8-24-95

74-O-95

AN ORDINANCE

Authorizing the City Manager to Execute Amendments to the Redevelopment Agreement for 1660 Chicago Avenue

WHEREAS, the Evanston City Council, in Ordinance 95-O-94, authorized the City Manager to execute the Redevelopment Agreement with the Church and Chicago Limited Partnership, JBC Evanston Limited Partnership, Washington National Insurance Company, and the John Buck Company, for the redevelopment of 1660 Chicago Avenue; and

WHEREAS, the City adopted Ordinance 129-O-93 Adopting and Approving Tax Increment Financing Redevelopment Plan and Redevelopment Project; Ordinance 130-O-93, Designating the Washington National Tax Increment Redevelopment Project Area; and Ordinance 131-O-93, Adopting Tax Increment Financing; Ordinance 53-O-95, Amending Ordinance 72-O-94 Amending the Site Plan for 1660 Chicago Avenue and Amending Ordinance 59-O-93 Granting a Special Use for a Planned Development for Church and Chicago Limited Partnership at 1660 Chicago Avenue; and Ordinance 54-O-95, Authorizing the City Manager to Execute Amendments to the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement contained a development schedule and major dates; and

WHEREAS, the Developer has diligently pursued financing for the Project and has finalized terms with various funding sources; and

WHEREAS, the funding sources have necessitated additional financial burdens for said Developer; and

WHEREAS, the Church and Chicago Limited Partnership, JBC Evanston Limited Partnership, Washington National Insurance Company, and the John Buck Company have requested modification of the Redevelopment Agreement; and

WHEREAS, the City Council of the City of Evanston has determined that the approval of the modifications to the Redevelopment Agreement are in the best interests of the City of Evanston;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign and the City Clerk is hereby authorized and directed to attest to the aforesaid amendments as set forth herein. The City Manager is further authorized to negotiate any changes or additional terms and conditions with respect to the Redevelopment Agreement as may be deemed fit and proper.

SECTION 2: That the City Manager and the City Clerk respectively are hereby authorized and directed to execute, attest, and deliver such other documents, agreements and certificates as may be necessary.

Introduced: September 5, 1995

Adopted: September 18, 1995

Approved: September 22, 1995

Lorraine H. Morton

Mayor

ATTEST:

City Clerk

Approved as to form:

Corporation Counsel

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT ("Agreement"), is made and entered into as of the ____ day of _____, 1994, by and between the City of Evanston, Illinois, a home rule unit of local government located in Cook County, Illinois (the "City"), Church and Chicago Limited Partnership ("CCLP") which shall acquire the Subject Property hereafter defined, JBC Evanston Limited Partnership, an Illinois limited partnership ("JBC") the general partner of CCLP, Washington National Insurance Company, an Illinois corporation ("WNC") the limited partner of CCLP and the John Buck Company ("Buck"). CCLP and Buck are also collectively referred to as "Developer".

RECITALS

A. Pursuant to the terms of a Redevelopment Plan entitled "Washington National Redevelopment Plan and Project," which was introduced on January 24, 1994 as Ordinance No. 129-0-93 (hereinafter referred to as the "Redevelopment Plan"), the City designated a certain area within its municipal limits for redevelopment and revitalization with the development of residential and commercial uses. The site proposed for the redevelopment and revitalization (hereinafter referred to alternatively as the "Redevelopment Area" and the "Subject Property"), consists of approximately 83,000 square feet and is legally described on Exhibit 1 which is attached hereto and made a part hereof. The City will adopt Ordinance No. 129-0-93 by September 30, 1994.

B. On January 24, 1994, Ordinance No. 130-0-93 designating the Washington National Redevelopment Project Area was introduced. Said area is legally described on Exhibit 1. The City will adopt Ordinance No. 130-0-93 by September 30, 1994.

C. On January 24, 1994, Ordinance No. 131-0-93 adopting tax increment financing ("TIF") pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-2 et seq.)(hereinafter referred to as the "Act") was introduced. The City will adopt Ordinance No. 131-0-93 by September 30, 1994.

D. The corporate authorities of the City, after due and careful consideration, have concluded that the development of the Subject Property as provided in this Agreement and in the Redevelopment Plan will further the growth of the City, facilitate the redevelopment of the Redevelopment Area, improve the environment of the City, increase the assessed valuation of the real estate situated within the City, increase the sales tax revenues realized by the City, foster increased economic activity within the City, enable the City to control the development of the Subject Property and otherwise be in the best interests of the City.

E. CCLP will acquire the Subject Property from Washington National Insurance Company. Developer will construct or cause to be constructed on the Subject Property in accordance with the site plan which is attached as exhibit No. A to Ordinance 72-0-94 ("Site Plan"), an apartment tower of not less than twenty (20) stories containing not less than two hundred sixty one (261) dwelling units in not less than 225,000 rentable square feet with

an attached parking garage, as well as not less than 3,000 square feet of retail space in Phase I of the Project. It is understood by CCLP and the City that but for the availability of funds provided for herein, and the revenues provided under the Act, CCLP would not, and could not, proceed with the development of the Project.

F. Provided that CCLP, JBC, WNC and Buck are in compliance with the terms of this Agreement, as more fully set forth below, the City will take the necessary action to issue bonds ("TIF Bonds") sufficient to provide the Developer a net amount of $3,000,000.00. The City has consulted with bond counsel and received therefrom assurances that nothing contained in the Agreement would prohibit the issuance of general obligation bonds, the interest payable on which will be exempt from federal income taxation. Therefore, the City agrees to use its best efforts to issue such tax exempt bonds. If it is determined that tax exempt bonds are not permitted and that only taxable bonds can be issued and the Developer has substantially performed to date, then the City shall issue taxable bonds and/or another financial instrument mutually acceptable to the City, bond counsel and the Developer which meets the City's necessary financial requirements and all applicable laws. In addition, the City and Developer agree to discuss and consider any necessary revisions to this agreement to achieve the goals and purpose of the Agreement and the Redevelopment Plan and Project. In addition to the $3,000,000.00 in Bond proceeds the Developer as later provided herein may be entitled to receive an amount not to

exceed $500,000.00 from excess incremental tax revenues. Provided that City's bond counsel and bond Consultants have, prior to the execution of this Agreement, submitted their opinions as to the form and legality thereof, the proceeds from the sale of the TIF Bonds shall be used for land write down, demolition, site preparation, interest allowed by statute and other statutorilly eligible TIF expenditures under the Act. The estimated eligible redevelopment project costs are attached hereto as Exhibit 2.

The development of the Subject Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents and taxpayers.

NOW THEREFORE, in consideration of the premises set forth above, and the mutual agreements hereinafter set forth below, it is hereby agreed by and between the parties hereto as follows:

1. INCORPORATION OF RECITALS

The representations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

2. PROPERTY ACQUISITION AND CONVEYANCE

(a) Washington National Insurance Company currently holds legal title to the Subject Property.

(b) Pursuant to the terms of a certain Limited Partnership Agreement of CCLP, Washington National Insurance Company will convey or cause to be conveyed to CCLP the fee simple title in

and to the Subject Property. Developer shall provide the City with a list of permitted exceptions thirty (30) days prior to the conveyance of title.

(c) CCLP and Washington National Insurance Company agree to provide the City copies of the Limited Partnership Agreement and any contract to convey the Subject Property seven (7) days prior to the execution of this Agreement and represent that to the best of their knowledge, said agreements and contracts upon their execution will be valid and enforceable as between them.

(d) If the Developer enters into any Operation and Easement Agreement with any retail tenants ("OEA") for the Subject Property prior to the final disbursement of any funds pursuant this Agreement, the Developer shall provide the City with an executed copy thereof.

3. DEVELOPMENT

(a) Phase I of the Project shall consist of an apartment tower of not less than twenty (20) stories containing not less than two hundred sixty one (261) dwelling units in not less than 225,000 rentable square feet with an attached parking garage, as well as not less than 3,000 square feet of retail space ("Phase I"). Phase II of the Project ("Phase II") shall be a development consisting exclusively of retail/commercial uses; exclusively of residential uses; or a combination thereof. An exclusively retail/commercial development shall be comprised of not less than 22,000 square feet. An exclusively residential development shall be comprised of not less than thirty (30) for sale dwelling units. A combination commercial/retail-residential development

shall consist of a minimum of approximately 733 square feet of retail commercial space for every dwelling unit less than 30 dwelling units. Phase I and Phase II together shall be collectively referred to as the Project ("Project). Land uses in the Project may consist of such retail, commercial, or residential uses or a combination thereof to conform with Ordinance No. 59-O-93 (Exhibit 3 hereto) and Ordinance No. 72-O-94 (Exhibit 4 hereto) both of which were amended by Ordinance No. 53-O-95, which is attached hereto as Exhibit 6.

During the term of this Agreement, a permitted retail use anywhere on the premises may include the retail sale in restaurants of alcoholic liquor for consumption on the premises where the facilities for food preparation and service are primarily those of a restaurant offering complete meal service, as currently provided for as a Class C licensed premises under the ordinances of the City of Evanston. The retail use of the sale of alcoholic liquor for consumption on the premises while food is available, as currently provided for as a Class B licensed premises under the ordinances of the City of Evanston, shall be permitted so long as there is no public entry on Chicago Avenue nor on Church Street within 20 feet of the intersection of Church Street and Chicago Avenue. Nothing herein shall eliminate the requirement of compliance with the licensing provisions of the City of Evanston.

Phase I of the Project shall be constructed in a manner consistent with the general design as shown in the Site Plan, and the goals and objectives of the Redevelopment Plan and in

compliance with all applicable City codes and ordinances. It is understood and acknowledged by the parties that the Developer shall be responsible for the construction of the Project which shall consist first, of the demolition of the existing structures on the Subject Property, and site clearance. The City may request permission from the Developer to construct and maintain a communication antenna on top of the apartment tower at no cost to Developer, such request to be made within four (4) months of the commencement of demolition. Said permission shall not be unreasonably withheld. Developer covenants that construction of the apartment tower shall commence not later than October 1, 1995 and that Phase I of the Project shall be completed and landscaped not later than October 29, 1997. The dates set forth in the previous sentence are extensions authorized by Ordinance No. 54-O-95 (Exhibit 7 hereto).

b) On or before December 1, 1994, Developer shall prepare basic concept drawings and related documents in reasonable detail for Phase I including preliminary engineering plans in accordance with the Site Plan, the Redevelopment Plan and this Agreement and submit same to the City Manager for the City Manager's approval or disapproval. Such documents shall include, but not be limited to, information necessary to determine zoning and code compliance, preliminary engineering, landscaping and parking facilities of Phase I of the Project. The City Manager shall inform the Developer of his approval or disapproval of these documents within twenty one (21) days of his receipt of the same.

(c) On or before March 1, 1995, Developer shall prepare and

submit their respective construction drawings for Phase I of the Project, final engineering plans and related documents (collectively called "Drawings") to the City for review and approval or disapproval in accordance with all applicable ordinances, codes and regulations. These Drawings in the aggregate shall include all site improvements, all parking facilities, on-site utilities, off-site utilities, landscaping and grading plans for Phase I of the Project all in compliance with the Redevelopment Plan and this Agreement. The City agrees, during the preparation of all Drawings, to meet with Developer to coordinate the preparation of its submissions to, and review of the Drawings by the City. The City shall communicate and consult informally with Developer as frequently as is necessary to insure that the formal submittal of each of their respective Drawings to the City receive prompt and speedy consideration.

(d) Any disapproval of the Drawings referred to herein shall state in writing the reasons for disapproval and the changes shall be consistent with sound engineering practices and the basic concept drawings previously approved by the City Manager. Such disapproval shall be delivered to Developer within thirty (30) days from the date of submittal. Upon receipt from the City of a disapproval of all or any portion of the Drawings, Developer shall resubmit revisions of such disapproved Drawings to the City as soon as reasonably possible after notice of disapproval. Any Drawings approved by the City shall be considered in all respects to be in accordance with the Site Plan, the Redevelopment Plan and this Agreement.

(e) Before commencement of construction or development of the Project as described herein, Developer shall, at its expense, secure or cause to be secured any and all permits, documents or plats which may be required by the City and any other governmental agencies having jurisdiction over such construction, development or work, or such portion of the work being performed, including, without limitation, any applications and permits, documents or plats which may be required to be obtained from any local, federal or state environmental protection agency, the Metropolitan Water Reclamation District of Greater Chicago, or from any other agency which may have or exercise any jurisdiction of any type whatsoever which may affect the Subject Property. The City shall provide all proper assistance to Developer in securing such permits and shall promptly issue all permits required to be issued by the City, and agrees to sign other permits, documents or plats which require execution by the City, provided such permits, documents or plats are in proper form and comply with all lawful requirements. The City shall approve any Plat of Subdivision for the Subject Property, or portions thereof, submitted by Developer which conforms to and is in accord with the Site Plan. The City further agrees that, as to Developer, there shall be no unreasonable or discriminatory increases, or unreasonable or discriminatory changes in the method of calculation, of the respective building permit fees, sewer or water tap-on fees, inspection fees or any other fees or charges of the City as compared to such City fees or charges currently in effect. Except as provided in this Agreement, the costs of developing the Project and all

improvements thereon shall be borne and paid for by the Developer.

(f) The City acknowledges that Phase I of the Project is to be governed in accordance with the City of Evanston Zoning Ordinance of 1960, Phase II of the Project in accordance with the City of Evanston Zoning Ordinance of 1993, and both Phases in accordance with PUD Ordinance No.59-O-93 and 72-O-94.

4. BONDS

(a) The parties acknowledge that the conveyance and development of the Subject Property as provided in the Redevelopment Plan and this Agreement can only occur with the use of proceeds from the sale of the TIF Bonds and from real estate tax increment and sales tax increment received by the City that is not required for the TIF Bonds. The City and Developer agree that the sole source for any City expense or cost in any way related to creation of the Redevelopment Area, the Redevelopment Plan and Project, the sale of the TIF Bonds and this Agreement shall be the proceeds from the sale of the TIF Bonds more specifically described below, and any real estate tax increment and sales tax increment received by the City that is not required for the TIF Bonds.

(b) The TIF Bonds to be issued and sold pursuant to this Agreement shall be general obligation bonds ("GO-TIF Bonds"). The City will issue and sell the Go-TIF Bonds having a term of not less than 15, nor more than 20 years with such right to redeem as the City shall determine. The City has consulted with bond counsel and received therefrom assurances that nothing contained

in the Agreement would prohibit the issuance of general obligation bond, the interest payable on which will be exempt from federal income taxation. Therefore, the City agrees to use its best efforts to issue such tax exempt bonds. If it is determined that tax exempt bonds are not permitted and that only taxable bonds can be issued, and the Developer has substantially performed to date, then the City shall issue taxable bonds and/or another financial instrument mutually acceptable to the City, bond counsel and the Developer which meets the City's necessary financial requirements and all applicable laws. In addition, the City and Developer agree to discuss and consider any necessary revisions to this agreement to achieve the goals and purpose of this Agreement and the Redevelopment Plan and Project. The GO-TIF bonds may be payable, inter alia, from the incremental ad valorem real estate taxes arising from the levies upon taxable real property located within the Redevelopment Area ("Real Estate Tax Increments") and the City's incremental share of the amount of Retailers' Occupation Tax, Service Occupation Tax, Use Tax, Service Use Tax, Municipal Retailer's Occupation Tax, Municipal Service Occupation Tax and Municipal Use Tax, and any other similar sales and use tax revenues in addition to, or in lieu of, such taxes (collectively, "Sales Tax"), paid by retailers and servicemen on transactions located within the Redevelopment Area. A copy of the WNC Tax Increment Analysis is attached hereto as Exhibit 5. The City has obtained an update of the WNC Tax Increment Analysis. A copy thereof is attached hereto as Exhibit 8.

(c) It is understood and agreed between the parties that the City shall have no obligation to sell any GO-TIF Bonds pursuant to the terms of this Agreement unless the City and CCLP, JBC, WNC and Buck certify that CCLP, JBC, WNC and Buck are in complete compliance with the provisions of this Agreement relating to Phase I and until the City receives all of the following: (1) copies of all documents evidencing the transfer of the subject property from WNC to CCLP; (2) a current appraisal prepared by a real estate appraiser, acceptable to the City, as to the fair market value of the subject property as of the date of transfer; (3) a fully executed construction loan commitment (including borrower's completion guarantee to lender) to complete Phase I of the Project by the Completion Date; (4) any and all building permits required by the City for the development of Phase I.

(d) A Special Tax Allocation Fund (the "Incremental Taxes Fund") for the Redevelopment Project Area has been, or will be, created pursuant to the Act and the ordinances adopted by the City relating to the Redevelopment Project Area. The City pledges that it will deposit the entirety of the real estate tax increment into the Incremental Taxes Fund. The sales tax increment shall be deposited into a separate sales tax fund. Funds from these two accounts may collectively be used to pay debt service in the GO-TIF Bonds, but the funds in the Incremental Taxes Fund must be used for such purpose first. The Incremental Taxes Fund is a special fund, and the aforesaid deposits into or out of the Incremental Taxes Fund shall not be

subject to the appropriation process of the corporate authorities and the amounts deposited therein shall be disbursed in accordance with this Agreement, the TIF Bonds and any TIF bond indenture or bond ordinance without further action of the Corporate Authorities. In addition, to the fullest extent lawful, the City agrees as follows: (1) it will not, without the consent of the Developer, revoke or amend the ordinances adopted by the City relating to the Redevelopment Project Area; (2) it will not, except as provided herein, pledge or apply the Incremental Taxes Fund to any other purpose or payment of any other obligation of the City; (3) it will properly account for all monies in the Incremental Taxes Fund; (4) it will not take any action or omit to take any action that will affect the continued existence of the Incremental Taxes Fund or the availability of monies in the Incremental Taxes Fund to pay the TIF Bonds; (5) it will take all actions and submit all documents required by the Act in a timely manner in order to receive all Real Estate Tax Increment and Sales Tax; and (6) it will direct the investment of the Real Estate Tax Increment and Sales Tax in accordance with Illinois State Law. The parties also agree that they will take all actions necessary to ensure that the interest payable on the GO-TIF bonds is and remains exempt from taxation under the Internal Revenue Code of 1986, as amended, if applicable, and all related regulations of the Department of the Treasury.

Developer agrees that each and every lease Developer enters into with a commercial tenant shall provide that said commercial

tenant shall, concurrently with the filing of any and all reports with the Illinois Department of Revenue or any successor agency, furnish to the City (to the attention of the City's Finance Director) copies of any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity. Said leases shall also provide that in the event the State of Illinois is unable or unwilling to provide such information to the City, said commercial tenant shall, upon at least thirty (30) days prior written request therefor, provide the City with all documentation available that the City reasonably deems necessary to accurately determine the amount of the City's Tax Revenue Share. Said commercial tenants shall, upon the request of City, furnish such consents or waivers as may be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in order to release the above-described sales tax information to the City. Developer hereby acknowledges and agrees that any disbursements of the City's share of sales tax due it for any revenue year can only be made from and to the extent of sales data submitted in accordance herewith.

(e) The Developer shall be entitled to any interest earned on the Incremental Taxes Fund and on the Sales Tax Fund. It is understood and agreed by the parties here to that in no event shall the sum total of payments due the Developer under this Agreement, including interest, exceed the amount of $3,500,000.00.

(f) It is agreed that, if the Developers are in complete compliance with this Agreement as to Phase I of the Project, the sum of three million dollars ($3,000,000.00) from the proceeds of the sale of the GO-TIF Bonds shall be held by the City in a separate account ("Bond Disbursement Account"), solely for the purpose of disbursing the same to Developer from time to time, in accordance with the terms of this Agreement.

The City shall receive all of its costs and expenses associated with the sale of the GO-TIF Bonds at the closing of the same.

The $3,000,000.00 portion of the proceeds of the GO-TIF Bonds shall be disbursed by the City, but only for eligible TIF expenditures under the Act, to the Developer in the following manner:

(1) The sum of One million Five Hundred Thousand Dollars ($1,500,000.00) shall be disbursed from the Bond Disbursement Account upon receipt of evidence that (A) Developer has obtained a temporary certificate of occupancy for the Phase I Residential Tower; (B) Developer has completed the construction of the parking garage and sidewalks and driveways for Phase I.

(2) The remaining One Million Five Hundred Thousand Dollars ($1,500,000.00) plus any interest thereon, from the date of the first disbursement, to the extent said interest is not required to meet debt service or abatement, shall be disbursed from the Bond Disbursement Account to the Developer upon issuance of a final certificate of occupancy

for Phase I of the Project, receipt of an executed lease for a retail store of approximately 30,000 square feet which generates a minimum of $150.00 per square foot of sales and has opened for business, proof of fully executed written leases for ten percent 10% of the residential units, and completion of all site work and landscaping for Phase I.

(g) The Developer shall be entitled to receive not more than $500,000.00 of additional money from the City beyond the $3,000,000.00, provided all of the following conditions are met:

(1) The Developer incurred statutory eligible redevelopment project costs under the Act that legally may be reimbursed by the City in excess of the $3,000,000.00 referred to above and;

(2) Developer shall begin construction of Phase II of the project by July 1, 1998 and shall complete Phase II on or before June 1, 1999. The date set forth in this paragraph (2) is an extension authorized by Ordinance No. 54-O-95 (Exhibit 7 hereto).

(3) The City receives real estate tax increment and/or sales tax in excess of that required for the scheduled payments of principal and interest for the TIF Bonds and the annual $25,000.00 payment due the City for eligible redevelopment project costs (Excess Tax Increment).

The maximum amount of additional money that may be paid to the Developer under this paragraph (g) shall be $500,000.00, but in no event shall the total disbursement to the Developer exceed

$3,500,000.00.

The City shall establish and maintain a separate Developer Account ("Developer Account") into which it shall annually deposit the first $200,000.00 plus one-third (1/3) of the remainder of Excess Tax Increment received. The City shall be entitled to the remaining two-thirds (2/3) of the remainder of Excess Tax Increment received. The City agrees to make such deposits on December 31, of each year, commencing the first year in which Excess Tax Increment is received, and terminating on July 1, 1998, or the date on which Developer begins construction of Phase II of the Project, whichever is earlier.

Provided the above referenced three conditions are met, the Developer shall receive 50% of the funds on deposit in the separate Developer Account (including interest) upon beginning construction of Phase II of the Project.

During construction of Phase II of the Project and to the extent Excess Tax Increment exists, Developer shall be entitled to receive annual payments from the City. Said payments shall be a proportion of the Excess Tax Increment calculated as the ratio between that portion of Phase II for which building permits have been issued, and the minimum Phase II development defined in paragraph 3(a) herein. Said payments shall be made by January 31 of the following year with an explanation of the receipts and disbursements from the account for the prior year.

Provided Developer completes the construction of Phase II of the Project on or before June 1, 1999, Developer shall, upon said completion, be entitled to receive the remaining 50% of the funds

on deposit in the separate Developer Account, (including interest). In addition, after the completion of Phase II of the Project, Developer shall be entitled to receive annual payments based upon the formula for deposits in the Developer account until it has received the sum of $500,000.00 or such lesser amount limited by the above three conditions.

The annual payments to the Developer shall not equal $500,000 until the Developer has completed the minimum development program for Phase II and leases have been secured for a use acceptable to the City.

(h) The City shall be entitled to any interest earned on the funds in the Bond Disbursement Account until the first disbursement is made. The city shall have the right to direct the investment of the funds in all the referenced accounts, and shall do so in accordance with Illinois State law.

(i) The developer shall evidence its expenditure of eligible redevelopment project costs under the Act in the following manner: (1) for land acquisition and write-down, by providing the City with an executed copy of the deed from WNC to CCLP and an appraisal as previously provided for in paragraph 4(c)(1) and (2) respectively, herein; (2) for site preparation and demolition, by providing the City with reasonable evidence of expenditure for such purpose and (3) for all other eligible redevelopment project costs, by providing the City with reasonable evidence of expenditure for such purposes.

(j) The City hereby designates the City Finance Director as

its representative to coordinate the authorization of disbursement of funds from the account and the Incremental Taxes Fund. The City intends to use GO-TIF Bond Proceeds to pay Developer, capitalized interest, as well as the City's administrative, legal and bond issuance costs constituting Redevelopment Project Costs (as defined in the Act) and as are listed in Exhibit 6 to this Agreement.

(k) It is understood and agreed to by the parties that in no event shall the sum total of payments due Developer under this Agreement, including interest, exceed the amount of $3,500,000.00.

5. TRANSFERS PRIOR TO CERTIFICATE OF OCCUPANCY

Mortgages, deeds of trust, sales and leases-back, ground leases or any other form of financing conveyances including the formation of a joint venture with a pension fund in which the Developer retains at least 50% of ownership and control of the Project, required for any method of financing are permitted before issuance of a certificate of occupancy for Phase I of the Project improvements for the purpose of securing loans or funds to be used for financing the acquisition of the Subject Property or any portion thereof, the construction of the improvements on the Subject Property, and any other expenditures necessary and appropriate to complete the Project under this Agreement.

Developer shall notify the City in advance of any mortgage, deed of trust, sale and lease-back, joint venture or other form of conveyance for financing if it proposes to enter into the same before issuance of a certificate of occupancy for Phase I of the

Project improvements. The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction, and land development, and the words "sale and lease-back" shall include sales and subleases-back. Any such lease, transfer, sale, joint venture or conveyance for financing shall not relieve Developer from any of its respective obligations or responsibilities hereunder unless the City specifically, and in writing, releases Developer from any such obligation or responsibility. Any such subsequent owner shall take subject to and be bound by the terms and conditions of this Agreement. Except as provided in this paragraph, Developer shall not, prior to the issuance of a certificate of occupancy for Phase I of the Project improvements, sell, transfer, convey, assign or lease any of its interest in the Subject Property or any part hereof, without compliance with this Agreement provided, however, nothing herein shall preclude execution of easements, leases for occupancy by lessees of any part of the Subject Property, or collateral assignments and/or mortgages of the Developer's rights respecting Phase I of the Project and/or the Subject Property to lenders financing the Project. After certificates of occupancy for Phase I of the Project have been issued, the requirements of this paragraph 5 shall no longer apply.

6. NOTICES

All notices herein required shall be in writing and shall be served on the parties, either personally or mailed by certified or registered mail, return receipt requested as follows:

If to the City: City of Evanston
2100 Ridge Road
Evanston, Illinois
Attn: City Manager

With a copy to: Burke and Ryan
33 N. Dearborn St. (402)
Chicago, IL 60602

To CCLP and JBC: John G. Iberle
c/o The John Buck Company
200 S. Wacker Dr. (4000)
Chicago, IL 60606

With a copy to: Daniel L. Houlihan
Houlihan & Associates
111 W. Washington, (1631)
Chicago, IL 60602

To WNC: Thomas Pontarelli
Executive Vice President
Washington National Corporation
300 Tower Parkway
Lincolnshire, IL 60060-3665

7. PROGRESS REPORTS

Upon request from time to time by the City or by Developer the party to whom such request is directed agrees to make brief monthly progress reports informing the other party of all matters and of all studies made by the reporting party relating to the development of the Subject Property as well as meeting the requirements of minority and women participation as set forth in applicable law.

8. BROKER'S COMMISSION

Developer agrees to indemnify, defend and hold harmless the City, its officers and employees from any and all claims for any

real estate broker commissions or fees as a consequence of the execution of this Agreement, or CCLP's purchase of the Subject Property. The City hereby represents that it has not engaged any brokers in connection with the transactions contemplated in this Agreement.

9. MEMORANDUM

Neither party shall record this Agreement, but each party agrees to execute and to deliver to the other party when this Agreement is executed and delivered, multiple copies of a memorandum in a form acceptable to their respective counsel. Any party, at its sole expense, may record the memorandum in the offices of the Recorder of Deeds of Cook County, Illinois.

10. LEGAL CONFORMITY

The parties shall carry out the construction of the Project in conformity with all applicable laws and ordinances, including all applicable federal and state standards. The laws of the State of Illinois shall govern the interpretation and enforcement of this Agreement.

11. PERMITTED DELAYS

Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by

the party claiming such extension is sent to the other party not more than twenty (20) days after the commencement of the cause or not more than twenty (20) days after the party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later.

12. MORTGAGE HOLDERS

(a) Whenever the City shall deliver any notice or demand to Developer with respect to any alleged breach or default by Developer hereunder, the City shall at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest and the lessor under a lease-back or grantee under any other conveyance for financing a copy of such notice or demand, provided the City has been advised of the name and address of any such holder. Each such holder or other entity shall (insofar as the rights of the City are concerned) have the right at its option within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien of its security interest or to the obligations of the lessee under the lease-back or of the grantor under any other conveyance for financing; provided, however, in the event of a default by Developer hereunder which is not curable by such holder or other entity (e.g., insolvency or bankruptcy of Developer), such holder or other entity shall be deemed to have cured such noncurable defaults by its execution of the assumption agreement contemplated in the later portions of this paragraph.

(b) The holder of any mortgage, deed of trust or other

security interest and the lessor under a lease-back or grantee under any other conveyance for financing referred to in paragraph 5 of this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion, notwithstanding the assignment of this Agreement to such party by Developer. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Subject Property to any uses, or to construct any improvement thereon, other than those uses or improvements provided for or authorized by this Agreement, any such unauthorized use or improvements being expressly prohibited. Nothing contained in this Agreement shall be deemed to permit or authorize any holder or other entity to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvement or construction already made) without first having expressly assumed the obligations of Developer (with respect to the portion of the Subject Property on which the holder or other entity has an interest) to the City by written agreement satisfactory to the City. The holder or other entity in this event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder or other entity relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Such holder and its successors in interest shall only be deemed to have assumed the obligations of Developer for as long as they have an interest in

the Subject Property, and the sole remedy for breach of this assumption agreement will be limited to the equity interest of such holder or successor in the Subject Property. No such assumption agreement will relieve Developer of any of its obligations under this Agreement. Any such holder or other entity properly completing such improvements shall be entitled, upon written request made to the City, to a certificate of occupancy from the City with respect to such improvements. Nothing in this paragraph 13 shall be deemed to grant to any such holder or other entity referred to in this paragraph any rights or powers beyond those granted under their underlying agreement with Developer.

(c) In the event of a default or breach by Developer or any entity permitted to acquire title hereunder, in the construction or completion of construction of the improvements contemplated hereunder, which is also a default under any mortgage, deed or trust, other security instrument or lease-back or obligations to the grantee under any other conveyance for financing with respect to the Subject Property prior to the issuance of the certificate of occupancy for the project and the holder, lessor or grantee, as the case may be, has not exercised its option to complete the Project, the City may cure the default or cause the same to be cured prior to completion of any foreclosure as a result of such default or termination of the lease or other interest retained or granted back as a result of such default. In such event, the City or its nominee shall be entitled to reimbursement from Developer respectively of all reasonable costs and expenses

incurred by the City in curing the default, of such party, including reasonable attorneys' fees. The City shall also be entitled to a lien upon the Subject Property to the extent of such reasonable costs and expenses including reasonable attorneys' fees. Any such lien shall be subject to mortgages, deeds of trust or other security instruments and the interest of a lessor under any lease-back and grantees under other conveyances for financing executed for the sole purpose of obtaining funds to purchase and develop the Subject Property, construct the improvements, finance such costs and to pay all costs reasonably related to Developers obtaining and performing this Agreement.

13. CERTIFICATES OF OCCUPANCY

Certificates of occupancy shall be issued in accordance with the city code, upon written request of Developer or other permitee.

14. NO DISCRIMINATION-CONSTRUCTION

Developer for itself and its successors and assigns agree that in the construction of the improvements on the Subject Property provided for in this Agreement:

(a) Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or sexual orientation. Developer shall take affirmative action to require that applicants are employed and that employes are treated during employment, without regard to race, creed, color, religion, sex, national origin, disability or sexual orientation. Such action shall include, but not be

limited to , the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising, solicitations or advertisements of employees; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, in and on the Subject Property, available to employees and applicants for employment, notices which may be provided by the City setting forth the provisions of the nondiscrimination clause.

(b) Notwithstanding the foregoing provisions, Developer shall be entitled to employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

(c) In addition to the foregoing covenants, as more fully provided in Paragraph 15(b) below, in the construction of the improvements on the Subject Property provided for in this Agreement, Developer shall use its best efforts to secure participation by MBEs (as Defined in Paragraph 16(b) below), with a goal of 25% of the aggregate dollar volume of all such construction to be let to MBEs. Such best efforts shall include, without limitation, utilizing their best efforts to secure participation by a joint venture between an MBE and non-MBE entity in at least one portion of construction of the improvements on the Subject Property, which MBE joint venture participation shall be included as MBE participation in determining whether the 25% participation goal has been satisfied. In the event that notwithstanding such best efforts, said goal of 25% MBE participation is not met, which shall be

determined at the time of the final disbursement of proceeds under Paragraph 4(f) above, then the City shall retain from the final disbursement of such proceeds a fund equal to $50,000 to be utilized by the City to create a job training program.

15. NO DISCRIMINATION-USE

(a) Developer, agrees to comply with all applicable law prohibiting discrimination against, or segregation of, any person, or group of persons, on accounts of sex, race, color, creed, national origin, disability or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Subject Property. In addition, Developer itself or any person claiming under or through it, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of any portion of the Subject Property.

(b) Developer shall exercise its best efforts to secure minority business enterprises the greatest possible participation in all construction and service contracts for the Project. A minority business enterprise ("MBE") shall mean any entity which is owned or controlled by one or more minorities (including, without limitation, women), who, to the extent feasible, reside in Evanston, and which is, to the extent feasible, a small business concern within Section 3 of the Small Business Act. Developer shall be responsible for utilizing its best efforts to secure participation by MBEs with the goal that 25% of the aggregate dollar volume of all construction and service contracts

be let to MBEs with respect to the Project. Developer shall exercise its best efforts to identify appropriate MBEs and, where necessary, shall assist such MBEs in qualifying to secure construction or service work in the Project. Developer further agrees that the leases Developer enters into with its commercial tenants shall contain language similar to that contained in this Paragraph 14(b).

(c) Developer hereby acknowledges that it will comply with all provisions of the City of Evanston Fair Housing Ordinance (Title 5, chapter 5 of City Code).

16. EMPLOYMENT OPPORTUNITIES MARKETING

Prior to the initial hire of employees for the commercial retail operations, Developer agrees to use its best efforts to require its commercial tenants to place employment advertisements within newspapers or publications of local distribution at least two (2) weeks in advance of advertising such employment opportunities in newspapers or publication of general distribution. The Developer shall use its best efforts to require the commercial tenants to coordinate this advertisement and initial employment interview process with City staff in order to make jobs available for City residents.

17. REMEDIES-LIABILITY

(a) In addition to any other rights or remedies, any party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement, any at law or in equity, including, but not limited to the

equitable remedy of an action for specific performance. In the event any party shall institute legal action because of a breach of any provision or obligation contained in this Agreement, and a breach shall be established by a final, non-appealable judgment against a party, the prevailing party shall be entitled to recover all damages, costs and expenses, including reasonable attorneys' fees incurred therefor.

(b) The rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other parties.

(c) Subject to the extensions of time set forth in paragraph 11, failure or delay by any party to perform any term or provision of this Agreement shall constitute a default under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy with due diligence. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as required to protect against further damages, and except as otherwise expressly provided in this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after giving

such notice. If such default cannot be cured within such thirty (30) day period, said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the defaulting party diligently proceeds therewith; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. A default not cured as provided above shall constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(d) Each of the following acts or omissions of Developer shall constitute a breach or default:

1. Developer transfers, or suffers any involuntary transfer of its interest in the Subject Property, or any part thereof, in violation of this Agreement (it is understood and agreed that the conveyance of portions of the Subject Property from Washington National Insurance company to CCLP pursuant to paragraph 2 and of this Agreement shall not constitute a default under this Agreement);

2. The filing or execution or occurrence of: a petition filed by Developer seeking any debtor relief; the making of an assignment for the benefit of creditors by Developer or its execution of any instrument for the purpose of effecting a composition of creditors; or if Developer is adjudicated as

bankrupt.

18. ASSIGNMENT

During the term of the Bonds, any transfer of all or any interest in the Subject Property, any improvements thereon and this Agreement (including the beneficial interest under a land trust that takes title to the Subject Property) is only permitted upon the prior written approval of the City which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that nothing herein shall preclude execution of easements or leases for occupancy by lessees of any part of the Subject Property or collateral assignments and/or mortgages of the Developer's rights and/or sales and leases-back respecting the Project and/or the Subject Property to lenders financing the Project or their respective portions thereof. As a minimum, the City shall be entitled to reasonably require the following regarding any transfer:

a. Any proposed transferee of Developer shall have the experience and financial responsibility necessary to fulfill the obligations undertaken by Developer in this Agreement.

b. Any such proposed transferees shall have expressly assumed the obligations of Developer hereunder in writing.

c. Any such proposed transferee shall not be in default on any obligation to the City

d. A copy of the proposed deed and transfer declaration involved and affecting any such transfer from Developer to any transferee shall be submitted to the City for review. Upon compliance with the requirements contained in this Paragraph 18,

Developer shall be relieved from all further liability under this Agreement. In the absence of specific written agreement by the City, no transfer shall be deemed to relieve Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Project from any of their obligations with respect thereto as to the interest transferred. Notwithstanding any other provision in this Agreement, Developer may without prior City approval transfer all or any portion of Subject Property or this Agreement to a limited partnership or any other entity in which Developer maintain control and ownership of 50% or more of said interest.

Developer shall in any event notify the City of any transfer of any interest in its portion of the Subject Property (including the beneficial interest under any land trust).

19. CONDOMINIUM CONVERSION

Nothing contained herein shall prevent the Developer from converting Phase I of the Project to a condominium development. Upon completion of the sale of 25% of the condominium units the Developer shall immediately pay to the City the sum of $250,000.00 or such lesser sum as may be required by City Covenants regarding its Bonds, as determined by bond counsel to the City.

20. INSURANCE

While any Bonds are outstanding, Developer shall carry and maintain, and the successor owners, shall carry and maintain property insurance covering the Subject Property with a responsible insurance company or companies, against physical loss

or damage, including fire and extended coverage, vandalism, malicious mischief, collapse, boiler and sprinkler leakage, with such exceptions as are ordinarily required by insurers of structures or facilities of similar type, in an amount not less than one hundred percent (100%) of the replacement value thereof, and, Developer, its agents, representatives, successors, assigns and transferees agree that the proceeds from such insurance may be used and may be applied for the purpose of repair, replacement or reconstruction of the damaged or destroyed portion of the respective portion of the Subject Property provided, however, that in the event Developer should not apply the proceeds in such a manner, any damages claimed by the City shall be limited to the then outstanding amount of the GO-TIF Bonds, or such lesser sum as may be required by City covenants regarding its Bonds, as determined by bond counsel to the City. In addition, Developer, while any Bonds are outstanding, shall carry and maintain, and their successors shall carry and maintain policies of insurance covering any and all losses by death, injuries, losses, damages, suits, liability, judgments, costs and expenses of any type including costs of defense (including by not limited to reasonable attorneys fees).

21. INDEMNIFICATION

Developer shall indemnify and hold harmless the City, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses of any type including costs of defense (including but not limited to reasonable attorney's fees), arising out of the

condition of the Subject Property, including, but not limited to the presence of any hazardous waste or other environmental condition thereof, or out of the negligence or reckless or willful misconduct of Developer, its general contractor or its or their employees and agents, (but excluding in all cases, those arising out of the negligence of the City, its officers, agents, employees and contractors.)

22. EXISTING ENVIRONMENTAL CONDITIONS

The parties acknowledge that the City has never held title to the Subject Property. Developer therefore agrees as follows:

(a) that of will not initiate any environmental action against the City;

(b) that if the City is named a party in any environmental action, Developer, as its cost, will defend the City in such proceeding.

23. AMENDMENT

This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties with the adoption of an ordinance or resolution of the City approving said amendment, as provided by law, and by the execution of the amendment by the parties or their successors in interest. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

24. DUPLICATE ORIGINALS

This Agreement is executed in six (6) duplicate originals,

each of which is deemed to be an original.

25. TIME

Time is of the essence of this Agreement.

26. CERTIFICATE OF COMPLETION

Promptly after completion of the construction of each phase of the Project, in accordance with this Agreement, the City shall furnish Developer, with an appropriate instrument so certifying. The certification by the City shall be conclusive determination of satisfaction and termination of only the covenants in this Agreement with respect to the obligations of Developer and its successors and assigns to construct the Project. The certification shall be in such form as will enable it to be recorded. Upon written request by Developer for a certificate of completion, the City shall within thirty (30) days after receipt of the same provide Developer either with a certificate of completion or a written statement indicating in adequate detail, how Developer has failed to complete the construction in conformity with the Redevelopment Plan or this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for Developer to take or perform in order to obtain the certification. If the City requires additional measures or acts of Developer to assure compliance, Developer shall resubmit a written request for a certificate of completion upon compliance with the City's response.

IN WITNESS WHEREOF this Agreement has been duly authorized and approved by the City Council of the City of Evanston, Cook

County, Illinois, and duly authorized, approved and executed by

_____

_____ as of the date and year first above set forth.

CITY:

CITY OF EVANSTON, an Illinois home rule municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

CHURCH AND CHICAGO LIMITED PARTNERSHIP

By:_____

JBC EVANSTON LIMITED PARTNERSHIP

By:_____

WASHINGTON NATIONAL INSURANCE CORP.

By:_____

Attest:_____

JOHN BUCK COMPANY

By:_____

Attest:_____