

FY 2022

ANNUAL TAX INCREMENT FINANCE REPORT



SUSANA A. MENDOZA ILLINOIS STATE COMPTROLLER

Name of Municipality: Des Plaines Reporting Fiscal Year: 2022
County: Cook Fiscal Year End: 12/31/2022
Unit Code: 016/140/30

FY 2022 TIF Administrator Contact Information-Required

First Name: Michael Last Name: Bartholomew
Address: 1420 Miner Street Title: City Manager
Telephone: 847/391-5488 City: DesPlaines Zip: 60016
E-mail

I attest to the best of my knowledge, that this FY 2022 report of the redevelopment project area(s)
in the City/Village of:
is complete and accurate pursuant to Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-3 et. seq.] and or Industrial Jobs Recovery Law [65 ILCS 5/11-74.6-10 et. seq.].
Written signature of TIF Administrator Date 6-26-2023

Section 1 (65 ILCS 5/11-74.4-5 (d) (1.5) and 65 ILCS 5/11-74.6-22 (d) (1.5)\*)

FILL OUT ONE FOR EACH TIF DISTRICT

Table with 3 columns: Name of Redevelopment Project Area, Date Designated MM/DD/YYYY, Date Terminated MM/DD/YYYY. Rows include TIF No. 1 Downtown, TIF No. 3 Wille Road MtProspect Road, TIF No. 4 Five Corners Rand Road, TIF No.5 Lee Street Perry Stret, TIF No. 6 Mannheim Higgins Road, TIF No. 7 Higgins Road and Pratt Avenue, TIF No. 8 Oakton Street.

\*All statutory citations refer to one of two sections of the Illinois Municipal Code: The Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-3 et. seq.] or the Industrial Jobs Recovery Law [65 ILCS 5/11-74.6-10 et. seq.]

**SECTION 2** [Sections 2 through 8 must be completed for each redevelopment project area listed in Section 1.]

**FY 2022**

**Name of Redevelopment Project Area:**

**TIF 8 Oakton**

<b>Primary Use of Redevelopment Project Area*:</b> CBD
*Types include: Central Business District, Retail, Other Commercial, Industrial, Residential, and Combination/Mixed.
<b>If "Combination/Mixed" List Component Types:</b> Mixed Ind.Com Ret
<b>Under which section of the Illinois Municipal Code was Redevelopment Project Area designated? (check one):</b>
Tax Increment Allocation Redevelopment Act <span style="float: right;"><u>X</u></span>
Industrial Jobs Recovery Law

**Please utilize the information below to properly label the Attachments.**

	No	Yes
For redevelopment projects beginning prior to FY 2022, were there any amendments, to the redevelopment plan, the redevelopment project area, or the State Sales Tax Boundary? [65 ILCS 5/11-74.4-5 (d) (1) and 5/11-74.6-22 (d) (1)] <b>If yes, please enclose the amendment (labeled Attachment A).</b> For redevelopment projects beginning in or after FY 2022, were there any amendments, enactments or extensions to the redevelopment plan, the redevelopment project area, or the State Sales Tax Boundary? [65 ILCS 5/11-74.4-5 (d) (1) and 5/11-74.6-22 (d) (1)] <b>If yes, please enclose the amendment, enactment or extension, and a copy of the redevelopment plan (labeled Attachment A).</b>	X	
Certification of the Chief Executive Officer of the municipality that the municipality has complied with all of the requirements of the Act during the preceding fiscal year. [65 ILCS 5/11-74.4-5 (d) (3) and 5/11-74.6-22 (d) (3)] <b>Please enclose the CEO Certification (labeled Attachment B).</b>		X
Opinion of legal counsel that municipality is in compliance with the Act. [65 ILCS 5/11-74.4-5 (d) (4) and 5/11-74.6-22 (d) (4)] <b>Please enclose the Legal Counsel Opinion (labeled Attachment C).</b>		X
Statement setting forth all activities undertaken in furtherance of the objectives of the redevelopment plan, including any project implemented and a description of the redevelopment activities. [65 ILCS 5/11-74.4-5 (d) (7) (A and B) and 5/11-74.6-22 (d) (7) (A and B)] <b>If yes, please enclose the Activities Statement (labeled Attachment D).</b>		X
Were any agreements entered into by the municipality with regard to the disposition or redevelopment of any property within the redevelopment project area or the area within the State Sales Tax Boundary? [65 ILCS 5/11-74.4-5 (d) (7) (C) and 5/11-74.6-22 (d) (7) (C)] <b>If yes, please enclose the Agreement(s) (labeled Attachment E).</b>		X
Is there additional information on the use of all funds received under this Division and steps taken by the municipality to achieve the objectives of the redevelopment plan? [65 ILCS 5/11-74.4-5 (d) (7) (D) and 5/11-74.6-22 (d) (7) (D)] If yes, please enclose the Additional Information (labeled Attachment F).	X	
Did the municipality's TIF advisors or consultants enter into contracts with entities or persons that have received or are receiving payments financed by tax increment revenues produced by the same TIF? [65 ILCS 5/11-74.4-5 (d) (7) (E) and 5/11-74.6-22 (d) (7) (E)] <b>If yes, please enclose the contract(s) or description of the contract(s) (labeled Attachment G).</b>	X	
Were there any reports <u>submitted to</u> the municipality <u>by</u> the joint review board? [65 ILCS 5/11-74.4-5 (d) (7) (F) and 5/11-74.6-22 (d) (7) (F)] <b>If yes, please enclose the Joint Review Board Report (labeled Attachment H).</b>	X	
Were any obligations issued by the municipality? [65 ILCS 5/11-74.4-5 (d) (8) (A) and 5/11-74.6-22 (d) (8) (A)] <b>If yes, please enclose any Official Statement (labeled Attachment I). If Attachment I is answered yes, then the Analysis must be attached (labeled Attachment J).</b>	X	
An analysis prepared by a financial advisor or underwriter, <b>chosen by the municipality</b> , setting forth the nature and term of obligation; projected debt service including required reserves and debt coverage; <b>and actual debt service.</b> [65 ILCS 5/11-74.4-5 (d) (8) (B) and 5/11-74.6-22 (d) (8) (B)] <b>If attachment I is yes, the Analysis and an accompanying letter from the municipality outlining the contractual relationship between the municipality and the financial advisor/underwriter MUST be attached (labeled Attachment J).</b>	X	
Has a cumulative of \$100,000 of TIF revenue been deposited into the special tax allocation fund? 65 ILCS 5/11-74.4-5 (d) (2) and 5/11-74.6-22 (d) (2) <b>If yes, please enclose Audited financial statements of the special tax allocation fund (labeled Attachment K).</b>		X
Cumulatively, have deposits of incremental taxes revenue equal to or greater than \$100,000 been made into the special tax allocation fund? [65 ILCS 5/11-74.4-5 (d) (9) and 5/11-74.6-22 (d) (9)] <b>If yes, the audit report shall contain a letter from the independent certified public accountant indicating compliance or noncompliance with the requirements of subsection (q) of Section 11-74.4-3 (labeled Attachment L).</b>		X
A list of all intergovernmental agreements in effect to which the municipality is a part, and an accounting of any money transferred or received by the municipality during that fiscal year pursuant to those intergovernmental agreements. [65 ILCS 5/11-74.4-5 (d) (10)] <b>If yes, please enclose the list only, not actual agreements (labeled Attachment M).</b>	X	
For redevelopment projects beginning in or after FY 2022, did the developer identify to the municipality a stated rate of return for each redevelopment project area? Stated rates of return required to be reported shall be independently verified by a third party chosen by the municipality. <b>If yes, please enclose evidence of third party verification, may be in the form of a letter from the third party (labeled Attachment N).</b>	X	

**SECTION 3.1** [65 ILCS 5/11-74.4-5 (d)(5)(a)(b)(d)] and (65 ILCS 5/11-74.6-22 (d) (5)(a)(b)(d)]

**FY 2022**

**Name of Redevelopment Project Area:**

**TIF 8 Oakton**

**Provide an analysis of the special tax allocation fund.**

Special Tax Allocation Fund Balance at Beginning of Reporting Period \$ 2,287,784

SOURCE of Revenue/Cash Receipts:	Revenue/Cash Receipts for Current Reporting Year	Cumulative Totals of Revenue/Cash Receipts for life of TIF	% of Total
Property Tax Increment	\$ 1,085,223.00	\$ 3,620,783.00	100%
State Sales Tax Increment			0%
Local Sales Tax Increment			0%
State Utility Tax Increment			0%
Local Utility Tax Increment			0%
Interest	\$ 13.00	\$ 38.00	0%
Land/Building Sale Proceeds			0%
Bond Proceeds			0%
Transfers from Municipal Sources			0%
Private Sources			0%
Other (identify source _____; if multiple other sources, attach schedule)			0%

**All Amount Deposited in Special Tax Allocation Fund** \$ 1,085,236.00

**Cumulative Total Revenues/Cash Receipts** \$ 3,620,821 100%

**Total Expenditures/Cash Disbursements (Carried forward from Section 3.2)** \$ 592,913.00

**Transfers to Municipal Sources** \$ -

**Distribution of Surplus**

**Total Expenditures/Disbursements** \$ 592,913

**Net/Income/Cash Receipts Over/(Under) Cash Disbursements** \$ 492,323

**Previous Year Adjustment (Explain Below)**

**FUND BALANCE, END OF REPORTING PERIOD\*** \$ 2,780,107

\* If there is a positive fund balance at the end of the reporting period, you must complete Section 3.3

**Previous Year Explanation:**

**SECTION 3.2 A** [65 ILCS 5/11-74.4-5 (d) (5) (c) and 65 ILCS 5/11-74.6-22 (d) (5)(c)]

**FY 2022**

**Name of Redevelopment Project Area:**

**TIF 8 Oakton**

**ITEMIZED LIST OF ALL EXPENDITURES FROM THE SPECIAL TAX ALLOCATION FUND  
PAGE 1**

Category of Permissible Redevelopment Cost [65 ILCS 5/11-74.4-3 (q) and 65 ILCS 5/11-74.6-10 (o)]	Amounts	Reporting Fiscal Year
1. Cost of studies, surveys, development of plans, and specifications. Implementation and administration of the redevelopment plan, staff and professional service cost.		
Transfers out	36,000	
		\$ 36,000
2. Annual administrative cost.		
		\$ -
3. Cost of marketing sites.		
		\$ -
4. Property assembly cost and site preparation costs.		
		\$ -
5. Costs of renovation, rehabilitation, reconstruction, relocation, repair or remodeling of existing public or private building, leasehold improvements, and fixtures within a redevelopment project area.		
		\$ -
6. Costs of the construction of public works or improvements.		
Economic Development	46,511	
		\$ 46,511



**SECTION 3.2 A  
PAGE 3**

13. Relocation costs.		
		\$ -
14. Payments in lieu of taxes.		
		\$ -
15. Costs of job training, retraining, advanced vocational or career education.		
		\$ -
16. Interest cost incurred by redeveloper or other nongovernmental persons in connection with a redevelopment project.		
		\$ -
17. Cost of day care services.		
		\$ -
18. Other.		
		\$ -
<b>TOTAL ITEMIZED EXPENDITURES</b>		<b>\$ 592,913</b>



**SECTION 3.3 [65 ILCS 5/11-74.4-5 (d) (5d) 65 ILCS 5/11-74.6-22 (d) (5d)]**

**FY 2022**

**Name of Redevelopment Project Area:**

**TIF 8 Oakton**

**Breakdown of the Balance in the Special Tax Allocation Fund At the End of the Reporting Period by source**

<b>FUND BALANCE BY SOURCE</b>	<b>\$ 2,780,107</b>
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1. Description of Debt Obligations	Amount of Original Issuance	Amount Designated
<b>Total Amount Designated for Obligations</b>	<b>\$ -</b>	<b>\$ -</b>

2. Description of Project Costs to be Paid	Amount of Original Issuance	Amount Designated
Land Acquisition		\$ 890,000
Project Development		\$ 11,500,000
<b>Total Amount Designated for Project Costs</b>		<b>\$ 12,390,000</b>

<b>TOTAL AMOUNT DESIGNATED</b>	<b>\$ 12,390,000</b>
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<b>SURPLUS/(DEFICIT)</b>	<b>\$ (9,609,893)</b>
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**SECTION 4** [65 ILCS 5/11-74.4-5 (d) (6) and 65 ILCS 5/11-74.6-22 (d) (6)]

**FY 2022**

**Name of Redevelopment Project Area:**

**TIF 8 Oakton**

**Provide a description of all property purchased by the municipality during the reporting fiscal year within the redevelopment project area.**

	Indicate an 'X' if no property was acquired by the municipality within the redevelopment project area.
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Property (1):	
Street address:	1396 E. Oakton
Approximate size or description of property:	7500 sq ft
Purchase price:	\$ 500,000.00
Seller of property:	Taoufik S. Boujbel and Ahmad Fahoum

Property (2):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (3):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (4):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (5):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (6):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (7):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

**SECTION 5 [20 ILCS 620/4.7 (7)(F)]**

**FY 2022**

**Name of Redevelopment Project Area:**

**TIF 8 Oakton**

**PAGE 1**

**Page 1 MUST be included with TIF report. Pages 2 and 3 are to be included ONLY if projects are listed.**

**Select ONE of the following by indicating an 'X':**

<b>1. NO</b> projects were undertaken by the Municipality Within the Redevelopment Project Area.	
2. The Municipality <b>DID</b> undertake projects within the Redevelopment Project Area. (If selecting this option, complete 2a.)	X
2a. The total number of <b>ALL</b> activities undertaken in furtherance of the objectives of the redevelopment plan:	1

**LIST ALL projects undertaken by the Municipality Within the Redevelopment Project Area:**

<b>TOTAL:</b>	<b>11/1/99 to Date</b>	<b>Estimated Investment for Subsequent Fiscal Year</b>	<b>Total Estimated to Complete Project</b>
Private Investment Undertaken (See Instructions)	\$ -	\$ -	\$ 30,000,000
Public Investment Undertaken	\$ -	\$ -	\$ -
Ratio of Private/Public Investment	0		0

**Project 1 Name: Halston Market M/I Homes**

Private Investment Undertaken (See Instructions)			\$ 30,000,000
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

**Project 2 Name:**

Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

**Project 3 Name:**

Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

**Project 4 Name:**

Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

**Project 5 Name:**

Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

**Project 6 Name:**

Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

**SECTION 6** [Information requested in SECTION 6.1 is not required by law, but may be helpful in evaluating the performance of TIF in Illinois.

SECTIONS 6.2, 6.3, and 6.4 are required by law, if applicable. (65 ILCS 5/11-74.4-5(d))

**FY 2022**

**Name of Redevelopment Project Area:**

**TIF 8 Oakton**

**SECTION 6.1-For redevelopment projects beginning before FY 2022, complete the following information about job creation and retention.**

Number of Jobs Retained	Number of Jobs Created	Job Description and Type (Temporary or Permanent)	Total Salaries Paid
			\$ -

**SECTION 6.2-For redevelopment projects beginning in or after FY 2022, complete the following information about projected job creation and actual job creation.**

The number of jobs, if any, projected to be created at the time of approval of the redevelopment agreement	The number of jobs, if any, created as a result of the development to date, for the reporting period, under the same guidelines and assumptions as was used for the projections used at the time of approval of the redevelopment agreement

**SECTION 6.3-For redevelopment projects beginning in or after FY 2022, complete the following information about increment projected to be created and actual increment created.**

The amount of increment projected to be created at the time of approval of the redevelopment agreement	The amount of increment created as a result of the development to date, for the reporting period, using the same assumptions as was used for the projections used at the time of the approval of the redevelopment agreement

**SECTION 6.4-For redevelopment projects beginning in or after FY 2022, provide the stated rate of return identified by the developer to the municipality and verified by an independent third party, if any:**

**SECTION 7** [Information in the following section is not required by law, but may be helpful in evaluating the performance of TIF in Illinois.]

**FY 2022**

**Name of Redevelopment Project Area:**

**TIF 8 Oakton**

**Provide a general description of the redevelopment project area using only major boundaries.**

<b>Optional Documents</b>	<b>Enclosed</b>
Legal description of redevelopment project area	
Map of District	



**Attachment B** Certification of the Chief Executive Officer of the municipality that the municipality has complied with all the requirements of the Act during the reporting Fiscal Year.

Re: City of Des Plaines Certificate of Compliance  
TIF No.8 Oakton Street  
For Fiscal Year Ending December 31, 2022

I, Andrew Goczkowski, the duly elected Chief Executive Officer of the City of Des Plaines, County of Cook, State of Illinois, do hereby certify that to the best of my knowledge, the City of Des Plaines complied with the requirements pertaining to the Illinois Tax Increment Redevelopment Allocation Act during the fiscal year beginning January 1, 2022 and ending December 31, 2022.

  
\_\_\_\_\_  
MAYOR

6/19/2023  
\_\_\_\_\_  
DATE

**RE: Attorney Review City of Des Plaines TIF No. 8 Oakton Street**

To Whom It May Concern:

This will confirm that I am the General Counsel for the City of Des Plaines, Illinois. I have reviewed all information provided to me by the City staff and consultants, and I find that the City of Des Plaines has conformed to all applicable requirements of the Illinois Tax Increment Redevelopment Allocation Act set forth thereunder for the fiscal year beginning January 1, 2022 and ending December 31, 2022, to the best of my knowledge and belief.

Sincerely,



General Counsel

**Attachment D** Statement setting forth all activities undertaken in furtherance of the objectives of the Redevelopment Plan, including any project implemented in the preceding fiscal year and a description of the activities undertaken [65 ILCS 5/11-74.4-5(d)(7)(A & B) and 5/11-74.6-22(d)(7)(A & B)]

TIF #8 The City of Des Plaines' TIF District No. 8 was established in September 2019, extending along segments of Oakton and Lee Streets, including the Oakton-Lee intersection. The creation of this TIF District was in response to the City's desire to respond to the problematic conditions within an important commercial intersection within the City and to revitalize the area.

In 2022 the City utilized TIF funds to acquire 1392-1396 East Oakton Street for \$500,000, a 7,500-square-foot property consisting of an underutilized building and parking lot at the northwest corner of Oakton and Center Street. The City aspires to control all of the Oakton frontage property between the Canadian National / North Central Service (NCS) Metra rail line and Center Street. The City envisions this property as complementary and useful to a future proposed Oakton NCS commuter rail station, with existing structures demolished and property used as future train station parking, redevelopment, or a combination of both. Metra has indicated the station is under strong consideration, as Metra system ridership continues to recover from a decline during the COVID-19 pandemic.

At 1050 East Oakton, construction on a 125-townhome residential project by M/I Homes (Halston Market) began, with its first expected occupancies and residents in 2023. The City enabled this project by vacating (selling) portions of Times Drive and Executive Way, within the District, for \$32,000. This vacation transaction was approved in 2022 based on an independent appraisal and occurred concurrent to other project approvals. When the project – which is being built pursuant to a redevelopment agreement but received no TIF or other incentive – is completed and fully assessed, the activation of the former 11 vacant acres is expected to increase the increment by an estimated \$800,000-\$1,000,000 per year. Its nearly 300 additional residents are expected to provide additional spending power to support existing commercial development in the District.

In the Lee corridor, an approximately 2,300-square-foot Arby's restaurant with drive-through, formerly a vacant bank, completed construction at 1401 Lee (northeast corner of Lee and Forest Avenue). The tax bill and increment for the property increased from approximately \$28,000 for Cook County Tax Year 2020 (payable 2021) to \$58,000 for Tax Year 2021 (payable 2022). This amounts to \$30,000 of additional increment per year. Finally, the Council approved a multi-building commercial development at 1353 Lee Street on a vacant outlot in front of the Aldi Grocery Store, with construction on a 5,000-square-foot retail store expected to be complete in 2023.



CITY OF DES PLAINES

RESOLUTION R - 73 - 22

**A RESOLUTION APPROVING A REDEVELOPMENT AGREEMENT (HALSTON MARKET DEVELOPMENT - 1050 EAST OAKTON STREET, 1000-1100 EXECUTIVE WAY, AND 1555 TIMES DRIVE).**

WHEREAS, M/I Homes of Chicago, LLC, an Illinois limited liability company ("*Petitioner*"), is the contract purchaser of those certain parcels of real property located at the addresses commonly known as 1050 E. Oakton Street, 1000-1100 Executive Way, and 1555 Times Drive, Des Plaines, Illinois, (collectively, the "*Developer's Property*"); and

WHEREAS, on April 4, 2022, the City Council adopted Ordinance No. M-14-22, vacating a portion of Times Drive and Executive Way ("*Vacated Rights-of-Way*") (collectively, the Developer's Property and the Vacated Rights-of-Way are the "*Property*"); and

WHEREAS, on April 4, 2022, the City Council adopted Ordinance No. Z-9-22, approving a conditional use permit for planned unit development, a final plat of planned unit development, certain zoning exceptions within the planned unit development, and a final plat of subdivision to allow the construction of a new townhome development on the Property (collectively, "*Final Approvals*"); and

WHEREAS, the Final Approvals require that the City and the Petitioner enter into a redevelopment agreement governing the use and development of the Property ("*Development Agreement*"); and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the Redevelopment Agreement with the Petitioner;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

**SECTION 1: RECITALS.** The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

**SECTION 2: APPROVAL OF REDEVELOPMENT AGREEMENT.** The Redevelopment Agreement is approved substantially the form attached to this Resolution as **Exhibit A** and in a final form to be approved by the General Counsel.

**SECTION 3. AUTHORIZATION TO EXECUTE THE REDEVELOPMENT AGREEMENT.** The City Manager is authorized and directed to execute, on behalf of the City, the final Redevelopment Agreement.

**SECTION 4: EFFECTIVE DATE.** This Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this 4<sup>th</sup> day of April, 2022.

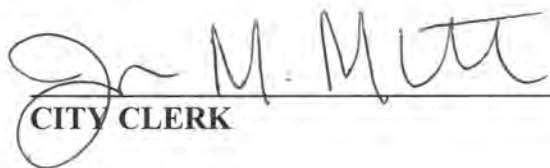
APPROVED this 4<sup>th</sup> day of April, 2022.

VOTE: AYES 7 NAYS 0 ABSENT 1




MAYOR

ATTEST:

  
CITY CLERK

Approved as to form:

  
Peter M. Friedman, General Counsel

#69659373\_v2

**THIS DOCUMENT  
PREPARED BY AND AFTER  
RECORDING RETURN TO:**

Peter M. Friedman  
Elrod Friedman LLP  
325 N. LaSalle Street  
Suite 450  
Chicago, IL 60654

Above Space For Recorder's Use Only

**REDEVELOPMENT AGREEMENT**

**BETWEEN**

**THE CITY OF DES PLAINES**

**AND**

**M/I HOMES OF CHICAGO, LLC**

**(1050 E. OAKTON STREET; 1000-1100 EXECUTIVE WAY; 1555 TIMES DRIVE)**

**DATED AS OF June 20, 2022**

**REDEVELOPMENT AGREEMENT  
BETWEEN  
THE CITY OF DES PLAINES  
AND  
M/I HOMES OF CHICAGO, LLC  
(1050 E. OAKTON STREET; 1000-1100 EXECUTIVE WAY; 1555 TIMES DRIVE)**

THIS REDEVELOPMENT AGREEMENT ("**Agreement**") is made as of the 20<sup>th</sup> day of June, 2022, by and between the **CITY OF DES PLAINES**, an Illinois home rule municipal corporation ("**City**"), and **M/I HOMES OF CHICAGO, LLC**, an Illinois limited liability company ("**Developer**").

**IN CONSIDERATION OF** the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the City's home rule powers, the City and Developer hereto agree as follows:

**SECTION 1. RECITALS.**

**A.** As of the Effective Date of this Agreement, Developer is the owner of the Developer's Property.

**B.** The Developer's Property is currently vacant and unimproved.

**C.** Developer desires to construct a residential development consisting of 125 townhome units and associated off-street parking, private drives and access lanes, common open space recreational areas, and stormwater detention facilities (collectively, "**Development**"), as more fully described and defined in Section 3 of this Agreement.

**D.** In order to construct the Development, Developer requested that the City vacate the Vacated Right-of-Way (collectively, the Developer's Property and the Vacated Right-of-Way are the "**Property**").

**E.** On October 4, 2021, the City Council adopted Ordinance No. Z-40-21, which approved: (i) a preliminary plat of planned unit development for the Development on the Property; (ii) a zoning map amendment to rezone the Property into the R-3 Townhome District ("**R-3 District**"); and (iii) a tentative plat of subdivision for the Property.

**F.** On March 8, 2022, the City of Des Plaines Planning and Zoning Board ("**PZB**") conducted a duly noticed public hearing to consider Developer's application for approval of: (i) a final plat of planned unit development for the Development on the Property; (ii) a conditional use permit for a planned development for the Development; (iii) certain zoning exceptions within the proposed planned development; and (iv) a final plat of subdivision for the Property (collectively, the "**Requested Relief**").

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All capitalized words and phrases throughout this Agreement have the meanings set forth in the preamble above and in Section 2 and the other provisions of this Agreement. If a word or phrase is not specifically defined in this Agreement, it has the meaning ascribed to it in the Zoning Ordinance.

G. On March 8, 2022, the PZB adopted Findings of Fact, Case Number 22-002-FPUD-FPLAT-VAC, recommending that the City Council approve the Requested Relief, subject to specified conditions.

H. On April 4, 2022, the City Council, after due and careful consideration, approved: (i) Ordinance No. Z-9-22 ("**Approval Ordinance**"), which approved the Requested Relief, subject to certain conditions; and (ii) Ordinance No. M-14-22, approving the plat of vacation for the Vacated of Right-of-Way.

I. The City Council has further concluded that the development and use of the Property pursuant to and in accordance with this Agreement would further enable the City to control the development of the area and would serve the best interests of the City.

J. The City desires that the Property be developed and used only in compliance with this Agreement and the Approval Ordinance.

K. As provided in, and as a condition of, the Approval Ordinance, Developer has agreed to execute this Agreement so as to provide that the Property be developed and used only in compliance with this Agreement and the Approval Ordinance.

## **SECTION 2. DEFINITIONS; RULES OF CONSTRUCTION.**

A. Whenever used in this Agreement, the following terms have the following meanings unless a different meaning is required by the context:

**"Approval Ordinance"**: Ordinance No. Z-9-22, adopted by the City Council, approving the Final Plat of Planned Unit Development, Conditional Use Permit, Final Plat of Subdivision, and certain zoning exceptions within the planned development.

**"Building Code"**: Title 10 of the City Code, as may be amended from time to time.

**"City Code"**: The City Code of the City of Des Plaines, as the same may be amended from time to time.

**"Common Areas"**: The Common Open Space Amenities, Stormwater Improvements, Private Roadways and Sidewalks, private water and sanitary sewer mains, and any other areas on the Property designated as common areas in the Declaration.

**"Common Open Space Amenities"**: The common outdoor areas as shown on the Landscape Plan and the Amenity Spaces Exhibit attached to this Agreement as **Exhibit A**.

**"Construction Schedule"**: Defined in Section 6.D of this Agreement.

**"Declaration"**: The Homeowner's Association declaration and by-laws required pursuant to and further described in Section 4 of this Agreement.

**"Developer's Property"**: That certain tract of land, consisting of approximately 480,488 square feet (11.03 acres) commonly known as 1090-1100 Times Drive, 1050 E. Oakton Street, and 1555 Times Drive, in Des Plaines, Illinois, and legally described in **Exhibit B** attached to this Agreement.

**“Easement Agreement”**: That certain Easement Agreement to be executed by the Parties as further defined in Section 10 of this Agreement.

**“Effective Date”**: The date upon which Developer obtains legal title to the Developer’s Property.

**“Estimate of Probable Cost” or “EOPC”**: The estimate, developed by Developer and accepted by the Director of Public Works and Engineering, of the probable cost to complete the Improvements, a copy of which is attached to this Agreement as **Exhibit C**.

**“Events of Default”**: Defined in Section 14 of this Agreement.

**“Evidence of Title Date”**: The date on which the Director of Community and Economic Development receives evidence, in the form of a recorded deed(s) and an effective title insurance policy or title report issued by an Illinois title insurance company, that evidences fee simple title to the Developer’s Property has been conveyed to Developer.

**“Final Engineering Plans”**: Those certain final engineering plans that are a component of the Final Plat of Planned Unit Development and approved in the Approval Ordinance, consisting of 43 sheets, prepared by Cage Civil Engineering, and dated March 16, 2022, copies of which are attached to this Agreement as **Exhibit D**.

**“Final Plat of Planned Unit Development” or “Final Development Plan”**: That certain set of plans and documents comprising the final plat of planned unit development for the Property, as approved and defined in Section 3 of the Approval Ordinance, as may be amended pursuant to Section 17.L of this Agreement.

**“Final Plat of Subdivision”**: That certain “Final Plat of Subdivision of Halston Market,” consisting of four sheets and prepared by Cage Civil Engineering, and dated March 15, 2022, which plat has been approved by the City Council pursuant to the Approval Ordinance, a copy of which plat is attached to this Agreement as **Exhibit E**.

**“Force Majeure”**: Strikes, lockouts, acts of God, natural disasters, terrorist activity, war, labor dispute, government ordered work stoppages or quarantines related to a pandemic, or other factors beyond a party’s reasonable control and reasonable ability to remedy; provided, however, that Force Majeure does not include: (i) delays caused by weather conditions, unless the weather conditions are unusually severe or abnormal considering the time of year and the particular location involved; or (ii) economic hardship, impracticability of performance, or commercial, economic, or market conditions.

**“Homeowner’s Association”**: The Homeowner’s Association required by and further described in Section 4 of this Agreement.

**“Improvements”**: The on-site and off-site improvements to be made in connection with the development of the Property, as provided in Section 5 of this Agreement, including, without limitation, the Public Improvements, but specifically excluding the Townhome Buildings to be constructed on the Property.

**“Landscape Plan”**: That certain landscape plan that is a component of the Final Plat of Planned Unit Development and approved in the Approval Ordinance, consisting of nine sheets

and prepared by Gary R. Weber Associates, Inc., with a latest revision date of March 15, 2022, a copy of which is attached to this Agreement as **Exhibit F**.

**"Parties"**: The City and Developer, collectively.

**"Person"**: Any natural individual, corporation, partnership, individual, joint venture, trust, estate, association, business, enterprise, proprietorship, or other legal entity of any kind, either public or private, and any legal successor, agent, representative, or authorized assign of the above, or other entity capable of holding title to, or any lesser interest in, real property.

**"Phase 1"**: Defined in Section 6.B.1 of this Agreement.

**"Phasing Plan"**: That certain Phasing Plan of the Proposed Development that is a component of the Final Plat of Planned Unit Development and approved in the Approval Ordinance, consisting of five sheets and prepared by Cage Civil Engineering, with a latest revision date of January 14, 2022, a copy of which is attached to this Agreement as **Exhibit G**.

**"Phase 2"**: Defined in Section 6.B.2 of this Agreement.

**"Private Roadways and Sidewalks"**: All roads, drive aisles, off-street parking areas containing at least 59 guest parking spaces, alleys, and sidewalks located on the Property.

**"Property"**: The Developer's Property and the Vacated Right-of-Way.

**"Public Improvements"**: Those Improvements that will be dedicated to, and accepted by, the City.

**"PUD Site Plan"**: That certain site plan, prepared by Cage Civil Engineering, dated March 17, 2022, that is a component of the Final Plat of Planned Unit Development and approved in the Approval Ordinance, a copy of which is attached to this Agreement as **Exhibit H**.

**"Requirements of Law"**: All applicable federal, state and City laws, statutes, codes, ordinances, resolutions, rules, and regulations.

**"Right-of-Way Improvements"**: Those specific Improvements to be constructed on or within the public-owned rights-of-way that are adjacent to or in the vicinity of the Property, as specifically described in Section 5.D of this Agreement.

**"Site Restoration"**: Site restoration and modification activities to establish a park-like setting suitable for passive outdoor recreational activities, including without limitation, demolition of partially constructed improvements and structures, regrading, erosion control, and installation of sod or seeding.

**"Stormwater Improvements"**: The following specific stormwater-related Improvements, as depicted on the Final Engineering Plan: the stormwater detention facility and private storm sewers, related equipment, appurtenances, structures, swales, and storm drainage areas installed and maintained on the Property to ensure adequate storm water drainage and management and to collect and direct storm water into the City's storm sewer system.

**"Structure"**: Defined in the Zoning Ordinance, and including, without limitation, the Townhome Buildings to be constructed on the Property.

**“Subdivision Code”**: Title 13 of the City Code, as may be amended from time to time.

**“Townhome Building”** (and collectively, **“Townhome Buildings”**): A residential building to be constructed on the Property as part of the Development.

**“Townhome Unit”**: A residential townhome unit to be constructed within the Townhome Buildings on the Property as part of the Development.

**“Turn Lane Improvements”**: The turn lane improvements to be constructed by the City as further defined in Section 10 of this Agreement.

**“Vacated Right-of-Way”**: The portions of the Executive Way right-of-way and the Times Drive right-of-way depicted on and vacated pursuant to that certain plat of vacation approved by Ordinance No. M-9-22, and titled “Plat of Vacation of Public Utility Easement, Building Lines & Right-of-Way,” consisting of one sheet, prepared by Cage Civil Engineering, with a latest revision date of January 28, 2022, a copy of which is attached to this Agreement as **Exhibit I** (collectively, the **“Vacated Right-of-Way”**).

**“Vertical Construction”**: The construction of any portion of a Structure above grade level.

**“Zoning Ordinance”**: Title 12 of the City Code, as may be amended from time to time.

## **B. Rules of Construction.**

1. **Grammatical Usage and Construction.** In construing this Agreement, plural terms are to be substituted for singular and singular for plural, in any place in which the context so requires.

2. **Headings.** The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

3. **Calendar Days; Calculation of Time Periods.** Unless otherwise specified in this Agreement, any reference to days in this Agreement will be construed to be calendar days. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event on which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless the last day is a Saturday, Sunday, or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The final day of any period will be deemed to end at 5:00 p.m., Central prevailing time.

4. **Compliance and Conflict with Other Requirements.** Unless otherwise provided in this Agreement either specifically or in context, in the event of a conflict between or among this Agreement and any plan, document, or Requirement of Law referenced in this Agreement, the plan, document, or Requirement of Law that provides the greatest control and protection for the City, as determined by the City Manager, will control. All of the provisions set forth in this Agreement, and all referenced plans, documents, and Requirements of Law are to be interpreted so that the duties and requirements imposed by any one of them are cumulative among all of them, unless otherwise provided in this Agreement either specifically or in context.



**SECTION 3. DEVELOPMENT, USE, OPERATION, AND MAINTENANCE OF THE PROPERTY.**

Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the City Code, the Subdivision Code, or the Zoning Ordinance or any other rights Developer may have, the Property must be developed, used, operated, and maintained only pursuant to, and in accordance with, the terms and provisions of this Agreement and its exhibits, including, without limitation, the following development conditions:

**A. Demolition of the Existing Structures.** Developer must demolish all existing pavement and remnant structures on the Property in compliance with Final Engineering Plans, the City Code, and Requirements of Law.

**B. Development.** The Development must consist of the following required elements, all of which were promised by Developer and served as an enticement to the City to enter into this Agreement and adopt the Approval Ordinance, in compliance with the Final Plat of Planned Unit Development and as depicted on the PUD Site Plan:

1. 23 three-story Townhome Buildings containing a total of 125 Townhome Units, including 118 three-bedroom Townhome Units and seven two-bedroom Townhome Units, each with a two-car garage;

2. Stormwater Improvements;

3. Water and sanitary sewer mains and service lines;

4. Private Roadways and Sidewalks;

5. Common Open Space Amenities; and

6. Right-of-Way Improvements.

**C. General Use and Development Restrictions.** The development, use, operation, and maintenance of the Property must comply with all applicable City codes and ordinances, as the same have been or may be amended from time to time, except to the extent specifically provided otherwise in this Agreement or the Approval Ordinance. Except for minor alterations due to final engineering or site work as may be approved by the Director of Community and Economic Development or the Director of Public Works and Engineering (for matters within their respective permitting authorities) in accordance with all applicable City standards, the development, use, operation, and maintenance of the Property must comply, and be in accordance with, the following:

1. this Agreement;

2. the Approval Ordinance;

3. the Final Plat of Subdivision;

4. the Final Plat of Planned Unit Development;

5. the Zoning Ordinance;

6. the Subdivision Code;

7. the Building Code; and
8. the Requirements of Law.

Unless otherwise provided in this Agreement either specifically or in context, in the event of a conflict between or among any of the plans or documents listed as or within items 1 through 8 of this Section 3.C, the interpretive provisions of Section 2.B.4 of this Agreement will govern the interpretation thereof.

#### **SECTION 4. OPERATIONAL DOCUMENTS.**

##### **A. Homeowners' Association.**

1. Membership in the Homeowners' Association must be mandatory for each and every owner, and successive owner, of the Townhome Units.

2. The declaration and by-laws of the Homeowners' Association ("**Declaration**") must be established and must be approved by the City Council prior to becoming effective. Further, said declaration and by-laws must provide that they not be amended to conflict with this Agreement or the requirements of the Subdivision Code without approval by the City Council.

##### **B. Mandatory Provisions.** The Declaration must include the following provisions:

1. The Homeowners' Association will be responsible for the continuity, care, conservation and maintenance, including operation in a first rate condition and in accordance with predetermined standards set forth in the Declaration, of the Common Areas, and the cost of power required for such equipment and appurtenances.

2. The Homeowners' Association will be responsible for procuring casualty and liability insurance and payment of real estate taxes for all Common Areas to be owned by the Homeowner's Association.

3. The owners of the Townhome Units must pay their *pro rata* share of all costs and expenses incurred by the Homeowners' Association by means of an assessment to be levied by the Homeowners' Association which meets the requirements for becoming a lien on the Property in accordance with statutes of the State of Illinois.

4. The Homeowners' Association must be responsible for snow and ice removal on the City-owned portion of Times Drive north of its intersection with Oakton Street.

5. The Homeowners' Association must be responsible for the collection of all refuse, landscape waste, and recyclable materials generated on the Property.

6. The City, as well as the owner of each of Townhome Unit, will have the right to enforce the Declaration.

7. The City will have the right, but not the obligation, after 10 days' written notice for stormwater related repairs and maintenance and after 30 days' written notice for all other repairs or maintenance to the Homeowners' Association, to perform any maintenance or repair work which, in the sole opinion of the City, the Homeowners' Association has neglected to perform on the Common Areas, to assess the membership for such work and, in the event of

nonpayment, to file a lien against the property of the Homeowners' Association or the property of any member failing to pay the assessment.

8. The Declaration will run with and bind the Property, and all portions thereof, and will be binding on the Developer, and their successors in interest, to all portions of the Property.

9. The Declaration must contain a provision requiring compliance with any conditions and requirements of the Metropolitan Water Reclamation District of Greater Chicago Watershed Management Ordinance Permit for the Property.

10. The Declaration or the deed conveying the Open Space Amenities to the Homeowners' Association must require the Open Space Amenities to be maintained in perpetuity for outdoor recreational use in accordance with Section 13-4-2.E of the Subdivision Code.

## **SECTION 5. IMPROVEMENTS.**

### **A. Design and Construction of the Improvements.**

1. Description of Improvements. Developer must, at its sole cost and expense, construct and install all of the Improvements depicted on the PUD Site Plan and the other components of the Final Plat of Planned Unit Development, including, without limitation, the following:

- a. Stormwater Improvements;
- b. Sanitary sewer mains and service lines;
- c. Water mains and service lines;
- d. Common Open Space Amenities and landscaping as depicted on the Landscape Plan;
- e. Private Roadways and Sidewalks and street signs on the Property;
- f. The Right-of-Way Improvements as described in Section 5.D of this Agreement;
- g. Telecommunications facilities and services;
- h. Gas facilities and services; and
- i. Electric facilities and services.

2. General Standards. Except for minor alterations due to final engineering or site work as may be approved by the Director of Community and Economic Development or the Director of Public Works and Engineering (for matters within their respective permitting authorities), all Improvements must be designed and constructed pursuant to and in accordance with the Final Plat of Planned Unit Development and the Approval Ordinance, and will be subject to the reasonable written satisfaction of the Director of Public Works and Engineering in accordance with the City Code and the Subdivision Code. All work performed on the

Improvements must be conducted in a good and workmanlike manner, with due dispatch, and within the time(s) provided in this Agreement. All materials used for construction of the Improvements must be new and of first rate quality.

3. Engineering Services. Developer must provide, at its sole cost and expense, all engineering services for the design and construction of the Improvements, by a professional engineer responsible for overseeing the construction of the Improvements. Developer must promptly provide the City with the name of Developer's representative and a telephone number or numbers at which Developer's representative can be reached at all times.

**C. Connection of Utilities.**

1. Developer must, at its sole cost and expense, and in accordance with and pursuant to the Final Plat of Planned Unit Development, install: (a) all public utility connections servicing the Property; and (b) the connection of all utilities to facilities located on the Property. Developer must coordinate and cooperate with all utility companies and owners of neighboring properties as may be necessary to ensure that the installation of utilities required pursuant to this Section 5.C does not unreasonably disrupt utility service to neighboring properties.

2. No utilities located on the Property may be connected to the sewer and water utilities belonging to the City except in accordance with the applicable provisions of the City Code and upon payment of the connection fees required pursuant to the City Code. Such fees shall be payable at the time of application for a building permit.

**D. Right-of-Way Improvements.**

1. Right-of-Way Improvements. Developer will construct the following improvements within the City's right-of-way:

a. Executive Way and Times Drive: Developer will fully reconstruct the Times Drive and Executive Way rights-of-way from Oakton Street to their intersections with the Private Roadways and Sidewalks on the Property in accordance with the Final Engineering Plans. Developer shall be allowed to connect to the utilities located within the City-owned right-of-way, but will not be required to replace any utilities within the City-owned portions of the rights-of-way.

b. Oakton Street Sidewalk: Developer will remove the existing five-foot-wide sidewalk along the Oakton Street right-of-way between Times Drive and Executive Way and replace it with an eight-foot-wide concrete multi-use path.

2. Construction. Developer must construct the Right-of-Way Improvements in accordance with and pursuant to the plans and cross sections included in the Final Plat of Planned Unit Development and this Agreement, in a good and workmanlike manner, all at the sole expense of Developer as follows, and subject to inspection and approval by the City in accordance with the Subdivision Code:

a. Developer must remove the existing curb, gutter, pavement, and stone base, and construct a new 28-foot-wide roadway, measured back-of-curb to back-of-curb, with eight-inch deep stone base, binder, and four inches of asphalt, B6-12 curb and gutter on both sides of the right-of-way, and the reconstruction of the existing curb cuts and aprons to the Post Office up to the Post Office property line on the west side of Executive Way and the commercial

businesses on the east side of Times Drive. If necessary, the City will obtain temporary license agreements from adjacent private property owners to allow the construction of the aprons.

b. During the period of installation, Developer must maintain the Licensed Premises (as defined below) and all streets, sidewalks, and other public property in and adjacent to the Licensed Premises in a safe, good, and clean condition without hazard to public use at all times, and in accordance with the standards set forth in Section 6.I of this Agreement.

3. Grant of Temporary Construction License to Developer. Subject to the terms and conditions set forth in this Agreement, the City hereby grants to Developer, and Developer hereby accepts, a temporary, non-exclusive, revocable construction license, for the benefit of the Property, over such portions of the public right-of-way ("**Licensed Premises**") for the construction of the Right-of-Way Improvements in accordance with the Final Engineering Plans, pursuant to and in strict accordance with the terms and provisions of this Section 5.D and the other provisions of this Agreement ("**License**").

a. Limitation of Interest. Except for the License granted pursuant to this Section 5.D, Developer does not and will not have any legal, beneficial, or equitable interest, whether by adverse possession or prescription or otherwise, in any portion of the Licensed Premises or of the Executive Way and Times Drive rights-of-way except for the Vacated Right-of-Way pursuant to the Plat of Vacation.

b. Reservation of Rights. The City hereby reserves the right to use the Licensed Premises in any manner that will not prevent, impede, or interfere in any way with the exercise by Developer of the rights granted pursuant to this Section 5.D. The City will have the right to grant other non-exclusive licenses or easements, including, without limitation, licenses or easements for utility purposes, over, along, upon, or across the Licensed Premises. The City further reserves its right of full and normal access to the Licensed Premises for the maintenance of any existing or future utility located thereon.

c. Term. The License granted pursuant to this Section 5.D will expire upon the acceptance by the City of the Right-of-Way Improvements pursuant to Section 5.F of this Agreement

4. Liens. Developer hereby represents and warrants that it will take all necessary action to keep all portions of the Licensed Premises free and clear of all liens, claims, and demands, including without limitation mechanic's liens, in connection with any work performed by the Licensee or its agents on the Licensed Premises.

5. Federal Tax Identification Number. The City will provide its federal tax identification number to Developer to enable Developer to procure materials and supplies for the construction of Public Improvements that will be accepted by the City.

**E. Completion of the Improvements.** The City has the right, but not the obligation, to refuse to issue a final certificate of occupancy for any building or structure located on the Property until the Improvements are completed by Developer and approved by the City. The foregoing does not preclude the City's issuance of conditional certificates of occupancy pursuant to Section 6.F of this Agreement and the applicable provisions of the City Code. The issuance of any building permit or certificate of occupancy by the City at any time prior to completion of all of the Improvements by Developer and approval of the Improvements by the City will not confer on Developer any right or entitlement to any other building permit or certificate of occupancy.

**F. Dedication and Maintenance of the Improvements.** The inspection, approval, acceptance, and maintenance of the Improvements must be in accordance with Section 13-2-8 and 13-3-5 of the City Code and the following:

1. Final Inspection and Approval of the Improvements. Developer must notify the City in writing when it believes that any or all of the Improvements have been fully and properly completed and must request final inspection and approval of the Improvement or Improvements by the City. The notice and request must be given five business days in advance of the requested inspection to allow the City time to inspect the Improvements and, within five business days thereafter, prepare a punch list of items requiring repair or correction after which Developer shall be allowed an appropriate and reasonable amount of time to make all required repairs and corrections prior to the scheduled completion date. Developer must promptly make all necessary repairs and corrections as specified on the punch list. The City is not required to approve any portion of the Improvements until the City Director of Public Works and Engineering has determined that the specific Improvement has been constructed to completion, in accordance with the Final Plat of Planned Unit Development and Requirements of Law.

2. Dedication and Acceptance of Public Improvements. Neither the execution of this Agreement, nor the approval of the Approval Ordinance, nor the approval or recordation of the Final Plat of Subdivision constitutes acceptance by the City of any Improvements that are depicted as "dedicated" on the Final Plat of Subdivision or on the Final Plat of Planned Unit Development, if any. The acceptance of ownership of, and responsibility for, a specific approved Improvement as a Public Improvement may be made only by the City Council, and only in compliance with the requirements of the Subdivision Code. The City is not obligated to accept dedication of any public improvement prior to issuance of any certificate of occupancy for the Development. Notwithstanding the foregoing, the City must promptly comply with the terms of the Subdivision Ordinance with regard to acceptance of the Improvements, but release the Performance Security in accordance with Section 9 of this Agreement.

3. Transfer of Ownership of the Public Improvements and Easements to the City. Upon the approval of, and prior to acceptance of, the Public Improvements to be accepted by the City pursuant to Section 5.F of this Agreement, Developer must execute, or cause to be executed, all documents, including specifically a bill of sale, as the City may require to transfer ownership of the Public Improvements to, and to evidence ownership of the Public Improvements by, the City, free and clear of all liens, claims, encumbrances, and restrictions, unless otherwise approved by the City in writing.

4. Private Roadways and Sidewalks. All Private Roadways and Sidewalks on the Property shall remain private improvements and shall not be accepted by the City. The City is not responsible for maintain any of the Private Roadway and Sidewalks on the Property and will not conduct snow plowing, salting, or snow removal on the Property. The City agrees that the street names identified on the Final Plat of Subdivision are acceptable to the City.

5. Maintenance of Public Improvements. Developer, hereby guarantees, on its behalf and on behalf of its successors to the Property, the prompt and satisfactory correction of all defects and deficiencies in the construction and installation of any of the Public Improvements that occur or become evident within 18 months after acceptance of the Public Improvement by the City pursuant to this Agreement. In the event the Director of Public Works and Engineering determines, in the Director of Public Works and Engineering's reasonable discretion, that Developer is not adequately maintaining, or has not adequately maintained, any Public Improvement, Developer must, within 30 days after written notice from the City (subject to

seasonal weather conditions and Force Majeure), correct it or cause it to be corrected. If Developer fails, within such 30 day period, to correct the defect or to commence to correct the defect and thereafter diligently pursue correction of the defect to completion, the City may, but will not be obligated to, enter upon any or all of the Property for the purpose of performing maintenance work on and to the Public Improvement. In the event that the City causes to be performed any work pursuant to this Section 5.F.5, Developer must, upon demand by the City, pay the actual costs of such work to the City. If Developer fails to pay the actual costs, the City will have the right to draw from the Maintenance Guarantee required pursuant to Section 9.E of this Agreement, based on costs actually incurred or on the City's reasonable estimates of costs to be incurred, an amount of money sufficient to defray the entire cost of the work, including legal fees and administrative expenses. In the event any Public Improvement is repaired or replaced pursuant to this Section 5.G.5, the City's right to hold and draw upon the portion of the Maintenance Guarantee necessary to secure the completion of the repair or replacement of that Public Improvement pursuant to Section 9.E of this Agreement will be extended, for 18 months from the date of the repair or replacement.

**G. Miscellaneous.** The City agrees that the Developer may install cluster mailboxes within the development if required by the Postmaster General.

## **SECTION 6. CONSTRUCTION.**

### **A. General Construction and Contracting Requirements.**

1. **Construction Standards.** All work on the Development must be conducted in a good and diligent manner. All materials used for construction of the Development will be in accordance with the specifications for the work to be performed as set forth in the Approval Ordinance and the Zoning Ordinance.

2. **Contracts for Work on Development.** The Developer must include in every contract for work on the Property terms requiring the contractor and its subcontractors to prosecute the work diligently, and in full compliance with, and as required by or pursuant to, this Agreement, the Approval Ordinance, and the Requirements of Law, until the work is properly completed, and terms providing that the Developer may take over and prosecute the work if the contractor fails to do so in a timely and proper manner.

3. **City Inspections and Approvals.** All work on the Property will be subject to inspection and approval by City representatives at all times, subject to safety rules applicable to the Development, including the Improvements, and the Property is subject to inspection and approval by City representatives at all times. Developer will provide immediate access to the Property for the purpose of conducting these inspections during regular operating hours and within 12 hours outside of regular operating hours upon notice by the City.

4. **Prevailing Wage.** The Developer will comply, and will cause all contractors constructing the Development to comply, with the Illinois Prevailing Wage Act (820 ILCS 130/00.1 *et seq.*), as it may be applicable. The Developer will take all necessary steps to insure, that the Illinois Prevailing Wage Act applies to each contract pursuant to which Developer will construct, or cause the construction of, an Improvement that will be paid for wholly or in part out of public funds. Notwithstanding the foregoing, Developer is not seeking payment for any Improvements in whole or in part out of public funds.

**B. Phasing of Development.** The construction of the Improvements will take place in two phases, as set forth in the Phasing Plan and in accordance with the Land Development

Schedule as further defined in Section 6.D of this Agreement, as follows:

1. Phase 1. Phase 1 of the Development will consist of the completion of construction of: (i) mass site grading of the entire Property; (ii) the installation of watermain, sanitary sewer main, and storm sewers serving Townhome Buildings 1 through 10 and watermain, sanitary sewer main, and storm sewer main stubs necessary to serve Townhome Buildings 11 through 23, as identified on the Phasing Plan; (iii) Townhome Buildings 1 through 10, as identified on the Phasing Plan, including building foundation and site landscaping in the Phase I area; (iv) all Private Roadways and Sidewalks serving Townhome Buildings 1 through 10, as identified on the Phasing Plan up to the binder course; (v) the Times Drive Right-of-Way Improvements; (vi) the temporary seeding of the Phase 2 area as depicted on the Phasing Plan; (v) the Stormwater Improvements; and (vi) installation of an eight-foot high construction fence along the north property line of the Property in the same location as the fence depicted on the Site Plan.

2. Phase 2. Phase 2 of the Development will consist of the completion of construction of: (i) the installation of watermain, sanitary sewer main, and storm sewers serving Townhome Buildings 11 through 23, as identified on the Phasing Plan; (ii) Townhome Buildings 11 through 23, as identified on the Phasing Plan; (iii) the 8-foot-fence shown on the Final Plat of Planned Unit Development; (iv) all remaining Private Roadways and Sidewalks, as identified on the Phasing Plan and the Final Plat of Planned Unit Development, up to the final road course; (iii) the permanent eight-foot fence shown on the Final Plat of Planned Unit Development; and (vi) all remaining Improvements, including final site landscaping and planting.

3. The construction of Phase 2 of the Development may be undertaken simultaneously with Phase 1. At no time, however, may the Developer undertake a phased construction of the Improvements in a manner that could adversely affect the health, safety or welfare of the residents of the Development, as reasonably determined by the Director of Public Works and Engineering.

**C. Limits on and Preconditions for Issuance of Permits for Vertical Construction.** In addition to any other applicable provision of this Agreement and the Requirements of Law, the City will not issue permits for, and Developer must not commence, any Vertical Construction on the Property unless the City Manager has determined that the construction of the following Improvements is complete as required by this Agreement and Requirements of Law, except as may be authorized in writing by the City Manager:

1. Site grading;
2. the Stormwater Improvements;
3. a functional water system that has an approved IEPA operating permit to supply the Vertical Construction; and

4. For the Townhome Buildings constructed along Oakton, the Private Roadways and Sidewalks up to stone base sufficient to enable vehicles to access the Vertical Construction. For all other Townhome Buildings, the Private Roadways and Sidewalks up to binder sufficient to enable vehicles to access the vertical construction site.

**D. Land Development Schedule.** Developer must pursue, or cause to be pursued, all required development, demolition, construction, and installation of the Improvements on the Property in a diligent and expeditious manner, in compliance with the City Code and the



Requirements of Law, and in accordance with the Phasing Plan and the Land Development Schedule prepared by Developer, a copy of which is attached to this Agreement as **Exhibit J**.

**E. Construction Site Management and Logistics.**

1. Construction and Traffic Management Plan. Developer must prepare and submit, for review and approval by the City Director of Public Works and Engineering, which approval will not be unreasonably withheld, a Construction and Traffic Management Plan ("**CTM Plan**") for the development of the Property. The CTM Plan will govern (i) the location, storage, and traffic routes for construction equipment and construction vehicles, and (ii) the location of alternative off-street parking during the construction. The City has no obligation to issue a building permit for any structure or Improvement, and no construction may be commenced with respect to the structure or Improvement, unless and until the City Director of Public Works and Engineering has approved, in writing, the CTM Plan. The City agrees to cause the CTM Plan to be promptly and expeditiously reviewed by the City Director of Public Works and Engineering; provided, however, that nothing in this Agreement is to be deemed or interpreted to require approval of the CTM Plan.

2. Designated Routes of Access. The City reserves the right to designate certain prescribed routes of access to the Property for construction traffic to provide for the protection of pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that the designated routes must not: (a) be unreasonably or unduly circuitous; nor (b) unreasonably or unduly hinder or obstruct direct and efficient access to the Property for construction traffic.

3. Maintenance of Routes of Access. At all times during the construction of the structures and Improvements, Developer must: (a) keep all routes used for construction traffic free and clear of mud, dirt, debris, obstructions, and hazards; and (b) repair any damage caused by construction traffic. The City acknowledges and agrees that Developer may be required to close Times Drive temporarily during construction and will cooperate with Developer to provide reasonable access to Dunkin Donuts during construction, in accordance with the CTM Plan.

4. Parking and Storm Water Management During Construction. During construction of any of the Structures or Improvements on the Property, Developer must comply with the MWRDCG Watershed Maintenance Ordinance permit for the Property.

All installations made pursuant to this Section 6.E must be maintained by Developer until issuance of final certificate of occupancy unless otherwise agreed with the City.

**F. Issuance of Permits and Certificates.** The issuance of any building permit or certificate of occupancy by the City at any time prior to completion of all of the Improvements by Developer and approval of the Improvements by the City will not constitute a waiver of the City's right to withhold any building permit or certificate of occupancy and will not confer on Developer any right or entitlement to any other building permit or certificate of occupancy.

1. General Right to Withhold Permits and Certificates. In addition to every other remedy permitted by law for the enforcement of this Agreement, the City has the absolute right to withhold the issuance of any building permit or certificate of occupancy for the Property at any time when Developer has failed or refused to meet fully any of its obligations under, or is in violation of, or is not in full compliance with, the terms of this Agreement.

2. Temporary Certificate of Occupancy. A temporary certificate of occupancy associated with any Structure to be located on the Property will not be issued until all utilities have

been connected to the building and the Private Roadways and Sidewalks serving the Structure are improved up to binder course.

3. Final Certificate of Occupancy. The City has the right, but not the obligation, to refuse to issue a final certificate of occupancy for any Structure located on the Property until the Improvements within the applicable Phase of the Development are completed by Developer and approved by the City. The foregoing does not preclude the City's issuance of temporary certificates of occupancy pursuant to the applicable provisions of the City Code.

4. Other Approvals. Where the construction and installation of any part of the Development requires the consent, permission, or approval of any public agency or private party, Developer must promptly file all applications, enter into all agreements, post all security, pay all fees and costs, and otherwise take all steps that may be required to obtain the consent, permission, or approval.

#### **G. Completion of Construction; Site Restoration.**

1. Removal of Partially Constructed Structures and Improvements. Subject to Force Majeure, if Developer fails to diligently pursue all demolition and construction as required in, or permitted by, Sections 3 and 5 of this Agreement to completion within the time period prescribed in the building permit or permits issued by the City for such construction, and if a perfected application to renew the building permit or permits is not filed within 30 days after the expiration of the permit or permits, Developer must, within 60 days after notice from the City: (a) remove any partially constructed or partially completed buildings, structures, or Improvements from the Property; and (b) perform Site Restoration on that portion of the Property in which Developer has failed to complete all such demolition and construction, all in accordance with plans approved by the City.

2. Removal and Restoration by City. In the event Developer fails or refuses to remove any partially completed buildings, structures, and Improvements, or to perform Site Restoration, as required pursuant to Section 6.G.1 of this Agreement, the City will have, and is hereby granted the right, at its option, to: (a) demolish and/or remove any of the partially completed buildings, structures, and Improvements from any and all portions of the Property; (b) perform Site Restoration; and/or (c) cause the buildings, structures, or Improvements to be completed in accordance with the plans submitted. Developer will fully reimburse the City for all costs and expenses, including legal and administrative costs, incurred by the City for such work. If Developer does not so fully reimburse the City, the City will have the right to draw from the Performance Security and the Maintenance Guarantee, as described in and provided pursuant to Section 9 of this Agreement, an amount of money sufficient to defray the entire cost of the work, including legal fees and administrative expenses. If Developer does not so fully reimburse the City, and if the Performance Security and Maintenance Guarantee have no funds remaining in them or are otherwise unavailable to finance such work, then the City will have the right to place a lien on the Property for all such costs and expenses in the manner provided by law. The rights and remedies provided in this Section 6.G.2 are in addition to, and not in limitation of, any other rights and remedies otherwise available to the City in this Agreement, at law, and/or in equity.

H. As-Built Plans. After completion of construction of any Structure, Developer must submit to the Director of Community and Economic Development final "as-built" plans related to the final as-built location of the Improvements (commonly referred to as a "spot survey") and drainage, grading, storm sewer, sanitary sewer and water mains, and associated appurtenances as required and approved by the Director of Public Works and Engineering and the City Director

of Community and Economic Development. The as-built plans must indicate, without limitation, the amount, in square feet, of impervious surface area on the Property.

**I. Damage to Public Property.** Developer must maintain the Property and all streets, sidewalks, and other public property in and adjacent to the Property in a good and clean condition at all times during the development of the Property and construction of the Improvements. Further, Developer must: (1) promptly clean all mud, dirt, or debris deposited on any street, sidewalk, or other public property in or adjacent to the Property by Developer or any agent of or contractor hired by, or on behalf of, Developer; and (2) repair any damage that may be caused by the activities of Developer or any agent of or contractor hired by, or on behalf of, Developer.

**J. Construction and Demolition Debris Management.** All debris, spoils, materials, and waste generated by demolition, grading, construction, installation and paving on the Property must be properly disposed in accordance with the Requirements of law all applicable state, county, and local laws, statutes, ordinances, and regulations concerning recycling of construction and demolition debris and recycling, removal, hauling, and disposal of special and hazardous waste, as may be applicable depending on site conditions.

#### **SECTION 7. DEDICATION OF PARK LANDS OR PAYMENTS OF FEES IN LIEU.**

**A. Park Lands Dedication Credit.** Pursuant to Chapter 4 of the Subdivision Code, the total fee in lieu attributable to the Development will be reduced by the amount of \$110,183.66, as a credit attributable to the Open Space Amenities provided on the Property as part of the Development.

**B. Fee In Lieu of Park Lands Dedication.** After the credit set forth in Section 7.A of this Agreement is applied, and accordance with Chapter 4 of the Subdivision Code, Developer must pay \$215,621 as a fee in lieu of land contributions to the City of Des Plaines, which are held in trust for the Des Plaines Park District ("***Park District***"). The fees required pursuant to this Section 7 are calculated on a per unit basis and must be paid in full prior to the issuance of any building permit for the Development on the Property. Developer acknowledges that the payment of fees in lieu imposed by Chapter 4 of the Subdivision Code, as well as Chapter 4 of the Subdivision Code itself, are reasonable and that Developer hereby holds harmless and releases the City and the Park District from any claim or other action Developer may have against either or both the City or the Park District as a result of Chapter 4 of the Subdivision Code and the fees paid thereunder for distribution to the Park District by the City.

#### **SECTION 8. PAYMENT OF CITY FEES AND COSTS.**

**A. Negotiation and Review Fees.** In addition to all other costs, payments, fees, charges, contributions, or dedications required by this Agreement or by the Requirements of Law, Developer must pay to the City, contemporaneous with the execution of this Agreement by the City Manager, all third-party legal, engineering, and other consulting or administrative fees, costs, and expenses incurred or accrued in connection with: (1) the development of the Property, including, without limitation, the review and processing of plans therefor; and (2) the negotiation, preparation, consideration, and review of this Agreement. Payment of all fees, costs, and expenses must be made by a certified, cashier's check, or corporate check. Developer acknowledges and agrees that it will continue to be liable for and to pay, promptly after presentation of a written demand or demands for payment, such third-party fees, costs, and expenses incurred in connection with any applications, documents, proposals, or requests for interpretations or amendments of this Agreement, whether formal or informal, of whatever kind,

submitted by Developer during the term of this Agreement in connection with the use and development of the Property. Further, Developer acknowledges and agrees that it is liable for and will pay after demand all fees, costs, and expenses incurred by the City for publications and recordings required in connection with the above matters.

**B. Other City Fees.** In addition to all other costs, payments, fees, charges, contributions, or dedications required by this Agreement, Developer must pay to the City all application, inspection, and permit fees, all water and sewer general and special connection fees, tap-on fees, charges, and contributions, and all other fees, charges, and contributions pursuant to the Requirements of Law in effect as of the date of execution of this Agreement.

## **SECTION 9. PERFORMANCE SECURITY.**

As security to the City for the performance by Developer of Developer's obligations under this Agreement, Developer must deliver to the City a letter of credit and cash deposit (collectively, "**Performance Security**") in accordance with this Section 9.

**A. Performance Security.** Upon the filing of an application by Developer for a building permit for any portion of the Development, Developer must deliver the Performance Security to the City to secure its performance of the Improvements.

**B. Form and Amount of Security.** The Performance Security must be in an amount equal to 125% of the Estimate of Probable Cost (EOPC). 90 percent of the Performance Security will be in the form a single letter of credit in substantially the form attached to this Agreement as **Exhibit L**; and 10 percent will be in the form of a cash deposit.

**C. Use of Guarantee Funds.** If the Developer fails or refuses to complete the Improvements that it is required to complete in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the Improvements, as required by this Agreement, and such failure or refusal is a Developer Event of Default, then the City in its reasonable discretion may draw on and retain all or any of the funds remaining in the Guarantee which secure such completion or correction and are necessary to remedy such failure or refusal. The City thereafter will have the right, subject to an additional 30 days' notice and opportunity for cure, to cause such Improvements to be completed or corrected, and subject to the terms of the immediately preceding sentence, to reimburse itself from the proceeds of the Letter of Credit or from the cash deposit for all of its costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of the Developer's failure or refusal. If the funds remaining in the Performance Security are insufficient to repay fully the City for all costs and expenses, then the Developer must upon demand of the City therefor deposit with the City any additional funds as the City determines are necessary, within 30 days of a request therefor, to fully repay such costs and expenses.

**D. Release of Performance Security.** The City will release the Performance Security in a timely fashion upon the City's approval and, as appropriate, acceptance of the Improvements; provided, however, that the City will only be required to release that percentage of the Performance Security that equals the portion of the Improvements that have been approved and, as appropriate, accepted; provided further that the portion of the Performance Security that equals the EOPC for the combined underground infrastructure Improvements, including water, sanitary sewer, and stormwater mains up to the buffalo box, for Phase 1 and Phase 2 of the Development will not be released until all of the underground infrastructure Improvements for both Phase 1 and Phase 2 of the Development have been completed.

**E. Maintenance Warranty for Public Improvements.** Following the City's release of any percentage of the Performance Security for any Public Improvement, the Developer must substitute for the released percentage of the Performance Security a maintenance warranty in the form of a letter of credit ("**Maintenance Warranty**"), which is equal to 10 percent of 125 percent of the amount of the EOPC approved by the Director of Public Works for the Public Improvements. The Developer must deposit the Maintenance Warranty with the City. The Maintenance Warranty shall remain with the City until 18 months after all of the Public Improvements are completed in substantial compliance with Final Plat of Planned Unit Development, have been approved by the Director of Public Works and Engineering, and accepted by the City Council ("**Maintenance Warranty Term**"), notwithstanding any transfer of the Common Areas to the Homeowners' Association or the transfer of any or all of the Townhome Units to purchasers. The City will return to the Developer the Maintenance Warranty upon the end of the Maintenance Warranty Term, minus any portion of the Maintenance Warranty utilized by the City in accordance with Section 5.F and 9.E of this Agreement.

## **SECTION 10. CITY TURN LANE IMPROVEMENTS**

**A. Turn Lane Improvements.** The City desires to install a third lane within the Times Drive and Executive Way rights-of-way at their intersections with Oakton Street to allow efficient vehicular egress from the Property and businesses located north of Oakton onto Oakton Street ("**Turn Lane Improvements**"). The Turn Lane Improvements will require the widening of each right-of-way from 28 feet to approximately 34 feet for a distance of approximately 60 feet north of their intersections with Oakton Street.

**B. IDOT Approval.** Upon the Developer's receipt of its Illinois Department of Transportation ("**IDOT**") permit, the City will apply for IDOT approval of the Turn Lane Improvements and shall deliver a copy of such application and supporting documentation to Developer.

**C. Public Right-of-Way Easements.** Within 30 days of IDOT's confirmation of geometry for the Turn Lane Improvements, and in order to facilitate the Turn Lane Improvements, Developer will grant the following permanent public right-of-way easements on the Property pursuant to an easement agreement ("**Easement Agreement**") substantially in the form attached to this Agreement as **Exhibit L**, and in a final form acceptable to the City:

a. **Executive Way.** A permanent easement along the east side of Executive Way beginning at the intersection with Oakton Street and running north for 60 feet, which easement will be sufficiently wide enough to construct the Turn Lane Improvements but will not exceed seven feet in width. The final width of the easement will be determined upon IDOT's confirmation of geometry.

b. **Times Drive.** A permanent easement along the west side of Times Drive from Oakton Street to proposed Tolt Avenue (private drive), which easement will be sufficiently wide enough to construct the Turn Lane Improvements but will not exceed seven feet in width. The final width of the easement will be determined upon IDOT's confirmation of geometry.

**D. Temporary Construction Easements.** Developer will grant temporary construction easements to the City, its employees, agents, and contractors, as necessary for the construction of the Turn Lane Improvements, which temporary construction easements will be included in the Easement Agreement.

**E. Coordination of Construction of Right-of-Way Improvements and Turn Lane Improvements.** Developer will reasonably cooperate with the City to coordinate the efficient construction of the Right-of-Way Improvements and the Turn Lane Improvements in order to minimize waste and coordinate construction logistics; provided, however, Developer will not be required to alter its Construction Schedule.

#### **SECTION 11. LIABILITY AND INDEMNITY OF CITY.**

**A. City Review.** Developer acknowledges and agrees that the City is not, and will not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans for the Property or the Improvements, or the issuance of any approvals, permits, certificates, or acceptances, for the development or use of the Property or the Improvements, and that the City's review and approval of any such plans and the Improvements and issuance of any such approvals, permits, certificates, or acceptances does not, and will not, in any way, be deemed to insure Developer or any of its successors, assigns, tenants and licensees, or any third party, against damage or injury of any kind at any time.

**B. City Procedure.** Developer acknowledges and agrees that all notices, meetings, and hearings have been properly given and held by the City with respect to the approval of this Agreement and of the Approval Ordinance, and Developer agrees not to challenge such approvals on the grounds of any procedural infirmity or of any denial of any procedural right.

**C. Indemnity.** Developer, only as to its own acts or omissions, agrees to, and does hereby, hold harmless and indemnify the City and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of those parties in connection with: (i) the City's review and approval of any plans for the Property or the Improvements; (ii) the issuance of any approval, permit, certificate, or acceptance for the Property or the Improvements; and (iii) the development, construction, maintenance, or use of any portion of the Property or the Improvements ("***Indemnified Claims***"); provided, however, that this indemnity does not, and will not, apply to willful misconduct or gross negligence on the part of the City.

**D. Defense Expense.** Developer, only as to its own acts or omissions, hereby agrees to pay all expenses, including legal fees and administrative expenses, incurred by the City in defending itself with regard to any and all of the Indemnified Claims.

#### **SECTION 12. NATURE, SURVIVAL AND TRANSFER OF OBLIGATIONS.**

**A. Binding Effect.** The terms of this Agreement bind and inure to the benefit of the Parties and their agents, successors, and assigns. All obligations assumed by Developer under this Agreement are and will be binding upon Developer personally, upon any and all of its heirs, successors, and assigns, and upon any and all of the respective successor legal or beneficial owners of all or any portion of the Property.

**B. Transfer Defined.** For purposes of this Agreement, the term "transfer" includes, without limitation, any assignment, sale, transfer to a receiver or to a trustee in bankruptcy, transfer in trust, or other disposition of the Property, or any beneficial interest in the Property, in whole or in part, by voluntary or involuntary sale, foreclosure, merger, sale and leaseback, consolidation, or otherwise; provided, however, that a sale, assignment or any other transfer of legal or beneficial interest in a single Townhome Unit does not constitute a "transfer" hereunder if no transferee owns any portion of any other Townhome Unit on the Property.

**C. Successors and Transferees.** To assure that all grantees, successors, assigns, and transferees of Developer and all successor owners of all or any portion of the Property have notice of this Agreement and the obligations created by it, Developer must:

1. Deposit with the City Clerk, concurrent with the City's approval of this Agreement, any consents or other documents necessary to authorize the City to record this Agreement in the office of the Recorders Division of the Cook County Clerk's Office after the Developer obtains title to the Developer's Property;

2. Notify the City in writing at least 30 days prior to any date on which Developer transfers a legal or beneficial interest in any portion of the Property to a third party;

3. Incorporate this Agreement by reference into any and all real estate sales contracts for transfers entered into for the sale of all or any portion of the Property; and

4. Except as provided in Section 12.B of this Agreement, require, prior to the transfer of all or any portion of the Property, or any legal or equitable interest therein, to any third party, the transferee of said portion or interest in the Property to execute an enforceable written agreement, in substantially the form of **Exhibit M** to this Agreement, agreeing to be bound by the provisions of this Agreement ("**Transferee Assumption Agreement**") and to provide the City, upon request, with such reasonable assurance of the financial ability of the transferee to meet those obligations as the City may require. The City agrees that upon a successor becoming bound to the obligation created in the manner provided in this Agreement and providing the financial assurances required pursuant to this Agreement, the liability of Developer will be released to the extent of the transferee's assumption of the liability. The failure of Developer to provide the City with a copy of a Transferee Assumption Agreement fully executed by the transferee and, if requested by the City, with the transferee's proposed assurances of financial capability before completing any transfer, will result in Developer remaining fully liable for all of its obligations under this Agreement but will not relieve the transferee of its liability for all such obligations as a successor to Developer.

**D. Mortgagees of Property.** This Agreement is and will be binding on all mortgagees of the Property or other secured parties automatically upon such mortgagee assuming title to the Property, in whole or in part, by a foreclosure or a deed in lieu of foreclosure without the necessity of entering into a Transferee Assumption Agreement. Until such time, however, a mortgagee or other secured party will have no personal liability hereunder.

### **SECTION 13. TERM.**

**A.** The provisions of this Agreement, unless terminated pursuant to the terms of this Agreement, run with and bind the Property and inure to the benefit of, be enforceable by, and obligate the City, Developer, and any of their respective, grantees, successors, assigns, and transferees, including all successor legal or beneficial owners of all or any portion of the Property from the date this Agreement is recorded and until: (i) all final certificates of occupancy are issued for the Development; (ii) the Improvements are accepted by the City; and (iii) the executed Easement Agreement is recorded, as required by this Agreement and the Approval Ordinance. Following such approval, acceptance, execution, and recordation, the City agrees, upon written request of the Developer, to execute appropriate and recordable evidence of the termination of this Agreement. Notwithstanding anything to the contrary in this Section 13, the Developer's indemnity and defense obligations as set forth in Section 11 of this Agreement will survive the termination of this Agreement. Approval or acceptance pursuant to this Section 13 will not

constitute a waiver of any rights or claims that the City has, before or after approval and acceptance, with respect to any breach of this Agreement by the Developer or any right of indemnification of the City by the Developer.

**B.** In the event that the Evidence of Title Date does not occur on or prior to 18 months after the date on which the Approval Ordinance was passed, the City will have the right, in its sole and absolute discretion, to terminate this Agreement and all obligations of the City under this Agreement by delivery of notice to Developer. The City may take all legislative actions necessary to rescind, repeal, or otherwise terminate the Approval Ordinance prior to terminating this Agreement pursuant to this Section 13.B. The Developer agrees that, notwithstanding the status of the Approval Ordinance, the Developer's right to construct, maintain, and operate the Development on the Property will terminate upon the termination of this Agreement pursuant to this Section 13.B.

#### **SECTION 14. EVENTS OF DEFAULT.**

**A. Developer Events of Default.** The following are Developer Events of Default under this Agreement:

1. If any representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by Developer in writing and delivered to the City pursuant to or in connection with this Agreement, proves to be untrue or incorrect in any material respect as of the date made.

2. Default by Developer for a period of 30 days after written notice thereof in the performance or breach of any covenant contained in this Agreement concerning the existence, structure or financial condition of Developer; provided, however, that such default or breach will not constitute an Event of Default if such default cannot be cured within said 30 days and Developer, within said 30 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 60 days after such notice.

3. Default by Developer for a period of 30 days after written notice thereof from the City in the performance or breach of any covenant, warranty or obligation contained in this Agreement; provided, however, that such default will not constitute an Event of Default if such default cannot be cured within said 30 days and Developer, within said 30 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 60 days after such notice.

4. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days.

5. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such



entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.

6. Failure to have funds to meet Developer's obligations.

7. Sale, assignment, or transfer of the Property except in accordance with the Transferee Assumption provisions in Section 12 of this Agreement.

8. Change in the organizational status of Developer except in accordance with the Transferee Assumption provisions in Section 12 of this Agreement.

9. Developer abandons the development of the Property. Abandonment will be deemed to have occurred when work stops on the development of the Property for more than 60 days for any reason other than Force Majeure between the commencement of a Phase and the completion of the Improvements applicable to that Phase, unless otherwise permitted by this Agreement. The failure of Developer to secure any approvals required for the development or construction of the Property will not be a valid defense to abandonment, provided the City has the right to withhold such approvals under the circumstances.

10. Developer fails to comply with the Requirements of Law in relation to the construction and maintenance of the Improvements and Structures contemplated by this Agreement, provided that Developer fails to cure such failure within 30 days after written notice thereof; and provided, further, that such default or breach will not constitute an Event of Default if such default cannot be cured within said 30 days and Developer, within said 30 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 60 days after such notice

**B. Events of Default by the City.** The following are City Events of Default under this Agreement:

1. If any material representation made by the City in this Agreement, or in any certificate, notice, demand or request made by the City in writing and delivered to Developer pursuant to or in connection with any of said documents, proves to be untrue or incorrect in any material respect as of the date made.

2. Subject to Force Majeure, default by the City for a period of 30 days after written notice thereof from Developer in the performance or breach of any covenant or obligation contained in this Agreement; provided, however, that such default will not constitute an Event of Default if such default cannot be cured within said 30 days and the City, within said 30 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 90 days after such notice.

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

**A. Remedies for Default.** In the case of an Event of Default under this Agreement:

1. Except as otherwise provided in this Agreement and subject to the provisions hereinafter set forth, the non-defaulting Party may institute such proceedings in law or in equity, by suit, action, mandamus, or any other proceeding, as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement.

2. Only in the event of a Default pursuant to Section 6.G of this Agreement, the City may, without prejudice to any other rights and remedies available to the City, require: (a) the demolition and removal of any partially constructed or partially completed buildings, structures, or Improvements from the Property; and (b) the performance of Site Restoration, all in accordance with Section 6.G of this Agreement. Concurrent with the City's exercise of its rights under Section 6.G, the City Council will have the right, but not the obligation, to terminate the entitlements set forth in the Approval Ordinance and this Agreement, without protest or objection by Developer.

3. In case the City has proceeded to enforce its rights under this Agreement and such proceedings have been discontinued or abandoned for any reason, then, and in every such case, Developer and the City will be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the City will continue as though no such proceedings had been taken.

**B. Limitation.** Notwithstanding anything to the contrary contained in this Agreement, including the provisions of this Section 15, Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the City or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys of the City, on account of the negotiation, execution or breach of any of the terms and conditions of this Agreement.

**C. Repeal of Approval Ordinance.** In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the City will have the absolute right to repeal the Approval Ordinance if a Developer Event of Default occurs under this Agreement, in accordance with Section 9 of the Approval Ordinance, and Developer fails to cure the Event of Default.

**D. Prevailing Party.** In the event of a judicial proceeding brought by one Party against the other Party, the prevailing Party in the judicial proceeding will be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with the judicial proceeding.

## **SECTION 16. WARRANTIES AND REPRESENTATIONS.**

**A. By the City.** The City represents, warrants and agrees as the basis for the undertakings on its part contained in this Agreement that:

1. The City is a municipal corporation duly organized and validly existing under the law of the State of Illinois and has all requisite corporate power and authority to enter into this Agreement;

2. The execution, delivery and the performance of this Agreement and the consummation by the City of the transactions provided for herein and the compliance with the provisions of this Agreement: (i) have been duly authorized by all necessary corporate action on the part of the City; (ii) require no other consents, approvals or authorizations on the part of the City in connection with the City's execution and delivery of this Agreement; and (iii) do not, by lapse of time, giving of notice or otherwise, result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the City is subject; and

3. To the best of the City's knowledge, there are no proceedings pending or threatened against or affecting the City or the Property in any court or before any governmental authority that involves the possibility of materially or adversely affecting the ability of the City to perform its obligations under this Agreement.

**B. By Developer.** Developer, and the person executing this Agreement on behalf of Developer, represent, warrant, and covenant, as of the Effective Date of this Agreement, that:

1. Developer is an Illinois limited liability company duly organized, validly existing, and qualified to do business in Illinois;

2. Developer has the right, power, and authority to enter into, execute, deliver and perform this Agreement, and Developer is in compliance with all Requirements of Law, the failure to comply with which could affect the ability of Developer to perform its obligations under this Agreement;

3. The execution, delivery and performance by Developer of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate its organizational documents, as amended and supplemented, any of the applicable Requirements of Law, or constitute a breach of or default under, or require any consent under, any agreement, instrument, or document to which Developer is now a party or by which Developer is now or may become bound;

4. The applications, plans, materials, and other submissions Developer has provided to the City accurately and truthfully represent Developer's capabilities, resource, and intentions for the construction of the Development on the Property as of the Effective Date. The Developer agrees and acknowledges that these submissions have served to induce the City to enter into this Agreement and that any material misrepresentation contained in the Developer's submissions will constitute an incurable Event of Default pursuant to Section 14 of this Agreement.

5. 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;

6. Developer will apply for and will maintain all government permits, certificates, and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and to construct and complete its obligations as required by this Agreement; and

7. Developer has sufficient financial and economic resources to implement and complete its obligations under this Agreement;

8. Developer has no knowledge of any liabilities, contingent or otherwise, of Developer which might have a material adverse effect upon its ability to perform its obligations under this Agreement.

9. All Improvements constructed or installed by or on behalf of Developer pursuant to this Agreement will be constructed and installed in accordance with the highest standards of professional practice, care, skill, and diligence practiced by recognized firms or licensed and accredited professionals in performing services of a similar nature. This warranty is in addition to any other warranties expressed in this Agreement, or expressed or implied by law,

which are reserved unto the City. Any work required by law or by this Agreement to be performed by licensed professionals will be performed by professionals licensed by the State of Illinois to practice in the applicable professional discipline.

**SECTION 17. GENERAL PROVISIONS.**

**A. Notices.** All notices required or permitted to be given under this Agreement must be given by the Parties by: (i) personal delivery; (ii) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon; or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section 17.A. The address of any Party may be changed by written notice to the other Parties. Any mailed notice will be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier will be deemed to have been given and received the following business day after deposit. Notices and communications to the Parties must be addressed to, and delivered at, the following addresses:

If to the City: City of Des Plaines  
1420 Miner Street  
Des Plaines, IL 60016  
Attention: City Manager

with a copy to: Elrod Friedman LLP  
325 N. LaSalle Street, Suite 450  
Chicago, IL 60654  
Attention: Peter Friedman, General Counsel

If to Developer: M/I Homes of Chicago, LLC  
400 E. Diehl Road, Suite 230  
Naperville, Illinois 60563  
Attention: Richard J. Champine

and: M/I Homes  
4131 Worth Avenue, Suite 500  
Columbus, Ohio 43219  
Attention: Zachary Sugarman

with a copy to: Levenfeld Pearlstein, LLC  
2 N. LaSalle Street, Suite 1300  
Chicago, Illinois 60602  
Attention: Julie M. Workman

**B. Time of the Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.

**C. Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement are cumulative and are not exclusive of any other such rights, remedies, and benefits allowed by law.

**D. Non-Waiver.** No waiver of any provision of this Agreement will be deemed to or constitute a waiver of any other provision of this Agreement (whether or not similar) nor will any waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

**E. Consents.** Whenever the consent or approval of any Party to this Agreement is required, the consent or approval must be in writing and may not be unreasonably withheld, delayed or conditioned, and, in all matters contained herein, all parties will have an implied obligation of reasonableness, except as may be expressly set forth otherwise.

**F. Governing Law and Venue.** This Agreement will be interpreted according to the internal laws, but not the conflicts of laws rules, of the State of Illinois. Exclusive jurisdiction with regard to the any actions or proceedings arising from, relating to, or in connection with this Agreement will be in the Circuit Court of Cook County, Illinois or, where applicable, in the federal court for the Northern District of Illinois. The Parties waive their respective right to transfer or change the venue of any litigation filed in the Circuit Court of Cook County, Illinois.

**G. Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement and the validity, enforceability, and application to any person, firm, corporation, or property are not to be impaired thereby, but the remaining provisions are to be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

**H. Entire Agreement.** This Agreement and the Approval Ordinance constitute the entire agreement between the parties, superseding any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

**I. Interpretation.** This Agreement is to be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Each provision of this Agreement is to be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. Any rule or construction that a document is to be construed against the drafting party is not applicable to this Agreement.

**J. Headings.** The table of contents, heading, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

**K. Exhibits/Conflicts.** Exhibits **A** through **M** attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit to this Agreement and the text of this Agreement, the text of this Agreement will control.

**L. Amendments and Modifications.**

1. No amendment or modification to this Agreement will be effective unless and until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

2. Amendments or modifications to the Approval Ordinance, Final Plat of Planned Unit Development, or Final Plat of Subdivision can be considered and acted on by the City without the same being deemed an amendment or modification to this Agreement provided that all applicable procedural requirements of the Zoning Ordinance and Subdivision Code and the provisions of this Agreement are satisfied.

**M. Changes in Laws.** Unless otherwise explicitly provided in this Agreement, any reference to any Requirements of Law is to be deemed to include any modifications of, or amendments to the Requirements of Law as may, from time to time, hereinafter occur.

**N. No Third Party Beneficiaries.** No claim as a third party beneficiary under this Agreement by any person, firm, or corporation may be made, or be valid, against the City or Developer.

**O. Recording.** The City will record this Agreement against the Property, at the sole cost and expense of Developer, with the Recordings Division of the Cook County Clerk's Office promptly following the full execution of this Agreement by the Parties and the Evidence of Title Date.


**P. Counterpart Execution.** This Agreement may be executed in counterparts, each of which will constitute an original document and together will constitute the same instrument.

**Q. City Actions, Consents, and Approvals.** Any action, consent, or approval needed to be taken or given under this Agreement by the City may only be performed by the City Manager, or their designee, to the extent provided for by law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the date first above written.


ATTEST:

  
\_\_\_\_\_  
City Clerk


**CITY OF DES PLAINES,**  
an Illinois home rule municipal corporation

By:   
\_\_\_\_\_  
Michael Bartholomew  
Its: City Manager

ATTEST:

By:   
\_\_\_\_\_  
Its: Land Acquisition Manager

**M/I HOMES OF CHICAGO LLC,**  
an Illinois limited liability company

By:   
\_\_\_\_\_  
Its: Area President

**ACKNOWLEDGMENTS**

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

This instrument was acknowledged before me on June 20, 2022, by Michael Bartholomew, the City Manager of the **CITY OF DES PLAINES**, an Illinois municipal corporation, and by Jessica M Mastalski, the City Clerk of said municipal corporation.

Given under my hand and official seal this 20th day of June, 2022.



Laura K Fast  
Notary Public

My Commission expires: 6/8/2024

SEAL

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF ~~COOK~~ DePage )

This instrument was acknowledged before me on May 3<sup>rd</sup>, 2022, by Richard J Champagne, the Area President of **M/I HOMES OF CHICAGO, LLC**, an Illinois limited liability company, and by Marc McLoughlin, the General Manager of said corporation.

Given under my hand and official seal this 3<sup>rd</sup> day of May, 2022.

Laura Baucom  
Notary Public

My Commission expires: 10/17/24

SEAL





# Attachment K

CITY OF DES PLAINES, ILLINOIS  
BALANCE SHEET  
GOVERNMENTAL FUNDS  
December 31, 2022

	Major Governmental Funds					Nonmajor Governmental Funds	Total Governmental Funds
	General	TIF #6 (Mannheim/ Higgins)	Gaming Tax	Grant Funded Projects	Capital Projects		
<b>ASSETS</b>							
Cash and Investments	\$ 47,585,453	\$ -	\$ 43,204,245	\$ -	\$ 11,469,248	\$ 28,705,028	\$ 130,963,974
Receivables (net)							
Property Tax Receivable	29,254,688	171,035	-	-	3,994	5,045,281	34,474,998
Other Taxes	1,064,035	-	-	-	141,308	-	1,205,343
Accounts Receivable	126,407	-	-	-	11,840	32,693	170,940
Accrued Interest	7,504	-	-	-	-	19,720	27,224
Other	225,395	-	-	47,504	-	29,114	302,013
Leases	-	-	-	-	-	653,643	653,643
Prepaid Items	235,926	-	-	-	7,582	35,919	279,427
Due from Other Governments	8,346,405	-	2,615,123	1,949,824	1,317,202	238,332	14,466,886
Due from Other Funds	156,320	-	-	-	-	-	156,320
Advances to Other Funds	24,133,927	-	-	-	-	-	24,133,927
<b>TOTAL ASSETS</b>	<b>\$ 111,136,060</b>	<b>\$ 171,035</b>	<b>\$ 45,819,368</b>	<b>\$ 1,997,328</b>	<b>\$ 12,951,174</b>	<b>\$ 34,759,730</b>	<b>\$ 206,834,695</b>
<b>LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES</b>							
<b>Liabilities</b>							
Accounts Payable	\$ 1,183,608	\$ -	\$ 17,688,444	\$ 1,447,854	\$ 798,198	\$ 1,383,925	\$ 22,502,029
Accrued Payroll	1,741,579	-	-	-	-	-	1,741,579
Property Taxes Payable to Pension Funds	3,327,665	-	-	-	-	-	3,327,665
Accrued Liabilities	9,171	-	-	-	-	-	9,171
Deposits Payable	-	-	-	-	6,397	167,367	173,764
Due to Other Funds	-	-	-	-	25,062	-	25,062
Advances from Other Funds	-	18,117,330	-	2,353,777	-	3,662,820	24,133,927
Unearned Revenue	23,275	-	-	-	-	49,597	72,872
<b>Total Liabilities</b>	<b>6,285,298</b>	<b>18,117,330</b>	<b>17,688,444</b>	<b>3,801,631</b>	<b>829,657</b>	<b>5,263,709</b>	<b>51,986,069</b>
<b>Deferred Inflows of Resources</b>							
Deferred Property Tax Revenue	24,244,258	141,295	-	-	1,627	4,669,633	29,056,813
Deferred Lease Revenue	-	-	-	-	-	569,724	569,724
Unavailable Other Revenue	428,878	-	-	1,158,557	158,878	1,515	1,747,828
<b>Total Deferred Inflows of Resources</b>	<b>24,673,136</b>	<b>141,295</b>	<b>-</b>	<b>1,158,557</b>	<b>160,505</b>	<b>5,240,872</b>	<b>31,374,365</b>
<b>Fund Balances</b>							
<b>Nonspendable</b>							
Prepaid Items	235,926	-	-	-	7,582	35,919	279,427
Long-Term Interfund Advances	24,133,927	-	-	-	-	-	24,133,927
<b>Restricted</b>							
Economic Development	-	-	-	-	-	3,979,080	3,979,080
Debt Retirement/Infrastructure	-	-	28,130,924	-	-	-	28,130,924
Streets and Highways	-	-	-	-	-	3,152,177	3,152,177
Rebuild Illinois Bond Funds Projects	-	-	-	-	-	223,079	223,079
Public Safety	-	-	-	-	-	1,825,372	1,825,372
<b>Assigned</b>							
Infrastructure	16,000,000	-	-	-	11,953,430	-	27,953,430
Capital Acquisitions	2,200,000	-	-	-	-	18,813,899	21,013,899
Unassigned	37,607,773	(18,087,590)	-	(2,962,860)	-	(3,774,377)	12,782,946
<b>Total Fund Balances</b>	<b>80,177,626</b>	<b>(18,087,590)</b>	<b>28,130,924</b>	<b>(2,962,860)</b>	<b>11,961,012</b>	<b>24,255,149</b>	<b>123,474,261</b>
<b>TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES</b>	<b>\$ 111,136,060</b>	<b>\$ 171,035</b>	<b>\$ 45,819,368</b>	<b>\$ 1,997,328</b>	<b>\$ 12,951,174</b>	<b>\$ 34,759,730</b>	<b>\$ 206,834,695</b>

CITY OF DES PLAINES, ILLINOIS  
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES  
GOVERNMENTAL FUNDS  
Year-Ended December 31, 2022

	Major Governmental Funds					Nonmajor Governmental Funds	Total Governmental Funds
	General	TIF #6 (Mannheim/ Higgins)	Gaming Tax	Grant Funded Projects	Capital Projects		
<b>Revenues</b>							
Property Taxes	\$ 25,010,610	\$ 102,201	\$ -	\$ -	\$ 6,604	\$ 4,298,127	\$ 29,417,542
Other Taxes	15,447,760	-	29,223,842	-	6,678,917	155,436	51,505,955
Licenses and Permits	1,804,859	-	-	-	-	-	1,804,859
Intergovernmental	32,788,858	-	-	13,778,332	-	4,548,447	51,115,637
Charges for Services	5,401,993	-	-	-	-	-	5,401,993
Fines, Forfeitures and Penalties	488,261	-	-	-	-	5,177	493,438
Developer Fees	-	-	-	-	-	509,666	509,666
Investment Income	234,158	1	111,258	6,251	143,626	34,446	529,740
Lease Revenue	-	-	-	-	-	264,357	264,357
Miscellaneous	406,780	-	-	-	966	281,698	689,444
<b>Total Revenues</b>	<u>81,583,279</u>	<u>102,202</u>	<u>29,335,100</u>	<u>13,784,583</u>	<u>6,830,113</u>	<u>10,097,354</u>	<u>141,732,631</u>
<b>Expenditures</b>							
Current							
General Government	9,324,287	-	17,709,180	718,769	-	3,404,463	31,156,699
Public Safety	50,625,268	-	-	-	-	197,300	50,822,568
Public Works	4,168,155	-	-	-	1,833,677	-	6,001,832
Streets and Highways	4,459,304	-	-	-	-	1,120,632	5,579,936
Economic Development	186,531	2,040	-	-	-	813,476	1,002,047
Debt Service							
Principal	-	1,575,000	-	-	-	1,550,000	3,125,000
Interest and Fiscal Charges	-	350	-	-	-	304,156	304,506
Capital Outlay	-	-	-	8,294,105	1,963,155	4,730,923	14,988,183
<b>Total Expenditures</b>	<u>68,763,545</u>	<u>1,577,390</u>	<u>17,709,180</u>	<u>9,012,874</u>	<u>3,796,832</u>	<u>12,120,950</u>	<u>112,980,771</u>
<b>Excess (Deficiency) of Revenues over (under) Expenditures</b>	<u>12,819,734</u>	<u>(1,475,188)</u>	<u>11,625,920</u>	<u>4,771,709</u>	<u>3,033,281</u>	<u>(2,023,596)</u>	<u>28,751,860</u>
<b>Other Financing Sources (Uses)</b>							
Proceeds from Sale of Capital Assets	-	-	-	-	-	106,833	106,833
Transfer In	53,000	-	-	538,105	-	5,600,000	6,191,105
Transfer Out	(1,900,000)	(1,000)	(3,700,000)	-	(538,105)	(47,000)	(6,186,105)
<b>Total Other Financing Sources (Uses)</b>	<u>(1,847,000)</u>	<u>(1,000)</u>	<u>(3,700,000)</u>	<u>538,105</u>	<u>(538,105)</u>	<u>5,659,833</u>	<u>111,833</u>
<b>Net Change in Fund Balances</b>	10,972,734	(1,476,188)	7,925,920	5,309,814	2,495,176	3,636,237	28,863,693
<b>Fund Balances at Beginning of Year</b>	<u>69,204,892</u>	<u>(16,611,402)</u>	<u>20,205,004</u>	<u>(8,272,674)</u>	<u>9,465,836</u>	<u>20,618,912</u>	<u>94,610,568</u>
<b>Fund Balances at End of Year</b>	<u>\$ 80,177,626</u>	<u>\$ (18,087,590)</u>	<u>\$ 28,130,924</u>	<u>\$ (2,962,860)</u>	<u>\$ 11,961,012</u>	<u>\$ 24,255,149</u>	<u>\$ 123,474,261</u>

CITY OF DES PLAINES, ILLINOIS  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2022

**NOTE 7 - LONG-TERM OBLIGATIONS (Continued)**

General Obligation Debt: All general obligation notes and bonds payable are backed by the full faith and credit of the City. Notes and bonds in the governmental funds will be retired by future property tax levies or tax increments accumulated by the debt service fund. Business type activities debt is payable by revenues from user fees of those funds or, if the revenues are not sufficient, by future tax levies.

	<u>Date of Issue</u>	<u>Final Maturity</u>	<u>Interest Rates (Fixed)</u>	<u>Original Indebtedness</u>	<u>Balance Outstanding</u>
<b>Governmental Activities</b>					
Series 2009A Taxable GO Refunding (Capital Appreciation) Bonds, due in annual installments of \$170,000 to \$1,575,000 Debt retired from TIF #6 fund	November 3, 2009	December 1, 2023	3.00%-5.80%	\$ 5,430,000	\$ 703,600 *
Series 2014B GO Refunding Bonds, due in annual installments of \$440,000 to \$1,165,000 Debt retired from TIF #3 fund	September 4, 2014	December 1, 2022	0.75%-3.00%	5,600,000	-
Series 2018 GO Refunding Bonds, due in annual installments of \$440,000 to \$2,135,000 Debt retired from TIF #3 fund	March 5, 2018	December 1, 2028	3.00%	12,410,000	<u>8,685,000</u>
Total governmental activities general obligation debt					<u>\$ 9,388,600</u>

\*A portion of the December 31, 2022 balance for the 2009A bonds represents accretion on debt from the date of issuance until December 31, 2022.

Debt service requirements to maturity are as follows (Principal Totals for Governmental Activities differs from the outstanding balance noted above in the amount of \$41,400, due to the future accretion on the 2009A Capital Appreciation Bonds):

<u>Years</u>	<u>Governmental Activities General Obligation Debt</u>	
	<u>Principal</u>	<u>Interest</u>
2023	\$ 2,590,000	\$ 260,550
2024	1,905,000	205,200
2025	1,960,000	148,050
2026	2,160,000	89,250
2027	400,000	24,450
2028	415,000	12,450
	<u>\$ 9,430,000</u>	<u>\$ 739,950</u>

(Continued)

CITY OF DES PLAINES, ILLINOIS  
 REQUIRED SUPPLEMENTARY INFORMATION  
 SCHEDULE OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE  
 BUDGET AND ACTUAL  
 TIF #6 (MANNHEIM/HIGGINS) FUND  
 Year-Ended December 31, 2022  
 With Comparative Actual Amounts for the Year-Ended December 31, 2021

	2022		Variance from Final Budget Positive (Negative)	2021 Actual
	Original and Final Budget	Actual		
<b>Revenues</b>				
Property Taxes	\$ 144,695	\$ 102,201	\$ (42,494)	\$ 123,507
Investment Income	25	1	(24)	4
Miscellaneous	-	-	-	215
<b>Total Revenues</b>	<u>144,720</u>	<u>102,202</u>	<u>(42,518)</u>	<u>123,726</u>
<b>Expenditures</b>				
Economic Development				
Contractual Services	8,040	2,040	6,000	40
Commodities	52	-	52	-
Total Economic Development	<u>8,092</u>	<u>2,040</u>	<u>6,052</u>	<u>40</u>
Debt Service				
Principal	1,575,000	1,575,000	-	1,440,000
Interest and Fiscal Charges	350	350	-	30,618
Total Debt Service	<u>1,575,350</u>	<u>1,575,350</u>	<u>-</u>	<u>1,470,618</u>
<b>Total Expenditures</b>	<u>1,583,442</u>	<u>1,577,390</u>	<u>6,052</u>	<u>1,470,658</u>
<b>Excess (Deficiency) of Revenues over (under) Expenditures</b>	<u>(1,438,722)</u>	<u>(1,475,188)</u>	<u>(36,466)</u>	<u>(1,346,932)</u>
<b>Other Financing Sources (Uses)</b>				
Transfer Out	(1,000)	(1,000)	-	(3,000)
<b>Total Other Financing Sources (Uses)</b>	<u>(1,000)</u>	<u>(1,000)</u>	<u>-</u>	<u>(3,000)</u>
<b>Net Change in Fund Balances</b>	<u>\$ (1,439,722)</u>	<u>(1,476,188)</u>	<u>\$ (36,466)</u>	<u>(1,349,932)</u>
<b>Fund Balances at Beginning of Year</b>		<u>(16,611,402)</u>		<u>(15,261,470)</u>
<b>Fund Balances at End of Year</b>		<u>\$ (18,087,590)</u>		<u>\$ (16,611,402)</u>

CITY OF DES PLAINES, ILLINOIS  
 COMBINING BALANCE SHEET  
 NONMAJOR GOVERNMENTAL FUNDS  
 December 31, 2022

	Special Revenue Funds					
	Motor Fuel Tax	Community Development Block Grant	Asset Seizure	Foreign Fire Insurance Tax	Escrow Fund	TIF #1 (Downtown)
<b>ASSETS</b>						
Cash and Investments	\$ 3,495,959	\$ 331	\$ 1,377,484	\$ 608,345	\$ 745,349	\$ -
Receivables (Net)						
Property Taxes	-	-	-	-	-	-
Accounts Receivable	-	-	-	-	8,394	-
Accrued Interest	-	-	-	-	-	-
Other	-	-	23,035	-	-	-
Leases	-	-	-	-	-	-
Prepaid Items	-	-	28,815	-	-	-
Due from Other Governments	236,817	1,515	-	-	-	-
<b>TOTAL ASSETS</b>	<u>\$ 3,732,776</u>	<u>\$ 1,846</u>	<u>\$ 1,429,334</u>	<u>\$ 608,345</u>	<u>\$ 753,743</u>	<u>\$ -</u>
<b>LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES</b>						
<b>Liabilities</b>						
Accounts Payable	\$ 357,520	\$ 2,208	\$ 34,471	\$ 886	\$ 21,641	\$ -
Deposits Payable	-	-	148,135	-	-	19,232
Unearned Revenue	-	-	-	-	-	-
Advances from Other Funds	-	-	-	-	-	469,094
<b>Total Liabilities</b>	<u>357,520</u>	<u>2,208</u>	<u>182,606</u>	<u>886</u>	<u>21,641</u>	<u>488,326</u>
<b>Deferred Inflows of Resources</b>						
Deferred Property Tax Revenue	-	-	-	-	-	-
Deferred Lease Revenue	-	-	-	-	-	-
Unavailable Other Revenue	-	1,515	-	-	-	-
<b>Total Deferred Inflows of Resources</b>	<u>-</u>	<u>1,515</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>Fund Balances</b>						
Nonspendable						
Prepaid Items	-	-	28,815	-	-	-
Restricted						
Economic Development	-	-	-	-	732,102	-
Streets & Highways	3,152,177	-	-	-	-	-
Rebuild Illinois Bond Funds Projects	223,079	-	-	-	-	-
Public Safety	-	-	1,217,913	607,459	-	-
Assigned						
Capital Acquisitions	-	-	-	-	-	-
Unassigned	-	(1,877)	-	-	-	(488,326)
<b>Total Fund Balances</b>	<u>3,375,256</u>	<u>(1,877)</u>	<u>1,246,728</u>	<u>607,459</u>	<u>732,102</u>	<u>(488,326)</u>
<b>TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES</b>	<u>\$ 3,732,776</u>	<u>\$ 1,846</u>	<u>\$ 1,429,334</u>	<u>\$ 608,345</u>	<u>\$ 753,743</u>	<u>\$ -</u>

(Continued)

Special Revenue Funds				Capital Projects Funds			Total Nonmajor Governmental Funds
TIF #3 (Wille Road)	TIF #5 (Perry/Lee)	TIF #7 (Mannheim/ Higgins South)	TIF #8 (Oakton)	Equipment Replacement	I.T. Replacement	Facilities Replacement	
\$ -	\$ 466,871	\$ -	\$ 2,595,611	\$ 5,653,873	\$ 389,900	\$ 13,371,305	\$ 28,705,028
2,365,779	208,382	773,137	1,697,983	-	-	-	5,045,281
-	-	-	-	-	-	24,299	32,693
-	-	-	-	19,720	-	-	19,720
-	-	-	6,079	-	-	-	29,114
-	-	-	-	-	-	653,643	653,643
-	-	-	-	-	7,104	-	35,919
-	-	-	-	-	-	-	238,332
<u>\$ 2,365,779</u>	<u>\$ 675,253</u>	<u>\$ 773,137</u>	<u>\$ 4,299,673</u>	<u>\$ 5,673,593</u>	<u>\$ 397,004</u>	<u>\$ 14,049,247</u>	<u>\$ 34,759,730</u>
\$ -	\$ -	\$ 287,585	\$ 94	\$ -	\$ 32,098	\$ 647,422	\$ 1,383,925
-	-	-	-	-	-	-	167,367
-	-	-	-	-	-	49,597	49,597
<u>2,223,797</u>	<u>-</u>	<u>969,929</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>3,662,820</u>
<u>2,223,797</u>	<u>-</u>	<u>1,257,514</u>	<u>94</u>	<u>-</u>	<u>32,098</u>	<u>697,019</u>	<u>5,263,709</u>
2,365,779	208,382	576,000	1,519,472	-	-	-	4,669,633
-	-	-	-	-	-	569,724	569,724
-	-	-	-	-	-	-	1,515
<u>2,365,779</u>	<u>208,382</u>	<u>576,000</u>	<u>1,519,472</u>	<u>-</u>	<u>-</u>	<u>569,724</u>	<u>5,240,872</u>
-	-	-	-	-	7,104	-	35,919
-	466,871	-	2,780,107	-	-	-	3,979,080
-	-	-	-	-	-	-	3,152,177
-	-	-	-	-	-	-	223,079
-	-	-	-	-	-	-	1,825,372
-	-	-	-	5,673,593	357,802	12,782,504	18,813,899
<u>(2,223,797)</u>	<u>-</u>	<u>(1,060,377)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(3,774,377)</u>
<u>(2,223,797)</u>	<u>466,871</u>	<u>(1,060,377)</u>	<u>2,780,107</u>	<u>5,673,593</u>	<u>364,906</u>	<u>12,782,504</u>	<u>24,255,149</u>
<u>\$ 2,365,779</u>	<u>\$ 675,253</u>	<u>\$ 773,137</u>	<u>\$ 4,299,673</u>	<u>\$ 5,673,593</u>	<u>\$ 397,004</u>	<u>\$ 14,049,247</u>	<u>\$ 34,759,730</u>

CITY OF DES PLAINES, ILLINOIS  
 COMBINING STATEMENT OF REVENUES, EXPENDITURES  
 AND CHANGES IN FUND BALANCES  
 NONMAJOR GOVERNMENTAL FUNDS  
 Year-Ended December 31, 2022

	Special Revenue Funds					
	Motor Fuel Tax	Community Development Block Grant	Asset Seizure	Foreign Fire Insurance Tax	Escrow Fund	TIF #1 (Downtown)
<b>Revenues</b>						
Taxes (Refunds)	\$ -	\$ -	\$ -	\$ 155,436	\$ -	\$ (56,092)
Intergovernmental	3,664,730	335,277	548,440	-	-	-
Fines, Forfeitures and Penalties	-	-	5,177	-	-	-
Developer Fees	-	-	-	-	509,666	-
Investment Income	25,123	-	1,145	1,281	-	3
Lease Revenue	-	-	-	-	-	-
Miscellaneous	-	-	-	-	7,650	-
<b>Total Revenues</b>	<u>3,689,853</u>	<u>335,277</u>	<u>554,762</u>	<u>156,717</u>	<u>517,316</u>	<u>(56,089)</u>
<b>Expenditures</b>						
Current:						
General Government	-	-	-	-	-	-
Public Safety	-	-	62,832	133,262	1,206	-
Streets and Highways	1,120,632	-	-	-	-	-
Economic Development	-	202,780	-	-	270,574	-
Debt Service						
Principal	-	-	-	-	-	-
Interest and Fiscal Charges	-	-	-	-	-	-
Capital Outlay	2,902,154	72,000	398,225	-	-	-
<b>Total Expenditures</b>	<u>4,022,786</u>	<u>274,780</u>	<u>461,057</u>	<u>133,262</u>	<u>271,780</u>	<u>-</u>
<b>Excess (Deficiency) of Revenues over (under) Expenditures</b>	<u>(332,933)</u>	<u>60,497</u>	<u>93,705</u>	<u>23,455</u>	<u>245,536</u>	<u>(56,089)</u>
<b>Other Financing Sources (Uses)</b>						
Proceeds from sale of capital assets	-	-	1,800	-	-	-
Transfers In	-	-	-	-	-	-
Transfers Out	-	-	-	-	-	-
<b>Total Other Financing Sources (Uses)</b>	<u>-</u>	<u>-</u>	<u>1,800</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>Net Change in Fund Balances</b>	(332,933)	60,497	95,505	23,455	245,536	(56,089)
<b>Fund Balances at Beginning of Year</b>	<u>3,708,189</u>	<u>(62,374)</u>	<u>1,151,223</u>	<u>584,004</u>	<u>486,566</u>	<u>(432,237)</u>
<b>Fund Balances at End of Year</b>	<u>\$ 3,375,256</u>	<u>\$ (1,877)</u>	<u>\$ 1,246,728</u>	<u>\$ 607,459</u>	<u>\$ 732,102</u>	<u>\$ (488,326)</u>

Special Revenue Funds				Capital Projects Funds			Total Nonmajor Governmental Funds
TIF #3 (Wille Road)	TIF #5 (Perry/Lee)	TIF #7 (Mannheim/ Higgins South)	TIF #8 (Oakton)	Equipment Replacement	I.T. Replacement	Facilities Replacement	
\$ 2,417,417	\$ 126,045	\$ 725,534	\$ 1,085,223	\$ -	\$ -	\$ -	\$ 4,453,563
-	-	-	-	-	-	-	4,548,447
-	-	-	-	-	-	-	5,177
-	-	-	-	-	-	-	509,666
19	2	8	13	5,289	1,563	-	34,446
-	-	-	-	-	-	264,357	264,357
-	-	-	-	1	-	274,047	281,698
<u>2,417,436</u>	<u>126,047</u>	<u>725,542</u>	<u>1,085,236</u>	<u>5,290</u>	<u>1,563</u>	<u>538,404</u>	<u>10,097,354</u>
-	-	-	-	-	80,546	3,323,917	3,404,463
-	-	-	-	-	-	-	197,300
-	-	-	-	-	-	-	1,120,632
60	-	293,551	46,511	-	-	-	813,476
1,550,000	-	-	-	-	-	-	1,550,000
304,156	-	-	-	-	-	-	304,156
-	-	-	510,402	547,874	266,685	33,583	4,730,923
<u>1,854,216</u>	<u>-</u>	<u>293,551</u>	<u>556,913</u>	<u>547,874</u>	<u>347,231</u>	<u>3,357,500</u>	<u>12,120,950</u>
<u>563,220</u>	<u>126,047</u>	<u>431,991</u>	<u>528,323</u>	<u>(542,584)</u>	<u>(345,668)</u>	<u>(2,819,096)</u>	<u>(2,023,596)</u>
-	-	-	-	105,033	-	-	106,833
-	-	-	-	1,500,000	400,000	3,700,000	5,600,000
(1,000)	-	(10,000)	(36,000)	-	-	-	(47,000)
<u>(1,000)</u>	<u>-</u>	<u>(10,000)</u>	<u>(36,000)</u>	<u>1,605,033</u>	<u>400,000</u>	<u>3,700,000</u>	<u>5,659,833</u>
562,220	126,047	421,991	492,323	1,062,449	54,332	880,904	3,636,237
<u>(2,786,017)</u>	<u>340,824</u>	<u>(1,482,368)</u>	<u>2,287,784</u>	<u>4,611,144</u>	<u>310,574</u>	<u>11,901,600</u>	<u>20,618,912</u>
<u>\$ (2,223,797)</u>	<u>\$ 466,871</u>	<u>\$ (1,060,377)</u>	<u>\$ 2,780,107</u>	<u>\$ 5,673,593</u>	<u>\$ 364,906</u>	<u>\$ 12,782,504</u>	<u>\$ 24,255,149</u>





Crowe LLP  
Independent Member Crowe Global

INDEPENDENT ACCOUNTANT'S REPORT

To the Honorable Mayor  
and Members of the City Council  
City of Des Plaines, Illinois

We have examined the City of Des Plaines, Illinois' ("City's") compliance with the requirements of subsection (q) of Section 11-74.4-3 of the Illinois Tax Increment Redevelopment Allocation Act during the year ended December 31, 2022. Management of the City is responsible for the City's compliance with the specified requirements. Our responsibility is to express an opinion on the City's compliance with the specified requirements based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the City complied, in all material respects, with the specified requirements referenced above. An examination involves performing procedures to obtain evidence about whether the City complied with the specified requirements. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material noncompliance, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

We are required to be independent and to meet our ethical responsibilities in accordance with relevant ethical requirements relating to the engagement.

Our examination does not provide a legal determination on the City's compliance with specified requirements.

In our opinion, the City complied, in all material respects, with the aforementioned requirements during the year ended December 31, 2022.

*Crowe LLP*  
Crowe LLP

Oak Brook, Illinois  
June 13, 2023