

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
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**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
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Exhibit K	City Note Requisition Form
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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.)

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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 1st of one calendar year through September 30th 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
ESTIMATED TOTAL:	\$122,590,000

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 30th 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 1st 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.

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.

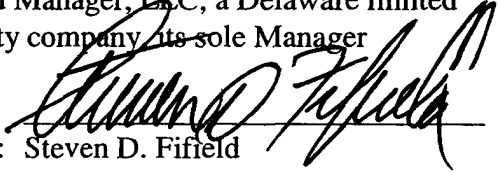
DEVELOPER

**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
company**

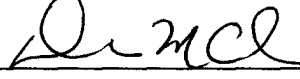

Its: Managing Member

**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

STATE OF ILLINOIS)
) ss
COUNTY OF ~~COOK~~)
 Will

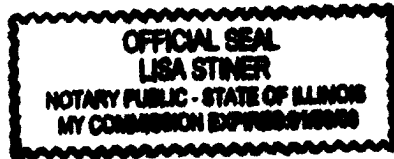
I, Lisa Stiner, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Steven D. Fifield, personally known to me to be the sole manager of Fifield Manager, LLC, a Delaware limited liability company (the "Manager") which is the sole manager of FRC 550 LLC, an Illinois 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

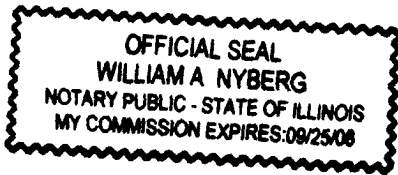
(SEAL)



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**

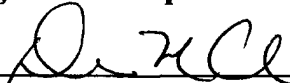
By: _____

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



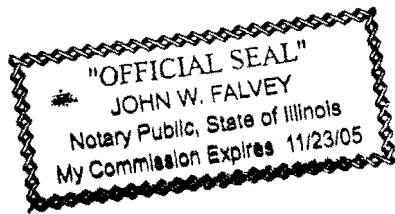
STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

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 2nd 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*.]

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 (15th) 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 (15th) 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: