.**

- 13.7.1 Where required hereunder to effectuate the intent of the Contract Documents, masculine shall mean neuter or feminine and the singular shall mean the plural.

13.8 **Captions.**

- 13.8.1 The captions and headings of various Articles and Paragraphs in the Contract Documents are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

13.9 **Severability.**

- 13.9.1 The invalidity of any covenant, restriction, condition, limitation or any other part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remainder of the Contract Documents.

13.10 **Manufacturers' Insignia.**

- 13.10.1 To the extent feasible, manufacturers' nameplates shall not be permanently attached to ornamental and miscellaneous metal work, doors, frames, elevator cabs and sills, millwork and similar factory fabricated products on which, in the Architect's opinion, the nameplates

would be objectionable if visible after installation of the work. This does not apply to Underwriters' labels where required, nor to manufacturers' name and rating plates on mechanical and electrical equipment.

13.11 **Signs.**

13.11.1 Contractor shall not display or permit any Subcontractor to display on or about the Site any sign, trademark or other advertisement or identification symbol without the prior written approval of the Owner.

13.12 **General Provisions.**

13.12.1 The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

13.12.2 Each party hereto agrees to do all acts and take all steps and to make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

13.12.3 Any specific requirement in this Construction Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor under the Contract Documents or the applicable subcontract.

**Article 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

14.1 **Termination by the Contractor.**

14.1.1 The Owner or the Contractor may terminate the Construction Contract if the Work is stopped for a period of sixty (60) days through no act or fault of the Contractor or a Subcontractor, or their agents or employees or any other person(s) performing portions of the Work under contract with the Contractor, for any of the following reasons:

14.1.1.1 issuance of an order of a court or other public authority having jurisdiction;

14.1.1.2 an act of government, such as a declaration of national emergency, making material unavailable.

14.1.2 If one of the above reasons exists, the applicable party may, upon seven (7) additional days' written notice to the other party terminate the Construction Contract and from the Owner payment for Work executed and for proven loss with respect to materials, equipment tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.2 **Termination by the Owner.**

- 14.2.1 If the Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law, or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency, or if a receiver of all or any substantial portion of the Contractor's properties is appointed, or if the Contractor abandons the Work, or if he fails, except for delays in the Work described in Section 8.2 and in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough property skilled workmen or proper materials for the Work, or if he submits an Application for Payment sworn statement waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified, or if he fails to make prompt payment to Subcontractors or for materials or labor or otherwise breaches his obligations under any sub-contract with a Subcontractor, or if a mechanic's or materialman's lien or notice of lien is filed against any part of the Work or the site of the Project and not promptly bonded by the Contractor in a manner reasonably satisfactory to the Owner or insured over by Title Insurance Company, or if the Contractor knowingly disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Work or the site of the Project, or if the Contractor breaches any warranty made by the Contractor under or pursuant to the Contract Documents, or if the Contractor fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents, or if the Contractor fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents, or if he otherwise materially violates any provision of the Contract Documents, then the Owner, without prejudice to any right or remedy available to the Owner under the Contract Documents or at law or in equity, may, after giving the Contractor and the Surety under the Performance Bond and under the Labor and Material Payment Bond described herein or under the Subgard Policy of insurance, ten (10) days' written notice and the failure by Contractor to commence to cure such default within said ten (10) day period and thereafter to continue with such cure diligently and expeditiously, terminate the employment of the Contractor, and take possession of the site of the Project and of all materials, equipment, tools and machinery thereon owned by the Contractor and may complete the Work by whatever method the Owner may deem expedient. If requested by the Owner following the termination of the Construction Contract as provided above, the Contractor shall remove any part or all of his equipment machinery and supplies from the site of the Project within seven (7) days from the date of such request, and in the event of the Contractor's failure to do so, the Owner shall have the right to remove or store or remove and store such equipment, machinery and supplies at the Contractors expense. In case of such termination, except as provided in Paragraph 14.2.2 below the Contractor shall not be entitled to receive any further payment for Work performed by the Contractor through the date of termination. The Owner's right to terminate the Construction Contract pursuant to this Paragraph 14.2.1 shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant hereto or at law or in equity.
- 14.2.2 In the event the Construction Contract is terminated under Paragraph 14.2.1, the Contract Sum shall be the Cost of the Work plus the proportionate amount of the Fee that bears the

same ratio as the Cost of the Work completed by the Contractor bears to the adjusted Guaranteed Maximum Cost at the time of termination (hereinafter referred to as the "Adjusted Contract Sum"). If the cost to the Owner of completing the Work, plus the sums previously paid to the Contractor are less than the Guaranteed Maximum Cost less any savings achieved by the Owner, then upon completion of the Work, the unpaid balance of the Adjusted Contract Sum shall be paid to the Contractor to the extent of such difference. If the cost to the Owner of completing the Work, plus the sums previously paid to the Contractor exceed the Guaranteed Maximum Cost less any savings achieved by the Owner, the Contractor shall pay the difference to the Owner immediately upon the Owner's demand. The costs to the Owner of completing the Work shall include (but not be limited to) the cost of any additional architectural, managerial and administrative services required thereby, any costs incurred in retaining another contractor or other subcontractors, any additional interest or fees which the Owner must pay by reason of a delay in completion of the Work, attorneys' fees and expenses, and any other damages, costs and expenses the Owner may incur by reason of completing the Work or any delay thereof. The amount if any, to be paid to the Contractor shall be certified by the Architect, upon application, in the manner provided in Section 9.3, and this obligation for payment shall survive the termination of the Construction Contract.

- 14.2.3 The Owner's right to terminate the Construction Contract pursuant to Section 14.2 shall be in addition to and not in limitation of his right to stop the Work without terminating the employment of the Contractor pursuant to Section 2.2.

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CHICAGO, ILLINOIS

FOR

FIFIELD COMPANIES  
20 NORTH WACKER DRIVE  
CHICAGO, ILLINOIS

The complete Project Manual for this project consists of this entire bound volume which is not to be separated for any reason. The Architect and Owner will not be responsible for any assumptions made by a Contractor or Subcontractor who does not receive a complete bound Project Manual containing all sections and documents listed in the Table of Contents.

The following listed documents comprise the Project Manual for 550 West Adams. Where numerical sequence of Sections or Divisions is interrupted, such interruptions are intentional.

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A-500	ROOM FINISH SCHEDULE	GMP 09.27.04
A-501	PARTITION TYPES	GMP 09.27.04
A-504	DOOR SCHEDULE	GMP 09.27.04
A-505	DOOR DETAIL	GMP 09.27.04
A-600	GROUND FLOOR LOBBY PAVING PLAN	GMP 09.27.04
A-601	GROUND FLOOR LOBBY REFLECTED CEILING PLAN	GMP 09.27.04
A-602	GROUND FLOOR LOBBY ELEVATIONS	GMP 09.27.04
A-603	GROUND FLOOR LOBBY DETAILS	GMP 09.27.04
A-604	SECURITY DESK AND FIRE COMMAND PANELS PLANS, ELEVATIONS, SECTIONS AND DETAILS	GMP 09.27.04
A-605	TOILET ROOMS - PLANS, FLOOR FINISH AND CEILING PLANS	GMP 09.27.04
A-606	TOILET ROOMS - INTERIOR ELEVATIONS	GMP 09.27.04

STRUCTURAL

S1	FOUNDATION & 1ST FLOOR PLAN	MILL ORDER 08.12.04
S2	2ND FLOOR & MEZZANINE FLOOR FRAMING PLANS	MILL ORDER 08.12.04
S3	3RD TO 9TH FLOOR FRAMING PLAN	MILL ORDER 08.12.04
S4	10TH FLOOR FRAMING PLAN	MILL ORDER 08.12.04
S5	11TH FLOOR FRAMING PLAN	MILL ORDER 08.12.04
S6	12TH THRU 18TH/PARTIAL 13TH FLR. FRAMING PLANS	MILL ORDER 08.12.04
S7	PENTHOUSE FLOOR FRAMING PLAN	MILL ORDER 08.12.04
S8	PENTHOUSE ROOF FRAMING PLAN	MILL ORDER 08.12.04
S9	WIND BRACE ELEVATION, COLUMN SCHEDULE & DETAILS	MILL ORDER 08.12.04
S9.1	WIND BRACE DETAILS	MILL ORDER 08.12.04
S10	FOUNDATION DETAILS	MILL ORDER 08.12.04
S11	FRAMING DETAILS	MILL ORDER 08.12.04
S12	GENERAL NOTES & DETAILS	MILL ORDER 08.12.04

MECHANICAL

M-0.0	HVAC SYMBOLS AND ABBREVIATIONS	GMP 09.27.04
M-1.01	GROUND FLOOR	GMP 09.27.04
M-1.02	SECOND FLOOR	GMP 09.27.04
M-1.03	TYPICAL LOW RISE FLOORS 3-9 PLAN	GMP 09.27.04
M-1.04	TENTH FLOOR PLAN	GMP 09.27.04
M-1.05	ELEVENTH FLOOR PLAN	GMP 09.27.04
M-1.06	TYPICAL HIGH RISE FLOORS 12-18 PLAN	GMP 09.27.04
M-1.07	PENTHOUSE FLOOR 19 PLAN	GMP 09.27.04
M-1.08	ROOF PLAN	GMP 09.27.04
M-2.01	MECHANICAL SCHEDULE 1	GMP 09.27.04
M-3.01	AIRFLOW DIAGRAM AND RISERS	GMP 09.27.04
M-3.02	WATERFLOW DIAGRAM AND RISERS	GMP 09.27.04
M-4.01	MECHANICAL DETAILS 1	GMP 09.27.04

ELECTRICAL

E-1	ELECTRICAL ONE LINE DIAGRAM	GMP 09.27.04
E-2	ELECTRICAL LOAD CALCULATIONS	GMP 09.27.04
E-3	ELECTRICAL RISER DIAGRAM	GMP 09.27.04
E-4	ELECTRICAL MECHANICAL EQUIPMENT SCHEDULE	GMP 09.27.04
E-5	ELECTRICAL GROUND FLOOR AND MEZZANINE PLAN	GMP 09.27.04
E-5.1	ELECTRICAL UNDERGROUND PIPING	GMP 09.27.04
E-6	ELECTRICAL SECOND FLOOR PLAN	GMP 09.27.04
E-7	ELECTRICAL TYPICAL LOW, FLOORS 3-9 PLAN	GMP 09.27.04
E-8	ELECTRICAL TENTH AND ELEVENTH FLOOR PLAN	GMP 09.27.04
E-9	ELECTRICAL TYPICAL HIGH, FLOORS 12-18 PLAN	GMP 09.27.04
E-10	ELECTRICAL MECHANICAL PENTHOUSE PLAN	GMP 09.27.04
EM-1	ELECTRICAL GROUND FLOOR & MEZZANINE EMERGENCY PLAN	GMP 09.27.04
EM-2	ELECTRICAL SECOND FLOOR EMERGENCY PLAN	GMP 09.27.04
EM-3	ELECTRICAL TYPICAL LOW, FLOORS 3-9 EMERGENCY PLAN	GMP 09.27.04
EM-4	ELECTRICAL TENTH AND ELEVENTH FLOOR EMERGENCY PLAN	GMP 09.27.04
EM-5	ELECTRICAL TYPICAL HIGH, FLOORS 12-18 EMERGENCY PLAN	GMP 09.27.04
EM-6	ELECTRICAL PENTHOUSE EMERGENCY FLOOR PLAN	GMP 09.27.04
EM-7	ELECTRICAL EMERGENCY RISER DIAGRAM	GMP 09.27.04

PLUMBING

P.01	PLUMBING SYMBOLS, ABBREVIATIONS DETAILS AND SCHEDULES	GMP 09.27.04
P.10	UNDERGROUND PLUMBING PLAN	GMP 09.27.04
P.11	GROUND FLOOR PLUMBING PLAN	GMP 09.27.04
P.20	SECOND FLOOR PLUMBING PLAN	GMP 09.27.04
P.30	TYPICAL LOW RISE FLOORS 3-9 PLUMBING PLAN	GMP 09.27.04
P.40	10TH AND 11TH FLOOR PLUMBING PLAN	GMP 09.27.04
P.50	TYPICAL HIGH RISE FLOORS 12-17 PLUMBING PLAN	GMP 09.27.04
P.60	EIGHTEENTH FLOOR PLUMBING PLAN	GMP 09.27.04
P.70	MECHANICAL PENTHOUSE FLOOR 19 PLUMBING PLANS	GMP 09.27.04
P.80	ROOF PLUMBING PLAN	GMP 09.27.04

LIGHTING

LD 1.0	EXTERIOR LIGHTING PLAN	GMP 09.27.04
LD 2.0	FIRST FLOOR LIGHTING PLAN	GMP 09.27.04
LD 3.0	FIRST FLOOR LIGHTING RCP	GMP 09.27.04
LD 4.0	PENTHOUSE LIGHTING PLAN	GMP 09.27.04

**EXHIBIT E**

**550 West Adams  
General Conditions  
Estimate**

August 4, 2004

Phase	Description	Quantity		Unit Price	Labor		Burden	Material		Total Cost
		Amount	Unit Meas.		Amount	Unit Price		Amount	Unit Price	
	<b>Duration of Project</b>	<b>18</b>	<b>MOS.</b>							
	<u>Supervision:</u>									
011	010		4	MOS.	\$9,200	\$36,800	\$25,024		\$0	\$61,824
011	020		16	MOS.	\$7,000	\$112,000	\$56,000		\$0	\$168,000
011	040		18	MOS.	\$8,200	\$147,600	\$73,800		\$0	\$221,400
011	030		10	MOS.	\$6,800	\$68,000	\$34,000		\$0	\$102,000
011	110		2	MOS.	\$6,700	\$13,400	\$6,700		\$0	\$20,100
011	070		19	MOS.	\$4,800	\$91,200	\$45,600		\$0	\$136,800
011	105		4	MOS.	\$6,000	\$24,000	\$12,000		\$0	\$36,000
011	130		18	MOS.	\$2,950	\$53,100	\$28,488		\$0	\$81,588
	<u>Field Engineering:</u>									
011	160		5	DAYS		\$0		\$1,100	\$5,500	\$5,500
011	170		2.25	MOS.		\$0		\$22,500	\$50,625	\$50,625
	<u>Safety/ Security:</u>									
011	620		4	MOS.	\$4,505	\$18,020	\$11,172	\$1,000	\$4,000	\$33,192
011	620		82	EA.	\$300	\$24,600	\$15,252	\$100	\$8,200	\$48,052
011	640		19	FLRS.	\$1,500	\$28,500	\$17,670	\$250	\$4,750	\$50,920
011	580		8	MOS.		\$0		\$5,200	\$41,600	\$41,600
011	720		18	MOS.		\$0		\$2,250	\$40,500	\$40,500
	<u>Temporary Construction:</u>									
011	590		5	MOS.				\$850	\$4,250	\$4,250
011	270		1	LS	\$5,540	\$5,540	\$3,435	\$5,000	\$5,000	\$13,975
011	250		12	MOS.		\$0		\$375	\$4,500	\$4,500
011	240		12	MOS.	\$75	\$900	\$558	\$100	\$1,200	\$2,658
011	510		1	LS		\$0		\$74,500	\$74,500	\$74,500
011	600		1	LS		\$0		\$7,500	\$7,500	\$7,500
011	180		3	EA	\$545	\$1,635	\$1,014	\$750	\$2,250	\$4,899
	<u>Temporary Facilities:</u>									
011	460		18	MOS.	\$400	\$7,200	\$4,464	\$700	\$12,600	\$24,264
011	470		1	LS		\$0		\$1,200	\$1,200	\$1,200
011	390		18	MOS.		\$0		\$125	\$2,250	\$2,250
011	410		18	MOS.		\$0		\$4,900	\$88,200	\$88,200
011	490		1	LS	\$2,500	\$2,500	\$1,550	\$4,500	\$4,500	\$8,550
011	440		1	LS				\$650	\$650	\$650
	<u>Clean-Up:</u>									
011	200		1	LS	\$85,000	\$85,000	\$52,700	\$60,000	\$60,000	\$197,700
011	220		18	FLRS		\$0		\$1,000	\$18,000	\$18,000
011	230		1	LS		\$0		\$11,000	\$11,000	\$11,000
011	210		9	MOS.	\$3,850	\$34,650	\$21,483	\$2,150	\$19,350	\$75,483
011	630		8	MOS.	\$3,850	\$30,800	\$19,096	\$2,150	\$17,200	\$67,096
	<u>Office Equipment:</u>									
011	290		18	MOS.				\$365	\$6,570	\$6,570

011	330	Facimile	1	LS				\$2,500	\$2,500	\$2,500
011	320	Computer Equipment	18	MOS.				\$1,000	\$18,000	\$18,000
011	340	Copier Equipment	18	MOS.				\$325	\$5,850	\$5,850
011	350	Office Supplies	18	MOS.				\$250	\$4,500	\$4,500
011	360	Postage	18	MOS.				\$600	\$10,800	\$10,800
011	370	Plans & Printing	1	LS				\$27,500	\$27,500	\$27,500
011	380	Messenger Service	18	MOS.				\$350	\$6,300	\$6,300

Outside Services:

011	850	Consulting Fees								\$0
011	885	Independent Surveys								\$0
011	880	Testing								\$0
011	560	Permits & Fees								\$0
011	840	Settlement Readings								\$0
011	890	Legal/ Audit								\$0

Support Equip./ Tools:

011	690	Elevator Operators	7	MOS.	\$14,000	\$98,000	\$60,760			\$158,760
011	710	Protect Elevators	1.5	LS	\$1,800	\$2,900	\$1,798	\$335	\$503	\$5,329

Miscellaneous:

011	740	Punch List Work	1	MOS.	\$3,500	\$3,500	\$2,170	\$4,500	\$4,500	\$10,170
011	570	Travel & Entertainment	18	MOS.				\$950	\$17,100	\$17,100
011	680	Mobile Crane	4	LS				\$1,213	\$4,852	\$4,852
011	860	Contingency	1	LS				\$25,000	\$25,000	\$25,000

SUBTOTAL \$889,845 \$494,734 \$623,300 \$2,008,007

LABOR ESCALATION 0.0% \$0  
TAX (W/ ABOVE IF APPLICABLE) 0.0% \$0 \$0 \$0

TOTAL \$889,845 \$494,734 \$623,300 \$2,008,007



EXHIBIT F  
**550 West Adams St.**  
**Chicago, Illinois**

DESCRIPTION	DIVISION	ESTIMATE
<b>DIVISION 2 - SITEWORK</b>		
DEMOLITION	02000	\$25,000
EARTHWORK	02200	\$381,000
CAISSONS	02400	\$542,500
EARTH RETENTION	NA	
SITE CONCRETE	03000	\$106,197
C.O.C. STREET LIGHTS - ALLOWANCE	00920	\$192,000
ASPHALT PAVING	02500	\$35,000
LANDSCAPING	02900	\$65,000
<b>DIVISION 3 - CONCRETE</b>		
CAST-IN-PLACE CONCRETE	03300	\$2,456,000
PRECAST CONCRETE	NA	\$0
<b>DIVISION 4 - MASONRY</b>		
UNIT MASONRY	04200	\$450,000
INTERIOR STONE	04400	\$651,970
EXTERIOR BASE STONE	04400	\$75,000
<b>DIVISION 5 - METALS</b>		
STRUC STEEL & METAL DECK	05000	\$8,129,295
METAL FABRICATIONS	05500	\$711,970
LOUVERS	05600	\$29,000
<b>DIVISION 6 - WOOD &amp; PLASTICS</b>		
ROUGH & FINISH CARPENTRY	06100	\$162,000
ARCHITECTURAL MILLWORK	06500	\$125,000
<b>DIVISION 7 - THERMAL &amp; MOISTURE PROT.</b>		
WATERPROOFING	07100	\$7,500
TRAFFIC TOPPING @ MECH. PENTHOUSE	07200	\$44,080

DESCRIPTION	DIVISION	ESTIMATE
METAL WALL PANELS	07300	\$58,520
SPRAY FIREPROOFING	07250	\$689,500
FIRESAFING / INSULATION	w/ Trades	
ROOFING	07630	\$705,700
JOINT SEALANTS	07900	\$25,000

#### DIVISION 8 - DOORS & WINDOWS

HOLLOW METAL FRAMES & HARDWARE	08210	\$291,425
WOOD DOORS	08200	Incl in 08210
SPECIAL DOORS S.S. DOORS	NA	
SECTIONAL OVERHEAD DOORS	08360	\$40,200
ALUMINUM CURTAINWALL	08500	\$9,180,000
FINISH HARDWARE	08710	Incl in 08210
MIRRORS	08800	\$18,000

#### DIVISION 9 - FINISHES

LATH & PLASTER	w/ Drywall	
GYPSUM BOARD	09250	\$2,593,030
GFRC COLUMN COVERS	NA	
CERAMIC TILE	09300	\$395,500
RESILIENT FLOORING	09650	\$7,500
ACOUSTICAL CEILINGS	w/ Drywall	
CARPET	NA	\$0
PAINTING	09900	\$252,300
WALL COVERING	NA	\$0
CONCRETE FLOOR HARDENER		\$5,200

#### DIVISION 10 - SPECIALTIES

TOILET COMPARTMENTS	10155	\$68,300
WALL & CORNER GUARDS	10280	\$5,500
MOLDED DOCK BUMPERS	10500	\$7,500
FIRE PROTECTION SPECIALTIES	10520	\$5,000
KITCHEN EQUIPMENT	NIC	NIC
TELEPHONE ENCLOSURES	10755	\$950
TOILET & BATH ACCESSORIES	10800	\$76,400
CUSTOM MAIL DROP	10755	

#### DIVISION 11 - EQUIPMENT

ROOF DAVIT SYSTEM	11014	\$50,000
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DESCRIPTION	DIVISION	ESTIMATE
DOCK EQUIPMENT	11160	\$6,500
WASTE HANDLING EQUIPMENT	NIC	NIC
PARKING CONTROL EQUIPMENT	11161	\$25,000
<b>DIVISION 12 - FURNISHINGS</b>		
WINDOW TREATMENT	12500	\$458,891
FLOOR MATS & FRAMES	12690	\$0
INTERIOR SIGNAGE	12760	\$25,000
<b>DIVISION 14 - CONVEYING SYSTEMS</b>		
ELEVATORS	14200	\$2,405,000
<b>DIVISION 15 - MECHANICAL</b>		
FIRE PROTECTION	15300	\$835,000
PLUMBING	15400	\$1,265,000
HVAC	15500	\$3,400,000
TEMPERATURE CONTROL	15650	incl in 15500
<b>DIVISION 16 - ELECTRICAL</b>		
ELECTRICAL	16000	\$4,573,000
<b>DIVISION 17 - MISCELLANEOUS</b>		
SECURITY DESK		\$45,000
BUILDING DIRECTORIES		\$25,000
SITE MONITORING, SETTLEMENT READINGS		\$15,000
TOWER CRANE		\$889,300
MAN/MATERIAL HOIST		\$376,500
WATER TAP FEES		\$15,000
PARKING METER & STREET CLOSURE FEES		\$170,700
STREET PATCHING AND REPAIR		\$25,000
USG INCREASED FLOOR LOADING		NOT INCLUDED
COMED TEMPORARY ACCESS FACILITIES CHARGES		\$60,000
<b>DIVISION 18 - ALLOWANCES</b>		
DEWATERING/CAISSONS ISSUE ALLOWANCE		BY OWNER
SECURITY SYSTEM EQUIPMENT & CONDUIT ALLOWANCE		\$75,000
ENTRANCE CANOPY ALLOWANCE		NOT INCLUDED
GROUND FLOOR LOBBY LIGHTING ALLOWANCE		\$100,000

DESCRIPTION	DIVISION	ESTIMATE
TOP OF BUILDING LIGHTING ALLOWANCE		\$50,000
WEATHER / WINTER PROTECTION ALLOWANCE	BY OWNER	
MECHANICAL FLOATING FLOOR ALLOWANCE		\$50,000
SPECIAL WASTE PREMIUMS ALLOWANCE		\$225,000
PENTHOUSE EQUIPMENT SOUND PROOFING ALLOWANCE		\$25,000
<b>SUBTOTAL</b>		<b>\$43,803,928</b>
GENERAL CONDITIONS		\$2,008,007
CONTRACTOR'S CONTINGENCY		\$700,000
FEE		\$1,279,078
OWNER'S DESIGN CONTINGENCY	BY OWNER	
<b>SUBTOTAL</b>		<b>\$47,791,013</b>
INSURANCE		\$468,352
PAYMENT AND PERFORMANCE BOND	NOT INCLUDED	
<b>TOTAL</b>		<b>\$48,259,365</b>

550 West Adams Project  
CHICAGO, ILLINOIS

ALTERNATES

Alternate No.	Direction Required By	Description	Cost
1	2/1/2005	Provide BTU metering on condensor water taps at floors 10-18	ADD \$20,000
2	11/1/2004	Provide kitchen exhaust riser in existing riser space location from 1st floor ceiling level through penthouse floor slab, terminated with a cap (as requirements have not been finalized this does not include fan, conduit or controls)	ADD \$75,000
3	11/1/2004	Stair pressurization via fans and risers at each stairwell with taps into each stairwell starting at the 18th floor and every 4th floor thereafter	ADD \$170,000
4	11/1/2004	Provide general exhaust riser in existing riser space location from 1st floor ceiling level through penthouse floor slab, terminated with a cap (as requirements have not been finalized this does not include fan, conduit or controls)	ADD \$25,000
5	11/1/2004	Provide 2 inch gas riser in existing shaft space	ADD \$8,000
6	11/1/2004	Provide 2 1/2 inch gas riser in existing shaft space	ADD \$9,000
7	11/1/2004	Provide 225 KVA transformer w/6 gang meter where for future tenants at floors 2 thru 9	ADD \$131,000
8	10/15/2004	Provide performance and payment bond for \$9,750,000	ADD \$50,413

550 West Adams Project  
CHICAGO, ILLINOIS

QUALIFICATIONS/CLARIFICATIONS

GENERAL:

- 1 Builders risk insurance is assumed to be provided by Owner.  
2 Building permit and permit management/expediting costs are assumed to be by the Owner.  
3 The Work shall commence, provided permits have been issued, no later than seven (7)  
4 days after the date stipulated in the Owners written notice to proceed.  
5 We have excluded all cost for testing services necessary for the project.  
6 COMED/ PEOPLES GAS excess facility and other charges are not included.  
7 A single-cage man/material hoist will be provided for base building work. Additional hoisting for tenant  
improvement work has not been included. It is assumed that interior elevators will be utilized to perform  
tenant improvement work after the elevators are completed and turned over.  
8 The following items are not included as they are assumed to be in the Owner's FF&E budget:  
Tele/Data Wiring Site Furniture  
Low Voltage Wiring Trash Compactor  
Loose Furniture Interior/Exterior Signage  
9 Design consultant costs related to graphics, lighting, fire protection and glazing systems have not been  
included.  
10 Winter heating equipment, enclosures and energy consumption is not included. An allowance for this  
required work is included in Owner's budget.  
11 Permits/costs related to crane air rights have not been included.  
12 Unless otherwise noted all allowances include labor and material.  
13 This Budget does not include any premium costs for Overtime or Acceleration of the Work.  
14 We include a best faith effort for City of Chicago Residency requirements but will not be responsible  
for any associated penalties or damages.  
15 The GMP is expressly contingent upon the information contained in these clarifications and qualifications.  
Notwithstanding anything to the contrary contained in the Construction Contract or General Conditions  
of the Contract, the Contractor shall not be required under the terms of this Contract to perform any work  
indicated on the Plans or Specifications that is inconsistent with these clarifications. In the event of  
any inconsistency between these clarifications, and the Plans and Specifications, the clarifications and  
qualifications shall take precedence. In the event of any disagreement between the Architect's  
interpretation of any item of clarification or qualification and the Contractor, the Owner's Representative  
and Contractor shall jointly agree on the proper interpretation.  
16 CAD drawings shall be provided by the Architect for backgrounds at no cost to Contractors.  
17 Field office for Architect's representative is not included.  
18 Perimeter protection / sidewalk barricades included from the start of grade beam installation.  
19 Progress photos are not included.  
20 Costs for outside or independent testing services for any trade is not included.  
21 We have included drawings by DeStefano dated May 27, 2004 (Design Development),  
June 4, 2004 (Mill Order Bld), July 12, 2004 (Issued for Mill Order).  
22 Certification/Commissioning of Building Systems by professional engineer is not included.  
23 This GMP is based on start of construction October 15, 2004.  
24 We have included the (5) five typical high density file alternates per the structural drawings. These locations  
must be provided by November 1, 2004. We have not included any additional costs associated with other  
floor loading modifications.  
25 Tenant improvement work is not included. General Conditions, Administrative and Supervision costs  
to monitor tenant improvement work is not included.  
26 General Contractors Fee on changes is 5%, no General Contractors Fee reduction is included for  
Deduct Change Orders.  
27 In conjunction with these qualifications / clarifications we have marked up a set of the May 27, 2004  
specifications highlighting areas of the document which are not included as part of this GMP.  
Performance/Payment Bond is not included. We have included bonds for subcontracts  
over \$100,000 or a Subguard policy for all Subcontractors.

SITework

- 28 Costs for removal of unsuitable soil, obstructions and hazardous materials etc. are not included.  
29 We have included an allowance of \$225,000 for special waste premiums.  
30 We have included the cost to excavate to 1.5 feet below slab on grade elevation and fill back to sub base elevation.  
31 Costs for underpinning/earth retention of existing utilities or at the property lines are not included.  
32 Costs for relocation of existing onsite or adjacent utilities are not included.  
33 Demolition of existing buildings or backfill of same is not included.  
34 Irrigation is not included.  
35 Demolition of existing vaulted sidewalks or backfill of same is not included.  
36 Sidewalks are included as standard concrete broom finish, exposed aggregate or colored concrete not included.  
37 Drainage piping for sidewalk planters is not included.  
38 Dewatering or well points are not included.

550 West Adams Project  
CHICAGO, ILLINOIS

QUALIFICATIONS/CLARIFICATIONS  
September 9, 2004

**CONCRETE**

- 39 We have included 1/4" in 10', non-accumulative slab tolerance.  
40 We have not included additional latexing or leveling beyond normal tolerances.  
41 A \$50,000 allowance is included for a floating floor at the mechanical floor.  
42 Wire mesh is not included in the stair pan treads.  
43 We include 5000psi concrete for caissons

**MASONRY AND STONE**

- 44 Travel costs associated with stone materials is not included.  
45 Masonry shop drawings are not included.  
46 North and West ground floor elevations are included as painted running bond CMU.  
47 Granite cladding (material \$18/sf) at ground floor base and bustle is included.

**METALS**

- 48 Cellular metal floor decks have not been included.  
49 Metal pan stairs with cast-in-place concrete.  
50 Miscellaneous metals are included as painted steel, aluminum is not included.

**ROOFING/WATERPROOFING**

- 51 We have included waterproofing of the elevator pits.  
52 No damproofing or waterproofing is assumed on the perimeter foundation or slab.  
53 No traffic topping has been included in the parking areas. Concrete sealer/ hardener is included.  
54 Waterproofing of toilet room floors is included at (3) toilet rooms.  
55 Roofing at the 19th floor, cooling tower area and bustle area is included as 60 mil Sure-white EPDM system or equal.  
56 Pavers are included as standard gray 2'x2'x2" concrete  
57 Green roof plantings is included as 1 plant / sf, 3" plug sedums, grasses, herbs  
58 Roofing warranties are included on Manufacturers standard warranty form only. Co-signing or other warranties are not included.

**CURTAINWALL / METAL PANEL**

- 59 Off-site mockup of typical curtainwall is included. Storefront or other exterior elements is not included.  
60 Refer to Arcadia quote dated August 8, 2004 for other specific clarifications.  
61 Two coat Kynar paint system included for metal wall panels, non-metallic, non-exotic.  
62 No metallic paint or finish of spandrel glass. Includes 1/4" monolithic custom color with solid flood coat with 3" of insulation CW-80.  
63 Vision glass 1" clear with low-e.  
64 2 coat mica paint finish on exterior aluminum and baked enamel on interior.  
65 Glass fins are rectangular with no tapered ends.  
66 Glass fins are clear laminated interlayer. Colored or patterned glass is not included.  
67 3" horizontal mullions are included.  
68 Penthouse level is included as 1" insulated translucent vertically butt glazed curtainwall, patterned glass is not included.  
69 Low iron glass is not included.  
70 Butt glazing is included on floors 2-18. Ground floor exterior will be glass not stone.

**FINISHES**

- 71 No ceiling system or wall and floor finishes are included in the typical floor elevator lobbies, exposed construction only.  
72 Perimeter drywall and drywall furring on columns is included on the tenant floors.  
73 Drywall at typical tenant floors is sanded and primed, no finish paint is included.  
74 Ceiling mounted toilet partitions are included.  
75 No perimeter drywall or drywall furring on columns is included on the penthouse floor.  
76 No stone base or thresholds included in toilet rooms.  
77 Electrical control of Meco or equal window treatments is not included.  
78 Drywall ceiling and blind pocket are not included at perimeter.  
79 Ceilings for parking are included as exposed construction. No finished ceilings are included.  
80 Standard color 2'x2" accent tile is included in lieu of 2'x2" glass accent tile.

**ELEVATORS**

- 81 An approximate value of each elevator cab as shown is \$35,000.  
82 Elevator doors and frames are included as #8 stainless steel at the lobby level (excluding service car) and primed metal at all remaining floors.  
83 We have included 800 fpm hirise passenger cars and 350 fpm lowrise passenger cars, with 3500 lb capacity.  
84 Service elevator is included as 350 fpm, 5000 lb, with manufacturers standard cab finishes  
85 An 8'-0" cab height is included.  
86 Elevator controls schemes to provide express service to 18th floor are not included as they are not finalized.

550 West Adams Project  
CHICAGO, ILLINOIS

QUALIFICATIONS/CLARIFICATIONS

September 9, 2004

**PLUMBING**

- 88 Insulation is included on the hot and cold water risers and branch mains where exposed only.
- 89 No insulation is included for branch piping.
- 90 A duplex domestic booster pump is included. (not variable speed)
- 91 A oil Interceptor is included for the parking area.
- 92 Hose bibs are included in the loading dock, parking garage, South and East face of building, and inside the penthouse.
- 93 Planter drains are not included.
- 94 We have included (2) wet columns separate from the toilet room area.
- 95 We have included AS# 6601.012 urinals and Grohe #20783 faucets in lieu of specified.

**FIRE PROTECTION**

- 96 Fire Protection System shall meet City of Chicago minimum code requirements.
- 97 Upturned sprinkler heads are included on the tenant floors including elevator lobbies.
- 98 A single dry sprinkler system is included for the parking area and loading dock.

**HVAC**

- 99 Test and balance is included for base building systems only.
- 100 DDC Temperature Controls are included.
- 101 Insulation is not included on the tenant condenser water loop.
- 102 Linear type air diffusers are not included on the typical floor elevator lobbies.
- 103 Make-up air to the parking area is not heated.
- 104 Exhaust from the parking area is activated by CO detectors.
- 105 We have included six (6) 1200 cfm, 7.5 w fan powered boxes with electric heat per typical tenant floor.
- 106 Galvanized cooling tower basins are included
- 107 No humidification system has been included
- 108 Includes 6" condenser water riser with 2 1/2" valve at ea. floor
- 109 Includes 4" refrigerant with 1" capped at ea. floor.
- 110 Additional equipment or other related work for Tenant computer room is not included.
- 111 Additional HVAC build-out of the Tenant floors is not included (ie 1 terminal unit /1000 sf is not included)
- 112 BTU metering is not included.
- 113 Temporary HVAC for the Tenant Floors is not included.
- 114 Kitchen exhaust riser is not included.
- 115 Stair pressurization is not included.
- 116 General exhaust riser system is not included.
- 117 Chiller fouling factor is included as 0.0025.
- 118 2" gas riser is not included.

**ELECTRIC**

- 119 Baseboard heat with integral thermostats is included only at the 1st floor lobby.
- 120 Lighting is provided in the public spaces, parking area, loading dock, 1st floor elevator lobby, all stairwells and toilet rooms.
- 121 There is no baseboard heat on the typical tenant floors.
- 122 Lightning protection system is not included.
- 123 Tenant floor transformers are not included for floors 2-9, bus duct plug is present at each floor for future tenant's use.
- 124 We included Fire Alarm System terminations and connections as it relates to Base Building work only, Tenant Improvement work is not included.
- 125 Tenant paging capabilities are not included.
- 126 We have included an additional 36 typical stairwell light fixtures for Tenant floors 10-18 only.
- 127 We have included a 400kw emergency generator for base building only, Tenant generator is not included.
- 128 We have an allowance of \$50,000 included in electrical for top of building lighting.
- 129 We have an allowance of \$100,000 included in electrical for ground floor lobby lighting.
- 130 We have included a maximum of 6 modules per floor for floors 10-18 to accommodate Tenant's installation of Life Safety strobes and speakers.
- 131 We have included 225 KVA transformer and 1-800amp CT/meter, (1) 800 amp distribution panel, 3-phase, 120/208 volt with 6-200 amp 3 pole breakers. Also included per floor (6) 200 amp panels, 3-phase, 120/208 volt, including sub breakers and conduit, cable, straps, fittings, hangers, breakers, boxes, hardware for floors 10-18.
- 132 Communication riser concept dated 3/26/04 by ESD
- 133 Provide (3) three dedicated 4" EMT conduits from Net Pop Room to 10th floor
- 134 Telephone backbone infrastructure is not included.

Description	Orig Dur	Start	Finish	2004 2005 2006 2007 2008											
				E M A M J J A S O N D		J F M A M J J A S O N D		J F M A M J J A S O N D		J F M A M J J A S O N D		J F M A M J J A S O N D			
<b>Mile Stones</b>															
Prepare Revised Permit Documents	65	02FEB04	30APR04	Prepare Revised Permit Documents											
C.O.C. Foundation Permit Review Process	66	03MAY04	02AUG04	C.O.C. Foundation Permit Review Process											
C.O.C. Building Permit Review Process	120	03MAY04	15OCT04	C.O.C. Building Permit Review Process											
Submit Revised Permit Documents	0	03MAY04		Submit Revised Permit Documents											
Obtain Foundation Permit	0	03AUG04		Obtain Foundation Permit											
Obtain Building Permit	0	15OCT04 *		Obtain Building Permit											
Deliver Floors 2 thru 9 For T.I. Construction	0		05DEC05	Deliver Floors 2 thru 9 For T.I. Construction											
Deliver Floors 10 thru 14 For T.I. Construction	0		02JAN06	Deliver Floors 10 thru 14 For T.I. Construction											
Tenant Build Out Duration	152	03JAN06	03AUG06	Tenant Build Out Duration											
Deliver Floors 15 thru 18 For T.I. Construction	0		01MAR06	Deliver Floors 15 thru 18 For T.I. Construction											
Base Building City Inspections	15	14MAR06	03APR06	Base Building City Inspections											
Base Building Occupancy Permit	0		03APR06	Base Building Occupancy Permit											
<b>Curtainwall Procurement/ Lead Times</b>															
Release Preliminary Curtainwall Engineering	0	01OCT04 *		Release Preliminary Curtainwall Engineering											
Die Construction	20	01OCT04	28OCT04	Die Construction											
Profile Approval	0	01OCT04		Profile Approval											
Engineering/Shop Drawing Process	100	01OCT04	17FEB05	Engineering/Shop Drawing Process											
Extrusion Production/ Fabrication	165	18FEB05	07OCT05	Extrusion Production/ Fabrication											
<b>Structural Steel Procurement</b>															
Release Mill Order	5	02JUN04	08JUN04	Release Mill Order											
Engineering/ Shop Drawing Process	120	09JUN04	23NOV04	Engineering/ Shop Drawing Process											
Structural Steel Fabrication	90	24NOV04	29MAR05	Structural Steel Fabrication											
<b>Foundations</b>															
Site Barricades & Fencing	10	15OCT04	28OCT04	Site Barricades & Fencing											
Site Demolition	15	29OCT04	18NOV04	Site Demolition											
Caissons	25	19NOV04	23DEC04	Caissons											
Grade Beams/ Caps	30	24DEC04	03FEB05	Grade Beams/ Caps											
<b>Structural Steel</b>															
Erect Tower Crane	5	04FEB05	10FEB05	Erect Tower Crane											
Erect 2nd Floor Steel (Tier #1)	10	11FEB05	24FEB05	Erect 2nd Floor Steel (Tier #1)											
Erect 3rd & 4th Floor Steel (Tier #2)	9	25FEB05	09MAR05	Erect 3rd & 4th Floor Steel (Tier #2)											
Erect 5th & 6th Floor Steel (Tier #3)	9	10MAR05	22MAR05	Erect 5th & 6th Floor Steel (Tier #3)											
Erect 7th & 8th Floor Steel (Tier #4)	9	23MAR05	04APR05	Erect 7th & 8th Floor Steel (Tier #4)											
Erect 9th & 10th Floor Steel (Tier #5)	9	05APR05	15APR05	Erect 9th & 10th Floor Steel (Tier #5)											
Erect 11th & 12th Floor Steel (Tier #6)	9	18APR05	28APR05	Erect 11th & 12th Floor Steel (Tier #6)											



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				E	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A
Detail 16th Floor Deck	3	10JUN05	14JUN05																I	Detail 16th Floor Deck																						
Install Metal Deck 17th Floor	3	15JUN05	17JUN05																I	Install Metal Deck 17th Floor																						
Install Metal Deck 19th Floor	7	20JUN05	28JUN05																I	Install Metal Deck 19th Floor																						
Detail 17th Floor Deck	3	20JUN05	22JUN05																I	Detail 17th Floor Deck																						
Detail 18th Floor Deck	3	23JUN05	27JUN05																I	Detail 18th Floor Deck																						
Detail 19th Floor Deck	5	29JUN05	06JUL05																I	Detail 19th Floor Deck																						
Install Penthouse Roof Deck	5	29JUN05	06JUL05																I	Install Penthouse Roof Deck																						
Detail Penthouse Roof	3	07JUL05	11JUL05																I	Detail Penthouse Roof																						
<b>Concrete Fill On Decks</b>																																										
Pour 2nd Floor Concrete	3	23MAR05	25MAR05																I	Pour 2nd Floor Concrete																						
Pour Slab On Grade	35	23MAR05	10MAY05																I	Pour Slab On Grade																						
Pour 3rd Floor Concrete	2	28MAR05	29MAR05																I	Pour 3rd Floor Concrete																						
Pour 4th Floor Concrete	2	05APR05	06APR05																I	Pour 4th Floor Concrete																						
Pour 5th Floor Concrete	2	08APR05	11APR05																I	Pour 5th Floor Concrete																						
Pour 6th Floor Concrete	2	18APR05	19APR05																I	Pour 6th Floor Concrete																						
Pour 7th Floor Concrete	2	21APR05	22APR05																I	Pour 7th Floor Concrete																						
Pour 8th Floor Concrete	2	29APR05	02MAY05																I	Pour 8th Floor Concrete																						
Pour 9th Floor Concrete	2	04MAY05	05MAY05																I	Pour 9th Floor Concrete																						
Pour 10th Floor Concrete	2	12MAY05	13MAY05																I	Pour 10th Floor Concrete																						
Pour 11th Floor Concrete	2	17MAY05	18MAY05																I	Pour 11th Floor Concrete																						
Pour 12th Floor Concrete	2	25MAY05	26MAY05																I	Pour 12th Floor Concrete																						
Pour 13th Floor Concrete	2	30MAY05	31MAY05																I	Pour 13th Floor Concrete																						
Pour 14th Floor Concrete	2	07JUN05	08JUN05																I	Pour 14th Floor Concrete																						
Pour 15th Floor Concrete	2	10JUN05	13JUN05																I	Pour 15th Floor Concrete																						
Pour 16th Floor Concrete	2	15JUN05	16JUN05																I	Pour 16th Floor Concrete																						
Pour 17th Floor Concrete	2	23JUN05	24JUN05																I	Pour 17th Floor Concrete																						
Pour 18th Floor Concrete	2	28JUN05	29JUN05																I	Pour 18th Floor Concrete																						
Pour 19th Floor Concrete	5	07JUL05	13JUL05																I	Pour 19th Floor Concrete																						
Pour Roof/ Penthouse Concrete	8	12JUL05	21JUL05																I	Pour Roof/ Penthouse Concrete																						
<b>Masonry</b>																																										
Masonry Walls - Electrical Rooms	20	11MAY05	07JUN05																I	Masonry Walls - Electrical Rooms																						
Exterior Masonry Walls	15	08JUN05	28JUN05																I	Exterior Masonry Walls																						
Interior Masonry Walls	25	29JUN05	03AUG05																I	Interior Masonry Walls																						
<b>Fire Proofing</b>																																										
Fire Proofing Ground Floor	10	11APR05	22APR05																I	Fire Proofing Ground Floor																						
Fire Proofing 2nd Floor	4	25APR05	28APR05																I	Fire Proofing 2nd Floor																						



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				E I M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A												E I M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A												E I M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A												E I M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A												E I M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A													
Fire Proofing 3rd Floor	4	29APR05	04MAY05																																																													I	Fire Proofing 3rd Floor
Fire Proofing 4th Floor	4	05MAY05	10MAY05																																																													I	Fire Proofing 4th Floor
Fire Proofing 5th Floor	4	11MAY05	16MAY05																																																													I	Fire Proofing 5th Floor
Fire Proofing 6th Floor	4	17MAY05	20MAY05																																																													I	Fire Proofing 6th Floor
Fire Proofing 7th Floor	4	23MAY05	26MAY05																																																													I	Fire Proofing 7th Floor
Fire Proofing 8th Floor	4	27MAY05	01JUN05																																																													I	Fire Proofing 8th Floor
Fire Proofing 9th Floor	4	02JUN05	07JUN05																																																													I	Fire Proofing 9th Floor
Fire Proofing 10th Floor	4	08JUN05	13JUN05																																																													I	Fire Proofing 10th Floor
Fire Proofing 11th Floor	4	14JUN05	17JUN05																																																													I	Fire Proofing 11th Floor
Fire Proofing 12th Floor	4	20JUN05	23JUN05																																																													I	Fire Proofing 12th Floor
Fire Proofing 13th Floor	4	24JUN05	29JUN05																																																													I	Fire Proofing 13th Floor
Fire Proofing 14th Floor	4	30JUN05	06JUL05																																																													I	Fire Proofing 14th Floor
Fire Proofing 15th Floor	4	07JUL05	12JUL05																																																													I	Fire Proofing 15th Floor
Fire Proofing 16th Floor	4	22JUL05	27JUL05																																																													I	Fire Proofing 16th Floor
Fire Proofing 17th Floor	4	28JUL05	02AUG05																																																													I	Fire Proofing 17th Floor
Fire Proofing 18th Floor	4	03AUG05	08AUG05																																																													I	Fire Proofing 18th Floor
Fire Proofing Penthouse Areas	15	09AUG05	29AUG05																																																													■	Fire Proofing Penthouse Areas
<b>Curtainwall</b>																																																																	
Install Ground Floor Curtainwall	35	05MAY05	22JUN05																																																													■	Install Ground Floor Curtainwall
Layout/ Clip 2nd thru 4th Floor	6	05MAY05	12MAY05																																																													I	Layout/ Clip 2nd thru 4th Floor
Install Curtainwall Framing 2nd thru 4th Floor	12	23MAY05	07JUN05																																																													■	Install Curtainwall Framing 2nd thru 4th Floor
Layout/ Clip 5th & 6th	6	23MAY05	30MAY05																																																													I	Layout/ Clip 5th & 6th
Layout/ Clip 7th & 8th Floor	6	27MAY05	03JUN05																																																													I	Layout/ Clip 7th & 8th Floor
Install Curtainwall Framing 4th thru 6th	12	08JUN05	23JUN05																																																													■	Install Curtainwall Framing 4th thru 6th
Layout/ Clip 9th & 10th Floor	6	08JUN05	15JUN05																																																													I	Layout/ Clip 9th & 10th Floor
Layout/ Clip 11th & 12th Floor	6	20JUN05	27JUN05																																																													I	Layout/ Clip 11th & 12th Floor
Install Curtainwall Framing 6th thru 8th	12	24JUN05	12JUL05																																																													■	Install Curtainwall Framing 6th thru 8th
Layout/ Clip 13th & 14th Floor	6	30JUN05	08JUL05																																																													I	Layout/ Clip 13th & 14th Floor
Install Curtainwall Framing 8th thru 10th	12	13JUL05	28JUL05																																																													■	Install Curtainwall Framing 8th thru 10th
Layout/ Clip 15th & 16th Floor	6	13JUL05	20JUL05																																																													I	Layout/ Clip 15th & 16th Floor
Layout/ Clip 17th & 18th Floor	6	21JUL05	28JUL05																																																													I	Layout/ Clip 17th & 18th Floor
Install Curtainwall Framing 10th thru 12th	12	29JUL05	15AUG05																																																													■	Install Curtainwall Framing 10th thru 12th
Install Curtainwall Framing 12th thru 14th	12	16AUG05	31AUG05																																																													■	Install Curtainwall Framing 12th thru 14th
Install Curtainwall Framing 14th thru 16th	12	01SEP05	16SEP05																																																													■	Install Curtainwall Framing 14th thru 16th
Install Curtainwall Framing 17th thru 18th	12	19SEP05	04OCT05																																																													■	Install Curtainwall Framing 17th thru 18th
Install Roof Top Coping	15	05OCT05	25OCT05																																																													■	Install Roof Top Coping
Hoist Bay Infill Framing	7	02JAN06	10JAN06																																																													I	Hoist Bay Infill Framing



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				E I M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A												E I M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A												E I M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A												E I M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A												E I M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A											
Top Track 14th & 15th Floor	5	17JUN05	23JUN05																																																	■ Top Track 14th & 15th Floor											
Top Track 16th & 17th Floor	5	22JUL05	28JUL05																																																	■ Top Track 16th & 17th Floor											
Top Track 18th Floor	2	29JUL05	01AUG05																																																	I Top Track 18th Floor											
Elevator Core Shaftwall 2nd & 3rd Floor	5	02AUG05	08AUG05																																																	■ Elevator Core Shaftwall 2nd & 3rd Floor											
Elevator Core Shaftwall 4th & 5th Floor	5	09AUG05	15AUG05																																																	■ Elevator Core Shaftwall 4th & 5th Floor											
Elevator Core Shaftwall 6th & 7th Floor	5	16AUG05	22AUG05																																																	■ Elevator Core Shaftwall 6th & 7th Floor											
Elevator Core Shaftwall 8th & 9th Floor	5	23AUG05	29AUG05																																																	■ Elevator Core Shaftwall 8th & 9th Floor											
Elevator Core Shaftwall 10th & 11th Floor	5	30AUG05	05SEP05																																																	■ Elevator Core Shaftwall 10th & 11th Floor											
Elevator Core Shaftwall 12th & 13th Floor	5	06SEP05	12SEP05																																																	■ Elevator Core Shaftwall 12th & 13th Floor											
Elevator Core Shaftwall 14th & 15th Floor	5	13SEP05	19SEP05																																																	■ Elevator Core Shaftwall 14th & 15th Floor											
Elevator Core Shaftwall 16th & 17 Floor	5	20SEP05	26SEP05																																																	■ Elevator Core Shaftwall 16th & 17 Floor											
Elevator Core Shaftwall 18th Floor	3	27SEP05	29SEP05																																																	I Elevator Core Shaftwall 18th Floor											
<b>Typical Floor Framing</b>																																																															
Typical Floor Framing 2nd & 3rd Floor	7	09AUG05	17AUG05																																																	■ Typical Floor Framing 2nd & 3rd Floor											
Typical Floor Framing 4th & 5th Floor	7	06SEP05	14SEP05																																																	■ Typical Floor Framing 4th & 5th Floor											
Typical Floor Framing 6th & 7th Floor	7	20SEP05	28SEP05																																																	■ Typical Floor Framing 6th & 7th Floor											
Typical Floor Framing 8th & 9th Floor	7	04OCT05	12OCT05																																																	■ Typical Floor Framing 8th & 9th Floor											
Typical Floor Framing 10th & 11th Floor	7	18OCT05	26OCT05																																																	■ Typical Floor Framing 10th & 11th Floor											
Typical Floor Framing 12th & 13th Floor	7	01NOV05	09NOV05																																																	■ Typical Floor Framing 12th & 13th Floor											
Typical Floor Framing 14th & 15th Floor	7	15NOV05	23NOV05																																																	■ Typical Floor Framing 14th & 15th Floor											
Typical Floor Framing 16th & 17th Floor	7	24NOV05	02DEC05																																																	■ Typical Floor Framing 16th & 17th Floor											
Typical Floor Framing 18th Floor	3	05DEC05	07DEC05																																																	I Typical Floor Framing 18th Floor											
<b>Drywall</b>																																																															
Drywall 2nd & 3rd Floor	8	15SEP05	26SEP05																																																	■ Drywall 2nd & 3rd Floor											
Drywall 4th & 5th Floor	8	13OCT05	24OCT05																																																	■ Drywall 4th & 5th Floor											
Drywall 6th & 7th Floor	8	27OCT05	07NOV05																																																	■ Drywall 6th & 7th Floor											
Drywall 8th & 9th Floor	8	10NOV05	21NOV05																																																	■ Drywall 8th & 9th Floor											
Drywall 10th & 11th Floor	8	24NOV05	05DEC05																																																	■ Drywall 10th & 11th Floor											
Drywall 12th & 13th Floor	8	08DEC05	19DEC05																																																	■ Drywall 12th & 13th Floor											
Drywall 14th & 15th Floor	8	22DEC05	02JAN06																																																	■ Drywall 14th & 15th Floor											
Drywall 16th & 17th Floor	8	05JAN06	16JAN06																																																	■ Drywall 16th & 17th Floor											
Drywall 18th Floor	4	17JAN06	20JAN06																																																	I Drywall 18th Floor											
<b>Elevators</b>																																																															
Install Man/ Material Hoist	3	25MAR05	29MAR05																																																	I Install Man/ Material Hoist											
Deliver Elevator Machine Room Equipment	2	20JUL05	21JUL05																																																	I Deliver Elevator Machine Room Equipment											
Drop Lines & Set Bottom Rails - Group 1	5	02SEP05	08SEP05																																																	■ Drop Lines & Set Bottom Rails - Group 1											



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				E	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J
Drop Lines & Set Bottom Rails - Group 2	5	09SEP05	15SEP05						■ Drop Lines & Set Bottom Rails - Group 2																												
Install Temp. Platforms - Group 1	8	09SEP05	20SEP05						■ Install Temp. Platforms - Group 1																												
Install Temp. Platforms - Group 2	8	16SEP05	27SEP05						■ Install Temp. Platforms - Group 2																												
Set Rails - Group 1	13	21SEP05	07OCT05						■ Set Rails - Group 1																												
Set Rails - Group 2	13	28SEP05	14OCT05						■ Set Rails - Group 2																												
Install Hoistway Frames - Group 1	15	10OCT05	28OCT05						■ Install Hoistway Frames - Group 1																												
Install Hoistway Frames - Group 2	15	17OCT05	04NOV05						■ Install Hoistway Frames - Group 2																												
Install/ Adjust Doors - Group 1	14	31OCT05	17NOV05						■ Install/ Adjust Doors - Group 1																												
Install/ Adjust Doors - Group 2	12	07NOV05	22NOV05						■ Install/ Adjust Doors - Group 2																												
Hoistway Wiring - Group 1	18	18NOV05	13DEC05						■ Hoistway Wiring - Group 1																												
Hoistway Wiring - Group 2	18	23NOV05	16DEC05						■ Hoistway Wiring - Group 2																												
Build Cars - Group 1	18	14DEC05	06JAN06						■ Build Cars - Group 1																												
Build Cars - Group 2	18	19DEC05	11JAN06						■ Build Cars - Group 2																												
Freight Car Turnover for Temp. Use	0		23DEC05						◆ Freight Car Turnover for Temp. Use																												
Dismantle Man/ Material Hoist	5	26DEC05	30DEC05						Dismantle Man/ Material Hoist																												
Final Adjustments	10	09JAN06	20JAN06						■ Final Adjustments																												
Balance Of Elevators Turned Over	1	23JAN06	23JAN06						Balance Of Elevators Turned Over																												
<b>Plumbing</b>																																					
Interior Underground	20	04FEB05	03MAR05						■ Interior Underground																												
Sewer/ Water Tie In	8	04MAR05	15MAR05						■ Sewer/ Water Tie In																												
Install Stacks	60	28MAR05	17JUN05						■ Install Stacks																												
Rough In 2nd & 3rd Floor	10	09AUG05	22AUG05						■ Rough In 2nd & 3rd Floor																												
Rough In 4th & 5th Floor	10	23AUG05	05SEP05						■ Rough In 4th & 5th Floor																												
Rough In 6th & 7th Floor	10	06SEP05	19SEP05						■ Rough In 6th & 7th Floor																												
Rough In 8th & 9th Floor	10	20SEP05	03OCT05						■ Rough In 8th & 9th Floor																												
Test Stacks thru 8th Floor	3	26SEP05	28SEP05						Test Stacks thru 8th Floor																												
Rough In 10th & 11th Floor	10	04OCT05	17OCT05						■ Rough In 10th & 11th Floor																												
Rough In 12th & 13th Floor	10	18OCT05	31OCT05						■ Rough In 12th & 13th Floor																												
Rough In 14th & 15th Floor	10	01NOV05	14NOV05						■ Rough In 14th & 15th Floor																												
Plumbing Trim 2nd & 3rd Floor	10	08NOV05	21NOV05						■ Plumbing Trim 2nd & 3rd Floor																												
Rough In 16th & 17th Floor	10	15NOV05	28NOV05						■ Rough In 16th & 17th Floor																												
Plumbing Trim 4th & 5th Floor	10	22NOV05	05DEC05						■ Plumbing Trim 4th & 5th Floor																												
Rough In 18th Floor	5	29NOV05	05DEC05						Rough In 18th Floor																												
Test Stacks thru 16th Floor	3	06DEC05	08DEC05						Test Stacks thru 16th Floor																												
Plumbing Trim 6th & 7th Floor	10	06DEC05	19DEC05						■ Plumbing Trim 6th & 7th Floor																												
Plumbing Trim 8th & 9th Floor	10	20DEC05	02JAN06						■ Plumbing Trim 8th & 9th Floor																												



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Description	Orig Dur	Start	Finish	2004 2005 2006 2007 2008																																		
				E	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Plumbing Trim 10th & 11th Floor	10	03JAN06	16JAN06	■ Plumbing Trim 10th & 11th Floor																																		
Plumbing Trim 12th & 13th Floor	10	17JAN06	30JAN06	■ Plumbing Trim 12th & 13th Floor																																		
Plumbing Trim 14th & 15th Floor	10	31JAN06	13FEB06	■ Plumbing Trim 14th & 15th Floor																																		
Plumbing Trim 16th & 17th Floor	10	21FEB06	06MAR06	■ Plumbing Trim 16th & 17th Floor																																		
Plumbing Trim 18th Floor	5	07MAR06	13MAR06	■ Plumbing Trim 18th Floor																																		
Backflow Certifications	3	14MAR06	16MAR06	I Backflow Certifications																																		
<b>Electrical</b>																																						
Temp. Construction Power (480/1200AMP)	25	24DEC04	27JAN05	■ Temp. Construction Power (480/1200AMP)																																		
Interior Underground Piping	40	21JAN05	17MAR05	■ Interior Underground Piping																																		
Gear/Bussduct Feeder Piping	21	25FEB05	25MAR05	■ Gear/Bussduct Feeder Piping																																		
ComEd Approval - Gear Room	5	08JUN05	14JUN05	I ComEd Approval - Gear Room																																		
ComEd Install Vault Equipment	10	15JUN05	28JUN05	■ ComEd Install Vault Equipment																																		
Electrical Gear Installation	45	29JUN05	31AUG05	■ Electrical Gear Installation																																		
Rough 2nd & 3rd Floor	15	18AUG05	07SEP05	■ Rough 2nd & 3rd Floor																																		
Perm. Power Elevator Machine Room	1	13SEP05	13SEP05	I Perm. Power Elevator Machine Room																																		
Rough 4th & 5th Floor	15	15SEP05	05OCT05	■ Rough 4th & 5th Floor																																		
Rough 6th & 7th Floor	15	29SEP05	19OCT05	■ Rough 6th & 7th Floor																																		
Trim 2nd & 3rd Floor	10	11OCT05	24OCT05	■ Trim 2nd & 3rd Floor																																		
Rough 8th & 9th Floor	15	13OCT05	02NOV05	■ Rough 8th & 9th Floor																																		
Rough 10th & 11th Floor	15	27OCT05	16NOV05	■ Rough 10th & 11th Floor																																		
Trim 4th & 5th Floor	10	08NOV05	21NOV05	■ Trim 4th & 5th Floor																																		
Rough 12th & 13th Floor	15	10NOV05	30NOV05	■ Rough 12th & 13th Floor																																		
Trim 6th & 7th Floor	10	22NOV05	05DEC05	■ Trim 6th & 7th Floor																																		
Rough 14th & 15th Floor	15	24NOV05	14DEC05	■ Rough 14th & 15th Floor																																		
Trim 8th & 9th Floor	10	06DEC05	19DEC05	■ Trim 8th & 9th Floor																																		
Rough 16th & 17th Floor	15	08DEC05	28DEC05	■ Rough 16th & 17th Floor																																		
Trim 10th & 11th Floor	10	20DEC05	02JAN06	■ Trim 10th & 11th Floor																																		
Rough 18th Floor	7	29DEC05	06JAN06	■ Rough 18th Floor																																		
Trim 12th & 13th Floor	10	03JAN06	16JAN06	■ Trim 12th & 13th Floor																																		
Trim 14th & 15th Floor	10	17JAN06	30JAN06	■ Trim 14th & 15th Floor																																		
Trim 16th & 17th Floor	10	31JAN06	13FEB06	■ Trim 16th & 17th Floor																																		
Trim 18th Floor	5	14FEB06	20FEB06	■ Trim 18th Floor																																		
<b>Typical Floor Ductwork</b>																																						
Ductwork Loop/ Risers 2nd & 3rd Floor	10	29APR05	12MAY05	■ Ductwork Loop/ Risers 2nd & 3rd Floor																																		
Ductwork Loop/ Risers 4th & 5th Floor	10	11MAY05	24MAY05	■ Ductwork Loop/ Risers 4th & 5th Floor																																		
Ductwork Loop/ Risers 6th & 7th Floor	10	23MAY05	03JUN05	■ Ductwork Loop/ Risers 6th & 7th Floor																																		



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Description	Orig Dur	Start	Finish	2004			2005			2006			2007			2008																					
				E	M	A	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M							
Ductwork Loop/ Risers 8th & 9th Floor	10	02JUN05	15JUN05																														■ Ductwork Loop/ Risers 8th & 9th Floor				
Ductwork Loop/ Risers 10th & 11th Floor	10	14JUN05	27JUN05																													■ Ductwork Loop/ Risers 10th & 11th Floor					
Ductwork Loop/ Risers 12th & 13th Floor	10	24JUN05	08JUL05																													■ Ductwork Loop/ Risers 12th & 13th Floor					
Ductwork Loop/ Risers 14th & 15th Floor	10	07JUL05	20JUL05																													■ Ductwork Loop/ Risers 14th & 15th Floor					
Ductwork Loop/ Risers 16th & 17th Floor	10	28JUL05	10AUG05																													■ Ductwork Loop/ Risers 16th & 17th Floor					
Ductwork Loop/ Risers 18th Floor	5	11AUG05	17AUG05																													■ Ductwork Loop/ Risers 18th Floor					
<b>Sprinkler</b>																																					
City of Chicago Approval	0	12NOV04 *																																◆ City of Chicago Approval			
Sprinkler 2nd & 3rd Floor	10	13MAY05	26MAY05																															■ Sprinkler 2nd & 3rd Floor			
Sprinkler 4th & 5th Floor	10	25MAY05	07JUN05																															■ Sprinkler 4th & 5th Floor			
Sprinkler 6th & 7th Floor	10	06JUN05	17JUN05																															■ Sprinkler 6th & 7th Floor			
Sprinkler 8th & 9th Floor	10	16JUN05	29JUN05																															■ Sprinkler 8th & 9th Floor			
Sprinkler 10th & 11th Floor	10	28JUN05	12JUL05																															■ Sprinkler 10th & 11th Floor			
Sprinkler 12th & 13th Floor	10	11JUL05	22JUL05																															■ Sprinkler 12th & 13th Floor			
Sprinkler 14th & 15th Floor	10	21JUL05	03AUG05																															■ Sprinkler 14th & 15th Floor			
Sprinkler 16th & 17th Floor	10	11AUG05	24AUG05																															■ Sprinkler 16th & 17th Floor			
Sprinkler 18th Floor	5	25AUG05	31AUG05																															■ Sprinkler 18th Floor			
Sprinkler Penthouse	10	01SEP05	14SEP05																															■ Sprinkler Penthouse			
Fire Pump Start Up Complete (Roof Flood Testing)	0		14SEP05																															◆ Fire Pump Start Up Complete (Roof Flood Testing)			
<b>Typical Floor Finishes</b>																																					
Ceramic Tile 2nd & 3rd Floor	10	25OCT05	07NOV05																																■ Ceramic Tile 2nd & 3rd Floor		
Paint 2nd & 3rd Floor	9	08NOV05	18NOV05																																■ Paint 2nd & 3rd Floor		
Ceramic Tile 4th & 5th Floor	10	08NOV05	21NOV05																																■ Ceramic Tile 4th & 5th Floor		
Paint 4th & 5th Floor	9	21NOV05	01DEC05																																■ Paint 4th & 5th Floor		
Ceramic Tile 6th & 7th Floor	10	22NOV05	05DEC05																																■ Ceramic Tile 6th & 7th Floor		
Paint 6th & 7th Floor	9	02DEC05	14DEC05																																■ Paint 6th & 7th Floor		
Ceramic Tile 8th & 9th Floor	10	06DEC05	19DEC05																																■ Ceramic Tile 8th & 9th Floor		
Paint 8th & 9th Floor	9	15DEC05	27DEC05																																■ Paint 8th & 9th Floor		
Ceramic Tile 10th & 11th Floor	10	20DEC05	02JAN06																																■ Ceramic Tile 10th & 11th Floor		
Paint 10th & 11th Floor	9	28DEC05	09JAN06																																■ Paint 10th & 11th Floor		
Ceramic Tile 12th & 13th Floor	10	03JAN06	16JAN06																																■ Ceramic Tile 12th & 13th Floor		
Paint 12th & 13th Floor	9	10JAN06	20JAN06																																■ Paint 12th & 13th Floor		
Ceramic Tile 14th & 15th Floor	10	17JAN06	30JAN06																																■ Ceramic Tile 14th & 15th Floor		
Paint 14th & 15th Floor	9	23JAN06	02FEB06																																■ Paint 14th & 15th Floor		
Ceramic Tile 16th & 17th Floor	15	31JAN06	20FEB06																																■ Ceramic Tile 16th & 17th Floor		
Paint 16th & 17th Floor	15	03FEB06	23FEB06																																■ Paint 16th & 17th Floor		



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Description	Orig Dur	Start	Finish	2004 2005 2006 2007 2008																																		
				E	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Ceramic Tile 18th Floor	5	21FEB06	27FEB06	I Ceramic Tile 18th Floor																																		
Paint 18th Floor	4	24FEB06	01MAR06	I Paint 18th Floor																																		
<b>Penthouse</b>																																						
Set Chillers/ Pumps/ Equipment	10	22JUL05	04AUG05	■ Set Chillers/ Pumps/ Equipment																																		
Set Fans	5	05AUG05	11AUG05	■ Set Fans																																		
Install Fan Housings	45	12AUG05	13OCT05	■ Install Fan Housings																																		
Drywall Partitions	18	12AUG05	06SEP05	■ Drywall Partitions																																		
Install Electrical Gear	10	12AUG05	25AUG05	■ Install Electrical Gear																																		
Electrical Piping & Wiring	30	07SEP05	18OCT05	■ Electrical Piping & Wiring																																		
Set/ Pipe Coils	25	09SEP05	13OCT05	■ Set/ Pipe Coils																																		
Control Work	25	05OCT05	08NOV05	■ Control Work																																		
Install Penthouse Ductwork	20	14OCT05	10NOV05	■ Install Penthouse Ductwork																																		
Testing Equipment & Controls	15	09NOV05	29NOV05	■ Testing Equipment & Controls																																		
MEP Systems Commissioning	35	30NOV05	17JAN06	■ MEP Systems Commissioning																																		
Balancing	15	18JAN06	07FEB06	■ Balancing																																		
<b>Sitework</b>																																						
Utilities	30	26OCT05	06DEC05	■ Utilities																																		
Final Grade Sidewalks	20	07DEC05	03JAN06	■ Final Grade Sidewalks																																		
Pour Sidewalks	25	23DEC05	26JAN06	■ Pour Sidewalks																																		
Remove Sidewalk Barricades	10	27JAN06	09FEB06	■ Remove Sidewalk Barricades																																		
<b>Main Lobby Finishes</b>																																						
Frame Lobby Walls	20	29JUN05	27JUL05	■ Frame Lobby Walls																																		
Electrical Rough In	15	28JUL05	17AUG05	■ Electrical Rough In																																		
MEP	15	28JUL05	17AUG05	■ MEP																																		
Frame Lobby Ceiling	12	18AUG05	02SEP05	■ Frame Lobby Ceiling																																		
Drywall Walls	12	05SEP05	20SEP05	■ Drywall Walls																																		
Drywall Lobby Ceilings	12	21SEP05	06OCT05	■ Drywall Lobby Ceilings																																		
Finish Painting	8	07OCT05	18OCT05	■ Finish Painting																																		
Install Granite Flooring	20	19OCT05	15NOV05	■ Install Granite Flooring																																		
Install Granite on Walls	18	16NOV05	09DEC05	■ Install Granite on Walls																																		
Install Millwork	21	12DEC05	09JAN06	■ Install Millwork																																		
Security System	12	10JAN06	25JAN06	■ Security System																																		
Punch List	10	26JAN06	08FEB06	■ Punch List																																		
Systems Orientation	20	09FEB06	08MAR06	■ Systems Orientation																																		



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**EXHIBIT H**

**CONTRACTOR'S AGREEMENT AND CONSENT TO ASSIGNMENT OF CONSTRUCTION DOCUMENTS**

The undersigned ("Contractor") as general contractor under the general contract between \_\_\_\_\_ ("Owner") and Contractor, dated \_\_\_\_\_, 2004 ("Agreement") which is one of the Construction Documents referred to in that certain Assignment of Construction Documents dated \_\_\_\_\_, 2004 ("Assignment") made by Owner to KeyBank National Association ("Assignee") hereby consents to the terms of the Assignment and agrees that, upon receipt of notice from Assignee or its successors or assigns that an Event of Default has occurred under the Assignment, it will perform all of its obligations, covenants, conditions and agreements under the Agreement for the benefit of Assignee and its successors and assigns, so long as Assignee performs the duties and obligations of the owner under the Agreement.

For purposes of the Assignment, all notices, demands or documents which are required or permitted to be given or served upon the undersigned or Assignee shall be deemed to have been properly given if hand delivered or, if mailed by United States registered or certified mail, postage prepaid, return receipt requested (effective three (3) days after mailing), addressed as follows:

If to the undersigned:                               POWER CONSTRUCTION COMPANY, LLC  
2360 North Palmer Drive  
Schaumburg, Illinois 60173-3819.  
Attention: Jeffrey A. Karp

If to Assignee:   KeyBank National Association  
227 West Monroe Street, Suite 1800  
Chicago, Illinois 60606  
Attention: Jeffrey Hunkele  
Telephone:               (312) 360-3881  
Facsimile:               (312) 360-3884

With a copy to:   KeyBank National Association  
127 Public Square  
Mail Code: OH-01-27-0839  
Cleveland, OH 44114  
Attn: Matt Schmelter  
Telephone:               (216) 689-0823  
Facsimile:               (216) 689-4721

and to:   Katten Muchin Zavis Rosenman  
525 West Monroe Street  
Chicago, Illinois 60661  
Attention: Mark C. Simon, Esq.  
Telephone                (312) 902-5301  
Facsimile                (312) 577-4517

The undersigned also agrees that in the event of a breach by Assignor of any of the terms and conditions of the Agreement, the undersigned will give Assignee written notice of such breach

and the opportunity to remedy or cure such breach within thirty (30) days thereafter except that the undersigned agrees that no default shall be deemed to have occurred if curing such default cannot by its nature be accomplished in such thirty (30) day period so long as Assignee shall have commenced curing the same within such thirty (30) day period and thereafter shall diligently and continuously prosecute the same to completion.

It is expressly understood that Assignee neither assumes nor has any obligation to Contractor to exercise its rights under the Assignment, and that the option to exercise such right rests in the sole and absolute discretion of Assignee. In the event Assignee exercises its rights under the Assignment, Contractor agrees that Assignee shall have no personal obligations or liabilities under the Agreement or the Assignment and the sole rights and remedies of Contractor as against Assignee under the Agreement or under this Consent shall be a suit against Assignor and enforcement of Contractor's lien rights, if any, against the property described in the Agreement. Notwithstanding the preceding sentence, Contractor shall have no obligation to continue construction on behalf of Assignee in the event Assignee exercises its rights under the Assignment unless Assignee assumes the obligation to pay sums due to Contractor for work performed or materials supplied as and when such payments become due under the terms of the Agreement.

Contractor acknowledges that the execution and delivery of this Agreement and Consent to Assignment ("Consent") is a material inducement to Assignee to make the Loan, and, without execution and delivery of this Consent, Assignee will not make the Loan.

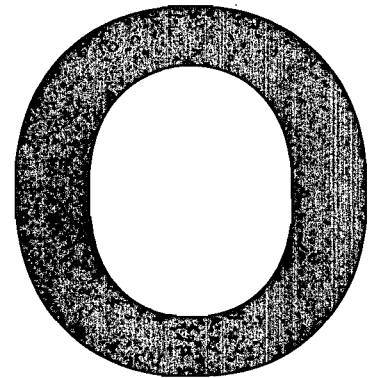
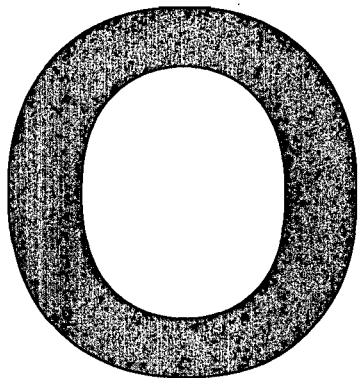
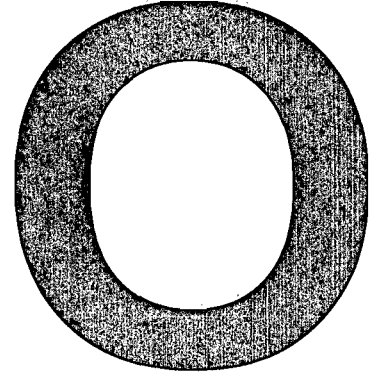
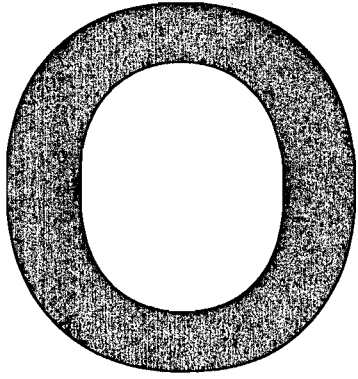
**POWER CONSTRUCTION COMPANY LLC**, an  
Illinois limited liability company

By:  
Its:



\_\_\_\_\_

12/25/10



**G**

**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT G**

**FORM OF CITY NOTE**

REGISTERED  
NO. [ ]

MAXIMUM AMOUNT  
\$6,500,000<sup>2</sup>

**UNITED STATES OF AMERICA  
STATE OF ILLINOIS  
COUNTY OF COOK  
CITY OF CHICAGO  
TAX INCREMENT ALLOCATION REVENUE NOTE  
CANAL/CONGRESS REDEVELOPMENT PROJECT AREA  
(550 WEST ADAMS STREET PROJECT)**

**THIS LIMITED OBLIGATION NOTE IS PAYABLE SOLELY FROM CERTAIN ALLOCATED PROJECT INCREMENTAL TAXES, AS DEFINED AND MORE PARTICULARLY DESCRIBED IN THAT CERTAIN 550 WEST ADAMS STREET PROJECT REDEVELOPMENT AGREEMENT BETWEEN 550 ADAMS LLC AND THE CITY OF CHICAGO DATED \_\_\_\_\_, 2004. IF NO SUCH ALLOCATED PROJECT INCREMENTAL TAXES EXIST, THE CITY OF CHICAGO SHALL HAVE NO OBLIGATION WHATSOEVER TO MAKE ANY PAYMENTS OF PRINCIPAL OR INTEREST UNDER THIS NOTE.**

Initial Registered Owner: 550 Adams LLC, a Delaware limited liability company

Registered Owner Upon Completion Date: USG Corporation, a Delaware corporation

Interest Rate: A fixed interest rate equal to eight and 75/100 percent (8.75%) per annum

Maturity Date: December 31, 2022, or such earlier date as may be applicable hereunder.

**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, on or before the Maturity Date identified above,

---

<sup>2</sup> Maximum amount to be finally established on the Completion Date, but not to exceed \$6,500,000, per Section 4.02(c).

but solely from the sources hereinafter identified, the principal amount of Six Million Five Hundred Thousand and No/100 Dollars (\$6,500,000), or such lesser amount as remains outstanding from time to time (the "Indebtedness"), in accordance with the terms of this Note, the Ordinance and that certain 550 West Adams Street Project Redevelopment Agreement between the City and 550 Adams LLC dated \_\_\_, 2004 (the "Redevelopment Agreement"), to which USG Corporation has executed a Limited Joinder (the "Limited Joinder"). The City shall also pay the Registered Owner interest at the Interest Rate from the date of this Note on the Indebtedness, subject to the terms and conditions of the Redevelopment Agreement and the Limited Joinder. Capitalized terms used in this Note and not otherwise defined shall have the meanings set forth in the Redevelopment Agreement and the Limited Joinder.

The Interest Rate payable with respect to the Indebtedness shall be a fixed simple interest rate of eight and 75/100 percent (8.75%) per annum. Interest under this Note shall be computed on the basis of a 360-day year of twelve 30-day months. From the date of this Note until December 31, 2005, interest on the principal amount of indebtedness evidenced by this Note shall accrue and, on December 31, 2005, compound and be capitalized and included within the principal amount hereof. From January 1, 2006 through the Completion Date, interest shall accrue and shall, on the Completion Date, compound and be capitalized and included within the principal amount hereof. The interest that accrues and is compounded and capitalized pursuant to the preceding two sentences shall not be deemed to be subject to the City Note Maximum Principal Amount limitation.

In the event that any interest is not paid within sixty (60) days of the Annual Payment Date, then on each such Annual Payment Date, accrued and unpaid interest shall compound until paid. Subject to the satisfaction of all conditions to payment set forth in the Redevelopment Agreement and the Limited Joinder, principal and interest on this Note, to the extent of any Project Incremental Taxes, if any, allocated to this Note under Section 4.01(d) of the Redevelopment Agreement, as determined by the City, is due within sixty (60) days of each December 1st (the "Annual Payment Date") after the Completion Date until the earlier of maturity, payment of the Note in full, or cancellation of this Note, in accordance with the debt service schedule attached hereto. Payments shall first be applied to the interest component of each such debt service schedule payment, and then to the principal component of such payment. In the event that Project Incremental Taxes are received by the City more than one time per year pursuant to the TIF Act (as hereinafter defined), the City, in its sole discretion, may elect to make payments under this Note two times per year. If the City elects to make two payments a year, the second payment date shall be a date selected by the City and shall also constitute an "Annual Payment Date" for purposes of the compounding of interest described in the first sentence of this paragraph.

**Notwithstanding anything in this Note to the contrary, this Note, and the payment of principal and/or interest otherwise due hereunder, is, under certain circumstances specified in the Redevelopment Agreement and the Limited Joinder, subject to cancellation, suspension, offset and/or reduction. Reference is made, without limitation, to Sections 4.02(e) and (g), 5.18, 7.05 and 15.03 of the Redevelopment Agreement, and Section**

**9 of the Limited Joinder, which set forth certain such circumstances. The terms of the Redevelopment Agreement and the Limited Joinder are incorporated herein by reference as if fully set forth herein. In the event of a conflict between the terms of this Note and the terms of the Redevelopment Agreement and the Limited Joinder, the terms of the Redevelopment Agreement and the Limited Joinder shall be controlling.**

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 15th day of the month immediately prior to the applicable payment, maturity or prepayment date, and shall be paid by check or draft of the Registrar (or, at the City's sole election, by wire transfer of funds), 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 (or, if the City elects to pay by wire transfer, to such account as the Registered Owner may direct by written wire transfer instructions); 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. 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 original outstanding principal amount of \$\_\_\_\_\_ [INSERT CLOSING DATE PRINCIPAL AMOUNT], subject to increase in principal amount pursuant to Section 4.02 of the Redevelopment Agreement, up to the maximum principal amount of \$6,500,000, for the purpose of paying the costs of certain eligible redevelopment project costs incurred by 550 Adams LLC on behalf of the City in connection with the acquisition of the Property and construction of the Building (both as defined in the Redevelopment Agreement) in the Canal/Congress 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 June 23, 2004 (the "Ordinance"), in all respects as by law required, and in accordance with the terms of the Redevelopment Agreement and the Limited Joinder.

Reference is hereby made to Section 2 (the definition of "Project Incremental Taxes") and Section 4 of the Redevelopment Agreement and to the aforesaid Ordinance for a description, among others, with respect to the determination, custody, allocation and application of any Project Incremental Taxes and the terms and conditions under which this Note is issued.

**THIS NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY, AND IS PAYABLE SOLELY FROM CERTAIN ALLOCATED PROJECT INCREMENTAL TAXES. 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 prepayment on any date (including, without limitation, in accordance with Section 8.05 of the Redevelopment Agreement), in whole or in part, without premium or penalty, at 100% of the principal amount thereof being prepaid, plus accrued interest. Notice of any such prepayment 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 prepayment 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, subject to the last paragraph of this Note.

This Note is issued in fully registered form in the maximum face amount of Six Million Five Hundred Thousand and No/100 Dollars (\$6,500,000). This Note may not be exchanged for a like aggregate principal amount of notes or other denominations.

This Note will be 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, the Redevelopment Agreement, the Limited Joinder and this Note. Upon such transfer, a new Note of authorized denomination of the same maturity and for the same aggregate principal amount, or having such other terms as the City may require under the Redevelopment Agreement and the Limited Joinder, will be issued to the transferee in exchange herefor. The Registered Owner shall not have the right to request that the Registrar issue multiple notes having an aggregate principal balance equal to the surrendered and canceled Note. The Registrar shall not be required to transfer this Note during the period beginning at the close of business on the 15th 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 payment has been mailed, nor during a period of five (5) days next preceding mailing of a notice of prepayment of this Note. Such transfer shall be by a written instrument in a form acceptable to the City.

This Note shall be executed as the Ordinance provides and upon execution delivered by the Comptroller to the Registered Owner upon satisfaction of the provisions of the Ordinance.

In reliance on and pursuant to the Redevelopment Agreement, the Registered Owner has acquired the Property and constructed the Building and advanced funds on behalf of the City for certain TIF-Funded Costs (as defined in the Redevelopment Agreement). The City acknowledges and agrees that as of the date of this Note, the Registered Owner has advanced funds and incurred TIF-Funded Costs in the amount of \$\_\_\_\_\_ [INSERT CLOSING DATE PRINCIPAL AMOUNT]. Such initial principal amount shall, upon execution by the City of the Certificate of Authentication attached to this Note, be deemed to be a disbursement of the proceeds of this Note in a like amount. Thereafter, upon the Registered Owner's submission, and



the City's approval, of additional Certificates of Expenditure pursuant to Section 4.02(b) of the Redevelopment Agreement, the amount evidenced by each such Certificate of Expenditure shall be deemed an additional disbursement of the proceeds of the Note and become outstanding Indebtedness thereunder.

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.

[SIGNATURE PAGE FOLLOW]

**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 \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Mayor

(SEAL)

Attest:

\_\_\_\_\_  
City Clerk

**CERTIFICATE  
OF  
AUTHENTICATION**

This Note is described in the within mentioned Ordinance and is the Tax Increment Allocation Revenue Note Canal/Congress Redevelopment Project Area (550 West Adams Street Redevelopment Project) (Maximum Amount \$6,500,000) of the City of Chicago, Cook County, Illinois.

Registrar and Paying  
Agent:

\_\_\_\_\_  
Comptroller of City of  
Chicago, Cook County,  
Illinois

\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

**DEBT SERVICE SCHEDULE**

[TO BE ATTACHED ON COMPLETION DATE]

**PRINCIPAL PAYMENT RECORD**

DATE OF PAYMENT

PRINCIPAL PAYMENT

PRINCIPAL AMOUNT DUE

**Schedule 1  
Certificate of Expenditure**

To: Registered Owner of the Note No. R-1

Re: City of Chicago, Cook County, Illinois (the "City")  
\$6,500,000\* Tax Increment Allocation Revenue Note  
Canal/Congress Redevelopment Area (550 West Adams Street Project), Series 2004  
(Taxable)(the "City Note")

This Certification is submitted to you, as Registered Owner of the City Note, pursuant to Section 4 of the 550 West Adams Street Project Redevelopment Agreement between the City and 550 Adams LLC (the "**Redevelopment Agreement**"), with a Limited Joinder by USG Corporation, dated \_\_\_\_\_ 2004, the terms of the City Note and an ordinance of the City authorizing the execution of the City Note adopted by the City Council of the City on June 23, 2004 (the "**Ordinance**"). All terms used herein shall have the same meanings as when used in the Redevelopment Agreement.

The City hereby certifies that \$ \_\_\_\_\_ is advanced as principal under the City Note as of \_\_\_\_\_, 200\_\_\_. Such amount has been properly incurred, is a proper charge made or to be made in connection with the redevelopment project costs for the Project and has not been the basis of any previous principal advance. As of the date hereof, the outstanding principal balance under the City Note is \$ \_\_\_\_\_, including the amount of this Certificate, and less payments made on the Note.

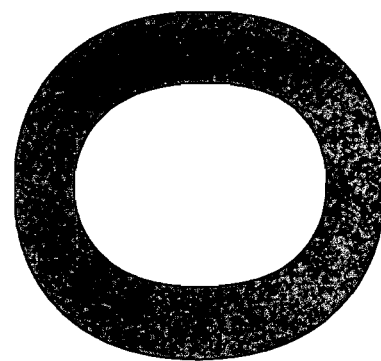
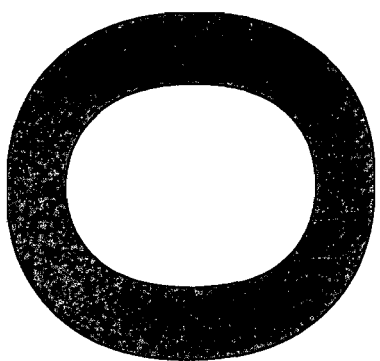
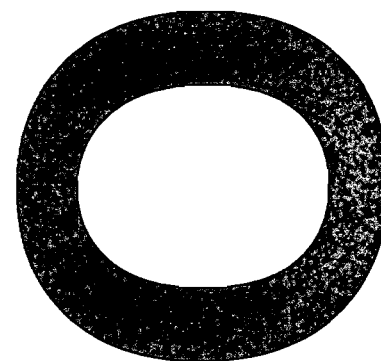
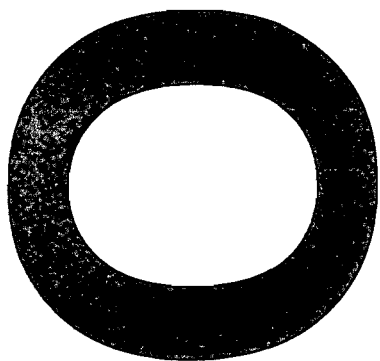
IN WITNESS WHEREOF, the City has caused this Certification to be signed on its behalf as of \_\_\_\_\_, 20\_\_.

CITY OF CHICAGO, COOK COUNTY,  
ILLINOIS, acting by and through its  
Department of Planning and Development

By: \_\_\_\_\_  
[Deputy] Commissioner

AUTHENTICATED BY:

\_\_\_\_\_  
REGISTRAR



**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT H**

**FORM OF NOTICE OF PROPOSED [[TRANSFER]][[REFINANCING]]**

[DEVELOPER'S LETTERHEAD]

[DATE]

BY MESSENGER

City of Chicago  
Department of Planning and Development  
121 North LaSalle Street, Room 1000  
Chicago, IL 60602  
Attention: Commissioner

City of Chicago  
Department of Law  
Finance and Economic Development Division  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

Re: 550 West Adams Street Project Redevelopment Agreement  
[[Refinancing]][[Sale]] of 550 West Adams Street

Dear Commissioner:

This letter is written pursuant to Section 8.01(k) of the 550 West Adams Street Project Redevelopment Agreement dated \_\_\_\_\_, 2004 (the "Agreement") and constitutes the written notice of 550 Adams LLC of the proposed [[transfer]][[refinancing]] of the Property. A summary of the principal terms of the proposed [[transfer]][[refinancing]] is attached hereto as Schedule 1. If the City has further questions concerning the proposed [[transfer]][[refinancing]], such questions should be directed to [INSERT NAME, ADDRESS, AND PHONE NUMBER OF PERSON TO BE CONTACTED].

Sincerely yours,

[DEVELOPER SIGNATURE BLOCK]



**Schedule 1 to Exhibit H**  
**Summary of Principal Terms**

Legal Description:

Street Address:

Description of  
Improvements:

Current Use:

Intended Use:

Buyer:<sup>3</sup>

Price:

Lender:

Proposed  
Closing Date:

Other Material  
Terms of Sale  
or Refinancing:

---

<sup>3</sup> Attach organizational chart depicting upper-tier ownership interests in Buyer identifying all persons and entities having a direct or indirect ownership interest in Buyer.

Schedule 2 to Exhibit H

[FORM OF CERTIFICATION BY PROPOSED TRANSFEREE]

[LETTERHEAD OF PROPOSED TRANSFEREE]

[DATE]

BY MESSENGER

City of Chicago  
Department of Planning and Development  
121 North LaSalle Street, Room 1000  
Chicago, IL 60602  
Attention: Commissioner

City of Chicago  
Department of Law  
Finance and Economic Development Division  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

Re: 550 West Adams Street (the "Property")  
550 West Adams Street Project Redevelopment Agreement  
Certification by Proposed Transferee

Dear Commissioner:

This letter is written pursuant to Section 8.01(k) of the 550 West Adams Street Project Redevelopment Agreement dated \_\_\_\_\_, 2004 (the "Agreement") and constitutes the written certification of the undersigned, which has entered into a contract with [INSERT Developer], to purchase the Property. A copy of the contract is being delivered to you with this letter. Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Pursuant to Section 8.01(k), and with the understanding that the City will be relying upon such certifications, the undersigned hereby certifies as follows:

(1) it has received and reviewed a true, correct and complete copy of the Agreement and the Redevelopment Plan (collectively, the "TIF Agreements");

(2) it acknowledges and agrees that it shall be bound by, and hereby covenants to comply with, the terms, conditions, covenants, representations and warranties set forth in the TIF Agreements which, by their terms, are binding upon any owner and operator of the Property;

(3) it shall operate the Building solely for retail and office uses;

(4) neither the undersigned, nor any affiliate thereof, nor any person identified in the organizational chart depicting the undersigned's ownership being delivered to the City simultaneously herewith (the "**Transferee Parties**"), is (a) in violation of any City laws, regulations and requirements (including, without limitation, any "anti-scofflaw" laws); (b) in default under any other written agreements between any such person or entity and the City, or (c) delinquent in the payment of any amounts due to the City or the State of Illinois;

(5) the undersigned is qualified to do business in the State of Illinois and has obtained all qualifications, licenses and approvals required by the City of Chicago in order to own and operate the Property; and

(6) the undersigned is solvent, able to pay its debts as they become mature and has the financial capability and business expertise to acquire, own and operate the Property;

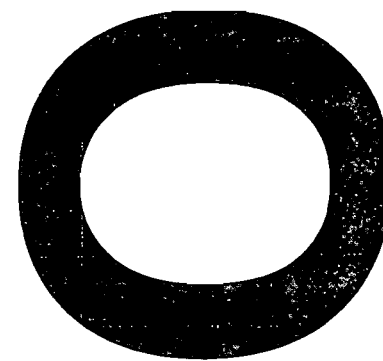
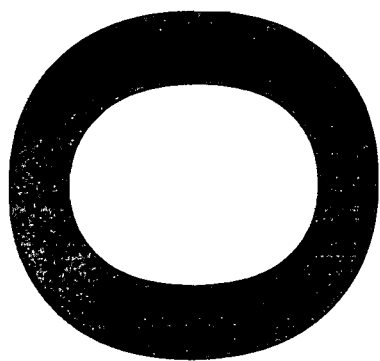
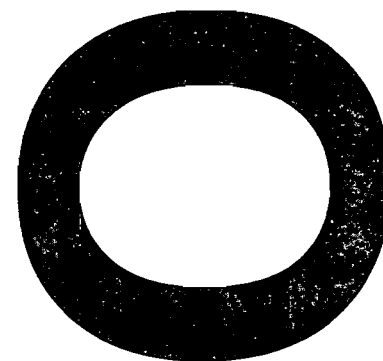
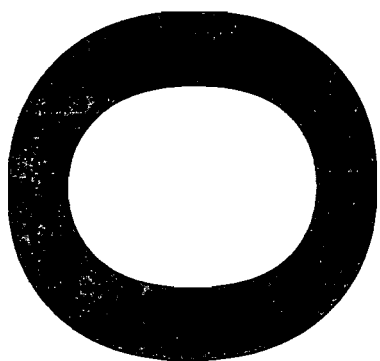
(7) the total cash and non-cash consideration to be paid for the Property, and the value of such consideration, is as follows: [INSERT DESCRIPTION]; and

(8) the undersigned is an Approved Purchaser because of its status as [INSERT DESCRIPTION]:

If the City has further questions concerning the proposed transfer, such questions should be directed to [INSERT NAME, ADDRESS, AND PHONE NUMBER OF PERSON TO BE CONTACTED].

Sincerely yours,

[PROPOSED TRANSFEREE  
SIGNATURE BLOCK]



**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

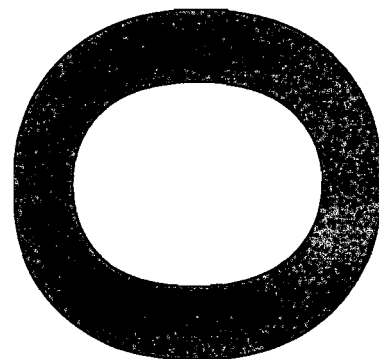
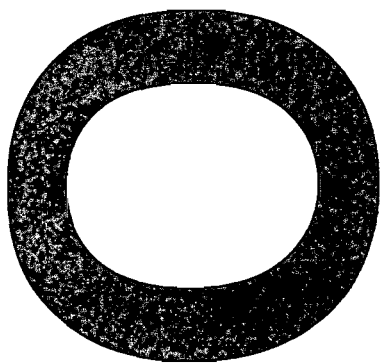
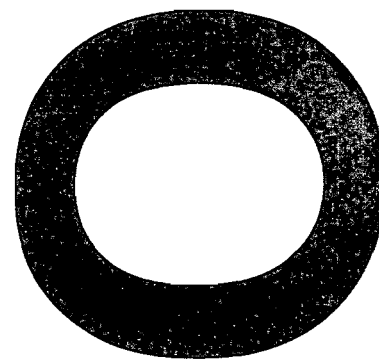
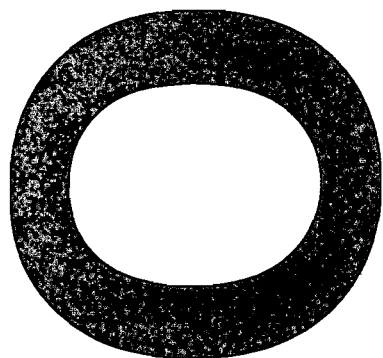
**EXHIBIT I**

**PERMITTED LIENS**

**1. Liens or encumbrances against the Property:**

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

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



**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT J**

**TIF-FUNDED COSTS**

Property assembly and related costs permitted under 65 ILCS 5/11-74.4(q)(2)	\$5,150,000
Costs of the construction of public improvements permitted under 65 ILCS 5/11-74.4(a)(4)	\$ 350,000

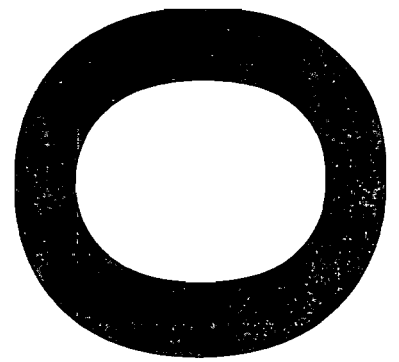
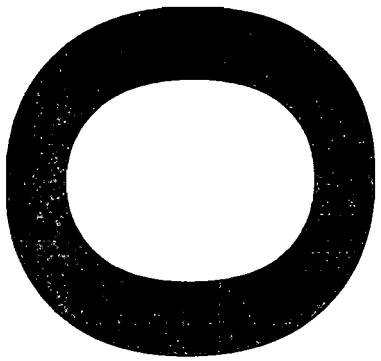
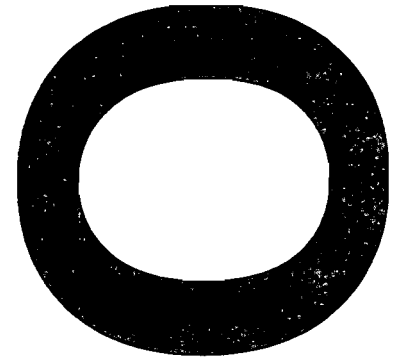
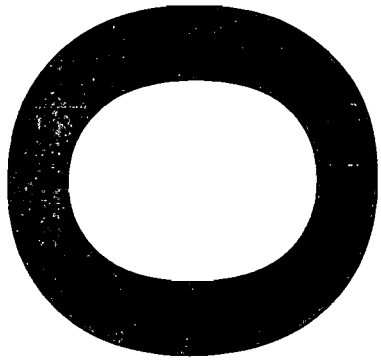
## EXHIBIT J

## TIF-FUNDED COSTS

Note Value Summary	
Land	4,200,000
Earthwork	355,000
Street Lights	192,000
Legal Fees - Land Acquisition	155,193
Public Sidewalks	130,000
Caisson De-Watering	100,000
Utility Connections	98,000
A & E (1)	62,572
Misc. Testing & Consultants	45,444
Demolition	25,000
Street Patching	25,000
Site Monitoring/Settlement Readings	15,000
Survey	7,743
Appraisal	2,628
TOTAL TIF-FUNDED COSTS (1)	<u>5,413,580</u>

(1) This amount is an estimate. The final amount will be determined following the completion of the Project. The maximum amount will not exceed \$6.5 million





**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT K**

**CITY NOTE REQUISITION FORM**

A form of City Note Requisition Form is attached to this exhibit cover sheet.

**EXHIBIT K**

**REQUISITION FORM**

State of Illinois        )  
                                  ) SS  
COUNTY OF COOK    )

The affiant, \_\_\_\_\_, \_\_\_\_\_ of USG Corporation, a Delaware corporation (the "Requestor"), hereby certifies that with respect to that certain 550 Adams LLC, with a Limited Joinder by USG Corporation, a Delaware corporation, Redevelopment Agreement for 550 West Adams Street Project by and between 550 Adams, LLC, a Delaware limited liability company with a Limited Joinder by USG Corporation, a Delaware corporation, dated \_\_, \_\_\_\_ (the "Agreement"):

A.     **Applicable City Note.** This Requisition Form is being submitted to request payment from Project Incremental Taxes, if any, or such other source of funds as may have been approved by further City Council action, with respect to that certain Tax Increment Allocation Revenue Note issued by the City, registered to the Requestor and dated as of \_\_\_\_\_, 2004 (the "City Note").

B.     **Accrued Interest.** Attached as Schedule 1 is a true, correct and complete computation of the accrued interest to date on such City Note.

1.     Enter sum of amounts on Schedule 1:                 \$

C.     **Prior City Payments.** To date, the City has made the following aggregate payments of principal and interest on such City Note:

1.     Principal paid to date:                                 \$

2.     Interest paid to date:                                     \$

D.     **Amounts Due and Payable.** Based on the City's payments to date, the amount due on such City Note as of the date hereof is:

1.     Unpaid Principal:   \$

2.     Unpaid Interest:    \$

E.     **Payment Request.** The Requestor requests a payment in the amount of \$ \_\_\_\_\_.

F. **Available Incremental Taxes.** [THIS SECTION TO BE COMPLETED BY THE CITY] As of December 1, \_\_\_\_\_, the amount of Available Incremental Taxes for tax year \_\_\_\_\_, as determined by the City, was \$\_\_\_\_\_. The City hereby approves a payment to the Requestor from such Project Incremental Taxes in the amount of \$\_\_\_, to be applied as follows:

1. Amount to be applied to the payment of previously accrued and unpaid interest: \$
2. Amount to be applied to the payment of current accrued interest: \$
3. Amount to be applied to the payment of principal: \$

G. **Unpaid Amount.** [THIS SECTION TO BE COMPLETED BY THE CITY] After application of the reimbursement payment in accordance with Section F, the unpaid principal and interest with respect to such City Note shall be as follows:

1. Unpaid Principal \$
2. Unpaid Interest \$

H. **Supporting Documents.** Attached (applicable to all Requisition Form requests) is a certification from Requestor as to the status of its compliance with its covenants under the Agreement.

I. **Certifications.** The Requestor hereby certifies to the City that, as of the date hereof:

1. The total amount of the payment request represents the actual amounts due under the City Note, which amounts for costs, work, materials and/or services have not been previously reimbursed by the City. To the Requestor's knowledge, the Developer has approved all work, materials and/or services.
2. Except as set forth below, the representations and warranties contained in the Agreement are true and correct and the Requestor is in compliance with all covenants contained therein (if true and correct, state "NONE").

3. The Requestor 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.

4. No act or omission which, with the giving of notice or passage of time, or both, would constitute a Requestor Event of Default, exists or has occurred.

5. No event has occurred which, under the terms of the Agreement or Limited Joinder, entitle the City to terminate the City Note, or to reduce the principal amount thereof, or to reduce payments (or claim a credit against payments due) thereunder, or otherwise modify the City's payment obligations with respect to such City Note.

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

**[Requestor]**

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

Name

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

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

\_\_\_\_\_

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

Agreed and accepted:

\_\_\_\_\_

Name

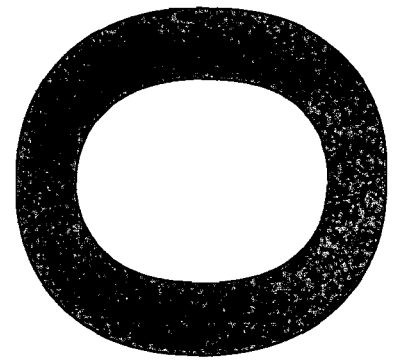
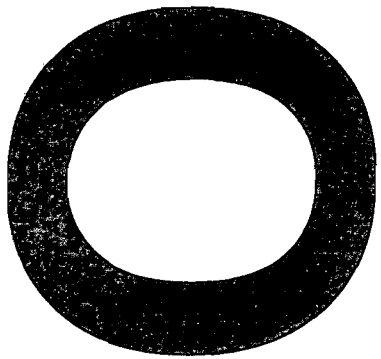
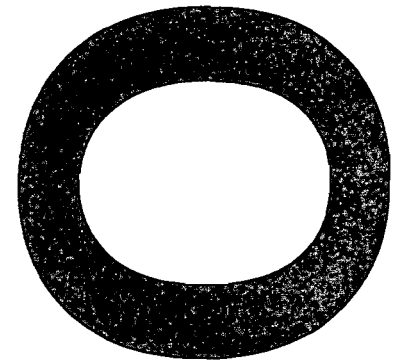
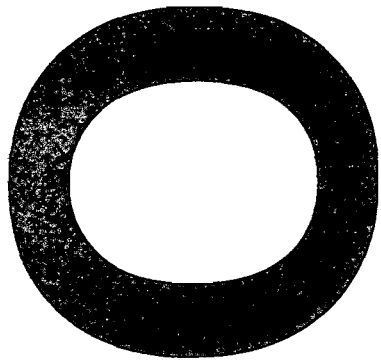
Title: \_\_\_\_\_

City of Chicago

Department of Planning and Development

Schedule 1 to  
Requisition Form

Accrued Interest Computation



**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT L**

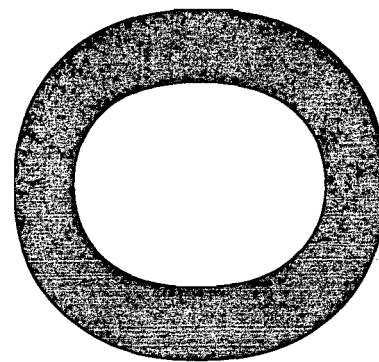
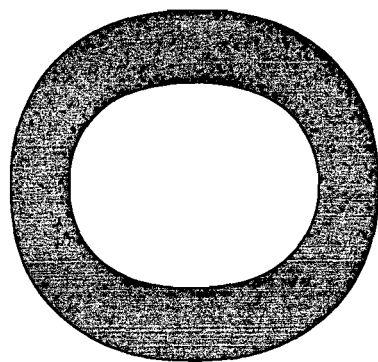
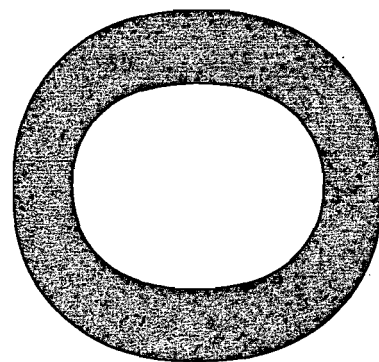
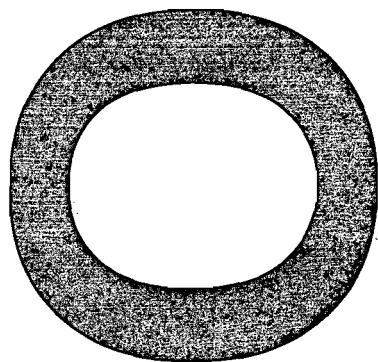
**ESTIMATED TIF-FUNDED INTEREST COSTS**

Lender Financing Construction Period Interest	\$ 7,900,000
CBRE Financing Construction Period Interest	\$ 3,700,000
Estimated Total Construction Period Interest Costs	\$11,600,000
TOTAL CONSTRUCTION PERIOD TIF-FUNDED INTEREST COSTS;	\$ 3,480,000

NOTES:

1. The \$3,480,000 represents 30% of construction period interest costs, as permitted under the Act.
2. The above TIF-Funded Interest Costs only relate to construction period interest costs. TIF-Funded Interest Costs are subject to increase up to the TIF-Funded Interest Costs Maximum Amount and may also include interests costs associated with a Permitted Refinancing.





**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT M**

**TIF-FUNDED INTEREST COSTS REQUISITION FORM**

A form of TIF-Funded Interest Costs Requisition Form is attached to this exhibit cover sheet.

**EXHIBIT M**

**INTEREST REQUISITION FORM**

State of Illinois        )  
                                  ) SS  
COUNTY OF COOK    )

The affiant, \_\_\_\_\_, \_\_\_\_\_ of 550 Adams LLC, a Delaware limited liability company (the "Developer"), hereby certifies that with respect to that certain 550 Adams LLC, with a Limited Joinder by USG Corporation, a Delaware corporation, Redevelopment Agreement for 550 West Adams Street Project by and between 550 Adams, LLC, a Delaware limited liability company with a Limited Joinder by USG Corporation, a Delaware corporation, dated \_\_\_\_\_, \_\_\_\_\_ (the "Agreement"):

A.     **Financing Interest Costs.** This Requisition Form is being submitted to request payment from Area Incremental Taxes, if any, or such other source of funds as may have been approved by further City Council action, of interest costs incurred by Developer and which have accrued on the Lender Financing, the CBRE Financing and any refinancing of the foregoing (the "Financing Costs").

B.     **Accrued Financing Costs.** Attached as Schedule 1 is a true, correct and complete computation of the Financing Costs incurred by Developer for the period \_\_\_\_\_, 200\_\_ to \_\_\_\_\_, 200\_\_.

1.     Enter sum of amounts on Schedule 1:                 \$

C.     **Prior City Payments.** To date, the City has made the following aggregate payments to reimburse Developer for Financing Costs:

1.     Financing Costs paid to date:                         \$

D.     **Amounts Due and Payable.** Based on the City's payments to date, the amount due to Developer for reimbursement of Financing Costs as of the date hereof is:

1.     Previously Unpaid Financing Costs:                 \$

2.     Unpaid Financing Costs for the period             \$  
       In Section B:

E. **Developer Payment Request.** The Developer requests a payment in the amount of \$\_\_\_\_\_ which equals thirty percent (30%) of the Financing Costs incurred by Developer for the period set forth in Section B plus any unpaid Financing Costs and interest thereon.

F. **Area Incremental Taxes.** [THIS SECTION TO BE COMPLETED BY THE CITY] As of December 1, \_\_\_\_, the amount of Area Incremental Taxes for tax year \_\_\_\_\_, as determined by the City, was \$\_\_\_\_\_. The City hereby approves a payment to the Developer from such Area Incremental Taxes in the amount of \$\_\_\_\_\_, to be applied as follows:

1. Amount to be applied to the payment of previously accrued and unpaid Financing Costs: \$
2. Amount to be applied to the payment of current accrued Financing Costs: \$

G. **Unpaid Amount.** [THIS SECTION TO BE COMPLETED BY THE CITY] After application of the reimbursement payment in accordance with Section F, the unpaid Financing Costs are \$\_\_\_\_\_.

H. **Supporting Documents.** Attached (applicable to all Requisition Form requests) is a certification from Developer as to the status of its compliance with its covenants under the Agreement.

I. **Certifications.** The Developer hereby certifies to the City that, as of the date hereof:

1. The total amount of the payment request represents thirty percent (30%) of the actual amounts of Financing Costs incurred in connection with the Project for the period set forth herein, which amounts of Financing Costs have not been previously reimbursed by the City.
2. Except as set forth below, the representations and warranties contained in the Agreement are true and correct and the Developer is in compliance with all covenants contained therein (if true and correct, state "NONE").
3. 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.
4. No act or omission which, with the giving of notice or passage of time, or both, would constitute a Developer Event of Default, exists or has occurred.

5. No event has occurred which, under the terms of the Agreement or Limited Joinder, entitle the City to terminate reimbursement of Financing Costs, to reduce payments thereunder, claim a credit against payments due, or otherwise modify the City's reimbursement obligations with respect to such Financing Costs.

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

**[Developer]**

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

Name

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

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

\_\_\_\_\_.

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

Agreed and accepted:

\_\_\_\_\_

Name

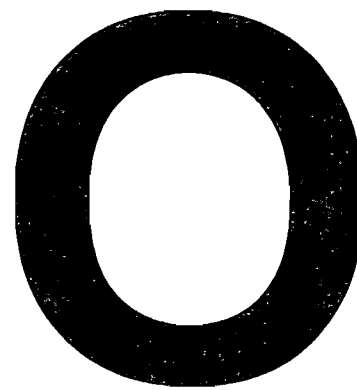
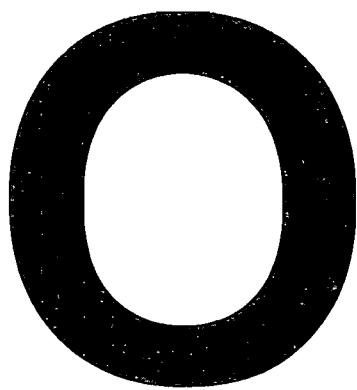
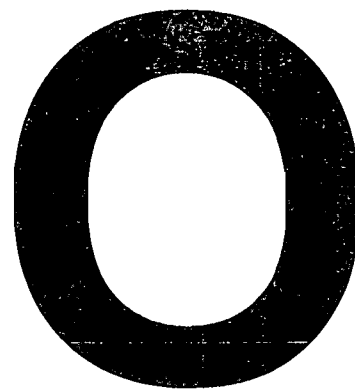
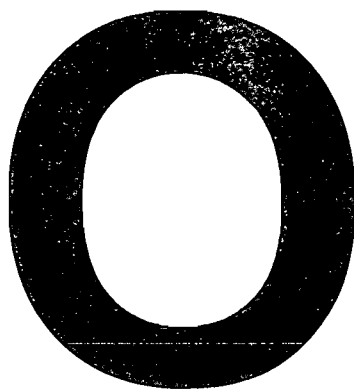
Title: \_\_\_\_\_

City of Chicago

Department of Planning and Development

Schedule 1 to  
Requisition Form

Financing Costs Computation



**550 ADAMS LLC**

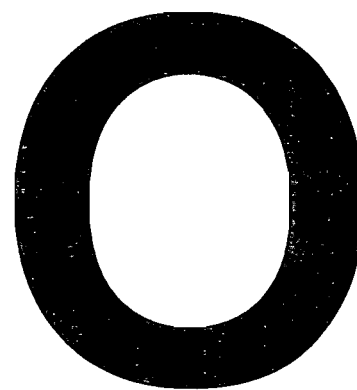
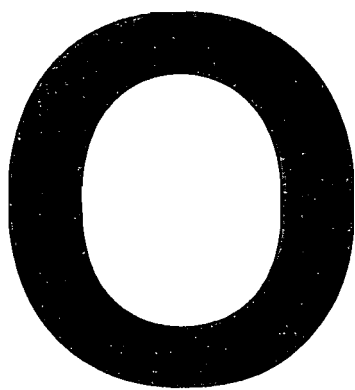
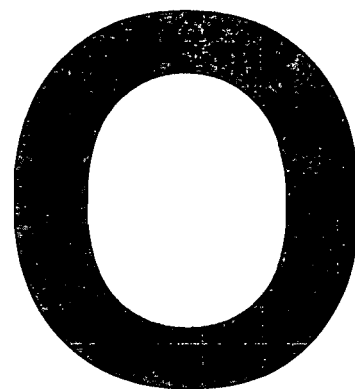
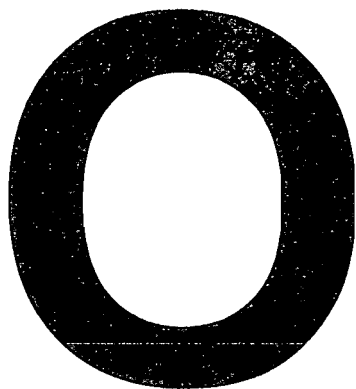
Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT N**

**APPROVED PRIOR EXPENDITURES**

Developer has been credited with \$3,500,000 in equity contribution from the \$4,200,000 acquisition price of the Property.





**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT O**

**OPINION OF DEVELOPER'S OR USG'S COUNSEL**

\_\_\_, 2004

City of Chicago  
121 North LaSalle Street  
Chicago, IL 60602

ATTENTION: Corporation Counsel

Ladies and Gentlemen:

We have acted as counsel to [[INSERT NAME OF Developer/USG]], a [[INSERT STATE OF ORGANIZATION AND FORM OF ENTITY]] Illinois corporation (the ["Developer"] ["USG"]), in connection with that certain redevelopment project to be undertaken by [[Developer]] [[USG]] with respect to the building commonly known as 550 West Adams Street, Chicago, Illinois located in the Canal/Congress Tax Increment Financing Redevelopment Project Area (the "Project"). In that capacity, we have examined, among other things, the following agreements, instruments and documents of even date herewith, hereinafter referred to as the "Documents":

- (a) \_\_\_\_\_ Redevelopment Agreement (the "Agreement") of even date herewith, executed by Developer and the City of Chicago (the "City") [[and the Limited Joinder attached thereto executed by the City and USG]];
- (b) [insert other documents as may be appropriate, including but not limited to the USG Lease, documents related to purchase and financing of the Property and all lender financing related to the Base Building Improvements]; and
- (c) all other agreements, instruments and documents executed in connection with the foregoing.

Capitalized terms not otherwise defined in this opinion shall have the meaning set forth in the Agreement.

In addition to the foregoing, we have examined

(a) the original or certified, conformed or photostatic copies of [[Developer's]][[USG's]] (i) Articles of Incorporation, as amended to date, (ii) qualifications to do business and certificates of good standing in all states in which Developer is qualified to do business, (iii) By-Laws, as amended to date, and (iv) records of all corporate proceedings relating to the [[Building]][[USG]] Project; and

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

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

Based on the foregoing, it is our opinion that:

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

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

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

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

5. [[DEVELOPER OPINION ONLY; MODIFY FOR APPLICABLE ORGANIZATIONAL STRUCTURE]] Exhibit A attached hereto (a) identifies each class of capital stock of Developer, (b) sets forth the number of issued and authorized shares of each such class, and (c) identifies the record owners of shares of each class of capital stock of Developer and the number of shares held of record by each such holder. To the best of our knowledge after diligent inquiry, except as set forth on Exhibit A, there are no warrants, options, rights or commitments of purchase, conversion, call or exchange or other rights or restrictions with respect to any of the capital stock of Developer. Each outstanding share of the capital stock of Developer is duly authorized, validly issued, fully paid and non-assessable.

6. To the best of our knowledge after diligent inquiry, no judgments are outstanding against [[Developer]][[USG]], nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against [[Developer]][[USG]] or affecting [[Developer]][[USG]] or its property, or seeking to restrain or enjoin the performance by [[Developer]][[USG]] of the Agreement [[or the Limited Joinder] or the transactions contemplated by the Agreement [[and the Limited Joinder]], or contesting the validity thereof. To the best of our knowledge after diligent inquiry, [[Developer]][[USG]] is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority or in default in any respect under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on [[Developer]][[USG]] or its business.

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

8. [[DEVELOPER OPINION ONLY]] To the best of our knowledge after diligent inquiry, all of the assets of Developer are free and clear of mortgages, liens, pledges, security interests and encumbrances except for those specifically set forth in Schedule 1 hereto.

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

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

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

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

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

Very truly yours,

\_\_\_\_\_

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

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

O

O

O

O

**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT P-1**

**BUILDING MBE/WBE BUDGET**

A Building MBE/WBE Budget is attached to this exhibit cover sheet.

EXHIBIT P-1

BUILDING MBE/WBE BUDGET

LAND & BUILDING DEVELOPMENT COSTS

Site & Building Costs - GMP	27,922,245
Additional Building Enhancements	1,277,000
Owners Hard Costs	320,000
Multi-Tenant Corridors	140,000
Miscellaneous	<u>100,000</u>

TOTAL BUILDING MBE/WBE BUDGET 29,759,245

MBE/WBE EXPENDITURE GOAL

MBE (24%)	7,142,218
WBE (4%)	<u>1,190,369</u>
TOTAL MBE/WBE EXPENDITURES	<u>8,332,587</u>

\* If USG or Developer obtains MBE/WBE participation in any hard or soft costs, regardless of whether a line item for such costs is shown above, USG or Developer, as applicable, shall receive MBE/WBE credit for such participation against its obligations in this exhibit.



**550 ADAMS LLC**

Redevelopment Agreement  
dated as of November 8, 2004

**EXHIBIT P-2**

**USG MBE/WBE BUDGET**

A USG MBE/WBE budget is attached to this exhibit cover sheet.

EXHIBIT P-2

USG MBE/WBE BUDGET (\*)

HARD COSTS

Office Build Out	11,835,563
Conference/Training Rooms	2,100,000
Food Service and Cafeteria	762,500
Base Building	585,000
Subtotal	<u>15,283,063</u>

SOFT COSTS

Architectural Design Services	455,800
Engineering - MEP	307,539
Engineering - Structural	86,111
Subtotal	<u>849,450</u>

TOTAL USG IMPROVEMENTS BUDGET 16,132,513

USG MBE/WBE EXPENDITURE GOAL

MBE (24%)	3,871,803
WBE (4%)	645,300
TOTAL USG MBE/WBE EXPENDITURES	<u>4,517,103</u>

\* If USG or Developer obtains MBE/WBE participation in any hard or soft costs, regardless of whether a line item for such costs is shown above, USG or Developer, as applicable, shall receive MBE/WBE credit for such participation against its obligations in this exhibit.

**550 ADAMS LLC  
REDEVELOPMENT AGREEMENT  
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**550 ADAMS LLC  
REDEVELOPMENT AGREEMENT  
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Exhibit B	* Property Legal Description
Exhibit C	Canal/Congress Redevelopment Plan
Exhibit D	Notice of Proposed Approved Successor
Exhibit E	* Project Budget
Exhibit E-1	* Base Building Improvements Budget
Exhibit E-2	* USG Improvements Budget
Exhibit F	Form of Building Construction Contract
Exhibit G	Form of City Note
Exhibit H	Form of Notice of Proposed Transfer/Refinancing
Exhibit I	Permitted Liens
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Exhibit K	City Note Requisition Form
Exhibit L	Estimated TIF-Funded Interest Costs
Exhibit M	TIF-Funded Interest Costs Requisition Form
Exhibit N	Approved Prior Expenditures
Exhibit O	Opinion of Developer's or USG's Counsel
Exhibit P-1	* Building MBE/WBE Budget
Exhibit P-2	* USG MBE/WBE Project Budget

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



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

**550 ADAMS LLC  
with a Limited Joinder by  
USG CORPORATION  
REDEVELOPMENT AGREEMENT  
for  
550 WEST ADAMS STREET PROJECT**

This 550 Adams LLC, with a limited joinder by USG Corporation Redevelopment Agreement for 550 West Adams Street Project (the "**Agreement**") is made as of November 8, 2004 by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), and 550 Adams LLC, a Delaware limited liability company (together with its permitted successors and permitted assigns under this Agreement, the "**Developer**"). USG Corporation, a Delaware corporation currently operating its business as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code ("**USG**"), has also executed the Limited Joinder of even date with this Agreement, and attached to this Agreement (the "**Limited Joinder**"), for purposes of acknowledging USG's agreement to the obligations described in this Agreement and in the Limited Joinder.

**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., (2002 State Bar Edition), as amended from time to time (the "**Act**"), to finance projects that reduce or eliminate those conditions the existence of which qualify a redevelopment project area as a "blighted area" or a "conservation area" or a combination thereof through the use of tax increment allocation financing for redevelopment projects.

**C. City Council Authority:** To induce redevelopment under the Act, the City Council of the City (the "**City Council**") adopted the following ordinances on November 12, 1998: (1) "An Ordinance of the City of Chicago, Illinois Authorizing Approval of a Tax Increment Redevelopment Plan for the Canal/Congress Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the Canal/Congress Redevelopment Project Area as a Tax Increment Financing District"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the Canal/Congress Redevelopment Project Area" (the "**TIF Adoption Ordinance**"). Such TIF Adoption Ordinances were amended pursuant to that certain ordinance adopted by the City Council on June 19, 2002 (collectively referred to herein, together with the TIF Adoption Ordinance, as (the "**TIF Ordinances**"). The redevelopment project area (the "**Redevelopment Area**") is legally described in Exhibit A.

**D. The Project:** Developer has previously acquired certain property located within the Redevelopment Area at 550 West Adams Street, Chicago, Illinois and legally described in Exhibit B (the "**Property**"). Developer will build on the Property an 18-story "Class A" office building having approximately 471,000 square feet of net rentable space (the "**Building**"). The Building will serve as the corporate headquarters for USG and certain of its Affiliates. USG will initially lease approximately 240,000 net rentable square feet in the Building on the 10th through the 18th floors.

The construction of the Building, for purposes of this Agreement, includes completion of all base building improvements (the "**Base Building Improvements**") and the completion of improvements to the space in the Building that USG will occupy (the "**USG Improvements**"). The Base Building Improvements, which will be completed by Developer, include, without limitation: the plumbing, electrical, HVAC, telecommunications and other building systems for the entire Building; the completion of the lobby; the construction of all exterior improvements, including a "green roof" on 100% of the net square footage of the roof (approximately 11,000 square feet), and the construction of all tenant improvements, if any, required to be constructed by Developer, as landlord under the USG Lease (as hereinafter defined). The City is also encouraging achievement of Energy Star Certification and a Leadership in Energy and Environmental Design certification from the United States Green Building Council, though such

certifications are not mandatory. The USG Improvements, which will be completed by USG, include the construction of all tenant improvements required to be constructed by USG, as tenant under the USG lease and include interior construction, fire protection, electrical and mechanical work, furniture and furniture installation, carpeting, telecommunications systems and architectural costs.

Developer and USG have entered into that certain Lease dated as of April 23, 2004 (as the same may be amended further as permitted under Section 8.19(a) and (f) of this Agreement and Section 2(a) and (f) of the Limited Joinder, the "**USG Lease**"), under which Developer has leased the premises described therein (the "**USG Premises**") to USG for a period of fifteen (15) years, subject to the terms and conditions contained therein. The City's agreement to provide City Funds (as defined below) to Developer and USG is conditioned upon USG's: (a) relocation of its corporate headquarters from 125 South Franklin and retention of not less than 500 Full-Time Equivalent Employees in the City (with at least 450 of such FTEs to be located at the Building) by the Job Creation Date (as defined below); (b) lease of not less than 225,000 rentable square feet of the Building on the Job Creation Date; (c) maintenance of USG's corporate headquarters at the Building (provided that in the event an Approved Successor succeeds to USG's assets or operations, such headquarters covenant shall be satisfied so long as such Approved Successor maintains operations at the Building as the principal place of business for one or more of USG's significant business units) at all times through the Tenth Anniversary Date; (d) retention of at least 500 FTEs in the City (with at least 450 of such FTEs to be located in the Building) at all times through the Tenth Anniversary Date; and (e) lease of not less than 150,000 rental square feet of the Building at all times prior to the Tenth Anniversary Date, all subject to the terms and conditions set forth herein. The construction of the Base Building Improvements, the USG Improvements, and the parties' compliance with their other respective obligations under this Agreement and the Limited Joinder is sometimes referred to collectively hereinafter as the "**Project**."

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

**E. Redevelopment Plan:** The Project will be carried out in accordance with this Agreement and the City of Chicago Canal/Congress Tax Increment Financing Redevelopment Project and Plan (the "**Redevelopment Plan**") attached as Exhibit C, as amended from time to time.

**F. City Financing:** The City agrees to use: (a) Area Incremental Taxes to pay the TIF-Funded Interest Costs (subject to the double-asterisked limitation set forth in Section 4.01(c)), and (b) Project Incremental Taxes to pay principal and interest on the Developer Note, the proceeds of which are to be used to reimburse Developer for TIF-Funded Costs (other than TIF-Funded Interest Costs), all under the terms and conditions of this Agreement.

**G. USG's Chapter 11 Filing and Current Operations:** On June 25, 2001, USG and certain of its subsidiaries filed voluntary petitions for reorganization (the "**Bankruptcy**"),

**Filing**” under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). The Chapter 11 cases of USG and its subsidiaries have been consolidated for purposes of joint administration as In re: USG Corporation et al. (Case No. 01-2094).

The Bankruptcy Filing was undertaken by USG in order to resolve asbestos claims related to USG’s historical operations in manner that USG deems to be fair and equitable and to protect the long-term value of USG’s building material businesses. USG and such subsidiaries are presently operating their businesses as debtors-in-possession subject to the provisions of the United States Bankruptcy Code. As a result of the Bankruptcy Filing, all pending asbestos lawsuits against USG and its affected subsidiaries have been stayed; no party may take any action to pursue or collect on such asbestos claims absent specific authorization of the Bankruptcy Court. USG is operating its businesses without interruption as a debtor-in-possession and vendors are being paid for goods furnished and services provided after the Bankruptcy Filing date.

However, because of the Bankruptcy Filing, realization of USG’s assets and liquidation of USG’s liabilities in the ordinary course of business, without substantial adjustments and/or changes in USG’s ownership, are subject to uncertainty. For this reason, USG’s financial statements are qualified to state that there is substantial doubt about USG’s ability to continue as a going concern. Therefore, the City has requested, and USG has granted, the remedies and security described in this Agreement and in the Limited Joinder.

Prior to the date hereof, under that certain Order dated May 24, 2004, USG has obtained the approval of the Bankruptcy Court for this Agreement, including the Limited Joinder. As a result of such approval, and upon the parties’ execution and delivery of this Agreement and the Limited Joinder, such Agreement and Limited Joinder shall constitute a legally binding post-petition obligation of USG enforceable in accordance with their respective terms.

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:

**AGREEMENT:**

**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 have the meanings set forth below:

**“Affiliate”** means any person or entity directly or indirectly controlling, controlled by or under common control with any of Developer, Steven D. Fifield, CBRE or USG, as applicable, and when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any person or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

**“Approved Purchaser”** means: (i) any publicly traded real estate investment trust or any private real estate investment trust, foreign pension fund, foreign insurance company or privately held entity with net assets (including net assets of affiliated entities) in excess of \$250 million; (ii) any pension fund or investment fund subject to the requirements of ERISA, or any manager thereof; (iii) any health, welfare or retirement fund of any governmental institution or other entity which would be subject to ERISA but for an exemption in ERISA, or any manager thereof; (iv) any corporation, partnership or other entity that is subject to periodic public financial reporting requirements under any state or federal laws governing securities, banking, or insurance or similar requirements requiring periodic public financial reporting to any governmental agency; (v) any public investment fund, private investment fund or similar entity, regulated by (or specifically exempt from regulation under) federal or state securities laws, whose invested equity funds, equity funds held pending investment or funds subject to capital calls exceed \$250 million, or any manager, general partner or managing member thereof; (vi) CBRE and any entity in which CBRE is the majority owner; (vii) USG or a USG Affiliate, (viii) the lender providing the Lender Financing, (ix) any entity that will finance its purchase with at least a 20% equity investment, or (x) such other purchaser as shall be acceptable to the Commissioner of DPD, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, no entity or person shall be an Approved Purchaser if it is: (1) in violation of any City ordinances or other City legal requirements, (2) involved in litigation adverse to the City, (3) unable or unwilling to accept an assignment of any unperformed obligations of Developer under this Agreement.

**“Approved Successor”** means any USG Affiliate, any entity with whom USG merges or consolidates or which purchases all or substantially all of the assets of USG so long as such successor continues USG’s building materials business operations, or any entity succeeding to all or substantially all of the business or assets (or both) of USG, so long as any such successor, as of the date of such merger, consolidation or purchase, employs at least 500 FTEs in corporate office jobs located in the City (with at least 450 of such FTEs to be located at the Building) in accordance with the terms of this Agreement. Without limiting the generality of the foregoing,

an “Approved Successor” shall include an independently administered trust established under Section 524(g) of the United States Bankruptcy Code as part of a reorganization of USG as part of the Bankruptcy Filing. In connection with any such merger, consolidation or purchase, USG shall use reasonable efforts, subject to non-disclosure requirements under any applicable securities laws or confidentiality agreements related to such transaction, to deliver to the Commissioner of DPD, not less than 10 days after the public announcement of any such merger, consolidation or purchase, a Notice of Proposed Approved Successor in the form of Exhibit D, making the certifications contained therein. Failure to make such delivery will not prevent an otherwise approved successor from being deemed an Approved Successor provided that such delivery is promptly made upon USG’s discovery of such failure.

“**Area Incremental Taxes**” means the Incremental Taxes for the Redevelopment Area, less and exclusive of those pledged and reserved for making mandatory payments under (i) the 555 West Monroe Redevelopment Agreement dated October 30, 2000, by and between the City and Monroe/Clinton, L.L.C., with a Limited Joinder by The Quaker Oats Company, (ii) the U.S. Fitness L.L.C. Redevelopment Agreement by and between the City and U.S. Fitness L.L.C. dated July 25, 2001, (iii) the redevelopment agreement to be entered into by and between 550 Jackson Associates, L.L.C. and the City; and (iv) such other redevelopment agreements as may be entered into by the City and developers after May 1, 2004, so long as the only Incremental Taxes pledged and reserved under such additional redevelopment agreements, if any, are those attributable to the project site for such redevelopment project(s).

“**Bad Year**” means a Calculation Period during which the job retention requirement included in Section 4(a)(ii) or Section 4(a)(iii) of the Limited Joinder is breached.

“**Bankruptcy-Related Default**” means: (a) the conversion of USG’s Chapter 11 Bankruptcy Filing into a Chapter 7 proceeding, or (b) any other dissolution, liquidation, sale of substantially all of USG’s assets (except to an Approved Successor who assumes in writing USG’s obligations under this Agreement), assignment for benefit of creditors, or (c) any other action, whether as a consequence of USG’s Bankruptcy Filing, changes in federal law or otherwise related to USG’s current Bankruptcy Filing that results in the substantial cessation of USG’s core operations as a building materials company, or (d) USG’s public announcement prior to the Security Cut-Off Date of its commitment to relocate USG’s corporate headquarters outside of the City.

“**Base Building Improvements**” means the improvements described in the second sentence of the second paragraph of Recital D.

“**Base Building Improvements Budget**” means the budget attached as Exhibit E-1, showing the total cost of the Base Building Improvements by line item, furnished by Developer to DPD, in accordance with Section 3.03 of this Agreement. Notwithstanding the preceding sentence and the inclusion of line items in the Base Building Improvements Budget and Building MBE/WBE Budget, the costs of completing tenant improvement work for tenants in the Building

other than USG and the “vanilla-box” build-out of first-floor retail tenant space shall not be construed to be included in the “Base Building Improvements” definition.

“**Building Certificate**” means the Certificate described in Section 7.01(a) for the Base Building Improvements.

“**Building Construction Contract**” means that certain contract, substantially in the form attached as Exhibit F, to be entered into between Developer and the Building General Contractor relating to the construction of the Base Building Improvements.

“**Building General Contractor**” means Power Construction Company, L.L.C., an Illinois limited liability company, or such other general contractor as shall be designated by Developer and shall be reasonably acceptable to DPD.

“**Building Plans and Specifications**” means the final construction documents containing a site plan and working drawings and specifications for the Base Building Improvements.

“**Business Day**” means any day other than Saturday, Sunday or a legal holiday in the State.

“**Calculation Period**” means any rolling twelve (12) month period (e.g., from October 1<sup>st</sup> of one calendar year through September 30<sup>th</sup> of the following calendar year) after the Job Creation Date through and including the Tenth Anniversary Date.

“**CBRE**” means CB Richard Ellis Strategic Partners, L.P. III, or any single asset entity substantially owned and controlled by such entity.

“**CBRE Financing**” means the funds borrowed by Developer from CBRE or another third party lender reasonably acceptable to DPD to pay for Project costs in the amount set forth in Section 4.01. If CBRE converts its investment with respect to the Project from that of a lender to that of an equity investor, the return paid to CBRE with respect to its investment shall not constitute TIF-Funded Interest Costs from and after the date on which such conversion occurs (and, if such conversion is given retroactive effect under the terms of the applicable documents, from and after such retroactive date). The final determination of whether the return paid to CBRE constitutes a TIF-Funded Interest Costs shall be made by the Corporation Counsel, in its sole discretion.

“**Certificate of Expenditure**” means a certificate in the form of the certificate of expenditure attached as Schedule 1 to the City Note.

“**Change Order**” means any amendment or modification to the Building Plans and Specifications, the USG Plans and Specifications, the Base Building Improvements Budget or the USG Improvements Budget as described in Section 3.03, Section 3.04 and Section 3.05, respectively.

**“City Funds”** means the funds described in Section 4.01(c), as the same may be reduced or terminated under the terms and conditions of this Agreement.

**“City Note”** means the City of Chicago Tax Increment Allocation Revenue Note (550 West Adams Street Project) to be in the form attached as Exhibit G, which will be issued by the City to Developer on the Closing Date.

**“City Note Maximum Principal Amount”** means the maximum principal amount of the City Note, which shall be equal to the lesser of (a) \$6,500,000, or (b) such lesser amount of TIF-Funded Costs (exclusive of TIF-Funded Interest Costs) as may be incurred prior to the Completion Date. Any interest on the principal of the City Note that is to be compounded in accordance with the terms of this Agreement and the City Note shall not be deemed to be subject to the City Note Maximum Principal Amount.

**“City Note Requisition Form”** has the definition stated in Section 4.02(e).

**“Clawback Amount”** means the amount of TIF-Funded Interest Costs that have accrued prior to the Completion Date, regardless of whether the reimbursement of such TIF-Funded Interest Costs occurs prior to or after such date.

**“Closing Date”** means the date of execution and delivery of this Agreement and the Limited Joinder by all parties hereto and thereto.

**“Completion Date”** means the date on which the conditions precedent specified in Section 5.19(b) have all been satisfied.

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

**“Developer”** means 550 Adams LLC, a Delaware limited liability company, and its permitted successors and permitted assigns under this Agreement, or such other entity controlled by Steven D. Fifield.

**“Developer Equity”** means contributed and unreturned capital contributions funded by Steven D. Fifield (and his family members and family trusts, his employees, and such other persons or entities as may be reasonably acceptable to the Commissioner of DPD) in connection with the acquisition and construction of the Project.

**“Developer Event of Default”** has the meaning set forth in Section 15.

**“Developer Reimbursement Event”** means an act or omission of Developer or its Affiliates, or CBRE or its Affiliates resulting in a Developer Event of Default relating to: (i) a material and intentional misrepresentation to the City related to the Project, (ii) a fraudulent act or omission related to the Project, (iii) a material and intentional misappropriation of funds from the uses set forth in the Base Building Improvements Budget resulting in the receipt by



Developer, CBRE or their Affiliates of additional fees, commissions or compensation not disclosed in such Project Budget or otherwise approved in writing by DPD; (iv) any intentional or material waste to the Property or any portion thereof; (v) use of City Funds for payment or reimbursement of amounts other than the TIF-Funded Costs; (vi) a breach of the sale, refinancing, assignment and other provisions in Sections 8.01(j),(k) or (m) or Section 18.15; (vii) any material breach of Developer's representations, warranties or covenants regarding environmental matters contained in this Agreement, as applicable; (viii) the occurrence of any material uninsured casualty event to the Building for which the landlord under the USG Lease is required to carry insurance, unless the portion of the Building damaged by such event is restored within a reasonable period of time; (ix) the material misappropriation or misapplication of insurance proceeds or condemnation awards relating to the Property; (x) any material misrepresentation in any Economic Disclosure Statements and Affidavit submitted by Developer; (xi) any receipt of City Funds after the occurrence of a Developer Event of Default, or the occurrence of an event which, if prompt notice of such event had been given, would have entitled the City to withhold, suspend, reduce or terminate the disbursement of such City Funds under this Agreement, or (xii) a breach of the lease amendment and financial arrangement restrictions in Sections 8.19(b) or (f) of this Agreement.

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

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

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

**“Financial Statements”** means complete audited financial statements of Developer, prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods, or such other financial statements as may be reasonably acceptable to DPD.

**“First Bad Day”** means the first day of the Bad Year.

**“Full-Time Equivalent Employee”** or **“FTE”** means an employee of USG, or an employee of a USG Affiliate, or an employee of an Approved Successor to USG (or, with respect to job shares or similar work arrangements, such employees taken collectively) who is employed at least 35 hours per week at the Building (or with respect to up to 50 FTEs, at another location within the City) during the applicable month. FTEs shall not include persons employed as independent contractors, third party service providers, consultants or persons employed by other third parties in positions ancillary to USG’s operations at the Building, including, without limitation, food service workers, security guards, cleaning personnel, or similar positions.

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

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

**“Job Creation Date”** means the date USG commences operations at the USG Premises, which, subject to the terms of Section 3.01, shall in no event be later than April 1, 2007, subject to delays by Developer in delivering the USG Premises to USG for its tenant improvement work.

**“KeyBank”** means KeyBank National Association, individually and as Agent, its successors and assigns.

**“Lender Financing”** means funds borrowed by Developer from KeyBank or any other lender reasonably acceptable to DPD to pay for Project costs, in the amount set forth in Section 4.01 hereof.

**“Material Amendment”** means an amendment (other than as described in the last sentence of this paragraph) of the USG Lease the net effect of which is to directly or indirectly do any of the following: (a) materially reduce, increase, abate or rebate base rent, other amounts deemed rent, operating expense payments, tax payments, tenant improvement allowances or credits, or other monetary amounts payable (or monetary credits) under the USG Lease, or otherwise confer or take away any material economic benefit, in each case taking into account all direct economic effects under the USG Lease of the amendment; or (b) shorten the initial 15-year term of the USG Lease or grant additional early termination rights that, if exercised, would shorten the initial 15-year term of the USG Lease. Reductions or expansions of space pursuant to the express expansion or contraction rights granted in the USG Lease in effect as of the date hereof shall not constitute Material Amendments.

“**MBE(s)**” means a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise.

“**Municipal Code**” means the Municipal Code of the City of Chicago.

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

“**Notice of Proposed Transfer/Refinancing**” means a written notice delivered by Developer to the City in the form of Exhibit H, with all certificates and attachments completed, and a copy of the contract of sale or refinancing commitment letter.

“**Permitted Liens**” means those liens and encumbrances against the Property and/or the Project set forth on Exhibit I.

“**Permitted Refinancing**” means a refinancing permitted under Section 8.01(k).

“**Permitted Transfer**” means: (a) a transfer by Steven D. Fifield of any ownership or economic interest held in Developer (or any upper-tier owner of Developer) to (i) a family member or a personal trust of Steven D. Fifield or such family member, of which Steven D. Fifield is the trustee, for estate planning purposes, (a “Fifield Trust”), (ii) an employee (or his/her family members) of Fifield Realty Company or any entity controlled by Steven D. Fifield, or (iii) such other person or entity as may be acceptable to the Commissioner of DPD, in her sole discretion, as evidenced by the Commissioner’s prior written approval. Notwithstanding the foregoing, no transfer shall be a Permitted Transfer if, after giving effect to such transfer, either (x) Steven D. Fifield (or a Fifield Trust) is not a managing member of Developer, unless CBRE has exercised its rights to replace Mr. Fifield as such managing member under the terms of Developer’s operating agreement and itself become the managing member, or (y) Steven D. Fifield and any Fifield Trusts have invested, in aggregate, less than \$1,000,000 of Developer Equity. The conversion of CBRE’s construction loan to an increased equity interest in Developer shall also be deemed a Permitted Transfer. A transfer of less than a 30% interest in Developer to an entity or individual who holds such investment as passive investment and exercises no substantive control over Developer’s operations shall also be deemed a Permitted Transfer.

“**Planned Development**” means that certain Planned Development No. 756 approved by the City Council of the City applicable to the Property and certain other real property, as the same may be modified or amended from time to time.

“**Prior Expenditure(s)**” has the meaning stated in Section 4.04(a).

“**Project Budget**” means the budget attached hereto as Exhibit E, showing the total cost of the Project by line item, or such other budget as DPD shall approve, in its reasonable discretion, in accordance with Section 3.04.

**“Project Incremental Taxes”** means the sum of: (a) those Incremental Taxes attributable to the tax parcels comprising the Property, which, as of the date of this Agreement, have the PINs set forth on Exhibit B, plus (b) if the City, in its sole discretion, so elects, such other Area Incremental Taxes, if any, as the City may designate for repayment of the City Note or payment of TIF-Funded Interest Costs.

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

**“Security Cut-Off Date”** means the date that is twelve (12) months after the date on which the Bankruptcy Court confirms a plan or plans of reorganization in USG’s Chapter 11 bankruptcy proceeding, provided, however, that if such reorganization is effectuated by means of new federal legislation rather than by confirmation of a plan or plans of reorganization by the Bankruptcy Court, the first day of such 12 month period shall be the effective date of such federal legislation.

**“Security Instrument”** means an irrevocable, standby, direct pay letter of credit naming the City as beneficiary or such other form of security as may be proposed by USG and may be acceptable to the City, in its sole discretion. The Security Instrument shall secure USG’s repayment of any applicable Clawback Amount. The Security Instrument shall remain outstanding and available to be drawn upon until 30 days after the Security Cut-Off Date. If no Bankruptcy-Related Default has occurred by the Security Cut-Off Date, the Security Instrument shall be promptly returned to USG. The Security Instrument shall initially be provided to the City on the date of the City’s first reimbursement of TIF-Funded Interest Costs and shall be in an amount equal to such reimbursement payment. Thereafter, on each subsequent date on which the City makes an additional reimbursement of TIF-Funded Interest Costs included within the Clawback Amount, the principal amount of the Security Instrument shall be increased by a like amount. The Security Instrument shall only secure Clawback Amounts that become repayable as a result of a Bankruptcy-Related Default and shall not secure the repayment of other amounts that may become repayable under this Agreement or the Limited Joinder due to other Events of Default.

**“Survey”** means a plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property dated within 45 days prior to the Closing Date, acceptable in form and content to the City, prepared by a surveyor registered in the State of Illinois, certified to the City, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency.

**“Tenth Anniversary Date”** means with respect to the USG minimum leasing, headquarters and jobs covenants set forth in Section 4 of the Limited Joinder, the tenth anniversary of the Job Creation Date.

**“Term of the Agreement”** means the period of time commencing on the execution of this Agreement and ending on the Tenth Anniversary Date. Such definition is used herein with respect to setting a expiration date for certain Developer and USG obligations and shall not excuse the City from making any payments that may be payable after such expiration date, if any.

**“TIF Fund”** means the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

**“TIF-Funded Costs”** means costs for those portions of the Project which: (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Plan, (iii) are set forth in the Project Budget, or are TIF-Funded Interest Costs associated with the Lender Financing, the CBRE Financing, or a Permitted Refinancing, and (iv) the City has agreed to pay for out of the City Funds, in accordance with and subject to the terms of this Agreement.

**“TIF-Funded Interest Costs”** means TIF-Funded Costs described in Section 5/11-74.4-3(q)(11) of the Act.

**“TIF-Funded Interest Costs Maximum Amount”** means an amount equal to the difference between (a) \$9,750,000, and (b) the City Note Maximum Principal Amount.

**“TIF-Funded Interest Costs Requisition Form”** has the definition stated in Section 4.03(b).

**“Title Company”** means Chicago Title Insurance Company, or such other reputable title company as may be reasonably acceptable to the City.

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

**“Transfer”** means any direct or indirect sale, transfer, conveyance, assignment, lease or other disposition of the Property, or any portion thereof, or any interest or estate therein, or any direct or indirect sale, transfer, assignment or other disposition of any ownership interest in Developer or any upper-tier owner of Developer that has the practical effect of transferring a 51% or more ownership interest in or control of the Property.

**“USG Certificate”** means the Certificate described in the second paragraph of Section 7.01(b) hereof for the USG Improvements.

**“USG Construction Contract”** means the construction contract to be entered into between USG and the USG General Contractor relating to the construction of the USG Improvements.

**“USG Event of Default”** has the meaning stated in Section 7 of the Limited Joinder.

**“USG General Contractor”** means the general contractor under the USG Construction Contract.

**“USG Improvements Budget”** means the budget attached hereto as Exhibit E-2, showing the total cost of the USG Improvements by line item, furnished by USG to DPD, in accordance with Section 3.03.

**“USG Plans and Specifications”** means the final construction documents containing working drawings and specifications for the USG Improvements.

**“USG Reimbursement Event”** means an act or omission of USG resulting in a USG Event of Default and relating to: (i) a material and intentional misrepresentation to the City related to the Project, (ii) a fraudulent act or omission related to the Project, (iii) any material misrepresentation in any Economic Disclosure Statements and Affidavit submitted by USG; (iv) any receipt of City Funds (or the benefit of such City Funds pursuant to the USG Lease) after the occurrence of a USG Event of Default or the occurrence of an event which, if prompt notice of such event had been given, would have entitled the City to withhold, suspend, reduce or terminate the disbursement of City Funds under this Agreement or the Limited Joinder, and (v) a breach of the lease amendment and financial arrangement restrictions in Sections 2(b) or (f) of the Limited Joinder.

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

**“WBE(s)”** means a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned business enterprise.

### SECTION 3. THE PROJECT

#### 3.01. **The Project.**

(a) **The Base Building Improvements.** With respect to the Base Building Improvements, Developer shall, pursuant to the Building Plans and Specifications and the USG Lease, and subject to the provisions of Section 18.17: (i) commence construction of the Base Building Improvements no later than January 1, 2005, and (ii) complete construction of the Base Building Improvements no later than June 1, 2006.

(b) **The USG Improvements.** With respect to the USG Improvements, USG shall, subject to the USG Plans and Specifications and the USG Lease, and subject to the provisions of Section 3.01(c) and Section 18.17 and further subject to delays by Developer in delivering the

USG Premises to USG by the date set forth in the USG Lease in order to permit USG to commence construction of the USG Improvements, (i) substantially complete construction of the USG Improvements no later than October 1, 2006, (ii) commence business operations at the USG Premises, with not less than 225,000 square feet leased and not less than 500 FTEs located within the City (with not less than 450 FTEs at the USG Premises), no later than April 1, 2007, and (iii) complete the USG Improvements by April 1, 2007.

(c) **Consent to Changes in Milestone Dates.** The milestone dates stated in **Sections 3.01(a) and (b)** may be extended by three months without the consent of the City. The Commissioner must consent to any extension of the milestone dates stated in **Sections 3.01(a) and (b)** above that is beyond three months past the dates specified above. Such consent shall not be unreasonably withheld provided that the Commissioner is provided with reasonable evidence that Developer and USG remain able to perform their obligations under this Agreement. Nothing herein shall be construed to amend or modify the rights and obligations as between Developer and USG under the USG Lease concerning construction timing, schedule and requirements.

**3.02 Plans and Specifications.** Developer has delivered the Building Plans and Specifications to DPD, and DPD has approved them. Prior to commencing the USG Improvements, USG will also deliver the USG Plans and Specifications to DPD. After DPD's initial approval of the Building Plans and Specifications, subsequent proposed changes to the Building Plans and Specifications must be submitted to DPD as a Change Order under **Section 3.04** and for such approval, if any, required under **Section 3.04**. All such plans and specifications must at all times conform to the Redevelopment Plan attached as **Exhibit C** and all applicable federal, State and local laws, ordinances and regulations. Developer and USG must submit all necessary documents to such City departments and other governmental authorities as may be necessary to acquire building permits and other required approvals for the Base Building Improvements and the USG Improvements, respectively.

**3.03 Project Budget.**

Developer and USG have furnished to DPD, and DPD has approved, the Project Budget attached as **Exhibit E**, the Base Buildings Improvements Budget attached as **Exhibit E-1**, and the USG Improvements Budget attached as **Exhibit E-2**.

Developer hereby certifies to the City that the Lender Financing and the CBRE Financing, together with the funds to be disbursed by Developer and Steve D. Fifield, all as described in **Section 4.01**, will be sufficient to complete the Base Building Improvements.

The Project Budget includes an amount not less than Thirty-Five Million Six Hundred Forty-Two Thousand, Nine Hundred and Sixteen Dollars (\$35,642,916) attributable to the USG Improvements.

Developer and USG, as applicable, must promptly deliver to DPD certified copies of any Change Orders with respect to the Project Budget, the Base Building Improvements Budget and

the USG Improvements Budget, respectively. Only Change Orders described in Section 3.04 will be subject to DPD's approval.

**3.04 Change Orders.** Any Change Orders that individually or in aggregate: (a) permanently decrease the Base Building Improvements Budget by more than five percent (5%) percent, (b) reduce the net rentable square footage of the Building by more than five (5%), or (c) change the basic use of the Building must be submitted by Developer to DPD for DPD's prior written approval. DPD will attempt to expeditiously review any such Change Order request and approve or disapprove (with a brief written explanation given of any disapproval) such proposed Change Order within fifteen (15) days of its receipt thereof. Subject to the next sentence, DPD's failure to respond to a proposed Change Order described in preceding clauses (a) or (b) within such time period shall be deemed to be an approval. In order for such deemed approval provision to be operative, the written Change Order request must state in all boldface, capitalized type: **"THIS CHANGE ORDER SEEKS AN APPROVAL FROM DPD WHICH, IF NOT APPROVED OR DISAPPROVED WITHIN 15 DAYS OF DPD'S RECEIPT, SHALL RESULT IN THE DEEMED APPROVAL OF THE CHANGE REQUESTED."** Neither Developer nor USG shall authorize nor permit the performance of any work relating to a Change Order described in the preceding clauses (a), (b) or (c) or the furnishing of materials in connection therewith prior to the receipt of DPD's written approval, or DPD's deemed approval. The Building Construction Contract and each contract between the Building General Contractor and any subcontractor must contain a provision to this effect. An approved Change Order will not be deemed to imply any obligation on the part of the City to increase the amount of City Funds payable under this Agreement or provide any other additional financial assistance. DPD must be notified in writing of all other Change Orders as part of the progress reports submitted by Developer and USG under Section 3.07.

**3.05. DPD Approval.** Any approval granted by DPD of the Building Plans and Specifications, the USG Plans and Specifications and any 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 under any City ordinance, code, regulation or any other governmental approval, nor does it constitute approval of the quality, structural soundness, safety, habitability or investment quality of any portion of the Building, the Property or any portion of the Project. Developer will not make any verbal or written representation to anyone to the contrary.

**3.06 Other Approvals.** Any DPD approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, Developer's and USG's obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals). Neither Developer nor USG shall commence construction of their respective portions of the Project until such entity has obtained all necessary permits and approvals and, with respect to Developer, proof of Developer's bonding with respect to any work in the public way.

**3.07 Progress Reports.** Developer and USG must each provide DPD with written quarterly progress reports detailing the status of their respective portions of the Project, including a revised, extended completion date, if necessary (with any extended completion date beyond



three months being considered a Change Order, requiring DPD's written approval under Section 3.04). Developer must provide DPD with copies of all draw request packages relating to the construction of the Base Building Improvements. Developer must also provide DPD's monitoring staff with monthly documentation including, without limitation, a current subcontractor's activity report, a contractor's certification concerning labor standards and prevailing wage requirements, a monthly MBE/WBE utilization report, a monthly City resident hiring report, and certified payroll records. Beginning with the first month after commencement of construction of the USG Improvements, USG shall provide the City with the same monthly information required under the preceding three sentences with respect to such USG Improvements work. When construction of the Base Building Improvements is approximately 25%, 50%, 70% and 100% complete, and when construction of the USG Improvements is approximately 25%, 50%, 70% and 100% complete, Developer and USG, as applicable, must also provide DPD with reports summarizing the status of such party's own MBE/WBE utilization, City resident hiring and the payment of prevailing wages, with a plan to address any shortfall, if necessary.

**3.07A Inspecting Architect.** With respect to the Base Building Improvements, the inspecting architect for the lender providing the Lender Financing, and with respect to the USG Improvements, such person as USG may designate (which may be USG's architect for the USG Improvements), will also serve as the inspecting architect for the City. Such inspecting architects must perform periodic inspections with respect to the Base Building Improvements and the USG Improvements, as applicable, and must provide certifications with respect thereto to DPD, including, without limitation, in connection with the City's issuance of the Building Certificate and the USG Certificate. Developer and USG, as applicable, must pay any amounts payable to such inspecting architects for their services to the City and any related expenses under this Section 3.07A.

**3.08 Barricades.** Prior to commencing any construction requiring barricades, Developer must 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. DPD must approve or disapprove (with a brief written explanation given of any disapproval) such proposed materials within ten (10) Business Days of its receipt thereof.

**3.09 Signs, Public Relations, Landscaping.** Developer will 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 in part by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding Developer, USG and the Project in the City's promotional literature and communications. After its initial approval of the signage disclosed in the Building Plans and Specifications and the USG Plans and Specifications, DPD retains the right to approve any material changes in the maintenance, appearance, color scheme, painting, nature, type, content and design of all signage on the Building and all landscaping on the Property. DPD must

approve or disapprove (with a brief written explanation given of any disapproval) such proposed materials within fifteen (15) days of its receipt thereof. Failure to approve such proposed Change Order within such time period shall be deemed to be an approval, provided that the written notice includes the boldface, capitalized language specified in Section 3.04.

3.10 **Utility Connections.** Developer and USG 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 they first comply with all City requirements governing such connections, including the payment of customary fees and costs related thereto.

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

3.12 **Accessibility for Disabled Persons.** Developer acknowledges that it is in the public interest to design, construct and maintain the Project in a manner which promotes, enables, and maximizes universal access throughout the Project. Plans for all buildings on the Property and related improvements will be reviewed and approved by the Mayor’s Office for People with Disabilities (“MOPD”) to ensure compliance with all applicable laws and regulations related to access for persons with disabilities and to promote the highest standard of accessibility.

## SECTION 4. FINANCING

### 4.01 **Total Project Cost and Sources of Funds.**

(a) **Project Costs.** The aggregate cost of the Base Building Improvements is estimated to be Seventy-Five Million One Hundred Seventy-Nine Thousand Five Hundred Forty Dollars (\$75,179,540). The aggregate cost of the USG Improvements is estimated to be Thirty-Five Million Six Hundred Forty-Two Thousand, Nine Hundred and Sixteen Dollars (\$35,642,916).

(b) **Sources of Funds for Project Costs.** Project costs shall be initially funded from the following sources:

Developer Equity	\$ 3,500,000
Lender Financing	\$ 77,090,000
CBRE Financing	\$ 42,000,000
<b>ESTIMATED TOTAL:</b>	<b>\$122,590,000</b>

**NOTE:** The estimated sources of funds exceed the Project costs because as of the date of City Council introduction, the final commitments and allocations for Lender Financing and CBRE Financing had not been determined.

(c) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4 (and the asterisked provisions below), Section 5 and Section 8.05 hereof, the City hereby agrees to reserve City Funds from the sources and in the apportioned amounts described below (the "City Funds") to repay the City Note and to pay the TIF-Funded Interest Costs:

<u>Source of City Funds</u>	<u>City Payment Obligation</u>	<u>Maximum Amount</u>
Project Incremental Taxes	City Note	City Note Maximum Principal Amount*
Area Incremental Taxes**	TIF-Funded Interest Costs	TIF-Funded Interest Costs Maximum Amount

\* The sum of the City Note Maximum Principal Amount, plus the TIF-Funded Interest Costs Maximum Amount, shall equal \$9,750,000. The City also agrees to reserve City Funds from Project Incremental Taxes to pay simple interest on the principal amount from time to time outstanding under the City Note at the rate of eight and 75/100 percent (8.75%) per annum, subject to the terms and conditions of this Agreement and such City Note. Such interests costs on the City Note shall not constitute TIF-Funded Interest Costs.

\*\* Notwithstanding the above, after the payment of TIF-Funded Interest Costs accrued with respect to the 2006 calendar year from Area Incremental Taxes, thereafter, only Project Incremental Taxes shall be reserved and used to make payment of TIF-Funded Interest Costs accrued with respect to 2007 and any subsequent calendar years, up to the TIF-Funded Interest Costs Maximum Amount. Project Incremental Taxes shall, as between amounts due with respect to the City Note and amounts due with respect to TIF-Funded Interests Costs, be applied first to make all scheduled payments due with respect to the City Note (and any voluntary prepayment of the City Note that the City may elect to make), and then to TIF-Funded Interest Costs. In 2005, the City shall not make any payments of TIF-Funded Interest Costs accrued with respect to the 2004 calendar year. In no event shall the TIF-Funded Interest Costs paid in 2006 exceed the lesser of: (w) the actual TIF-Funded Interests Costs accrued with respect to the 2004 and 2005 calendar years, and (x) \$1,625,000. In no event shall the TIF-Funded Interest Costs paid in 2007 exceed the lesser of: (y) the actual TIF-Funded Interests Costs accrued with respect to the 2006 calendar year, and (z) \$1,625,000, unless the TIF-Funded Interest Costs accrued with respect to the 2004 and 2005 calendar years were less than \$1,625,000 and the TIF-Funded Interest Costs accrued with respect to the 2006 calendar year were more than \$1,625,000, in which case the City shall also pay such amount in excess of \$1,625,000 as may be necessary to pay, in aggregate, \$3,250,000 in TIF-Funded Interest Costs with respect to the 2004, 2005 and 2006 calendar years (such payments to be made in 2006 and 2007). The provisions of this double-

asterisked paragraph are intended to set forth certain limitations regarding the reservation and pledge of Incremental Taxes and caps on the payment of Area Incremental Taxes for certain years and are not intended to modify or reduce the calculation of the TIF-Funded Interest Costs Maximum Amount.

(d) Sufficiency of City Funds. It is hereby understood and agreed to by Developer and USG that the City does not make any representations that the amount of the Project Incremental Taxes will be sufficient to repay the City Note or that the amount of Area Incremental Taxes (and Project Incremental Taxes, as the case may be) will be sufficient to reimburse Developer for the TIF-Funded Interest Costs. Developer and USG acknowledge and agree that the City has committed to reserve only the Project Incremental Taxes to repay the City Note, and the Area Incremental Taxes (subject further to the double-asterisked limitation set forth in Section 4.01(c)) to make reimbursement of the TIF-Funded Interest Costs, and that neither Developer nor USG has any right or claim to, and the City shall be free to otherwise reserve, pledge and commit to other redevelopment projects or financing, any other Incremental Taxes. The City acknowledges and agrees, however, that, subject to the reservations and designations set forth in the "Area Incremental Taxes" definition, Developer and USG shall otherwise have a first priority claim to the Area Incremental Taxes committed and reserved under this Section 4.

#### 4.02 City Note.

(a) Issuance of City Note. Subject to the terms and conditions of this Agreement, the City shall issue a taxable City Note to Developer on the Closing Date. The initial principal balance of the City Note, as of its issuance, shall equal the TIF-Funded Costs incurred by Developer prior to the Closing Date.

(b) Increases in Principal Amount of City Note; Certificate of Expenditure. After the issuance of the City Note and prior to the Completion Date, Developer may, up to four times per calendar year, provide DPD with a Certificate of Expenditure to request an increase in the principal amount of the City Note. Developer shall also submit, along with such Certificate of Expenditure, documentation necessary to establish Developer's incurrence of the TIF-Funded Costs covered by such certificate. Exhibit J states certain TIF-Funded Costs for the Project that are intended to be evidenced by the City Note. Upon DPD's request, Developer will meet with DPD to discuss the Certificate of Expenditure. If DPD approves and executes such Certificate of Expenditure, the outstanding principal indebtedness under the City Note shall then be increased by the amount stated in such Certificate of Expenditure effective as of the execution date of such certificate. In no instance will Developer submit a Certificate of Expenditure that includes costs that Developer has not previously paid, nor costs for correcting deficient work, nor costs for replacing deficient materials, or other costs attributable to a failure to initially complete the Project in accordance with all applicable laws and City requirements. No Certificate of Expenditure will be issued after the Completion Date, and the principal amount of the City Note shall be finally fixed on such date. From the date of issuance of the City Note until December 31, 2005, interest on the principal amount of the City Note shall accrue and, on December 31,

2005, compound and be capitalized and included within the principal amount thereof. From January 1, 2006 through the Completion Date, interest shall accrue and shall, on such Completion Date, compound and be capitalized and included within the principal amount of the City Note. The interest that accrues and is compounded and capitalized pursuant to the preceding two sentences shall not be deemed to be subject to the City Note Maximum Principal Amount limitation.

(c) City Note Maximum Principal Amount. In no event will the maximum principal amount of the City Note be increased to an amount greater than the lesser of (i) \$6,500,000, and (ii) the sum of (A) the initial principal balance of the City Note, plus (B) the aggregate, additional TIF-Funded Costs (exclusive of TIF-Funded Interest Costs) evidenced by Certificates of Expenditures approved and executed by DPD prior to the Completion Date.

(d) Developer to Hold City Note In Trust for USG. After the issuance date, and prior to the Completion Date, Developer will hold the City Note in trust for USG. During such time, the City Note may not be transferred by Developer in any way, nor may it be pledged or collaterally assigned, except to USG. By execution of this Agreement, Developer hereby disclaims, waives and releases any right, title or interest in such City Note (except in its capacity as the registered owner and holder of such City Note, in trust for USG) and any right to ever receive any payment with respect to such City Note. The parties acknowledge and agree that such City Note is being issued to Developer because it is Developer that is incurring TIF-Funded Costs that are reimbursable under the Act, but that Developer, as a material inducement to USG's execution of the USG Lease and the Limited Joinder to this Agreement, has covenanted in the USG Lease, and hereby covenants, to transfer and assign the City Note to USG on the Completion Date.

(e) Payments on City Note. No payments on the City Note will be made prior to the assignment of the City Note to USG on the Completion Date unless the City, in its sole discretion, elects to make such payments. If the City elects to make such payments, Developer, within five (5) business days of receipt of such payment, will remit to USG a like amount. After the Completion Date and the assignment of the City Note to USG, in order to request the payment of any City Funds with respect to the City Note, USG shall deliver to the City, a completed requisition form in substantially the form of Exhibit K (the "**City Note Requisition Form**"), together with the documentation described therein, prior to November 30<sup>th</sup> of each calendar year. The City shall approve or disapprove (with a brief written explanation for any disapproval) a City Note Requisition Form within thirty (30) days of receipt of the City Note Requisition Form. Any disapproved City Note Requisition Form may be resubmitted for approval after any unsatisfied conditions precedent have been satisfied. After such City approval, the City shall then make payments on the City Note on or before February 1<sup>st</sup> of the succeeding calendar year in accordance with the debt service schedule that shall be attached to the City Note on the Completion Date. Such debt service schedule shall fully amortize the principal balance of the City Note, and the interest that will accrue thereon, on a constant payment basis, over a ten year period commencing on the Completion Date (i.e., the annual payment amount shall be the same each year over such ten year period). If the Project

Incremental Taxes are insufficient to fully pay a scheduled annual payment, any unpaid amount shall also accrue simple interest, and shall be due and payable, along with the next scheduled debt service payment, on the next annual payment date. All City Funds paid pursuant to a City Note Requisition Form shall be used to pay principal and interest costs on the City Note, the proceeds of which were used to reimburse Developer for its previous payment of TIF Funded Costs.

(f) Prepayment. The City Note may be prepaid at any time without premium or penalty. In the event that the City fails to pay a scheduled debt service payment, the City shall also, to the extent of Project Incremental Taxes, make a “catch-up” payment to repay the unpaid portion of such payment prior to the next scheduled debt service payment date.

#### 4.03 Reimbursement for TIF-Funded Interest Costs.

(a) Statutory Interest Limitation. Subject to the double-asterisked limitation set forth in Section 4.01(c), the City hereby agrees to pay or reimburse Developer from Area Incremental Taxes for a portion of the interest costs incurred by Developer that will accrue on (i) the Lender Financing, (ii) the CBRE Financing, and (iii) any refinancing of the Lender Financing or the CBRE Financing that is secured by the Project incurred during the Term of the Agreement, including, without limitation, a refinancing resulting from a sale of the Project (any such financing, provided it further complies with Section 8.01(k), a “Permitted Refinancing”). Exhibit L states an estimate of such anticipated TIF-Funded Interest Costs. The City’s payment or reimbursement shall be based on the actual TIF-Funded Interest Costs, which may be more or less than the estimated amounts stated in Exhibit L (which only lists the anticipated TIF-Funded Interest Costs to be incurred prior to the Completion Date based on the initial Lender Financing and CBRE Financing and does not include TIF-Funded Interest Costs that may be incurred after the Completion Date) provided, however, that, consistent with Section 5/11-74.4-3(q)(11) of the Act, in no event shall the amount payable by the City for TIF-Funded Interest Costs in any year exceed the lesser of:

(i) 30 percent of the annual interest costs on the Lender Financing, the CBRE Financing and/or any Permitted Refinancing incurred by Developer with regard to the Project during that year, provided that, if there are not sufficient Area Incremental Taxes to make the payment under this subparagraph, then the amounts so due shall accrue (without interest) and be payable when Area Incremental Taxes (or Project Incremental Taxes, as the case may be) are available; or

(ii) 30 percent of the total (A) costs paid or incurred by Developer on the Project, plus (B) redevelopment project costs (excluding any property assembly costs and relocation costs) incurred by the City pursuant to the Act.

(b) Reimbursements. The amounts payable under this Section 4.03 shall be paid by the City in accordance with this Agreement while the Lender Financing, CBRE Financing, and/or any Permitted Refinancing remains outstanding and so long as the TIF-Funded Interest Costs,

may, under the Act, be legally paid out of Area Incremental Taxes (or Project Incremental Taxes, as the case may be) until such time as the City has paid or reimbursed Developer for an amount that, in aggregate, equals the TIF-Funded Interest Costs Maximum Amount.

The amounts payable under this Section 4.03 shall be paid by the City directly from the TIF Fund to Developer in reimbursement of TIF-Funded Interest Costs. The City will reimburse Developer for such TIF-Funded Interest Costs upon Developer's submission to DPD of an executed requisition form in the form of Exhibit M (the "**TIF-Funded Interest Costs Requisition Form**"). As provided in the USG Lease, Developer, within five (5) Business Days of receipt of such reimbursement payment, shall remit to USG a like amount. The TIF-Funded Interest Costs Requisition Form shall be submitted and processed by DPD in accordance with the same timeline and procedures applicable to the City Note Requisition Form. Upon a TIF-Funded Interest Costs Requisition Form's approval, the City Comptroller shall pay, from Area Incremental Taxes (or Project Incremental Taxes, as the case may be), the amount requested in the TIF-Funded Interest Costs Requisition Form. In no event, however, shall such payment exceed the maximum amount payable under Section 4.03 (including any "catch-up" payment due for prior years that was not been paid due to insufficient Area Incremental Taxes, or insufficient Project Incremental Taxes, as the case may be). Along with the TIF-Funded Interest Costs Requisition Form, Developer shall also submit to DPD and the Department of Finance at the addresses specified in Section 17 copies of the invoices sent to Developer by KeyBank, CBRE, and/or any lender providing Permitted Refinancing, and a statement of interest accrued on such financing based on Developer's most recent Financial Statements (or such other substantiating evidence as the City may accept) to evidence the accrual of such amounts for TIF-Funded Interest Costs.

(c) Developer Includes Successor Owner With Permitted Refinancing. If necessary to pay the TIF-Funded Interest Costs Maximum Amount, but subject to the limitation set forth in Section 4.03(a) that such interest costs be incurred during the Term of the Agreement, the "Developer," for purposes of this Section 4.03, shall include a successor permitted owner of the Project that incurs TIF-Funded Interest Costs arising from a Permitted Refinancing.

#### 4.04 **Treatment of Prior Expenditures**.

(a) Prior Expenditures. Only those expenditures made by Developer prior to the Closing Date, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Base Building Improvements Budget, shall be considered previously contributed equity or Lender Financing hereunder (the "**Prior Expenditures**"). Exhibit N sets forth the prior expenditures by Developer and approved by DPD as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Costs shall not be reimbursed from City Funds.

(b) Allocation Among Line Items. Disbursements for expenditures related to TIF-Funded Costs may be allocated to and charged against the appropriate line item only, with transfers of costs and expenses from one line item to another, without the prior written consent of

DPD, being prohibited; provided, however, that such transfers among line items, in an amount not to exceed \$25,000 or \$100,000 in the aggregate, may be made without the prior written consent of DPD. DPD shall not unreasonably withhold its consent to such transfers so long as the Corporation Counsel has advised DPD that an expenditure qualifies as a TIF-Funded Cost under the Act.

4.05 **Cost Overruns.** If the aggregate cost of the Project, or any portion thereof, exceeds the budgeted amount, Developer or USG, as applicable, shall be solely responsible for such party's excess costs, and shall hold the City harmless from any and all costs and expenses of completing such party's portion of the Project. In no instance shall any such cost overruns result in an increase in the amount of City Funds payable under this Agreement.

## SECTION 5. CONDITIONS PRECEDENT

The conditions precedent in Sections 5.01 through Section 5.18 below shall be complied with to the City's satisfaction within the time periods set forth below or, if no time period is specified, not less than five (5) Business Days prior to the Closing Date. The Commissioner's execution and delivery of this Agreement shall be deemed to be a satisfaction of DPD's approval of all such conditions precedent.

5.01 **Project Budgets.** Developer and USG shall each have submitted to DPD, and DPD shall have approved, the Project Budget, the Base Building Improvements Budget and the USG Improvements Budget, respectively, in accordance with the provisions of Section 3.03 hereof.

5.02 **Plans and Specifications.** Developer shall have submitted to DPD, and DPD shall have approved, the Building Plans and Specifications in accordance with the provisions of Section 3.02 hereof.

5.03 **Other Governmental Approvals.** Developer and USG must each have secured (or shall secure before work is undertaken for which such approval is necessary) all other necessary approvals and permits with respect to such party's work required by any State, federal, or local statute, ordinance or regulation and must submit evidence thereof to DPD, including, without limitation, any administrative approvals required under the Planned Development.

5.04 **Financing.** Developer and USG shall each have furnished proof acceptable to the City that each has sufficient funds to complete their respective portion of the Project and satisfy their respective obligations under this Agreement. Developer shall have furnished proof that the proceeds of the Lender Financing and CBRE Financing are available to be drawn upon by Developer as needed and are sufficient to complete the Project. Any liens against the Property in existence at the Closing Date will be subordinated to the covenants that run with the land specified in Section 7.04 pursuant to a Subordination Agreement in a form acceptable to the City executed and recorded on or prior to the Closing Date.



5.05 **Title.** Developer shall furnish the City with a copy of its Title Policy for the Property, dated down as of the Closing Date, certified by the Title Company, showing Developer as the named insured. The Title Policy shall contain only those title exceptions listed as Permitted Liens on Exhibit I hereto and shall evidence the recording of this Agreement under the provisions of Section 8.17 hereof. Developer shall provide to DPD, prior to the Closing Date, a title commitment, copies of documents identified on Schedule B to such title commitment, and documentation related to the purchase of the Property and establishing its acquisition cost (or, if the Property was acquired as part of a larger parcel, supporting the portion of the total acquisition cost allocated to the Property).

5.06 **Evidence of Clear Title.** Developer, at its own expense, shall have provided the City with current searches for Developer, each of Developer's upper-tier owners, Steven D. Fifield and USG, as follows:

Secretary of State (IL)	UCC search
Secretary of State (IL)	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 (N.D. IL)	Pending suits, judgments, bankruptcy proceedings
Clerk of Circuit Court, Cook County	Pending suits, judgments, bankruptcy proceedings

showing no liens against Developer, the Property or any fixtures now affixed thereto, except for the Permitted Liens, nor any other unacceptable matters.

5.07 **Survey.** Developer shall have furnished the City with three (3) copies of the Survey.

5.08 **Insurance.** Developer and USG, at their own expense, shall each have insured their respective portions of the Property in accordance with Section 12 and provided to DPD the certificates of insurance required under Section 12 (or, in the case of USG only, written confirmation of such self-insurance as USG may carry with respect to one or more of the required coverages).

5.09 **Opinion of Developer's Counsel.** On the Closing Date, Developer and USG shall each furnish the City with an opinion of counsel, substantially in the form of Exhibit O, with such changes as may be required by or acceptable to Corporation Counsel.

5.10 **Evidence of Prior Expenditures.** Developer and USG shall each have provided evidence satisfactory to DPD, in its sole discretion, of any Prior Expenditures of such party in accordance with the provisions of Section 4.04(a) hereof.

5.11 **Financial Statements.** Developer shall have provided Financial Statements to DPD for all years since its formation and unaudited interim financial statements for the year in which the Closing Date occurs and Financial Statements for Steven D. Fifield for 2002 and 2003.

5.12 **Documentation.** Developer, with respect to the Base Building Improvements work, and USG, with respect to the USG Improvements work, shall have provided evidence satisfactory to DPD, in its sole discretion, with respect to its ability to satisfy MBE/WBE and City resident employment standards. Such evidence shall include, without limitation: Developer's MBE/WBE Utilization Plan, including Schedules C and D; evidence that the General Contractor has met at least once with, and provided bid documents to, applicable MBE/WBE contractor associations; and evidence of meeting with DPD's monitoring staff.

5.13 **Environmental.** Developer shall have provided DPD with copies of any Phase I and Phase II environmental audits and any other environmental assessments or remediation reports completed with respect to the Property. Developer shall provide 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.** Developer and USG shall each have provided DPD with copies of their respective articles of organization or incorporation, as applicable, containing the original certification of the Secretary of State of the state of incorporation or organization; certificates of existence or good standing from the Secretary of State of its state of organization or incorporation and the State of Illinois, if different; copies of operating agreements or bylaws, as applicable; a managing member's or secretary's certificate in such form and substance as the Corporation Counsel may reasonably require; member or director or shareholders consents evidencing consent to the execution of this Agreement and the Limited Joinder, as applicable; and such other limited liability company and corporate documentation as the City may request.

5.15 **Litigation.** Developer and USG shall each provide to Corporation Counsel and DPD a description of all pending or threatened litigation or administrative proceedings involving such party's property located in the City, or to which the City is a party, or involving payment of franchise, income, sales or other taxes by such party to the State of Illinois or City. In each case, the description shall specify the amount of each claim, and whether (and to what extent) such potential liability is covered by insurance.

5.16 **USG Lease.** A complete copy of the USG Lease, and all other written agreements setting forth the parties' understandings relating to USG's relocation to or occupancy of the USG Premises and any financial agreements between the parties in any way relating to the Property or USG Lease, jointly certified by Developer and USG, shall have been delivered to the City. Such USG Lease shall be in full force and effect, with neither side having given any prior written

notice of a default thereunder (unless, after the giving of such notice and prior to the Closing Date, such default was cured or waived in writing).

5.17 **Payment and Performance Bonds.** Developer shall have delivered to the City a copy of payment and performance bonds relating to the Base Building Improvements, if, and only if, such bonds are required by the lender providing the Lender Financing. The City shall be named as an obligee or co-obligee on such bonds, if any, provided that the City's rights under such Base Building Improvement payment and performance bonds shall be subordinate to those of KeyBank.

5.18. **Bankruptcy-Related Conditions.** With respect to USG's pending Chapter 11 bankruptcy proceeding, (a) no Bankruptcy-Related Default shall have occurred, and (b) the Bankruptcy Court shall have passed an order expressly approving USG's execution of this Agreement and provision of the Security Instrument as binding post-petition contracts of USG. USG shall also have provided such pleadings from the Bankruptcy Filing as the City may reasonably request.

5.19 **Conditions Precedent to City Payments.** The conditions in this Section 5.19 must be satisfied prior to the City's obligation to make the applicable payments of City Funds:

(a) **Prior to Completion Date.** The City shall not be required to make any reimbursement payments for TIF-Funded Interest Costs prior to the Completion Date unless, as of the date such payment is required: (i) the representations and warranties contained in this Agreement and the Limited Joinder shall be true and correct and Developer and USG shall be in material compliance with their respective covenants; (ii) no Bankruptcy-Related Default shall have occurred; (iii) Developer has complied with Section 4.03. If the Completion Date has not occurred by July 1, 2007, the City shall have no obligation to make further reimbursement payments for TIF-Funded Interest Costs. The City shall have no obligation to make any payments with respect to the City Note until on and after the Completion Date.

(b) **Completion Date.** The occurrence of the Completion Date will be a condition precedent to the City's initial payment with respect to the City Note, and the City's obligation to make any payments after July 1, 2007 with respect to TIF-Funded Interest Costs. The conditions precedent to the occurrence of the Completion Date are: (i) the representations and warranties contained in this Agreement and the Limited Joinder must be true and correct and Developer and USG must be in material compliance with their respective covenants; (ii) no Bankruptcy-Related Default shall have occurred; (iii) the parties' MBE/WBE obligations under Section 10.01 must have been satisfied (the parties acknowledging that either party's failure to satisfy such requirements is not subject to cure and will mean that neither party will ever be paid any City Funds); (iv) the parties' prevailing wage obligations under Section 8.08 must have been satisfied (or, if not satisfied, any required prevailing wage underpayment shall have been remedied); (v) the City resident hiring requirements under Section 10.02 must have been satisfied (or, if not satisfied, any penalty amounts due under Section 10.02 shall have been paid); (vi)

USG must have commenced operations at the USG Premises, which must include at least 225,000 square feet of leased space, and must employ at least 500 FTEs in the City (with not less than 450 FTEs at the Building); (vii) both the Building Certificate and USG Certificate have been issued; (viii) no Default (as defined in the USG Lease) by USG under the USG Lease or default by the landlord under the USG Lease exists or has occurred that has resulted in the termination of the USG Lease (whether by the landlord or by USG) or the landlord's exercise of its right of reentry under Section 16 of the USG Lease); and (ix) Developer must have provided the City with current title, due diligence search and insurance evidence consistent with the requirements of Sections 5.05, 5.06 and 5.08.

(c) After Completion Date. After the Completion Date, the City will not be required to make any further reimbursement payments for TIF-Funded Interest Costs or any payments with respect to the City Note unless, as of the date such payment is required: (i) the representations and warranties contained in this Agreement and the Limited Joinder must be true and correct and Developer and USG must be in material compliance with their respective covenants; (ii) no Bankruptcy-Related Default shall have occurred; (iii) USG has complied with Section 4.02, or Developer has complied with Section 4.03, as applicable; (iv) no Default (as defined in the USG Lease) by USG under the USG Lease or default by the landlord under the USG Lease exists or has occurred that has resulted in the termination of the USG Lease (whether by the landlord or by USG) or the landlord's exercise of its right of reentry under Section 16 of the USG Lease).

(d) Special Lease Termination Provision. In addition to the conditions precedent stated in Section 5.19(a) above, if either USG or Developer terminates the USG Lease pursuant to any right granted it thereunder prior to the Completion Date, this Agreement and the Limited Joinder shall terminate. Upon such termination, Developer (if it was the party whose act or omission led to the USG Lease termination) or USG (if it was the party whose act or omission led to the USG Lease termination) shall repay to the City an amount equal to any TIF-Funded Interest Costs previously paid by the City hereunder, and no further City Funds will ever be paid pursuant to this Agreement.

(e) Payment Notwithstanding Certain Developer Events of Default. Notwithstanding the above conditions precedent in this Section 5.19, if (x) a Developer Event of Default or impending Developer Event of Default means the condition precedent specified in Sections 5.19(a)(i), (b)(i), or (c)(i), as applicable, is not satisfied, and (y) such Developer Event of Default is not a Developer Reimbursement Event described in clauses (i), (ii) or (x) of the definition of Developer Reimbursement Event, and (z) all other applicable conditions precedent are specified, then the City will continue to make TIF-Funded Interest Cost reimbursement payments and payments with respect to the City Note.

(f) "As-Built" Survey. Within three (3) months of the issuance of the Final Certificate, an "as-built" Survey shall be provided to the City.

## SECTION 6. AGREEMENTS WITH CONTRACTORS

### 6.01 **Bid Requirement for General Contractor and Subcontractors.**

(a) The City hereby approves Developer's retention of the Building General Contractor. Except as set forth in Section 6.01(b) below, prior to entering into an agreement with any subcontractor for construction of any portion of the Base Building Improvements, and except for building materials manufactured and/or supplied by USG, Developer shall cause the general contractor to solicit bids from qualified contractors eligible to do business with the City of Chicago, and shall submit all bids received to DPD for its inspection. For the Base Building Improvements, Developer shall cause the Building General Contractor to select the subcontractor submitting the lowest responsive and responsible bid, as reasonably determined by Developer, who can complete the Base Building Improvements in a timely manner. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Costs shall be provided to DPD within ten (10) Business Days of the execution thereof. Developer agrees that the Building General Contractor shall not (and shall cause such Building General Contractor to insure that the subcontractors shall not) begin work on the Project until the applicable plans and specifications have been approved by DPD and all requisite permits and approvals have been obtained.

(b) The amount paid to each of the Building General Contractor and the USG General Contractor for general conditions and profit shall be limited to 10% of the total amount of the such contractor's construction contract.

6.02 **Construction Contracts.** Prior to the execution thereof, Developer has delivered to DPD, and DPD has approved, a certified copy of the Building Construction Contract. Prior to commencing the USG Improvements, USG shall deliver to DPD a copy of the USG Construction Contract. Developer and USG shall each deliver to DPD and Corporation Counsel copies of any modifications, amendments or supplements to such party's construction contract within ten (10) Business Days after execution of such changes.

6.03 **Performance and Payment Bonds.** Prior to commencement of construction, Developer shall require that, with respect to any work in the public way or other work for which a bond or letter of credit is required under the Municipal Code, the Building General Contractor, and any applicable subcontractors be bonded for their respective payment and performance (if any) by sureties having an AA rating or better using American Institute of Architect's Form No. A311 or its equivalent. The City shall be named as obligee or co-obligee on such bond.

6.04 **Employment Opportunity.** Developer shall contractually obligate and cause the Building General Contractor to agree and to contractually obligate each subcontractor, and USG shall contractually obligate and cause the USG General Contractor to agree and to contractually obligate each subcontractor, to agree to the provisions of Section 10 hereof, provided, however, that the contracting, hiring and testing requirements for the MBE/WBE and City Residency obligations in Section 10 must be applied on an aggregate basis and the failure of the General

Contractor to require each subcontractor to satisfy, or the failure of any one subcontractor to satisfy, such obligations will not result in a default under or termination of this Agreement or require the payment of the City resident hiring shortfall amount so long as such Section 10 obligations are satisfied on an aggregate basis.

6.05 **Other Provisions.** In addition to the requirements of this Section 6, the Building Construction Contract and the USG Construction Contract and each contract with any subcontractor shall contain provisions required under Section 3.04 (Change Orders) (provided that this Section shall be inapplicable to USG), Section 8.08 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Employment Requirement), Section 12 (Insurance) and Section 14.01 (Books and Records). Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Costs must be provided to DPD within ten (10) Business Days of the execution thereof.

## SECTION 7. COMPLETION OF CONSTRUCTION

### 7.01 **Certificates of Completion.**

(a) **Base Building Improvements.** After (i) completion of the Base Building Improvements in accordance with the terms of this Agreement, (ii) the issuance of any permits and governmental approvals necessary for the occupancy of the Building and the USG Premises, and (iii) the written request of Developer, DPD shall issue to Developer a certificate in recordable form (a "**Building Certificate**") certifying that Developer has fulfilled its obligation to complete the construction work relating to the Base Building Improvements (exclusive of MBE/WBE, prevailing wage, and City resident hiring requirements) in accordance with the terms of this Agreement.

(b) **USG Improvements.** After completion of the USG Improvements in accordance with the terms of this Agreement, (ii) the issuance of any permits and governmental approvals necessary for the occupancy of the USG Premises, and (iii) the written request USG, DPD shall issue to USG a certificate in recordable form (a "**USG Certificate**") certifying that USG has fulfilled its obligation to complete the construction work relating to the USG Improvements (exclusive of MBE/WBE, prevailing wage, and City resident hiring requirements) in accordance with the terms of this Agreement.

(c) **Issuance of Certificate.** DPD must respond to a written request for a certificate under this Section 7.01 within thirty (30) days by issuing either a certificate or a written statement detailing the ways in which the applicable portion of the Project has not been satisfactorily completed and the measures which must be taken in order to obtain the applicable certificate. If DPD disapproves a request for a certificate, then Developer or USG, as applicable, may resubmit a written request for the applicable certificate upon completion of such measures.

7.02 **Effect of Issuance of Section 7.01 Certificate.** The issuance of a certificate under Section 7.01 relates only to the construction of the applicable portion of the Project (exclusive of MBE/WBE, prevailing wage, and City resident hiring requirements) and will state that the terms of the Agreement specifically related to the performance of such construction work have been satisfied.

7.03 **Final Certificate.** After the issuance of the Building Certificate and USG Certificate under Section 7.01, Developer and USG shall provide the City's monitoring personnel such documents as may be necessary to establish their respective compliance with the prevailing wage requirements set forth in Section 8.08, the City resident hiring requirement in Section 10.02, and the MBE/WBE requirements set forth in Section 10.03. Upon the City's determination of Developer's and USG's compliance with such requirements (which, except for prevailing wage, may be tested on an aggregated basis, so that one party's shortfall may be offset by the other party's overage in order to arrive at a final, single compliance figure), the City will issue to Developer and USG a final letter (the "**Final Certificate**") certifying such parties' compliance with such requirements.

7.04 **Continuing Requirements.**

(a) **Developer's Continuing Requirements.** After the issuance of a Final Certificate, only the executory terms and other requirements of this Agreement set forth in Sections 4, 5.19, 8.01(k), (n), 8.05, 8.10, 8.13, 8.14, 8.16, 8.18 and 8.19, 11 through 17, 18.01, 18.04, 18.15, and 18.19 of this Agreement (collectively, the "**Developer Continuing Requirements**"), and all representations, warranties and covenants of Developer and other requirements contained in Developer Continuing Requirements will continue to remain in full force and effect throughout the Term of the Agreement, or such other period as may be expressly provided for herein. The issuance of the Final Certificate must not be construed as a waiver by the City of any of its rights, remedies or requirements pursuant to such Developer Continuing Requirements. Those covenants specifically described at Sections 8.01 (k) and (m) and Sections 8.19 shall be covenants that run with the land from the date hereof and shall be binding upon Developer and any Approved Purchaser throughout the Term of the Agreement, or such other period as may be expressly provided for in such Sections, notwithstanding the issuance of a Final Certificate. The other Developer Continuing Requirements that remain after the issuance of a Final Certificate will be binding only upon Developer and upon any successor in interest to Developer's rights and obligations under this Agreement.

(b) **USG's Continuing Requirements.** After the issuance of a Final Certificate, only the executory terms and other requirements set forth in Sections 4, 5.18, 5.19, 12, 13, 14, 17, 18.01, 18.04, and 18.19 of this Agreement and Section 2, 3(a) through (d), (g) through (i) and (n) through (u), 4 and 7 through 14 ) of the Limited Joinder (collectively, the "**USG Continuing Requirements**"), and all representations, warranties and covenants of USG and other requirements contained in the USG Continuing Requirements will continue to remain in full force and effect throughout the Term of the Agreement, or such other period as may be expressly provided for in the USG Continuing Requirements. The issuance of the Final Certificate must

not be construed as a waiver by the City of any of its rights and remedies pursuant to the USG Continuing Requirements. Those covenants specifically described at Sections 2, 3(h), (i) and (m) through (u), 4 and 19 of the Limited Joinder shall be covenants that shall be binding upon any successor to USG's leasehold interest under the USG Lease throughout the Term of this Agreement, or such other period as may be expressly provided for herein or in the Limited Joinder, notwithstanding the issuance of a Final Certificate. The other USG Continuing Requirements that remain after the issuance of a Final Certificate will be binding only upon USG and any Approved Successor.

**7.05 Failure to Complete.** If any of the following occur: (a) Developer fails to complete the Base Building Improvements, as evidenced by the City's issuance of the Building Certificate, or (b) USG fails to complete the USG Improvements, as evidenced by the City's issuance of the USG Certificate, or (c) Developer and USG fail to satisfy the conditions precedent to the issuance of a Final Certificate, or (d) either Developer or USG permits an unpermitted lien to exist and such lien is foreclosed or otherwise enforced in such a manner as to terminate the encumbrance of this Agreement or lessen the priority thereof, then the City shall have the following rights, which shall be cumulative: (i) the City may terminate this Agreement, the City Note and the City's obligation to make any further payments of any City Funds; and (ii) the City may seek reimbursement from USG of any TIF-Funded Interest Costs previously paid by the City to Developer and thereafter paid or credited to USG (and if Developer has received any such amounts which have then not been paid or credited to USG, the City may seek such reimbursement from Developer), provided, however, that in no instance shall the City be permitted to recover more than the actual amount of such TIF-Funded Interest Costs.

The City's termination rights under this Section 7.05 are in addition to the conditions precedent and termination rights described in Section 5.19 that are applicable even prior to the issuance of a Final Certificate.

**7.06 Notice of Expiration of Term of Agreement.** Upon the expiration of the Term of the Agreement, DPD shall provide Developer and USG, at any such party's written request, with a written notice in recordable form stating that the Term of the Agreement has expired and that the Property is no longer subject to the covenants that run with the land.

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

**8.01 General.** Developer represents, warrants and covenants that as of the date of this Agreement, and at all times prior to the Completion Date (unless a longer period is expressly provided for below):

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



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

(c) the execution, delivery and performance by Developer of its obligations under this Agreement has been duly authorized by all necessary limited liability company action, and does not violate Developer's articles of organization, operating agreement, as the same may be amended and supplemented, nor any applicable provision of law, nor does it constitute a breach of, default under or require any consent under any material agreement, instrument or document to which Developer is now a party or by which it is now or may become bound;

(d) Developer shall acquire and shall maintain good, indefeasible and merchantable fee simple title to the Property free and clear of all liens (except for the Permitted Liens, Lender Financing, the CBRE Financing, Non-Governmental Charges that Developer is contesting in good faith pursuant to Section 8.14 hereof, equipment financing liens and purchase money security interests in personal property located on the Property) and, as evidence of compliance with such covenant, shall provide DPD with copies of all date-down title endorsements at the time such endorsements are issued to the lender providing the Lender Financing (or, if no such endorsements are issued, such other title evidence as shall be reasonably satisfactory to DPD);

(e) Developer is and shall remain solvent and able to pay its respective debts as they mature;

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

(g) Developer has obtained (or will, prior to the commencement of construction shall obtain) and shall maintain all government permits, certificates and consents necessary to conduct its business and to construct, complete and operate the Base Building Improvements;

(h) Developer is not in default beyond any applicable grace period or notice and cure period with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which Developer is a party or by which it or the Property is bound;

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

(j) Developer shall not do or permit any of the following without the prior written consent of DPD, which shall be in DPD's sole discretion: (1) be a party to any merger, liquidation or consolidation; (2) transfer the Property (except for the lease to USG and leases and

subleases to tenants and subtenants in the ordinary course of business and Permitted Transfers) or otherwise dispose of all or substantially all of its assets or refinance the Property; (3) enter into any transaction outside the ordinary course of business that would cause a material and detrimental change to Developer's financial condition so as to impair Developer's ability to complete the Project; or (4) assume or guarantee the obligations of any other person or entity (except assumptions or guarantees given for the benefit of CBRE and the lender providing the Lender Financing) in such a manner so as to impair Developer's ability to complete the Project;

(k) after the Completion Date, Developer may: (i) transfer the Property or substantially all of its assets provided that: (A) Developer gives the City a completed Notice of Proposed Transfer/Refinancing at least 30 days prior to such sale, and (B) the transferee is an Approved Purchaser; and (ii) secure any debt by the Property or any portion thereof, provided the mortgage lien associated with any such secured financing is subject and subordinate to this Agreement, and any such refinancing shall be deemed a "Permitted Refinancing" hereunder;

(l) Developer has not incurred and shall not, without the prior written consent of DPD, allow, without contesting the same under Section 8.14, the existence of any liens against the Property other than the Permitted Liens, equipment financing liens and purchase money security interests in personal property located on the Property;

(m) Developer has not incurred and shall not incur, any indebtedness, secured or to be secured by the Property or any fixtures now or hereafter attached thereto, except the Lender Financing and CBRE Financing disclosed in the Base Building Improvements Budget, any Permitted Refinancing and any additional financing approved in writing by DPD; and

(n) has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("**City Contract**") as an inducement for the City to enter into the Agreement or any City Contract with Developer in violation of Chapter 2-156-120 of the Municipal Code of the City.

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

In the event an Approved Purchaser or KeyBank succeeds to Developer's interest under this Agreement, as permitted hereunder, the representations, warranties, and covenants in this Section 8 shall thereafter be deemed to be those of such successor and deemed modified, as appropriate, based on such successor's organizational form and state of organization.

8.02 **Covenant to Redevelop.** Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances (in the form in effect as of the date of this Agreement), the Building Plans and Specifications, the Base Building Improvements Budget and all amendments thereto, the USG Lease, the Planned Development, and all federal, State and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property, and Developer.

8.03 **Redevelopment Plan.** Developer represents that the Base Building Improvements are and shall be in compliance with all of the terms of the Redevelopment Plan attached as Exhibit C.

8.04 **Use of City Funds.** City Funds disbursed to Developer must be used by Developer solely to reimburse Developer for TIF-Funded Costs as provided in this Agreement.

8.05 **Other Bonds.** At the request of the City, Developer will agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole discretion) any bonds in connection with the Project or the Area; provided, however, that any such amendments shall not have a material adverse effect on Developer, USG or the Project, or the ability to pay City Funds as provided for hereunder, as determined by DPD. Under the terms of this Agreement, and without any such amendment, the City may use bond proceeds from any such bond issue to prepay any amounts payable under the Agreement, to the fullest extent permitted under the Act. Developer shall, at no expense to Developer, cooperate and provide reasonable assistance in connection with the marketing of any such additional bonds, including but not limited to providing written descriptions of the Project, and providing information and assisting the City in preparing an offering statement with respect thereto. Developer shall not have any liability with respect to any disclosures made in connection with any such issuance that are actionable under applicable securities laws unless such disclosures are based on factual information provided by Developer that is determined to be false or misleading.

8.06 **Employment Opportunity.** Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the Building General Contractor and each of its subcontractors to abide by the terms set forth in Section 10.

8.07 **Employment Profile.** Developer shall submit, and contractually obligate and cause the Building General Contractor and its subcontractors to submit, to DPD, from time to time, statements of their respective employment profiles upon DPD's request.

8.08 **Prevailing Wage.** Developer covenants and agrees to pay, and to contractually obligate and cause the Building General Contractor and each of its subcontractors to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "**Department**"), to all Project employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contracts. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, Developer shall provide the City with copies of all such

contracts to evidence compliance with this Section 8.08. Provided that any monetary amounts payable under the Prevailing Wage Act, 820 ILCS 130/0.01, et seq., for any violation of such statute are paid, nothing in this Agreement shall be construed to give the City any remedies with respect to prevailing wage violations beyond those provided for in the statute.

8.09 **Arms-Length Transactions.** Unless DPD shall have given its prior written consent with respect thereto, and except as explicitly disclosed in the Base Building Improvements Budget, neither the Developer, CBRE nor either such party's Affiliates may receive, directly or indirectly, any payment for work done, services provided or materials supplied in connection with the Project. Upon DPD's request, Developer shall provide information with respect to any entity receiving, directly or indirectly, any such payment prior to any disbursement of City Funds or otherwise.

8.10 **Conflict of Interest.** Pursuant to Section 5/11-74.4-4(n) of the Act, Steven Fifield represents and warrants that, to the best of his actual knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or the Developer with respect thereto, owns or controls, has owned or controlled or intends to own or control any interest, and no such person has represented any person, as agent or otherwise, who owns or controls, has owned or controlled, or intends to own or control any interest, direct or indirect, in Developer's business, the Property or any other property in the Redevelopment Area (excluding property used exclusively as a principal residence).

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

8.12 **Financial Statements.** Developer shall obtain and provide to DPD Financial Statements for the fiscal year ended December 31, 2004 and each year thereafter through the Completion Date. In addition, Developer shall, upon DPD's request, submit unaudited financial statements as soon as practical following the close of each fiscal year and for such other periods as DPD may request.

8.13 **Insurance.** Developer, at its expense, shall comply (or cause compliance) with all provisions of Section 12 hereof.

8.14 **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 Base Building Improvements, 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 Base Building Improvements; provided, however, that if such Non-Governmental Charge may be paid in installments, Developer may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty,

interest, or cost may be added thereto for nonpayment. Developer shall furnish to DPD, within thirty (30) days of DPD's request, official receipts from the appropriate entity, or other proof satisfactory to DPD, evidencing payment of the Non-Governmental Charge in question.

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

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend Developer' covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 8.14); or

(ii) at DPD's sole option, to furnish a good and sufficient bond or evidence of title insurance or other security reasonably 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, or the preservation of the encumbrance of this Agreement, 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.

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

8.16 **Compliance with Laws.** Developer covenants that the Property and the Base Building Improvements are and shall be maintained in compliance with all applicable federal, State and local laws, statutes, ordinances, the Planned Development, rules, regulations, executive orders and codes pertaining to or affecting the Base Building Improvements and the Property. Upon the City's request, Developer shall provide evidence satisfactory to the City of such compliance.

8.17 **Recording and Filing.** Developer shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto to be recorded and filed on the date hereof in the conveyance and real property records of the Cook County along with the subordination agreement described in Section 5.04. USG shall pay all fees and charges incurred in connection with any such recording. Upon recording, Developer shall immediately

transmit to the City an executed original of this Agreement showing the date and recording number of record.

8.18 **Real Estate Provisions.**

(a) **Governmental Charges.**

(i) **Payment of Governmental Charges.** Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon Developer, the Property or the Base Building Improvements, or become due and payable, and which create or may create a lien upon Developer or all or any portion of the Property or the Project. "**Governmental Charge**" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances relating to Developer, the Property or the Project including but not limited to real estate taxes.

(ii) **Right to Contest.** Developer shall have 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 Developer's covenants to pay any such Governmental Charge at the time and in the manner required by law and provided in this Agreement unless Developer has given prior written notice to DPD of its intent to contest or object to a Governmental Charge and, unless, at DPD's sole option:

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

(B) Developer shall furnish a good and sufficient bond, evidence of title insurance or other security reasonably 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 prevent the imposition of such lien during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

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

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

(c) **Insurance.** In addition to the insurance required pursuant to Section 12 hereof, Developer shall procure and maintain the following insurance:

(i) During construction of the Project, All Risk Property Insurance in the amount of the full replacement value of the Property.

(ii) Post-construction, throughout the Term of the Agreement, All Risk Property Insurance, including improvements and betterments in the amount of full replacement value of the Property. Coverage extensions shall include business interruption/loss of rents, flood and boiler and machinery, if applicable.

**8.19 USG Lease Representations, Warranties and Covenants.** With respect to the USG Lease, as of the date hereof, and during the time period ending on the Tenth Anniversary Date, Developer represents, warrants and covenants to the City that:

(a) assuming the due authorization and execution of the USG Lease by USG, the USG Lease is valid and binding as to Developer and is unmodified (or if modified, modified only by: (i) approved Material Amendments, and (ii) amendments that are not unapproved Material Amendments) and is in full force and effect;

(b) except for the USG Lease, there are no binding agreements (written or verbal) between Developer and USG which, taken as a whole, materially effect the economic relationship between Developer and USG with respect to the Property or the USG Lease;

(c) Developer has delivered (and will deliver) to the City copies of any written notices delivered by Developer, as landlord under the USG Lease, to USG pursuant to the USG Lease alleging or asserting either: (i) that USG is in Default (as defined in the USG Lease) under the USG Lease or that an event has occurred and or a condition exists which, with the giving of notice, or the lapse of time, or both, would constitute such a Default, or (ii) that it has current defenses, counterclaims, liens or claims of offset or credit under, or claims or currently exercisable termination rights under the USG Lease against USG;

(d) Developer, as landlord under the USG Lease, has performed all of its current obligations under the USG Lease;

(e) Developer, as landlord under the USG Lease, (i) shall, upon receiving notice from USG or upon obtaining actual knowledge, give written notice of any assignment or subletting of any portion of the USG Premises to DPD, which notice shall include a calculation of any rent or consideration above that which USG, as tenant under the USG lease, is required to pay arising from such assignment or subletting, (ii) shall deliver to DPD a copy of written notice of any change in circumstances that makes the representations and warranties in Section 8.19(a) inaccurate (it being agreed by the City that if such change in circumstances is not due to a Default by Developer, Developer shall not be deemed in default under such cited section if it gives such written notice), and (iii) comply with its obligations under the USG Lease (subject to Developer's exercise of whatever rights it may have in the case of a Default by USG); and

(f) Developer, as landlord under the USG Lease, shall not agree to a Material Amendment of the USG Lease without the prior written consent of DPD, which consent shall be in DPD's sole discretion.

**8.20 Survival of Covenants.** All warranties, representations, covenants and agreements of Developer contained in this Section 8 and elsewhere in this Agreement shall survive the execution, delivery and acceptance hereof by the parties hereto. Construction-related obligations shall terminate pursuant to Section 7.02 upon the issuance of a Final Certificate. Thereafter, Developer Continuing Requirements shall be in effect throughout the Term of the Agreement, or such shorter period as may be expressly provided therein. In addition, and notwithstanding the preceding sentence, Developer's indemnification, defense and hold harmless obligations in Section 11 and Section 13 of the Agreement shall survive the Term of the Agreement.

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

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

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

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

As used in this Section 10, references to the "Developer" shall mean Developer, with respect to the Base Building Improvements, and USG, with respect to the USG Improvements, and references to "Project" shall mean the Base Building Improvements, with respect to



Developer, and the USG Improvements, with respect to USG. References to “general contractor” shall mean the applicable general contractor of Developer or USG.

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

(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 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. (2002 State Bar Edition), as amended, and any subsequent amendments and regulations promulgated thereto.

(d) Each Employer, in order to demonstrate compliance with the terms of this Section, 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 construction of the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, so that each such provision shall be binding upon each contractor, subcontractor, 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 15.03 hereof.

**10.02 City Resident Construction Worker Employment Requirement.** Developer agrees for itself and its successors and assigns, and shall contractually obligate its General Contractor and shall cause the General Contractor to contractually obligate its subcontractors, as applicable, to agree, that during the construction of 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, 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.

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.

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 personnel documents supportive of every Chicago employee's actual record of residence.

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

Developer, the General Contractor and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DPD, the

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

At the direction of DPD, affidavits and other supporting documentation will be required of Developer, the General Contractor and each subcontractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen. Good faith efforts on the part of Developer, the General Contractor and each subcontractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section concerning the worker hours performed by actual Chicago residents.

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

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

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

The testing of Developer's and USG's compliance under this Section 10.02 is subject to the aggregation provision in Section 7.03.

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

a. Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "MBE/WBE" Program"), Section 2-92-420 et seq., Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 10.03, during the course of the Project, at least the following percentages of the Building MBE/WBE Project Budget and USG MBE/WBE Project Budget attached as Exhibits P-1 and P-2, respectively, as applicable, shall be expended for contract participation by MBE or WBE:

- i. At least 24 percent by MBE.
- ii. At least 4 percent by WBE.

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

c. Consistent with Section 2-92-440, Municipal Code of Chicago, Developer's MBE/WBE commitment may be achieved in part by Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by Developer), or by a joint venture with one or more MBE or WBE (but only to the extent of the lesser of: (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by Developer utilizing a MBE or a WBE as a General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBE or WBE, or by the purchase of materials used in the Project from one or more MBE or WBE, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to Developer's MBE/WBE commitment as described in this Section 10.03. Developer or the General Contractor may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBE or WBE in its activities and operations other than the Project.

d. Developer shall deliver monthly reports to DPD during the Project describing its efforts to achieve compliance with this MBE/WBE commitment (which may be included as part of the monthly progress report required by Section 3.07). Such reports shall include inter alia the name and business address of each MBE and WBE solicited by Developer or the General Contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist DPD in determining Developer's compliance

with this MBE/WBE commitment. DPD shall have reasonable access to Developer's books and records, including, without limitation, payroll records, books of account and tax returns, and records and books of account in accordance with Section 14 of this Agreement, on five (5) Business Days notice, to allow the City to review Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

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

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

g. Prior to the commencement of the Project, Developer, the General Contractor and all major subcontractors shall be required to meet with the monitoring staff of DPD with regard to Developer's compliance with its obligations under this Section 10.03. During this meeting, Developer shall demonstrate to DPD its plan to achieve its obligations under this Section 10.03, the sufficiency of which shall be approved by DPD. During the Project, Developer shall submit the documentation required by this Section 10.03 to the monitoring staff of DPD. Failure to submit such documentation on a timely basis, or a determination by DPD, upon analysis of the documentation, that Developer is not complying with its obligations hereunder shall, upon the delivery of written notice to Developer, be deemed an Event of Default hereunder. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may withhold any further payment of any City Funds to Developer or the General Contractor.

h. The testing of Developer's and USG's compliance under this Section 10.03 is subject to the aggregation provision in Section 7.03.

## **SECTION 11. ENVIRONMENTAL MATTERS**

Developer represents and warrants to the City that it has conducted environmental studies sufficient to conclude that the Base Building Improvements may be completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Plans and Specifications and all amendments thereto and the Redevelopment Plan.

Without limiting any other provisions hereof, Developer agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of Developer or USG: (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 all or any portion of the Building (excluding the USG Premises) or the USG Premises, as applicable, 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, Developer or USG or any of its Affiliates under any Environmental Laws.

## SECTION 12. INSURANCE

As used in this Section 12, references to the "Developer" shall mean both Developer, with respect to the Building (excluding the USG Premises) and USG, with respect to the USG Premises.

Developer shall provide and maintain, or cause to be provided, at Developer's own expense (or the expense of such other party as may be required to maintain such insurance) during the Term of the Agreement, the insurance coverages and requirements specified in Section 8.18(c) and below, insuring all operations related to, in the case of Developer, the Building (excluding the USG Premises), and in the case of USG, the USG Premises.

(a) After Construction

(i) Workers Compensation and Employers Liability Insurance

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

(ii) Commercial General Liability Insurance (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, independent contractors, separation of insured, 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 Insurance

All Risk Property Insurance, including improvements and betterments in the amount of full replacement value of the Project and inventory located thereon. Coverage extensions shall include business interruption/loss of rents, flood and boiler and machinery, if applicable. The City of Chicago shall be named as an additional insured and loss payee, as its interests may appear. The application of insurance proceeds shall be governed by the terms of the Lender Financing documents.

(b) During Construction

(i) Workers Compensation and Employers Liability Insurance

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

(ii) Commercial General Liability Insurance (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability; provided, however, that such limit shall only be \$1,000,000 in the case of any subcontractors whose subcontract amount is less than \$100,000). Coverages shall include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following issuance of the applicable Certificate), explosion, collapse, underground, independent contractors, separation of insured, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(iii) Automobile Liability Insurance (Primary and Umbrella)

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

(iv) Railroad Protective Liability Insurance

When any work is to be done adjacent to or on railroad or transit property, the applicable General Contractor shall provide, or cause to be provided with respect

to the operations that the applicable General Contractor performs, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy shall have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons; and for damage to or destruction of property, including the loss of use thereof.

(v) Builders Risk Insurance

When the applicable General Contractor undertakes any construction, including improvements, betterments, and/or repairs, the applicable General Contractor shall 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 permanent facility. Coverages shall include but are not limited to the following: collapse, boiler and machinery if applicable. The City of Chicago shall be named as an additional insured and loss payee.

(vi) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000. Coverage shall include contractual liability. 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.

(vii) Valuable Papers Insurance

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

(viii) Contractor's Pollution Liability

When any environmental remediation work is performed which may cause a pollution exposure, contractor's Pollution Liability shall be provided with limits of not less than \$1,000,000 insuring bodily injury, property damage and environmental re-dedication, cleanup costs and disposal. When policies are renewed, the Policy retroactive date must coincide with or precede, start of work on the Agreement. A claims made policy which is not renewed or replaced must have an extended reporting period of one (1) year. If commercially available, the City of Chicago is to be named as an additional insured on a primary, non-contributory basis.



(c) Other Requirements

Developer will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term of this Agreement. Developer shall submit evidence of insurance on the City of Chicago Insurance Certificate Form or commercial equivalent prior to Agreement award. 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 shall not be deemed to be a waiver by the City. Developer shall advise all insurers of this Agreement's provisions regarding insurance. Non-conforming insurance shall not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to terminate the defaulting party's rights under this Agreement (subject to the provision in Section 15.03(g) that would permit continued payments with respect to the City Note as therein described) until proper evidence of insurance is provided.

The insurance shall provide for 30 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

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

Developer agrees that insurers shall waive rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives. Developer expressly understands and agrees that any coverages and limits furnished by Developer shall in no way limit Developer's liabilities and responsibilities specified within this Agreement or the Limited Joinder, as applicable, or by law.

Developer expressly understands and agrees that the Developer's insurance is primary and any insurance or self insurance programs maintained by the City of Chicago shall not contribute with insurance provided by Developer under the Agreement.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

Developer shall require the applicable General Contractor, and all subcontractors to provide the insurance required herein or Developer may provide the coverages for the Contractor, or subcontractors. All General Contractors and subcontractors shall be subject to the same requirements as Developer unless otherwise specified herein.

If Developer, the applicable General Contractor or subcontractor desires additional coverages, Developer, Contractor and each subcontractor shall be responsible for the acquisition and cost of such additional protection.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements, subject to USG's right to continue to self-insure with respect to one or more coverages.

### SECTION 13. INDEMNIFICATION

Developer and USG (each, an "**Indemnifying Party**") each agrees to severally indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) ("**Indemnified Costs**") suffered or incurred by the City arising from third party actions against the City in connection with: (i) such Indemnifying Party's failure to comply with any of the terms, covenants and conditions contained within this Agreement, or (ii) such Indemnifying Party's failure or such Indemnifying Party's general contractor's failure to pay the applicable general contractor, subcontractors or materialmen in connection with the Indemnifying Party's applicable portion of the Project, or (iii) such Indemnifying Party's making of any material misrepresentation or omission in this Agreement or the Limited Joinder, as applicable, any offering memorandum or the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by such Indemnifying Party or its agents, employees, contractors or persons acting under the control or at the request of the such Indemnifying Party, or (iv) such Indemnifying Party's failure to cure any material misrepresentation in this Agreement or in the Limited Joinder, as applicable, or any other agreement relating thereto and known to the Indemnifying Party. Nothing in this Section 13 shall be construed to obligate Developer to indemnify the City for any Indemnified Costs attributable to USG's non-performance of its obligations under this Agreement or the Limited Joinder or USG's material misrepresentation or omission, nor to obligate USG to indemnify the City for any Indemnified Costs attributable to Developer's non-performance of any obligations under this Agreement or Developer's misrepresentation or omission. Nothing in this Section 13 shall be construed to obligate Developer or USG to indemnify the City for any negligent or intentional act of the City or violation of the Act by the City that gives rise to such third party actions.

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

14.01 **Books and Records.** Developer and USG each shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Base Building Improvements and the USG Improvements, respectively, and the disposition of all funds from whatever source allocated thereto, and to monitor such portion of the Project. All such books, records and other documents, including but not limited to the loan

statements, general contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at Developer's office or USG's office, respectively, as applicable, for inspection, copying, audit and examination by an authorized representative of the City, at the expense of Developer and USG respectively. Developer and USG each shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts they respectively enter into with respect to the Project.

14.02 **Inspection Rights.** Upon two (2) Business Days notice, any authorized representative of the City shall have reasonable access to all portions of the Project and the Property (excluding confidential product information, trade secrets, proprietary product information and the like) during normal business hours for the Term of the Agreement for purposes of confirming compliance with this Agreement and the Limited Joinder.

## SECTION 15. DEFAULT AND REMEDIES

15.01 **Developer Events of Default.** This Section 15 states Developer defaults and the available City remedies for such defaults. Defaults by USG and available City remedies for such defaults are specified in Sections 7 and 9 of the Limited Joinder or elsewhere in this Agreement or the Limited Joinder.

The occurrence of any one or more of the following events by Developer which is not cured within the cure or dismissal period specified below (it being understood that if no such period is specified, an immediate event of default shall exist) (a "**Developer Event of Default**") will entitle the City to exercise the applicable remedies described in Section 15.03:

- (a) a breach of the sale, refinancing and assignment provisions in Section 8.01(j), (k) or (m) or Section 18.15;
- (b) the failure of Developer to perform, keep or observe any of the other material covenants, conditions, promises, agreements or obligations under this Agreement that is not cured within the period provided for in Section 15.02;
- (c) the commencement of any proceedings in bankruptcy by or against Developer or for the liquidation or reorganization of Developer, or alleging that Developer is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of Developer's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving Developer; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute a Developer Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

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

(e) the entry of any judgment or order against Developer or relating to the Property in an amount in excess of \$500,000 which remains unsatisfied or undischarged and in effect for ninety (90) days after such entry without a stay of enforcement or execution;

(f) the institution in any court of a criminal proceeding against Developer, Steven D. Fifield or CBRE for any crime (other than a misdemeanor) which is not dismissed within ninety (90) days;

(g) a default by the landlord under the USG Lease that is not cured within any cure period granted under the USG Lease (if any) that results in USG's terminating the USG Lease or leasing less than 150,000 net rentable square feet as the USG Premises.

**15.02 Curative Period.** Developer must promptly notify the City of any breach or default by Developer under this Agreement, provided, however, that an unintentional failure to notify the City shall not, in and of itself, be deemed a Developer Event of Default. In the event Developer breaches or defaults under any representation, warranty, covenant or other obligation which Developer is required to perform under this Agreement, (other than Developer Events of Default described in Sections 15.01(a), (c), (d) and (g), which either have no cure period or the cure period specified therein) a Developer Event of Default shall not be deemed to have occurred unless Developer fails to perform such defaulted obligation within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default. If such a Developer Event of Default cannot be cured within thirty (30) days, and Developer has commenced to cure such Developer Event of Default within such initial cure period and thereafter diligently prosecutes such cure to completion, then Developer shall have up to an additional ninety (90) days time to cure such Developer Event of Default (or, if a longer period of time is permitted under the loan documents for the Lender Financing, such longer period as may be applicable thereunder). Such additional ninety (90) day (or longer) cure period shall never apply to Developer Events of Default described in Sections 15.01(a), (c), (d) or (g).

**15.03 City Remedies.** If a Developer Event of Default (or, in the case of Section 15.03(a), the USG failure described therein) occurs, the City shall have the following rights and remedies depending on the nature of such default. If more than one Developer Event of Default exists, the City will have the right to exercise the remedies applicable to each such default.

(a) **Before Completion Date.** Before the Completion Date, if an Event of Default (which is not cured by KeyBank in accordance with its cure period and curative rights described in Section 16) or other event results in the failure by Developer and USG to obtain a Final

Certificate under Section 7.03, then the City shall have the rights and remedies stated in Section 7.05 of the Agreement;

(b) After Completion Date. After the Completion Date, if Developer breaches any representation, warranty, covenant or obligation of Developer, and such breach is not cured within any cure period afforded under Section 15.02 applicable to such breach, then the City may terminate this Agreement, the City Note and the disbursement of any further City Funds. Notwithstanding the preceding sentence, if: (i) such breach does not relate to a Developer Reimbursement Event described in clauses (i), (ii) or (x) of the definition of “Developer Reimbursement Event,” and (ii) USG is in compliance with its obligations under this Agreement and the Limited Joinder, then the City will continue to make payments with respect to the City Note and for TIF-Funded Interest Costs. If the breach does relate to a Developer Reimbursement Event described in clauses (i), (ii) or (x) of the definition thereof, then the City may terminate this Agreement, the City Note and the disbursement of any further City Funds, and the City will be entitled to recapture from Developer only (and not from USG) any and all City Funds previously paid under this Agreement (it being agreed that in the event such a Developer Reimbursement Event occurs, the City will not be entitled to recapture any City Funds from USG).

In addition to the foregoing remedies, 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 provided for under this Agreement or available at law or in equity, including but not limited to injunctive relief or the specific performance of the agreements contained herein (exclusive of the leasing and jobs covenants). However, the City will be entitled to recapture from Developer only any City Funds previously paid to Developer as TIF-Funded Interest Costs or to USG with respect to the City Note only if a Developer Event of Default involves a Developer Reimbursement Event, except that with respect to a Developer Reimbursement Event described in clause (xi) of the definition thereof, the City shall only be entitled to recapture City Funds improperly received after the occurrence of the event that would have entitled the City to withhold, suspend, reduce or terminate disbursement of City Funds.

**15.04 Remedies Not Penal In Nature.** The remedies set forth in this Section 15 constitute a material part of the City’s bargained-for consideration and are a material inducement to its execution of this Agreement. Developer acknowledges that but for the City’s agreement to provide the City Funds, USG would not have agreed to the USG Lease and that the existence of the USG Lease was essential to Developer’s ability to finance and construct the Project, from which Developer will realize certain economic benefits. Developer acknowledges and agrees that such remedies are reasonable and not penal in nature and that, but for such remedies, the City would not have agreed to execute this Agreement.

## SECTION 16. MORTGAGING OF THE PROJECT

The only mortgages encumbering the Property or any portion thereof as of the date hereof are those granted in favor of KeyBank and CBRE. Such mortgages and new mortgage(s) permitted under Section 8.01 are referred to herein collectively as the "**Permitted Mortgage(s)**," and the holder of any such Mortgage is referred to herein as a "**Permitted Mortgagee**." In the event that any Permitted Mortgagee succeeds to Developer's fee simple interest in the Property or any portion thereof under the exercise of remedies under a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and accepts an assignment of Developer's interest hereunder in accordance with Section 18.15, and provided further that the City receives adequate written assurance from USG as to USG's intent to continue to comply with its obligations under this Agreement and the USG Lease (subject to USG's exercise of its rights thereunder), then the City hereby agrees to attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement. The City consents to Developer's collateral assignment of its interest under this Agreement to KeyBank for purposes of permitting KeyBank to succeed to Developer's interest hereunder, if necessary.

If any Permitted Mortgagee does not accept an assignment of Developer's interest in accordance with Section 18.15, such Permitted Mortgagee shall be bound only by those covenants specified in Section 8.02 (which covenant shall terminate upon the completion of construction of the Building), Sections 8.01(k) and (m) and Section 8.19 that run with the land.

The City acknowledges and agrees that KeyBank will never be obligated to: (a) make any payments to the City that might be required under the terms of this Agreement as a result of a Developer Reimbursement Event unless the relevant act or omission is KeyBank's act or omission after KeyBank's acquisition of title to the Property, or (b) repay any City Funds previously paid by the City under this Agreement that may be subject to recapture or repayment from such entities under the terms of this Agreement.

The City agrees to provide KeyBank and any other Permitted Mortgagee notices sent under Section 17 and to permit such parties (other than CBRE) an additional 15 days to cure any default for which a cure period is provided for herein and, if applicable (including with respect to CBRE), to provide the aforesaid written assurance and acceptance of assignment of Developer's interest. The City agrees that the Events of Default arising from a breach of Sections 8.01(e), (f), (h), (i) and (j) and Events of Default described in Sections 15.01(c), (d), (e) (to the extent the judgment or order is against Developer) and Section 15.01(f) are not susceptible to cure by KeyBank and further agrees that so long as no other Events of Default exist and all other conditions applicable to obtaining a Final Certificate and conditions precedent to the City's obligation to make payments hereunder are satisfied, then the City will not terminate the Agreement and will issue such Final Certificate and make such payments.

## SECTION 17. NOTICE

Unless otherwise specified, any notice, demand or request required hereunder must be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) telecopier 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 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
If to Developer:	550 Adams LLC 20 North Wacker Drive Chicago, Illinois 60606 Attn: Steven D. Fifield
With a copy to:	Acosta, Kruse & Zemenides One South Wacker Drive, Suite 3890 Chicago, Illinois 60606 Attn: Erika L. Kruse, Esq.
If to CBRE:	CB Richard Ellis Strategic Partners, L.P. 865 South Figueroa Street, 35 <sup>th</sup> Floor Los Angeles, California 90017 Attn: Mr. John M. Gilb
If to KeyBank:	KeyBank National Association 127 Public Square Cleveland, Ohio 44114 Attn: Commercial Real Estate Department
With a copy to:	KMZ Rosenman 525 West Monroe Street, Suite 1600 Chicago, Illinois 60611 Attn: Mark C. Simon, Esq.

If to USG: USG Corporation  
125 South Franklin  
Chicago, Illinois 60606  
Attn: General Counsel

and to: USG Corporation  
125 South Franklin  
Chicago, Illinois 60606  
Attn: Vice President and Treasurer

With a Copy To: Piper Rudnick  
203 N. LaSalle Street, Suite 1800  
Chicago, Illinois 60601  
Attn: David Reifman, Esq. and Andrew Scott, Esq.

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.

Notwithstanding the foregoing, after USG occupies and begins business operations at the USG Premises, then notice shall be delivered to the designated USG recipients at the 550 West Adams Street address for the Building, with a copy to its outside legal counsel.

## SECTION 18. ADDITIONAL PROVISIONS

18.01 **Amendment**. This Agreement and the Exhibits attached hereto may not be amended without the prior written consent of the City, Developer and USG; **provided, however, that:** (a) the City has the unilateral right to amend **Exhibit A** (the legal description for the Area) and **Exhibit C** (the Plan) and **Exhibit J** (to recognize other statutorily permitted eligible costs as TIF-Funded Costs or reallocate amounts between the line items listed therein), and (b) the City and either Developer or USG, as applicable, may amend those portions of the Agreement or Limited Joinder that only affect the City and such party without obtaining the third party's consent, but only after notice to the other non-consenting party.

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



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

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

18.05 **Waiver.** Waiver by the City, Developer or USG with respect to any breach or default under 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, Developer or USG in writing.

18.06 **Remedies Cumulative.** The remedies of the City 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 ordinances 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 Final Certificate or otherwise administering this Agreement for the City.

18.15 **Assignment.** Prior to the Completion Date, 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, which shall be in the City's sole discretion. After the Completion Date, Developer may make such an assignment provided any successor in interest to Developer under this Agreement certifies in writing to the City its agreement to abide by all remaining executory terms of this Agreement for the Term of the Agreement, or such shorter period as may be expressly provided for herein. 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 Developer, USG, the City and their respective permitted successors and permitted assigns (as provided herein and in the Limited Joinder). USG is an intended third party beneficiary of this Agreement with respect to the rights and benefits conferred to USG hereunder, and by its execution of the Limited Joinder, has undertaken to comply with the obligations applicable to USG hereunder and under the Limited Joinder.

18.17 **Force Majeure.** Neither the City, Developer nor USG nor any successor in interest to any of them shall be considered in breach of or in default of its obligations under this Agreement in the event of war, acts of terrorism, 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 delay such party in discharging its obligations hereunder.

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., 2002 State Bar Edition, as amended), if Developer or USG is required to provide notice under the WARN Act, Developer or USG, as applicable, 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 Developer or USG has locations in the State. Failure by Developer or USG 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 with respect to such party only.

18.20 **Business Relationships.** Developer acknowledges: (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a “Business Relationship” (as defined in Section 2-156-080 of the Municipal Code 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. Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-145-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

18.21 **No Third Party Beneficiary.** This Agreement and, as applicable to USG only, the Limited Joinder, is for the sole and exclusive benefit of the City, USG, an Approved Successor, Developer and their permitted successors and permitted assigns. No other person or entity (excluding Permitted Mortgagees, for purposes of Section 16), is an intended third party beneficiary or shall have the right to enforce any of the provisions of this Agreement.

18.22 **Construction of Words.** The use of the singular form of any word herein includes the plural, and vice versa. Masculine, feminine and neuter pronouns are fully interchangeable, where the context so requires. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision. The term “include” (in all its forms) means “include, without limitation” unless the context clearly states otherwise. The word “shall” means “has a duty to”.

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

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

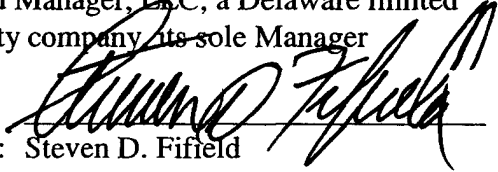
**DEVELOPER**

**550 ADAMS LLC,  
a Delaware limited liability company**

**By: FRC 550 LLC, an Illinois limited liability company**

**Its: Managing Member**

**By: Fifield Manager, LLC, a Delaware limited liability company, its sole Manager**

**By:**   
**Name: Steven D. Fifield**  
**Its: Sole Manager**

**CITY**

**CITY OF CHICAGO, a municipal corporation,  
acting by and through its Department of  
Planning and Development**

**By: \_\_\_\_\_**  
**Denise M. Casalino, P.E.**  
**Commissioner**

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

**DEVELOPER**

**550 ADAMS LLC,  
a Delaware limited liability company**

**By: FRC 550 LLC, an Illinois limited liability  
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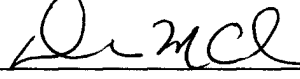

**Its: Managing Member**

**By: Fifield Manager, LLC, a Delaware limited  
liability company, its sole Manager**

By: \_\_\_\_\_  
Name: Steven D. Fifield  
Its: Sole Manager

**CITY**

**CITY OF CHICAGO, a municipal corporation,  
acting by and through its Department of  
Planning and Development**

By:   
Denise M. Casalino, P.E.   
Commissioner

STATE OF ILLINOIS        )  
  ) ss  
COUNTY OF ~~COOK~~        )  
  Will

I, Lisa Stiner, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Steven D. Fifield, personally known to me to be the sole manager of Fifield Manager, LLC, a Delaware limited liability company (the "Manager") which is the sole manager of FRC 550 LLC, an Illinois limited liability company, which is the Managing Member of 550 Adams LLC, a Delaware limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him as the sole manager of the Manager of the Managing Member of Developer, as his free and voluntary act and as the free and voluntary act of the Manager and Developer, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 8th day of November, 2004.

Lisa Stiner  
Notary Public

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

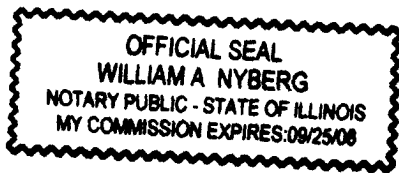
(SEAL)



STATE OF ILLINOIS        )  
  ) ss  
COUNTY OF COOK        )

I, William A. Nyberg, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Denise M. Casalino, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago (the "City"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument and to the attached Limited Joinder, appeared before me this day in person and acknowledged that she signed, sealed, and delivered said instruments pursuant to the authority given to her by the City, as her free and voluntary act and as the free and voluntary acts of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 8th day of November, 2004.



*William A. Nyberg*  
Notary Public

My Commission Expires 09/25/08

(SEAL)

## **LIMITED JOINDER**

This Limited Joinder, dated as of November 8, 2004, by and between the City of Chicago, an Illinois municipal corporation, acting by and through its Department of Planning and Development, its successors and assigns (the "**City**") and USG Corporation, a Delaware corporation currently operating its business as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code ("**USG**"), and is attached to and forms a part of that certain Redevelopment Agreement dated as of November 8, 2004, the "**Agreement**"), concerning 550 West Adams Street, by and between Developer and the City. Capitalized terms not defined herein shall have the meaning given in the attached Agreement.

## **RECITALS**

A. USG and Developer have previously entered into the USG Lease demising the USG Premises. Under Section 46 of the USG Lease, Developer is obligated to pay to USG an amount equal to the amount paid to Developer as TIF-Funded Interest Costs and, upon the Completion Date, to assign the City Note to USG. The USG Lease grants USG certain offset rights in the event that Developer does comply with such obligations.

B. Developer and the City are simultaneously herewith executing the Agreement, under which the City has committed, subject to the terms and conditions of the Agreement and this Limited Joinder, to reimburse Developer for such TIF-Funded Interests Costs, to initially issue the City Note to Developer and, after the Completion Date, to make payments with respect to the City Note to USG. The City is entering into the Agreement on the express condition that USG execute this Limited Joinder.

C. USG has voluntarily agreed to execute this Limited Joinder because it will receive the economic benefits described in Recital A, subject to the satisfaction of the conditions precedent to the disbursement of such City Funds.

## **AGREEMENTS**

NOW, THEREFORE, in consideration of the recitals set forth above, the economic benefit to be received by USG under Section 46 of the USG Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, USG hereby agrees as follows:

1. **Recitals and Defined Terms.** The above recitals are incorporated herein by reference and constitute a material part of this Limited Joinder.



2. **USG Lease Representations, Warranties and Covenants.** USG represents, warrants and covenants, as of the date hereof and such items shall continue to be true during the time period ending on the Tenth Anniversary Date as follows:

(a) assuming the due authorization and execution of the USG Lease by Developer, the USG Lease is valid and binding as to USG and is unmodified (or if modified, modified only by: (i) approved Material Amendments, and (ii) amendments that are not unapproved Material Amendments) and is in full force and effect;

(b) except for the USG Lease, there are no binding agreements (written or verbal) between Developer and USG which, taken as a whole, materially affect the economic relationship between Developer and USG with respect to the Property or the USG Lease;

(c) USG has delivered (and will deliver) to the City copies of any written notices delivered by USG to the landlord under the USG Lease alleging or asserting either: (i) that Developer is in Default (as defined in the USG Lease) under the USG Lease or that an event has occurred and or a condition exists which, with the giving of notice, or the lapse of time, or both, would constitute such a Default, or (ii) that it has current defenses, counterclaims, liens or claims of offset or credit under, or claims or currently exercisable termination rights under the USG Lease against Developer;

(d) USG has performed all of its current obligations under the USG Lease;

(e) USG: (i) shall give written notice of any assignment or subletting of any portion of the USG Premises, which notice shall include a calculation of any rent or consideration above that which USG, as tenant under the USG lease, is required to pay, arising from such assignment or subletting, (ii) shall deliver to DPD a copy of written notice of any change in circumstances of which USG has knowledge that makes the representations and warranties in Section 2(a) inaccurate (it being agreed by the City that if such change in circumstances is due to an act or omission by the landlord, USG shall not be deemed in default under the Agreement or this Limited Joinder if it has given such written notice); and (iii) shall comply with its obligations under the USG Lease (subject to USG's exercise of whatever rights it may have in the case of a landlord default under the USG Lease); and

(f) USG, as tenant under the USG Lease, shall not agree to a Material Amendment of the USG Lease without the prior written consent of DPD, which consent shall be in DPD's sole discretion.

3. **General Agreement Representations, Warranties and Covenants.** USG represents, warrants and covenants as of the date hereof, and during the time period ending on the Tenth Anniversary Date (and except as to those construction-related representations, warranties and covenants of USG that shall earlier terminate upon the City's issuance of a Final Certificate):

(a) USG is a Delaware corporation, 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 (provided that the failure to be qualified to do business in any state other than Illinois shall not be a breach of this representation and warranty unless such failure materially impairs USG's ability to perform its obligations under the Agreement and this Limited Joinder);

(b) USG has the right, corporate power and authority, and has received the express approval of the Bankruptcy Court, to enter into, execute, deliver and perform its obligations under the Agreement and this Limited Joinder;

(c) the execution, delivery and performance by USG of its obligations under the Agreement and this Limited Joinder has been duly authorized by all necessary corporate action, and does not violate the Certificate of Incorporation or the by-laws of USG, as the same may be amended and supplemented, nor any applicable provision of law, nor does it constitute a breach of, default under or require any consent under any agreement, instrument or document to which USG is now a party or may become bound;

(d) except for the Bankruptcy Filing, and the pending and threatened litigation that led to the Bankruptcy Filing, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting USG which would materially impair its ability to perform under the Agreement and this Limited Joinder;

(e) USG has obtained (or will obtain, prior to the commencement of construction of the USG Improvements and the conduct of business at the USG Premises) and shall maintain all government permits, certificates and consents necessary to conduct its business at the USG Premises and to construct, complete and operate the USG Improvements (except such permits or certificates as may be the landlord's responsibility under the USG Lease);

(f) USG shall not, without the prior written consent of the Commissioner of DPD, which shall not be unreasonably withheld or delayed, cause any liens against the Property other than the Permitted Liens;

(g) USG has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or under City ordinance, for services to any City agency ("**City Contract**") as an inducement for the City to enter into the Agreement or any City Contract with USG in violation of Chapter 2-156-120 of the Municipal Code of the City;

(h) After USG's receipt of all required building permits and governmental approvals, USG shall complete and maintain the USG Improvements in accordance with the applicable provisions of the Agreement and all Exhibits attached thereto, the TIF Ordinances, the USG Plans and Specifications, the USG Improvements 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 USG;

(i) USG shall, at the request of the City, agree to any reasonable amendments to the Agreement and this Limited Joinder that are necessary or desirable in order for the City to issue (in its sole discretion) any bonds in connection with the Project or the Area; provided, however, that any such amendments shall not have a material adverse effect on USG or the Project. USG shall cooperate and provide reasonable assistance in connection with the marketing of any such bonds, including but not limited to providing written descriptions of the USG Improvements and providing information and assisting the City in preparing an offering statement with respect thereto. USG shall not have any liability with respect to any disclosures made in connection with any such issuance that are actionable under applicable securities laws unless such disclosures are based on factual information provided by USG that is determined to be false or misleading.

(j) USG covenants and agrees to abide by, and to contractually obligate and use reasonable efforts to cause the USG General Contractor to abide by and to cause each of its subcontractors to abide by the terms set forth in Section 10 of the Agreement, provided, however, that the contracting, hiring and testing requirements for the MBE/WBE and City Residency obligations in Agreement Section 10 shall be applied on an aggregate basis and the failure of the USG General Contractor to require each subcontractor to satisfy, or the failure of any one subcontractor to satisfy, such obligations shall not result in a default under or termination of this Agreement or require the payment of the City resident hiring shortfall amount so long as such Agreement Section 10 obligations are satisfied on an aggregate basis.;

(k) USG shall submit, and shall contractually obligate and use reasonable efforts to cause the USG General Contractor to submit and to contractually obligate its subcontractors to submit, to DPD, from time to time, statements of their respective employment profiles upon DPD's request;

(l) USG covenants and agrees to pay, and to contractually obligate and cause the USG General Contractor to pay and to contractually obligate each of its subcontractors to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "**Department**"), to all USG Improvements construction employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed under such contracts. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, USG shall provide the City with copies of all such contracts to evidence compliance with this Section 3(l). Provided that any monetary amounts payable under the Prevailing Wage Act, 820 ILCS 130/0.01, et seq. (2002 State Bar Edition), as amended, for any violation of such statute are paid, nothing in this Agreement shall be construed to give the City any remedies with respect to prevailing wage violations beyond those provided for in the statute;

(m) Unless DPD shall have given its prior written consent with respect thereto, which consent shall not be unreasonably withheld, and except for building materials manufactured

and/or supplied by USG, and except as otherwise explicitly disclosed in the USG Improvements Budget or otherwise approved in writing by DPD, which approval shall not be unreasonably withheld, neither USG nor any Affiliate may receive, directly or indirectly, any payment for work done, services provided or materials supplied in connection with the USG Improvements. The preceding limitation shall apply only to construction costs related to the USG Improvements. USG shall provide information with respect to any entity receiving, directly or indirectly, any such payment upon DPD's request, prior to any disbursement of City Funds or otherwise;

(n) Pursuant to Section 5/11-74.4-4(n) of the Act, USG represents, warrants and covenants that, to the best of its knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the USG Improvements, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or USG 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 USG business (except as a holder of publicly-traded shares of USG stock, or warrants or options relating to such shares), the Property or any other property in the Redevelopment Area (excluding property used exclusively as a principal residence);

(o) USG's outside counsel has no direct or indirect financial ownership interest in the Property or any other aspect of the Project;

(p) USG, at its own expense (or, with respect to coverages required to be carried by other parties, such other parties' expense), shall comply with all insurance provisions of Section 12 of the Agreement applicable to USG (subject to such self-insurance as USG may carry with respect to one or more of the required coverages);

(q) Except for the Permitted Liens and costs or charges (including any Non-Governmental Charge) which Developer or landlord under the USG Lease is responsible for paying, USG agrees to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the USG Improvements, the USG Premises 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, USG 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. USG 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. USG shall have 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, or any portion thereof (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend USG's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 3(q)); or

(ii) to furnish security in the form of a written undertaking by USG 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, or the preservation of the encumbrance of the Agreement and this Limited Joinder, during the pendency of such contest, which undertaking shall include a commitment to pay fully any such contested Non Governmental Charge and all interest and penalties upon the adverse determination of such contest;

(r) the USG Improvements 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 USG Improvements and the Property. Upon the City's request, USG shall provide evidence reasonably satisfactory to the City of such compliance.

(s) USG agrees to pay or cause to be paid when due all post-Bankruptcy Filing Governmental Charges (as defined below) which are assessed or imposed upon USG or the USG Premises or become due and payable, and which create, may create, or appear to create a lien upon all or any portion of the Property or the Project, excluding, however, costs or charges which Developer or landlord under the USG Lease is responsible for paying. "**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 relating to USG, the USG Premises or the USG Improvements. USG shall have 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 any portion of the Property. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending USG's covenants to pay any such Governmental Charge at the time and in the manner required by law and provided in this Agreement unless USG has given prior written notice to DPD of its intent to contest or object to a Governmental Charge and, unless:

(i) USG shall demonstrate to DPD's reasonable satisfaction that legal proceedings instituted by USG 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) USG shall furnish security in the form of a written undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of any

portion of the Property or prevent the imposition of such lien during the pendency of such contest, which undertaking will include a commitment to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

If USG fails to pay any Governmental Charge or to obtain discharge of the same, USG 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 USG under the Agreement or this Limited Joinder, 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 reimbursed to DPD by USG. Notwithstanding anything herein to the contrary, this paragraph must not be construed to obligate the City to pay any such Governmental Charge.

(t) In lieu of the all-risk property insurance that USG would otherwise be required to provide under Agreement Section 12, USG shall procure and maintain the following insurance (provided, however, that USG may self-insure one or more of the following required coverages):

(i) During construction of the USG Improvements, All Risk Property Insurance in the amount of the full replacement value of the USG Improvements, provided, however, that such requirement shall be deemed satisfied if USG causes its general contractor to maintain such coverage; and

(ii) Post-construction, throughout the Term of the Agreement, All Risk Property Insurance, including improvements and betterments in the amount of full replacement value of the USG Improvements and all inventory located thereon. Coverage extensions shall include business interruption/loss of rents, flood and boiler and machinery, if applicable.

(u) USG acknowledges: (A) receipt of a copy of Section 2-156-030(b) of the Municipal Code of Chicago; (B) that it has read such provision and understands that under such Section 2-156-030(b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship; and (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 Limited Joinder shall be grounds for termination of this Limited Joinder and the transactions contemplated hereby. USG hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-145-030(b) has occurred with respect to this Limited Joinder or the transactions contemplated hereby.

4. **USG Jobs Covenant.** USG covenants that it (and, if applicable, any Approved Successor) shall comply with all of the following job-related covenants (the “**Jobs Covenant**”): (i) on the Job Creation Date, USG shall lease at least 225,000 square feet at the Building and employ at least 500 FTEs in the City (with not less than 450 FTEs located at the Building); (ii) after the Job Creation Date and at all times prior to the Tenth Anniversary Date, USG or USG’s Affiliates shall employ at least 500 FTEs in the City (with at least 450 of such FTEs located at the Building), (iii) after the Job Creation Date and at all times prior to the Tenth Anniversary Date, USG shall lease at least 150,000 net rentable square feet of space at the Building, (iv) after the Job Creation Date and at all times prior to the Tenth Anniversary Date, USG shall maintain its corporate headquarters at the Building; and (v) in the event that an Approved Successor, by merger, consolidation or purchase of all or substantially all of the assets of USG, succeeds to USG’s business operations, such Approved Successor shall maintain its principal place of business, or shall maintain the principal place of business for one or more of its significant business units at the Building, through the Tenth Anniversary Date.

The job retention requirements described in Section 4(a)(ii) and (iii) above will be tested as follows. Each month, USG will determine (and, if requested, report to the City) the number of FTEs employed during the prior month at the Building and elsewhere in the City. If during any Calculation Period, either the number of FTEs employed each month in such Calculation Period at the Building is less than 450, or the number of total FTEs employed in the City each month in such Calculation Period is less than 500, USG will have had a Bad Year and will be in default of such job retention requirements. USG agrees that it shall act in good faith and, among other things, shall not hire temporary workers or relocate workers for short periods of time as a means avoiding a breach of such requirements. If either such job retention default occurs, USG will have a one-time cure period (i.e., there is only one cure opportunity, not a separate one-time cure period for each type of job retention default) of 121 days, commencing on the last day of the Bad Year, to cure the job retention default, which if not so cured, shall constitute an immediate USG Event of Default (as defined in Section 7) and entitle the City to exercise the remedies set forth in Section 9(b) below. During such 121 day cure period, the City shall not be obligated to make any payments of City Funds, pending such possible cure. In addition, no interest shall accrue on the City Note with respect to the Bad Year. The City shall reserve any City Funds that would otherwise be paid during such cure period and, if such cure occurs, shall then pay such reserved City Funds upon such cure.

The termination of the USG Lease after a casualty event in accordance with Section 12 of the USG Lease shall not be an excuse or defense to the performance by USG of its obligations under this Section 4.

5. **Survival of Covenants.** All warranties, representations, covenants and agreements of USG contained in the Agreement and this Limited Joinder shall survive the execution, delivery and acceptance hereof by the parties hereto. Construction-related obligations shall terminate pursuant to Agreement Section 7.02 upon the issuance of a Final Certificate. Thereafter, the USG Continuing Requirements shall be in effect throughout the Term of the Agreement, or such shorter period as may be expressly provided therein. In addition, and

notwithstanding the preceding sentence, USG's indemnification, defense and hold harmless obligations in Agreement Section 13 shall survive the Term of the Agreement.

6. **Acknowledgments and Agreements.** USG acknowledges and agrees as follows:

(a) Each of the representations, warranties and covenants applicable to USG stated in the Agreement and this Limited Joinder is a material inducement to the City's execution of the Agreement, payment of City Funds with respect to the City Note, and payment of City Funds to USG.

(b) USG has been provided with a copy of the Agreement and this Limited Joinder prior to the date hereof, has had opportunity for legal counsel to review it, and is familiar with its terms and conditions, and agrees to abide by its obligations under the Agreement and under this Limited Joinder.

7. **USG Events of Default.** The occurrence of any one or more of the following events, which is not cured within the cure period expressly specified below (if any) shall constitute a default (a "**USG Event of Default**") entitling the City to exercise the applicable remedies described in Section 9:

(a) a breach of Section 4 that is not cured within the cure period provided therein, if any;

(b) the failure of USG to perform, keep or observe any of the material covenants, conditions, promises, agreements or obligations of USG under this Limited Joinder or the Agreement (other than obligations specifically designated as USG Events of Default under other subsections of this Section 7) that is not cured within the period provided for in Section 8;

(c) the making or furnishing by USG to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Limited Joinder, the USG Lease or any material related agreement with Developer which is untrue or misleading in any material respect that is not cured within the period provided in Section 8 (or, in the case of other material agreements, in such other agreement, whichever is longer);

(d) the occurrence of a Bankruptcy-Related Default; or

(e) a Default (as defined in the USG Lease) by USG under the USG Lease that is not cured within any cure period granted under the USG Lease (if any) and that results in a termination of the Lease or the landlord's exercising its right of re-entry under Section 16 of the USG Lease.

8. **Cure Period.** USG shall promptly notify the City of any breach or default by USG under the Agreement or this Limited Joinder, provided, however, that an unintentional failure to notify the City shall not, in and of itself, be deemed a USG Event of Default. If a



default occurs under Section 7(b) or (c), a USG Event of Default shall not exist unless and until USG fails to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default. If such a default cannot be cured within thirty (30) days, and USG has commenced to cure such default within such initial cure period and thereafter diligently prosecutes such cure to completion, then USG shall have up to an additional ninety (90) days time to cure such default. The cure period described in this Section 8 shall never apply to USG Events of Default described in Section 7(a), (d) or (e). During any cure period afforded with respect to defaults under Sections 7(b) and (c), the City shall not be obligated to make any payments of City Funds, pending such possible cure. The City shall reserve any City Funds that would otherwise be paid during such cure period and, if such cure occurs, shall then pay such reserved City Funds upon such cure.

9. **Remedies.** If a USG Event of Default occurs, the City shall have the following rights and remedies depending on the nature of such default. If more than one USG Event of Default exists, then the City will have the right to exercise the remedies applicable to each such default:

(a) if a failure to complete the Project described in Agreement Section 7.05 occurs, then the City shall have the rights and remedies in Section 7.05 of the Agreement. In addition, if a Bankruptcy-Related Default exists at the time of such failure; then the City shall also have the rights described in Section 9(c) below, provided that in no event, however, shall the City be entitled to recover a greater amount than the City Funds paid as of such date;

(b) after the issuance of a Final Certificate, if a USG Event of Default described in Section 7(a) of this Limited Joinder thereafter occurs, then the City shall have the right to both: (i) recapture any payments of any City Funds paid after the occurrence of the First Bad Day, and (ii) terminate any further payments of any City Funds;

(c) if a USG Event of Default described in Section 7(d) of this Limited Joinder occurs after the date hereof and prior to the Security Cut-Off Date, then the City shall have the right both to: (i) recapture the Clawback Amount (and, if necessary or appropriate, to draw on or otherwise liquidate the Security Instrument to assure the repayment of such amount), and (ii) terminate any further payments of City Funds;

(d) after the issuance of a Final Certificate, for a breach of any other representation, warranty, covenant or obligation of USG that is not cured within the applicable cure period, the City shall have the right to both: (i) recapture any payments of any City Funds made after the occurrence of the event which, after the lapse of all applicable cure periods, if any, gave rise to such USG Event of Default, and (ii) terminate any further payments of any City Funds. The foregoing remedy is separate and in addition to the condition precedent to payment of TIF-Funded Interest Costs prior to the Completion Date that is specified in Agreement Section 5.19(a)(i) and shall not be construed in derogation thereof;

(e) if an Event of Default includes a USG Reimbursement Event, then, in addition to the remedies in Section (b) above, the City shall also have the right to recapture from USG only any and all City Funds previously paid by the City; and

(f) 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 provided for under the Agreement or this Limited Joinder, including but not limited to injunctive relief or the specific performance of the agreements contained herein (exclusive of the jobs and leasing covenants). However, the City will be entitled to recapture City Funds previously paid by the City only if the USG Event of Default involves a USG Reimbursement Event, except for a USG Reimbursement Event described in clause (iv) of the definition thereof, with respect to which the City shall only be entitled to recapture City Funds disbursed after the occurrence of the event that would have entitled the City to withhold, suspend, reduce or terminate disbursement of City Funds.

A default by the landlord under the USG Lease shall not: (a) relieve USG from its obligations under the Agreement or this Limited Joinder, or (b) constitute any defense, excuse of performance, release, discharge or similar form of equitable or other relief that would prevent or limit the City's enforcement of its remedies under this Limited Joinder. However, if a default by the landlord under the USG Lease leads USG to terminate the USG Lease and a USG Event of Default occurs under Section 9(b) (i.e., a jobs default), the City may exercise against USG only the remedy set forth in Section 9(b).

The remedies set forth in this Section 9 constitute a material part of the City's bargained-for consideration, and represent a material inducement to the City's execution of this Agreement. USG acknowledges and agrees that such remedies are reasonable and not penal in nature and that, but for such remedies, the City would not have agreed to execute the Agreement.

10. **Subordination of Leasehold Interest.** Notwithstanding anything in the USG Lease or otherwise to the contrary, the covenants identified in Agreement Section 7.04 and in this Limited Joinder as running with the land (and incorporated herein by reference) (the "**City Encumbrances**") shall, upon the recording of the Agreement, be superior to USG's rights under the leasehold estate created by the USG Lease, notwithstanding that the USG Lease may have been entered into and record notice thereof recorded prior to the recording of the Agreement and this Limited Joinder. USG hereby subordinates its leasehold estate to such City Encumbrances. Notwithstanding such subordination, nothing in the Agreement or this Limited Joinder creates, nor shall be deemed to create, either: (a) a City lien or encumbrance capable of being legally foreclosed or otherwise enforced under any applicable Illinois law so as to extinguish USG's rights as tenant under the USG Lease, or (b) any City right to terminate the USG Lease or to otherwise disturb USG's right of possession as tenant under the USG Lease.

11. **Notices.** All notices and communications concerning this Limited Joinder shall be sent and deemed to have been received as described in Section 17 of the Agreement.

12. **Amendment.** This Limited Joinder may not be altered, amended, changed or modified in any respect without the written consent of both the City and USG. USG acknowledges that the City shall have the unilateral right to amend Exhibit A (the legal description for the Area) and Exhibit C (the Plan) to the Agreement.

13. **Assignment.** USG may not assign its obligations under the Agreement or this Limited Joinder (except to an Approved Successor, who assumes in writing USG's obligations under this Agreement) without the prior written consent of the City, which consent shall be in the City's sole discretion, it being acknowledged and agreed that the benefits afforded under this Agreement and the Limited Joinder are personal to USG (and such Approved Successor).

14. **Successors and Assigns.** This Limited Joinder shall inure to the benefit of and be binding upon the City and USG and their respective permitted successors and permitted assigns.

15. **No Third Party Beneficiary.** This Limited Joinder is for the sole and exclusive benefit of the City. No other person or entity is an intended third party beneficiary of this Limited Joinder or shall have the right to enforce any of the provisions of this Limited Joinder. Nothing contained in this Limited Joinder may be construed to create or imply any partnership, joint venture or other association between the City and USG.

16. **Headings.** The section headings contained herein are for convenience only and are not intended to limit, expand or modify the provisions of such sections.

17. **Counterpart Execution.** This Limited Joinder may be executed in multiple counterparts, the signature pages of which, taken together, shall constitute an original execution copy.

18. **Authority.** The person signing this Limited Joinder on behalf of USG certifies that he or she has the power and authority to enter into and execute this Limited Joinder.

19. **Public Benefits Program.** On the Closing Date, USG shall make a \$25,000 contribution to the WITS tutoring program or another program designated by DPD and reasonably acceptable to USG. At the time the City issues the Final Certificate, USG shall make a second payment of \$25,000 to the WITS tutoring program or another program designated by DPD and reasonably acceptable to USG.

**IN WITNESS WHEREOF**, USG and the City have signed this Limited Joinder effective as of the date of the attached Redevelopment Agreement.

**USG**

**USG CORPORATION,  
a Delaware corporation**

By: Karen L. Leets  
Name: Karen L. Leets  
Its: VP and Treasurer

**CITY**

**CITY OF CHICAGO, a municipal corporation,  
acting by and through its Department of  
Planning and Development**

By: \_\_\_\_\_  
Denise M. Casalino, P.E.  
Commissioner

**IN WITNESS WHEREOF**, USG and the City have signed this Limited Joinder effective as of the date of the attached Redevelopment Agreement.

**USG**

**USG CORPORATION,  
a Delaware corporation**

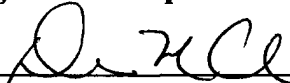
By: \_\_\_\_\_

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

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

**CITY**

**CITY OF CHICAGO, a municipal corporation,  
acting by and through its Department of  
Planning and Development**

By: 

Denise M. Casalino, P.E.  
Commissioner



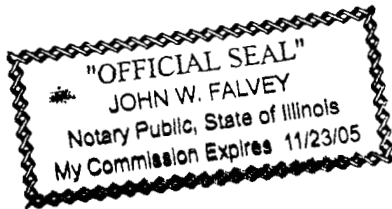
STATE OF ILLINOIS     )  
                                  ) ss  
COUNTY OF COOK     )

I, the undersigned, a notary public in and for Cook County, Illinois, hereby certify that KAREN L. LEETS, personally known to me to be the V.P. + Treasurer of USG Corporation, personally known to me to be the same person whose name is subscribed to the foregoing Limited Joinder, executed and delivered such instrument as his/her own free and voluntary act, and as the free and voluntary act of USG Corporation, for the uses and purposes set forth therein.

Given under by hand and notarial seal this 2<sup>nd</sup> day of November 2004.

John W. Falvey  
NOTARY PUBLIC  
My Commission Expires 11-23-05

(SEAL)



**550 ADAMS LLC  
REDEVELOPMENT AGREEMENT  
LIST OF EXHIBITS**

Exhibit A	* Redevelopment Area Legal Description
Exhibit B	* Property Legal Description
Exhibit C	Canal/Congress Redevelopment Plan
Exhibit D	Notice of Proposed Approved Successor
Exhibit E	* Project Budget
Exhibit E-1	* Base Building Improvements Budget
Exhibit E-2	* USG Improvements Budget
Exhibit F	Form of Building Construction Contract
Exhibit G	Form of City Note
Exhibit H	Form of Notice of Proposed Transfer/Refinancing
Exhibit I	Permitted Liens
Exhibit J	TIF-Funded Costs
Exhibit K	City Note Requisition Form
Exhibit L	Estimated TIF-Funded Interest Costs
Exhibit M	TIF-Funded Interest Costs Requisition Form
Exhibit N	Approved Prior Expenditures
Exhibit O	Opinion of Developer's or USG's Counsel
Exhibit P-1	* Building MBE/WBE Budget
Exhibit P-2	* USG MBE/WBE Project Budget

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

[(Sub)Exhibit "A" referred to in this Form of Subordination Agreement constitutes (Sub)Exhibit "A" to the Jacobs Real Estate, Inc. Redevelopment Agreement and is printed on page 26425 through 26429 of this *Journal*.]

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DESIGNATION OF CHRISTIANA INVESTORS, L.L.C. AS PROJECT DEVELOPER, AUTHORIZATION FOR EXECUTION OF REDEVELOPMENT AGREEMENT AND ISSUANCE OF TAX INCREMENT ALLOCATION REVENUE NOTE FOR PROPERTY AT 550 WEST ADAMS STREET.

The Committee on Finance submitted the following report:

CHICAGO, June 23, 2004.

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

Your Committee on Finance, having had under consideration an ordinance authorizing entering into and executing a redevelopment agreement with Christiana Investors, L.L.C. and USG Corp. and the issuance of a City of Chicago Tax Increment Allocation Revenue Note, amount of note not to exceed \$6,500,000, having had the same under advisement, begs leave to report and recommend that Your Honorable Body *Pass* the proposed ordinance transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the Committee.

Alderman Burke abstained from voting pursuant to Rule 14 of the City Council's Rules of Order and Procedure.

Respectfully submitted,

(Signed) EDWARD M. BURKE,  
*Chairman.*



On motion of Alderman Burke, the said proposed ordinance transmitted with the foregoing committee report was *Passed* by yeas and nays as follows:

*Yeas* -- Aldermen Flores, Haithcock, Tillman, Preckwinkle, Hairston, Lyle, Beavers, Stroger, Beale, Pope, Balcer, Cárdenas, Olivo, Coleman, L. Thomas, Murphy, Rugai, Troutman, Brookins, Muñoz, Zalewski, Chandler, Solis, Ocasio, Burnett, E. Smith, Carothers, Reboyras, Suarez, Matlak, Mell, Austin, Colón, Banks, Mitts, Allen, Laurino, O'Connor, Doherty, Natarus, Daley, Tunney, Schulter, Moore, Stone -- 45.

*Nays* -- None.

Alderman Beavers moved to reconsider the foregoing vote. The motion was lost.

Alderman Burke invoked Rule 14 of the City Council's Rules of Order and Procedure, disclosing that he had represented parties to this ordinance in previous and unrelated matters.

The following is said ordinance as passed:

WHEREAS, Pursuant to an ordinance adopted by the City Council ("City Council") of the City of Chicago (the "City") on November 12, 1998 and published at pages 81881 -- 81974 of the *Journal of the Proceedings of the City Council of the City of Chicago* (the "*Journal*") of such date, a certain redevelopment plan and project (the "Plan") for Canal/Congress Redevelopment Project Area (the "Area") was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1, et seq.) (the "Act"); and

WHEREAS, Pursuant to an ordinance adopted by the City Council on November 12, 1998 and published at pages 81974 -- 81983 of the *Journal* of such date, the Area was designated as a redevelopment project area pursuant to the Act; and

WHEREAS, Pursuant to an ordinance (the "T.I.F. Ordinance") adopted by the City Council on November 12, 1998 and published at pages 81982 and 81984 -- 81991 of the *Journal* of such date, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain Area redevelopment project costs (as defined in the Act) incurred pursuant to the Plan; and

WHEREAS, Christiana Investors, L.L.C. (together with, if applicable, such other entity controlled by Steven D. Fifield to which the subject property may be conveyed prior to the closing date, the "Developer"), has previously acquired certain real property located within the Area at 550 West Adams Street (the "Property") on which

it will construct a new eighteen (18) story Class A office building having approximately four hundred seventy-one thousand (471,000) square feet of net rentable space (the "Building") which will become and serve as the corporate headquarters for USG Corporation ("USG"); and

WHEREAS, The construction of the Building includes an office building component to be completed by the Developer, which includes the Developer's acquisition of the Property and the Developer's construction of all base building improvements, including, without limitation: the plumbing, electrical, H.V.A.C., telecommunications and other building systems for the entire Building; the completion of the lobby, including "vanilla box" build-out of the first floor retail space, a fitness center, cafeteria and all exterior improvements; and the construction of all USG tenant improvements (other than those included within the USG project) necessary to permit USG to take possession in accordance with the terms of the USG lease (as defined below) (such Developer acquisition and construction work, the "Building Project"); and

WHEREAS, The construction of the Building also includes a USG improvements component, which includes USG's construction of certain USG tenant improvements and includes costs for interior construction, fire protection, electrical and mechanical work, furniture and furniture installation, carpeting, telecommunications systems and architectural costs within the USG premises (such USG construction work, together with the USG job covenants described below, the "USG Project", and collectively, together with the Building Project, the "Project"); and

WHEREAS, The Developer and USG have entered into that certain lease dated as of April 23, 2004 the ("USG Lease"), pursuant to which the Developer has leased approximately two hundred twenty-five thousand (225,000) square feet in the Building (the "USG Premises") to USG for a period of fifteen (15) years, subject to the terms and conditions contained therein; and

WHEREAS, The Developer will be obligated to undertake the Building Project in accordance with the Plan and pursuant to the terms and conditions of a proposed redevelopment agreement to be executed by the Developer and the City, with such Building Project to be financed in part by certain pledged incremental taxes deposited from time to time in the Special Tax Allocation Fund for the Canal/Congress Redevelopment Project Area (as defined in the T.I.F. Ordinance) pursuant to Section 5/11-74.4-8(b) of the Act ("Incremental Taxes"); and

WHEREAS, USG will be obligated to undertake the USG Project in accordance with the Plan and pursuant to the terms of such proposed redevelopment agreement by virtue of its execution of a limited joinder, pursuant to which USG shall bind itself to certain provisions of the redevelopment agreement and certain other obligations, including, without limitation, USG's (a) relocation of its corporate headquarters from

125 South Wacker Drive and not less than five hundred (500) full-time equivalent jobs to the Building, and (b) maintenance of USG's corporate headquarters and at least five hundred (500) full-time equivalent jobs at all times for a period of ten (10) years, all as more fully described in the proposed redevelopment agreement;

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

WHEREAS, Pursuant to its Resolution 04-CDC-27 adopted by the Community Development Commission of the City of Chicago (the "Commission") on April 13, 2004, the Commission has recommended that the Developer be designated as developer for the Project and that D.P.D. be authorized to negotiate, execute and deliver on behalf of the City a redevelopment agreement with the Developer for the Project, to which USG shall execute a limited joinder; now, therefore,

*Be It Ordained by the City Council of the City of Chicago:*

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

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

SECTION 3. The Commissioner of D.P.D. (the "Commissioner") or a designee of the Commissioner is each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver a redevelopment agreement between the Developer and the City, and with the limited joinder therein of USG, substantially in the form attached hereto as Exhibit A and made a part hereof (the "Redevelopment Agreement"), and such other supporting documents as may be necessary to carry out and comply with the provisions of the Redevelopment Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Redevelopment Agreement.

SECTION 4. The City Council of the City hereby finds that the City is authorized to issue its tax increment allocation revenue obligation in the maximum principal amount not to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000) for the purpose of paying a portion of the eligible redevelopment project costs included within the Project.

SECTION 5. There shall be borrowed for and on behalf of the City an amount not to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000) for the payment of a portion of the eligible redevelopment project costs included within the Project. The borrowing shall be evidenced by a note of the City in a principal amount not to exceed the lesser of (a) Six Million Five Hundred Thousand Dollars (\$6,500,000), or

(b) such lesser amount of T.I.F.-Funded Costs (exclusive of T.I.F.-Funded Interest Costs) as may be incurred prior to the Completion Date (as such capitalized terms are defined in the Redevelopment Agreement). The note shall be issued and be designated "Tax Increment Allocation Revenue Note Canal/Congress Redevelopment Project Area (550 West Adams Street Project) (the "City Note"). The City Note shall be dated as of the date of delivery thereof, shall bear the date of authentication, shall be in fully registered form, shall be in the denomination of the maximum outstanding principal amount thereof and shall become due and payable as provided therein.

The City Note shall bear interest at a fixed interest rate of eight and seventy-five hundredths percent (8.75%) per annum (the "Interest Rate"). Interest on the City Note shall be subject to federal income taxes. Interest shall be computed on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months. Accrued and unpaid interest on each Note shall compound on January 1 of each year and thereafter bear interest at a fixed interest rate equal to the Interest Rate.

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

The seal of the City shall be affixed to or a facsimile thereof printed on the City Note, and the City Note shall be signed by the manual or facsimile signature of the Mayor of the City and attested by the manual or facsimile signature of the City Clerk of the City, and in case any officer whose signature shall appear on the City Note shall cease to be such officer before the delivery of the City Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

The City Note shall have thereon a certificate of authentication substantially in the form hereinafter set forth duly executed by the Registrar, as authenticating agent of the City for the City Note and showing the date of authentication. The City Note shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this ordinance unless and until such certificate of authentication shall

have been duly executed by the Registrar by manual signature, and such certificate of authentication upon the City Note shall be conclusive evidence that the City Note has been authenticated and delivered under this ordinance.

**SECTION 6.** The City shall cause books (the "Register") for the registration and for the transfer of the City Note (to the extent such transfer is permitted under the Redevelopment Agreement) as provided in this ordinance to be kept at the principal office of the Registrar, which is hereby constituted and appointed the registrar of the City for the City Note. The City is authorized to prepare, and the Registrar shall keep custody of, multiple note blanks executed by the City for use in the transfer of the City Note.

Upon surrender for a transfer of the City Note authorized under the Redevelopment Agreement at the principal office of the Registrar (including specifically, but without limitation, in connection with the Developer's transfer of the City Note to USG on the Completion Date), duly endorsed by, or accompanied by (i) a written instrument or instruments of transfer in form satisfactory to the Registrar, (ii) an investment representation in form satisfactory to the City and duly executed by the registered owner or his attorney duly authorized in writing, (iii) the written consent of the City evidenced by the signature of the Commissioner (or his or her designee) on the instrument of transfer, and (iv) any deliveries required under the Redevelopment Agreement, the City shall execute and the Registrar shall authenticate, date and deliver in the name of any such authorized transferee a new fully registered City Note of the same maturity, of authorized denomination and for a like aggregate principal amount. The execution by the City of a fully registered City Note shall constitute full and due authorization of such City Note and the Registrar shall thereby be authorized to authenticate, date and deliver the City Note, provided however, that the principal amount of the City Note authenticated by the Registrar shall not exceed the authorized principal amount of the City Note less previous retirements. The Registrar shall not be required to transfer or exchange the City Note during the period beginning at the close of business on the fifteenth (15<sup>th</sup>) day of the month immediately prior to the maturity date of the City Note nor to transfer or exchange the City Note after notice calling the City Note for redemption has been made, nor during a period of five (5) days next preceding mailing of a notice of redemption of principal of the City Note. No beneficial interests in the City Note shall be assigned, except in accordance with the procedures for transferring the City Note described above.

The person in whose name the City Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of the City Note shall be made only to or upon the order of the registered

owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such City Note to the extent of the sum or sums so paid.

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

SECTION 7. The principal of the City Note shall be subject to determination, reduction and prepayment as provided in the form of the City Note attached to the Redevelopment Agreement as Exhibit G and as provided in the Redevelopment Agreement, including, without limitation, Sections 4.03, 7.05, 8.05 and 15.03 thereof and as provided in the limited joinder, including, without limitation, Section 9 thereof. As directed by the Commissioner, the Registrar shall proceed with redemptions without further notice or direction from the City.

SECTION 8. The Registrar shall note on the payment schedule attached to the City Note the amount of any payment of principal or interest on such City Note, including the amount of any redemption or prepayment and the amount of any reduction in principal pursuant to the Redevelopment Agreement.

SECTION 9. The City Note shall be prepared in substantially the form attached hereto as Exhibits G to the Redevelopment Agreement.

SECTION 10. The City Note hereby authorized shall be executed as provided in this ordinance and the Redevelopment Agreement and thereupon be deposited with the Commissioner, and be by said Commissioner delivered to the Developer.

SECTION 11. (a) Special Tax Allocation Fund. Pursuant to the T.I.F. Ordinance, the City has created a special fund, designated as the Canal/Congress Redevelopment Project Area Special Tax Allocation Fund (the "Tax Allocation Fund").

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

(b) Tax Allocation Fund Subaccounts. There is hereby created within the Tax Allocation Fund two (2) special subaccounts to be known as (i) the "550 West Adams Street Project Account" (the "Project Account") and (ii) the "550 West Adams Area-Wide Account" (the "Area-Wide Account"). The City shall designate and deposit into the Project Account an amount equal to the incremental ad valorem taxes deposited into the Tax Allocation Fund attributable to increases in the equalized assessed value of the tax parcels comprising the Property (such amount, the "Project Incremental Taxes"). The City shall designate and deposit into the Area-Wide Account an amount equal to the incremental ad valorem taxes deposited into the Tax Allocation Fund attributable to increases in the equalized assessed value of the tax parcels comprising the remainder of the Area but excluding the Project Incremental Taxes and the incremental ad valorem taxes attributable to the excluded tax parcels) (such amount, the "Area Available Incremental Taxes"). Subject to the terms and conditions of the Redevelopment Agreement, prior to the Completion Date, the City shall use the Area Available Incremental Taxes and the Project Incremental Taxes to pay T.I.F.-funded interest costs (as defined in the Redevelopment Agreement). Subject to the terms and conditions of the Redevelopment Agreement, after the Completion Date, the City shall use the project available incremental taxes to make payments as follows: first, to pay amounts currently due under City Note, until such current amounts have been fully paid; second, to pay any unreimbursed T.I.F.-funded interest costs currently unpaid; and third, as the City, in its sole discretion so elects, to prepay the City Note or to use such remaining Project Incremental Taxes for any legal purpose. In the event that an event of default under the Redevelopment Agreement entitles the City to permanently terminate further payments of city funds (as defined in the Redevelopment Agreement) with respect to the City Note or T.I.F.-funded interest costs, the City may in its discretion, return the amounts in the applicable subaccount established above that would otherwise be allocated to the payment of the City Note to the Tax Allocation Fund of the City and such subaccount shall be closed. The City may also designate and deposit into the Project Account such other incremental taxes or other legally available funds as it may deem necessary or appropriate in order to pay amounts due under the Redevelopment Agreement.

(c) Pledge Of Developer Subaccounts. The City hereby assigns, pledges and dedicates the Area-Wide Account to the payment of T.I.F.-funded interest costs accruing prior to the Completion Date, as and when due, as more fully described, and subject to the limitations set forth under the terms of the Redevelopment Agreement and the limited joinder, including specifically, but without limitation, Sections 4.03, 5.19 and 7.05 of the Redevelopment Agreement and Section 9 of the limited joinder. The City hereby further assigns, pledges and dedicates the Project

Account to the payment of the principal of and interest, if any, on the City Note on the dates set forth in the debt service schedule to be attached to the City Note, at maturity or upon payment or redemption prior to maturity, and, on and after the Completion Date, to the payment of any unreimbursed T.I.F.-funded interest costs, in the priority set forth above in Section 11(b), in each case, as and when due, as more fully described, and subject to the limitations set forth under the terms of the Redevelopment Agreement and the limited joinder, including specifically, but without limitation, Sections 4.02, 5.19 and 7.05 of the Redevelopment Agreement and Section 9 of the limited joinder. The payments from the Area-Wide Account and the Project Account described above are hereby authorized and appropriated by the City. Upon deposit, the monies on deposit in the Project Account and the Area-Wide Account may be invested as hereinafter provided. Interest and income on any such investment shall be deposited in the applicable subaccount. Upon payment of all amounts due under the City Note and the Redevelopment Agreement in accordance with their terms (or the termination of the City's obligation to make such payments), the amounts on deposit in the Project Account and the Area-Wide Account, as applicable, shall be deposited in the Tax Allocation Fund of the City and the applicable subaccount shall be closed.

SECTION 12. The City Note is a special limited obligation of the City, and is payable solely from amounts on deposit in the Project Account and the Area-Wide Account, as applicable (or such other funds in the Tax Allocation Fund as the City, in its sole discretion, may determine are legally available), and shall be a valid claim of the registered owner thereof only against said sources. The City 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(s) of the City Note shall not have the right to compel any exercise of the taxing power of the City, the State of Illinois or any political subdivision thereof to pay the principal of or interest on the City Note.

SECTION 13. Monies on deposit in the Project Account and the Area-Wide Account may be invested as allowed under Section 2-32-520 of the Municipal Code of the City of Chicago (the "Municipal Code"). Each such investment shall mature on a date prior to the date on which said amounts are needed to pay the principal of or interest on the City Note.

SECTION 14. Upon issuance, the City Note shall have an initial principal balance equal to the Developer's prior expenditures for T.I.F.-funded costs (as such term is defined in the Redevelopment Agreement). Such expenditure for such T.I.F.-funded costs shall be deemed to be a disbursement of the proceeds of the City Note.



After initial issuance, the principal amount outstanding under the City Note shall be its initial principal balance, as the same may be increased from time to time in accordance with the execution of certificates of expenditure pursuant to the terms of the Redevelopment Agreement, plus interest thereon, minus any principal amount and interest paid on the City Note, and as further provided for in the Redevelopment Agreement. Execution of each certificate of expenditure shall be deemed an additional disbursement of proceeds of the City Note.

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

**SECTION 16.** The provisions of this ordinance shall constitute a contract between the City and the registered owners of the City Note. All covenants relating to the City Note are enforceable by the registered owners of the City Note.

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

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

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

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

Exhibit "A" referred to in this ordinance reads as follows: