

UNOFFICIAL COPY

Return to:
Wheatland Title Guaranty
105 W. Veterans Parkway, Yorkville, IL 60580

MAM - 2010 20 - 6683 (1 of 1)
thru
-6696



Doc#: 1020934030 Fee: \$106.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/28/2010 09:53 AM Pg: 1 of 36

AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND

(The Above Space For Recorder's Use Only)

This **AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND** ("Agreement") is made on or as of the 20th day of July, 2010, by and between the **CITY OF CHICAGO**, an Illinois municipal corporation ("City"), acting by and through its Department of Community Development ("DCD"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 and **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia for-profit corporation ("Developer"), whose address is Three Commercial Place, Norfolk, Virginia 23510.

RECITALS

WHEREAS, pursuant to an ordinance adopted by the City Council of the City (the "City Council") on May 29, 2002 and published at pages 85676 through 85874, in the Journal of the Proceedings of the City Council (the "Journal") of such date, a certain redevelopment plan and project (the "Plan") for the 47th/Halsted Tax Increment Financing Redevelopment Project Area (the "Area"), was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1 et seq.) (the "Act"); and

WHEREAS, pursuant to an ordinance adopted by the City Council on May 29, 2002 and published at pages 85872 through 85888 in the Journal of such date, the Area was designated as a redevelopment project area pursuant to the Act; and

WHEREAS, pursuant to an ordinance ("TIF Ordinance") adopted by the City Council on May 29, 2002 and published at pages 85889 through 85904 the Journal of such date, tax increment financing was adopted pursuant to the Act as a means of financing certain Area redevelopment project costs (as defined in the Act) incurred pursuant to the Plan; and

WHEREAS, the Plan and the use of tax increment financing provide a mechanism to support new growth through leveraging private investment, and helping to finance land

UNOFFICIAL COPY

acquisition, demolition, remediation, site preparation and infrastructure for new development in the Area; and

WHEREAS, the Developer desires to purchase from the City the real property located in the Area, commonly known as 516, 522, 526, 530 and 544 W. Garfield Boulevard, 5436 S. Normal Avenue and 513-529 W. 54th Place, Chicago, Illinois 60609, and legally described on Exhibit A attached hereto (the "Property"); and

WHEREAS, the Developer intends to use the Property in order to expand its intermodal yard that adjoins the Property, as more fully described on Exhibit B attached hereto (the "Intermodal Yard Work"); and

WHEREAS, as additional consideration for the Property, the Developer shall complete the additional work described on Exhibit B attached hereto (the "Additional Work"; the Intermodal Yard Work and the Additional Work, collectively are known as the "Project"); and

WHEREAS, the Project is consistent with the Plan; and

WHEREAS, the City Council, pursuant to an ordinance adopted on April 14, 2010, and published at pages 88343 through 88385 in the Journal of the Proceedings of the City Council of such date, authorized the sale of the Property to the Developer, subject to the execution, delivery and recording of this Agreement; and

WHEREAS, the Developer and the City acknowledge that the implementation of the policies and provisions described in this Agreement will be of mutual benefit to the Developer and the City.

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

SECTION 1. INCORPORATION OF RECITALS.

The foregoing recitals constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

SECTION 2. PURCHASE PRICE.

Subject to the terms, covenants and conditions of this Agreement, the City hereby agrees to sell, and the Developer hereby agrees to purchase, upon and subject to the terms and conditions of this Agreement, the Property for its appraised fair market value of Two Hundred Ten Thousand and 00/100 Dollars (\$210,000; the "Purchase Price"), to be paid to the City at the Closing (as defined in Section 4) in cash or by certified or cashier's check or wire transfer of immediately available funds, less the Earnest Money (as defined in Section 3.1) previously paid

UNOFFICIAL COPY

by Developer to the City. Except as specifically provided herein to the contrary, the Developer shall pay all escrow fees and other title insurance fees and closing costs.

SECTION 3. EARNEST MONEY AND PERFORMANCE DEPOSIT.

3.1 Earnest Money. Not later than the earlier of (a) August 2, 2010 or such later date as determined by the Commissioner of DCD (the "Commissioner") and (b) the date on which the Developer executes this Agreement, the Developer shall deposit with the City the amount of Ten Thousand Five Hundred and 00/100 Dollars (\$10,500) ("Earnest Money"), which shall be applied to the Purchase Price at the Closing.

3.2 Performance Deposit. Not later than the earlier of (a) August 2, 2010 or such later date as determined by the Commissioner and (b) the date on which the Developer executes this Agreement, the Developer shall deposit with the City the amount of Ten Thousand Five Hundred and 00/100 Dollars (\$10,500), as security for the performance of its obligations under this Agreement ("Performance Deposit"), which the City will retain until the City issues a Certificate of Completion (as defined in Section 13).

3.3 Interest. The City will pay no interest to the Developer on the Performance Deposit.

SECTION 4. CLOSING.

The closing of the transaction contemplated by this Agreement (the "Closing") shall take place at the downtown offices of Greater Illinois Title Company, 120 North LaSalle Street, Chicago, Illinois 60602, or such other title company as may be selected by the Developer (the "Title Company"), within thirty (30) days after the Developer has obtained all applicable building permits and zoning approvals for the Intermodal Yard Work, as required pursuant to Section 9.1, or on such date as the parties mutually agree upon in writing (the "Closing Date"); provided, however, in no event shall the Closing occur (a) until the Developer has satisfied all conditions precedent set forth in Section 9, unless DCD, in its sole discretion, waives such conditions, and (b) any later than November 1, 2010 (the "Outside Closing Date"), unless DCD, in its sole discretion, extends the Outside Closing Date for a period of up to six (6) months. On or before the Closing Date, the City shall deliver to the Title Company the Deed, all necessary state, county and municipal real estate transfer tax declarations, and an ALTA statement.

SECTION 5. CONVEYANCE OF TITLE.

5.1 Form of Deed. Without limiting the generality of the quitclaim nature of the deed, the City shall convey the Property to the Developer by quitclaim deed ("Deed"), subject to the terms of this Agreement and the following (collectively, the "Permitted Exceptions"):

- (a) the Plan for the Area;
- (b) the standard exceptions in an ALTA title insurance policy;

UNOFFICIAL COPY

- (c) general real estate taxes and any special assessments or other taxes;
 - (d) all easements, encroachments, covenants and restrictions of record and not shown of record;
 - (e) such other title defects as may exist;
 - (f) any and all exceptions caused by the acts of the Developer or its agents;
- and
- (g) a perpetual public utilities easement in favor of the City, its successors and assigns.

5.2 Recording Costs. The Developer shall pay to record the Deed, this Agreement, and any other documents incident to the conveyance of the Property to the Developer.

SECTION 6. TITLE AND SURVEY.

6.1 The Developer acknowledges that the City has delivered to the Developer a commitment for an owner's policy of title insurance for the Property (the "Title Commitment") from the Title Company, showing the City in title to the Property. The Developer shall be solely responsible for and shall pay all costs associated with updating the Title Commitment (including all search, continuation and later-date fees), and obtaining any title insurance, extended coverage or other endorsements it deems necessary. The Developer shall also be solely responsible for and shall pay all costs associated with obtaining any survey it deems necessary. The City agrees to provide the Title Company with a completed ALTA owner's statement, and other transfer documents typically required by the Title Company and typically provided by the City (but expressly excluding, however, "gap" undertakings, title indemnities and similar liabilities) at or prior to the Closing. At the Closing, the Developer shall deliver to the City a copy of the owner's policy of title insurance that it obtains with respect to the Property.

6.2 The City shall use reasonable efforts to obtain the waiver or release of any delinquent real estate taxes or tax liens on the Property prior to the Closing, to the extent such taxes or tax liens can be waived or released through submission of an abatement letter to the Cook County Treasurer, a motion to vacate a tax sale or a petition for exemption. If the City is unable to obtain the waiver or release of any such tax liens or is unable to cause the Title Company to insure over such tax liens, or if the Property is encumbered with any other unpermitted exceptions, the Developer shall have the option to do one of the following: (a) accept title to the Property subject to the unpermitted exceptions, which shall then become Permitted Exceptions, without reduction in the Purchase Price; or (b) terminate this Agreement by delivery of written notice to the City at least fourteen (14) days prior to the Closing Date, in which event the City shall return the Earnest Money and Performance Deposit to the Developer, this Agreement shall be null and void and, except as otherwise specifically provided herein, neither party shall have any further right, duty or obligation hereunder. If the Developer elects not to terminate this Agreement as aforesaid, the Developer agrees to accept title subject to the

UNOFFICIAL COPY

unpermitted exceptions. The Developer shall be responsible for all taxes accruing after the Closing.

SECTION 7. BUILDING PERMITS AND OTHER GOVERNMENTAL APPROVALS.

The Developer shall apply for all applicable building permits and other required permits and approvals for the construction of the Intermodal Yard Work no later than fourteen (14) days after the City Council authorizes the sale of the Property, and shall pursue such permits and approvals in good faith and with all due diligence.

SECTION 8. INTERMODAL YARD WORK BUDGET AND PROOF OF FINANCING.

The total budget for the Intermodal Yard Work is currently estimated to be One Million One Hundred Seventy-Five Thousand and 00/100 Dollars (\$1,175,000) (the "Preliminary Intermodal Yard Work Budget"). Not less than fourteen (14) days prior to the Closing Date, the Developer shall submit to DCD for approval a final Intermodal Yard Work budget materially consistent with the Preliminary Intermodal Yard Work Budget ("Budget") and evidence of funds adequate to finance the purchase of the Property and the construction of the Intermodal Yard Work ("Proof of Financing"). The Proof of Financing shall include binding commitment letters from the Developer's lenders, if any, and evidence of the Developer's ability to make an equity contribution in the amount necessary to fill the gap between the Budget and any approved financing.

SECTION 9. CONDITIONS TO THE CITY'S OBLIGATION TO CLOSE.

The obligations of the City under this Agreement are contingent upon each of the following being satisfied at least fourteen (14) days prior to the Closing Date, or on such other date as may be expressly provided for below, unless waived in writing by the Commissioner:

9.1 Final Governmental Approvals. The Developer shall have delivered to the City evidence of all applicable building permits and other final governmental approvals necessary to construct the Intermodal Yard Work.

9.2 Budget and Proof of Financing. The City shall have approved the Developer's Budget and Proof of Financing.

9.3 Simultaneous Loan Closing. On the Closing Date, the Developer shall simultaneously close or draw down on any acquisition financing approved pursuant to this Agreement and be in a position to immediately commence construction of the Intermodal Yard Work.

9.4 Insurance. The Developer shall have delivered to the City evidence of liability and property insurance reasonably acceptable to the City. The City shall be named as an additional insured on all liability insurance policies from the Closing Date through the date the City issues the Certificate of Completion (as defined in Section 13 below). With respect to property insurance, the City will accept an ACORD 28 form. With respect to liability insurance,

UNOFFICIAL COPY

the City will accept an ACORD 25 form, together with a copy of the endorsement that is added to the Developer's policy showing the City as an additional insured. Upon request, the Developer shall provide a copy of the declaration page for each policy listed on the ACORD 25 and ACORD 28 forms.

9.5 Legal Opinion. The Developer shall, at the City's request, deliver to the City a legal opinion in a form reasonably acceptable to the City's Corporation Counsel.

9.6 Due Diligence. The Developer shall have delivered to the City due diligence searches in its name (UCC liens, state and federal tax liens, pending litigation and judgments in Cook County and the U.S. District Court for the Northern District of Illinois, and bankruptcy), showing no unacceptable liens, litigation, judgments or filings, as reasonably determined by the City's Corporation Counsel.

9.7 Subordination Agreement. On the Closing Date, and prior to recording any mortgage approved pursuant to Section 9.2, the Developer shall, at the City's request, deliver to the City a subordination agreement in which the construction lender agrees to subordinate the lien of its mortgage to the covenants running with the land, or such other subordination assurance as the Corporation Counsel shall deem acceptable.

9.8 MBE/WBE Compliance Plan. The Developer and the Developer's general contractor and all major subcontractors shall meet with staff from DCD regarding compliance with the MBE/WBE, city residency hiring, prevailing wage and other requirements set forth in Section 23, and at least seven (7) days prior to the Closing Date, the City shall have approved the Developer's compliance plan in accordance with Section 23.4.

9.9 Representations and Warranties. On the Closing Date, each of the representations and warranties of the Developer in Section 24 and elsewhere in this Agreement shall be true and correct.

9.10 Organization and Authority Documents. The Developer shall have delivered to the City the Developer's articles of incorporation, including all amendments thereto, as furnished and certified by the Illinois Secretary of State; the by-laws of the Developer, as certified by the secretary of the Developer; resolutions authorizing the Developer to execute and deliver this Agreement and any other documents required to complete the transaction contemplated by this Agreement and to perform its obligations under this Agreement; a certificate of good standing from the Illinois Secretary of State dated no more than thirty (30) days prior to the Closing Date; and such other corporate authority and organizational documents as the City may reasonably request.

9.11 Reconveyance Deed. Prior to the conveyance of the Property to the Developer, the Developer shall deliver to the City a special warranty deed for the Property in recordable form naming the City as grantee ("Reconveyance Deed"), for possible recording in accordance with Section 19.6 below, if applicable.

UNOFFICIAL COPY

9.12 Other Obligations. On the Closing Date, the Developer shall have performed all of the other obligations required to be performed by the Developer under this Agreement as and when required under this Agreement. If any of the conditions in this Section 9 have not been satisfied to the City's reasonable satisfaction within the time periods provided for herein, or waived by DCD in writing, the City may, at its option, terminate this Agreement by delivery of written notice to the Developer at any time after the expiration of the applicable time period, in which event the City shall return the Performance Deposit to the Developer, this Agreement shall be null and void and, except as otherwise specifically provided herein, neither party shall have any further right, duty or obligation hereunder. Any forbearance by the City in exercising its right to terminate this Agreement upon a default hereunder shall not be construed as a waiver of such right.

SECTION 10 CONSTRUCTION REQUIREMENTS.

10.1 Site Plans. The Developer shall construct the Intermodal Yard Work on the Property in accordance with the final design development drawings and specifications prepared by Daniel Weinbach & Partners, Ltd., 53 W. Jackson Boulevard, Suite 250, Chicago, Illinois 60604, which have been approved by DCD and which are attached hereto as Exhibit C ("Working Drawings and Specifications"). No material deviation from the Working Drawings and Specifications may be made without the prior written approval of DCD. If the Developer submits and DCD approves revised design development drawings and specifications after the date of this Agreement, the term "Working Drawings and Specifications" as used herein shall refer to the revised design development drawings and specifications upon DCD's written approval of the same.

10.2 Relocation of Utilities, Curb Cuts and Driveways. The Developer shall be solely responsible for and shall pay all costs associated with: (a) the relocation, installation or construction of public or private utilities, curb cuts and driveways; (b) the repair or reconstruction of any curbs, vaults, sidewalks or parkways required in connection with or damaged as a result of the Developer's construction of the Project; (c) the removal of existing pipes, utility equipment or building foundations; and (d) the termination of existing water or other services. The City shall have the right to approve any streetscaping provided by the Developer as part of the Project, including, without limitation, any paving of sidewalks, landscaping and lighting.

10.3 City's Right to Inspect Property. For the period commencing on the Closing Date and continuing through the date the City issues the Certificate of Completion, any duly authorized representative of the City shall have access to the Property at all reasonable times for the purpose of determining whether the Developer is constructing the Project in accordance with the terms of this Agreement and all applicable federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders and judgments, including, without limitation, Sections 7-28 and 11-4 of the Municipal Code of Chicago relating to waste disposal (collectively, "Laws").

10.4 Barricades and Signs. Promptly after the execution of this Agreement, the Developer shall, at its sole cost and expense, erect and maintain such signs as the City may reasonably require identifying the Property as a City redevelopment project. Prior to the

UNOFFICIAL COPY

commencement of any construction activity requiring barricades, the Developer shall install barricades of a type and appearance satisfactory to the City and constructed in compliance with all applicable Laws. DCD shall have the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades, which approval shall not be unreasonably withheld or delayed. The Developer shall erect all signs and barricades so as not to interfere with or affect any bus stop or train station in the vicinity of the Property.

10.5 Survival. The provisions of this Section 10 shall survive the Closing.

SECTION 11. LIMITED APPLICABILITY.

Any approval given by DCD pursuant to this Agreement is for the purpose of this Agreement only and does not constitute the approval required by the City's Department of Buildings or any other City department, nor does such DCD approval constitute an approval of the quality, structural soundness or safety of any improvements located or to be located on the Property, or the compliance of said improvements with any Laws, private covenants, restrictions of record, or any agreement affecting the Property or any part thereof.

SECTION 12. COMMENCEMENT AND COMPLETION OF PROJECT.

Subject to the receipt of all applicable government approvals, the Developer shall commence construction of the Project no later than May 1, 2011, and shall complete the Intermodal Yard Work (as determined by DCD) no later than October 31, 2011. The Commissioner of DCD shall have discretion to extend any of the construction commencement and completion dates by up to six (6) months each for good cause shown by issuing a written extension letter.

The Developer shall give written notice to the City within five (5) days after it commences construction of the Intermodal Yard Work and within five (5) days after it commences construction of each of the projects identified in item #1 of the Additional Work section in Exhibit B. The Developer shall construct the Project in accordance with the Working Drawings and Specifications, and all Laws and covenants and restrictions of record.

SECTION 13. CERTIFICATE OF COMPLETION.

The Developer shall request from the City a certificate of completion ("Certificate of Completion") upon the completion of the Project in accordance with this Agreement. Within forty-five (45) days after receipt of a written request by the Developer for a Certificate of Completion, the City shall provide the Developer with either the Certificate of Completion or a written statement indicating in adequate detail how the Developer has failed to complete the Project in conformity with this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the sole opinion of the City, for the Developer to take or perform in order to obtain the Certificate of Completion. If the City requires additional measures or acts to assure compliance, the Developer shall resubmit a written request for the Certificate of Completion upon compliance with the City's response. The Certificate of Completion shall be in recordable form, and shall, upon recording, constitute a conclusive determination of satisfaction and

UNOFFICIAL COPY

termination of the covenants in this Agreement and the Deed with respect to the Developer's obligations to construct the Project. The Certificate of Completion shall not, however, constitute evidence that the Developer has complied with any Laws relating to the construction of the Project, and shall not serve as any "guaranty" as to the quality of the construction. Promptly following the recordation of the Certificate of Completion, the City shall return the Performance Deposit and Reconveyance Deed to the Developer.

SECTION 14. RESTRICTIONS ON USE.

The Developer agrees that it:

14.1 Shall devote the Property solely to the Intermodal Yard Work or a rail use.

14.2 Shall not discriminate on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income in the use or occupancy of the Property or any part thereof or the Project or any part thereof.

14.3 Shall devote the Property to a use consistent with the Plan.

SECTION 15. PROHIBITION AGAINST SALE OR TRANSFER OF PROPERTY.

Prior to the issuance of the Certificate of Completion for the Project, the Developer may not, without the prior written consent of DCD, which consent shall be in DCD's sole discretion: (a) directly or indirectly sell, transfer or otherwise dispose of the Property or any part thereof or any interest therein or the Developer's controlling interests therein (including without limitation, a transfer by assignment of any beneficial interest under a land trust); or (b) directly or indirectly assign this Agreement. The Developer acknowledges and agrees that DCD may withhold its consent under (a) or (b) above if, among other reasons, the proposed purchaser, transferee or assignee (or such entity's principal officers or directors) is in violation of any Laws, or if the Developer fails to submit sufficient evidence of the financial responsibility, business background and reputation of the proposed purchaser, transferee or assignee. If the Developer is a business entity, no principal party of the Developer (e.g., a general partner, member, manager or shareholder) may sell, transfer or assign any of its interest in the entity prior to the issuance of the Certificate of Completion to anyone other than another principal party, without the prior written consent of DCD, which consent shall be in DCD's sole discretion. The Developer must disclose the identity of all limited partners to the City at the time such limited partners obtain an interest in the Developer. The provisions of this Section 15 shall not prohibit the Developer from transferring or conveying the Property to an Illinois land trust of which the Developer is the sole beneficiary.

SECTION 16. LIMITATION UPON ENCUMBRANCE OF PROPERTY.

Prior to the issuance of the Certificate of Completion, the Developer shall not, without DCD's prior written consent, which shall be in DCD's sole discretion, engage in any financing

UNOFFICIAL COPY

or other transaction which would create an encumbrance or lien on the Property, except for any mortgage approved pursuant to Section 9.2.

SECTION 17. MORTGAGEES NOT OBLIGATED TO CONSTRUCT.

Notwithstanding any other provision of this Agreement or of the Deed, the holder of any mortgage authorized by this Agreement (or any affiliate of such holder) shall not itself be obligated to construct or complete the Project, or to guarantee such construction or completion, but shall be bound by the other covenants running with the land specified in Section 18 and shall, prior to recording any mortgage approved pursuant to Section 9.2, execute and record a Subordination Agreement (as defined in Section 9.8). If any such mortgagee or its affiliate succeeds to the Developer's interest in the Property prior to the issuance of the Certificate of Completion, whether by foreclosure, deed-in-lieu of foreclosure or otherwise, and thereafter transfers its interest in the Property to another party, such transferee shall be obligated to complete the Project, and shall also be bound by the other covenants running with the land specified in Section 18.

SECTION 18. COVENANTS RUNNING WITH THE LAND.

The parties agree, and the Deed shall so expressly provide, that the covenants provided in Section 12 (Commencement and Completion of Project), Section 14 (Restrictions on Use), Section 15 (Prohibition Against Sale or Transfer of Property) and Section 16 (Limitation Upon Encumbrance of Property) will be covenants running with the land, binding on the Developer and its successors and assigns (subject to the limitation set forth in Section 17 above as to any permitted mortgagee) to the fullest extent permitted by law and equity for the benefit and in favor of the City, and shall be enforceable by the City. The covenants provided in Section 12, Section 15 and Section 16 shall terminate upon the issuance of the Certificate of Completion. The covenants contained in Section 14.1 shall remain in effect for so long as the Developer remains in title to the Property; provided, however, such covenants shall not terminate prior to the issuance of the Certificate of Completion. The covenants contained in Section 14.2 shall remain in effect without limitation as to time. The covenant contained in Section 14.3 shall terminate upon the expiration of the life of the Plan, as such expiration may be amended from time to time in accordance with and pursuant to applicable law.

SECTION 19. PERFORMANCE AND BREACH.

19.1 Time of the Essence. Time is of the essence in the Developer's performance of its obligations under this Agreement.

19.2 Permitted Delays. The Developer shall not be considered in breach of its obligations under this Agreement in the event of a delay due to unforeseeable causes beyond the Developer's control and without the Developer's fault or negligence, including, without limitation, acts of God, acts of the public enemy, acts of the United States government, fires, floods, epidemics, quarantine restrictions, strikes, embargoes and unusually severe weather or delays of subcontractors due to such causes. The time for the performance of the obligations shall be extended only for the period of the delay and only if the Developer, within twenty (20)

UNOFFICIAL COPY

days after the beginning of any such delay, submits to the Commissioner a written request for an extension.

19.3 Cure. If the Developer defaults in the performance of its obligations under this Agreement, the Developer shall have sixty (60) days after written notice of default from the City to cure the default, or such longer period as shall be reasonably necessary to cure such default provided the Developer promptly commences such cure and thereafter diligently pursues such cure to completion (so long as continuation of the default does not create material risk to the Project or to persons using the Project). Notwithstanding the foregoing, no notice or cure period shall apply to defaults under Sections 19.4 (c), (e) and (g).

19.4 Event of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" under this Agreement:

(a) The Developer makes or furnishes a warranty, representation, statement or certification to the City (whether in this Agreement, an Economic Disclosure Statement and Affidavit, or another document) that is not true and correct.

(b) A petition is filed by or against the Developer under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereafter existing, which is not vacated, stayed or set aside within thirty (30) days after filing.

(c) The Developer fails to complete the Project in accordance with the time line outlined in Section 12 above, or the Developer abandons or substantially suspends construction of the Project.

(d) The Developer fails to timely pay real estate taxes or assessments affecting the Property or any part thereof when due, or places thereon any encumbrance or lien unauthorized by this Agreement, or suffers or permits any levy or attachment, mechanic's, laborer's, material supplier's, or any other lien or encumbrance unauthorized by this Agreement to attach to the Property unless bonded or insured over.

(e) The Developer makes an assignment, pledge, unpermitted financing, encumbrance, transfer or other disposition in violation of this Agreement.

(f) There is a material and adverse change in the Developer's financial condition or operations.

(g) The Developer fails to close by the Outside Closing Date, unless DCD, in its sole discretion, extends the Outside Closing Date.

(h) The Developer fails to perform, keep or observe any of the other covenants, conditions, promises, agreements or obligations under this Agreement or any other written agreement entered into with the City with respect to the Project.

UNOFFICIAL COPY

19.5 Prior to Closing. If an Event of Default occurs prior to the Closing, and the default is not cured in the time period provided for in Section 19.3 above, the City may terminate this Agreement, institute any action or proceeding at law or in equity against the Developer, and retain the Earnest Money as liquidated damages.

19.6 After Closing. If an Event of Default occurs after the Closing but prior to the issuance of the Certificate of Completion, and the default is not cured in the time period provided for in Section 19.3 above, the City may terminate this Agreement, retain the Performance Deposit (which shall be applied against any money damages incurred by the City), and exercise any and all remedies available to it at law or in equity, including, without limitation, the right to re-enter and take possession of the Property, terminate the estate conveyed to the Developer, and revest title to the Property in the City pursuant to the Reconveyance Deed (the "Right of Reverter"); provided, however, the City's Right of Reverter shall be limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage authorized by this Agreement. If the Reconveyance Deed is recorded by the City, the Developer shall be responsible for all real estate taxes and assessments which accrued during the period the Property was owned by the Developer, and shall cause the release of all liens or encumbrances placed on the Property during the period of time the Property was owned by the Developer. The Developer represents and warrants to the City that the City may revest title through the recording of the Reconveyance Deed without any prior approval from the Surface Transportation Board, the Illinois Commerce Commission, or any similar regulatory body having jurisdiction over the Developer's operations. The Developer will cooperate with the City to ensure that if the City records the Reconveyance Deed, such recording is effective for purposes of transferring title to the Property to the City.

19.7 Resale of the Property. Upon the revesting in the City of title to the Property as provided in Section 19.6, the City may complete the Project or convey the Property, subject to any first mortgage lien, to a qualified and financially responsible party reasonably acceptable to the first mortgagee, who shall assume the obligation of completing the Project or such other improvements as shall be satisfactory to DCD, and otherwise comply with the covenants that run with the land as specified in Section 18.

19.8 Disposition of Resale Proceeds. If the City sells the Property as provided for in Section 19.7, the net proceeds from the sale, after payment of all amounts owed under any mortgage liens authorized by this Agreement in order of lien priority, shall be utilized to reimburse the City for:

(a) costs and expenses incurred by the City (including, without limitation, salaries of personnel) in connection with the recapture, management and resale of the Property (less any income derived by the City from the Property in connection with such management); and

(b) all unpaid taxes, assessments, and water and sewer charges assessed against the Property; and

UNOFFICIAL COPY

- (c) any payments made (including, without limitation, reasonable attorneys' fees and court costs) to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer; and
- (d) any expenditures made or obligations incurred with respect to construction or maintenance of the Project; and
- (e) any other amounts owed to the City by the Developer.

The Developer shall be entitled to receive any remaining proceeds up to the amount of the Developer's equity investment in the Property. In addition to, and without in any way limiting the City's rights under this Section 19, the City shall have the right to retain the Performance Deposit in the event of a default by the Developer.

SECTION 20. CONFLICT OF INTEREST; CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

The Developer represents and warrants that no agent, official or employee of the City shall have any personal interest, direct or indirect, in the Developer, this Agreement, the Property or the Project, nor shall any such agent, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, association or other entity in which he or she is directly or indirectly interested. No agent, official or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or with respect to any commitment or obligation of the City under the terms of this Agreement.

SECTION 21. INDEMNIFICATION.

The Developer agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the City arising from or in connection with: (a) the failure of the Developer to perform its obligations under this Agreement; (b) the failure of the Developer or any contractor or other agent, entity or individual acting under the control or at the request of the Developer ("Agent") to pay contractors, subcontractors or material suppliers in connection with the construction and management of the Project; (c) any misrepresentation or omission made by the Developer or any Agent; (d) the failure of the Developer to redress any misrepresentations or omissions in this Agreement or any other agreement relating hereto; and (e) any activity undertaken by the Developer or any Agent on the Property prior to or after the Closing. This indemnification shall survive the Closing or any termination of this Agreement (regardless of the reason for such termination).

UNOFFICIAL COPY

SECTION 22. INSPECTION; CONDITION OF PROPERTY AT CLOSING.

22.1 “As Is” Sale. The City makes no covenant, representation or warranty, express or implied, of any kind, as to the structural, physical or environmental condition of the Property or the suitability of the Property for any purpose whatsoever, and the Developer agrees to accept the property in its “as is,” “where is” and “with all faults” condition.

22.2 Right of Entry.

(a) The Developer’s obligations hereunder are conditioned upon the Developer being satisfied with the condition of the Property for the construction, development and operation of the Project. Upon the Developer’s request, the City shall grant the Developer the right, at its sole cost and expense, to enter the Property for a period of thirty (30) days (the “Inspection Period”) pursuant to a Right of Entry Agreement in form and substance reasonably acceptable to the City to inspect the same, performs, environmental assessments, soil and any other due diligence it deems necessary or desirable to satisfy itself as to the condition of the Property.

(b) If the Developer determines that it is not satisfied, in its sole discretion, with the condition of the Property, the Developer may terminate this Agreement by written notice to the City within thirty (30) days after the expiration of the Inspection Period, whereupon the City shall return the Earnest Money and Performance Deposit to the Developer and this Agreement shall be null and void and, except as otherwise specifically provided, neither party shall have any further right, duty or obligation hereunder. If the Developer elects not to terminate this Agreement pursuant to this Section 22.2, the Developer shall be deemed satisfied with the condition of the Property.

22.3 Indemnity. The Developer hereby waives and releases, and indemnifies the City from and against, any claims and liabilities relating to or arising from the structural, physical or environmental condition of the Property, including, without limitation, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), and shall undertake and discharge all liabilities of the City arising from any structural, physical or environmental condition that existed on the Property prior to the Closing, including, without limitation, liabilities arising under CERCLA. The Developer hereby acknowledges that, in purchasing the Property, the Developer is relying solely upon its own inspection and other due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the City or its agents or employees with respect thereto. The Developer shall perform such studies and investigations, conduct such tests and surveys, and engage such specialists as the Developer deems appropriate to evaluate fairly the structural, physical and environmental condition and risks of the Property. If, after the Closing, the structural, physical and environmental condition of the Property is not in all respects entirely suitable for its intended use, it shall be the Developer’s sole responsibility and obligation to take such action as is necessary to put the Property in a condition which is suitable for its intended use. The provisions of this Section 22.3 shall survive the Closing.

UNOFFICIAL COPY

SECTION 23. DEVELOPER'S EMPLOYMENT OBLIGATIONS.

23.1 Employment Opportunity. The Developer agrees, and shall contractually obligate its various contractors, subcontractors and any affiliate of the Developer operating on the Property (collectively, the "Employers" and individually, an "Employer") to agree, that with respect to the provision of services in connection with the construction of the Project:

(a) Neither the Developer nor any Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, gender identity, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Section 2-160-010 et seq. of the Municipal Code of Chicago, as amended from time to time (the "Human Rights Ordinance"). The Developer and each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon the foregoing grounds, and are treated in a non-discriminatory manner with regard to all job-related matters, including, without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer and each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Developer and each Employer, in all print solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon the foregoing grounds.

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

(c) The Developer and each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including, without limitation, the Human Rights Ordinance, and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

(d) The Developer, in order to demonstrate compliance with the terms of this Section 23.1, shall cooperate with and promptly and accurately respond to reasonable inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) The Developer and each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the

UNOFFICIAL COPY

construction of the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this Section 23.1 shall be a basis for the City to pursue remedies under the provisions of Section 19.

23.2 City Resident Employment Requirement.

(a) With respect to the Intermodal Yard Work, the Developer agrees, and shall contractually obligate each Employer to agree, that during the construction of the Project, the Developer and each Employer shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in Section 2-92-330 of the Municipal Code of Chicago (at least fifty percent); provided, however, that doing so does not violate a collective bargaining agreement of Developer or an Employer and that in addition to complying with this percentage, the Developer and each Employer shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

(b) The Developer and the Employers may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the chief procurement officer of the City of Chicago.

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

(d) The Developer and the Employers shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the construction of the Intermodal Yard Work. The Developer and the Employers shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

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

(f) The Developer and the Employers shall provide full access to their employment records to the chief procurement officer, DCD, the Superintendent of the Chicago Police Department, the inspector general, or any duly authorized representative

UNOFFICIAL COPY

thereof. The Developer and the Employers shall maintain all relevant personnel data and records for a period of at least three (3) years after the issuance of the Certificate of Completion.

(g) At the direction of DCD, the Developer and the Employers shall provide affidavits and other supporting documentation to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

(h) Good faith efforts on the part of the Developer and the Employers to provide work for actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the chief procurement officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section 23.2 concerning the worker hours performed by actual Chicago residents.

(i) If the City determines that the Developer or an Employer failed to ensure the fulfillment of the requirements of this Section 23.2 concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section 23.2. If such non-compliance is not remedied in accordance with the breach and cure provisions of Section 19.3, the parties agree that 1/20 of 1 percent (.05%) of the aggregate hard construction costs set forth in the Budget shall be surrendered by the Developer and for the Employers to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Developer and/or the other Employers or employees to prosecution.

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

(k) The Developer shall cause or require the provisions of this Section 23.2 to be included in all construction contracts and subcontracts related to the construction of the Project.

23.3 Developer's MBE/WBE Commitment. With respect to the Intermodal Yard Work, the Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the general contractor to agree, that during the construction of the Intermodal Yard Work:

UNOFFICIAL COPY

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 23.3, during the course of construction of the Intermodal Yard Work, at least 24% of the aggregate hard construction costs shall be expended for contract participation by minority-owned businesses and at least 4% of the aggregate hard construction costs shall be expended for contract participation by women-owned businesses.

(b) For purposes of this Section 23.3 only:

(i) The Developer (and any party to whom a contract is let by the Developer in connection with the Intermodal Yard Work) shall be deemed a "contractor" and this Agreement (and any contract let by the Developer in connection with the Intermodal Yard Work) shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

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

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

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Intermodal Yard Work by the Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture, or (ii) the amount of any actual work performed on the Intermodal Yard Work by the MBE or WBE); by the Developer utilizing a MBE or a WBE as the general contractor (but only to the extent of any actual work performed on the Intermodal Yard Work by the general contractor); by subcontracting or causing the general contractor to subcontract a portion of the construction of the Intermodal Yard Work to one or more MBEs or WBEs; by the purchase of materials or services used in

UNOFFICIAL COPY

the construction of the Intermodal Yard Work from one or more MBEs or WBEs; or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer's MBE/WBE commitment as described in this Section 23.3. In accordance with Section 2-92-730, Municipal Code of Chicago, the Developer shall not substitute any MBE or WBE general contractor or subcontractor without the prior written approval of DCD.

(d) The Developer shall deliver quarterly reports to the City's monitoring staff and to the alderman (aldermen) in whose ward(s) the Intermodal Yard Work and Additional Work is located during the construction of the Intermodal Yard Work describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, *inter alia*, the name and business address of each MBE and WBE solicited by the Developer or the general contractor to work on the Intermodal Yard Work, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the construction of the Intermodal Yard Work, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City's monitoring staff in determining the Developer's compliance with this MBE/WBE commitment. The Developer shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the construction of the Intermodal Yard Work for at least five (5) years after completion of the Intermodal Yard Work, and the City's monitoring staff shall have access to all such records maintained by the Developer, on prior notice of at least five (5) business days, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the construction of the Intermodal Yard Work.

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

(f) Any reduction or waiver of the Developer's MBE/WBE commitment as described in this Section 23.3 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

23.4 Pre-Construction Conference and Post-Closing Compliance Requirements. Not less than fourteen (14) days prior to the Closing Date, the Developer and the Developer's general contractor and all major subcontractors shall meet with DCD monitoring staff regarding compliance with all Section 23 requirements. During this pre-construction meeting, the Developer shall present its plan to achieve its obligations under this Section 23, the sufficiency of which the City's monitoring staff shall approve as a precondition to the Closing. During the construction of the Intermodal Yard Work, the Developer shall submit all documentation

UNOFFICIAL COPY

required by this Section 23 to the City's monitoring staff, including, without limitation, the following: (a) subcontractor's activity report; (b) contractor's certification concerning labor standards and prevailing wage requirements; (c) contractor letter of understanding; (d) monthly utilization report; (e) authorization for payroll agent; (f) certified payroll; (g) evidence that MBE/WBE contractor associations have been informed of the Intermodal Yard Work via written notice and hearings; and (h) evidence of compliance with job creation/job retention requirements. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that the Developer is not complying with its obligations under this Section 23, shall, upon the delivery of written notice to the Developer, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (x) issue a written demand to the Developer to halt construction of the Intermodal Yard Work, (y) withhold any further payment of any City funds to the Developer or the general contractor, or (z) seek any other remedies against the Developer available at law or in equity.

SECTION 24. REPRESENTATIONS AND WARRANTIES.

24.1 Representations and Warranties of the Developer. To induce the City to execute this Agreement and perform its obligations hereunder, the Developer hereby represents and warrants to the City that as of the date of this Agreement and as of the Closing Date the following shall be true and correct in all respects:

(a) The Developer is a for-profit corporation duly organized under the laws of the State of Virginia and validly existing and in good standing under the laws of the State of Illinois with full power and authority to acquire, own and redevelop the Property, and that the person signing this Agreement on behalf of the Developer has the authority to do so.

(b) All certifications and statements contained in the Economic Disclosure Statement last submitted to the City by the Developer (and any legal entity holding an interest in the Developer) are true, accurate and complete.

(c) The Developer's execution, delivery and performance of this Agreement and all instruments and agreements contemplated hereby will not, upon the giving of notice or lapse of time, or both, result in a breach or violation of, or constitute a default under the Developer's by-laws or any agreement to which the Developer, or any party affiliated with the Developer, is a party or by which the Developer or the Property is bound.

(d) To the best of the Developer's knowledge, no action, litigation, investigation or proceeding of any kind is pending or threatened against the Developer, or any party affiliated with the Developer, and the Developer knows of no facts which could give rise to any such action, litigation, investigation or proceeding, which could: (i) affect the ability of the Developer to perform its obligations hereunder; or (ii) materially affect the operation or financial condition of the Developer.

UNOFFICIAL COPY

respectively, provided that such facsimile transmission is confirmed as having occurred prior to 5:00 p.m. on a business day. If such transmission occurred after 5:00 p.m. on a business day or on a non-business day, it shall be deemed to have been given on the next business day. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the business day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 25 shall constitute delivery.

SECTION 26. BUSINESS RELATIONSHIPS.

The Developer acknowledges (a) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (b) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (c) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Developer hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

SECTION 27. PATRIOT ACT CERTIFICATION.

The Developer represents and warrants that neither the Developer nor any Affiliate (as hereafter defined) thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable Laws: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. As used in this Section 27, an "Affiliate" shall be deemed to be a person or entity related to the Developer that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Developer, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

UNOFFICIAL COPY

SECTION 28. PROHIBITION ON CERTAIN CONTRIBUTIONS - MAYORAL EXECUTIVE ORDER NO. 05-1.

28.1 The Developer agrees that the Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in the Developer of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, the Developer's contractors (i.e., any person or entity in direct contractual privity with the Developer regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (the Developer and all the other preceding classes of persons and entities are together the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (a) after execution of this Agreement by the Developer, (b) while this Agreement or any Other Contract (as hereinafter defined) is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated. This provision shall not apply to contributions made prior to February 10, 2005, the effective date of Executive Order 2005-1.

28.2 The Developer represents and warrants that from the later of (a) February 10, 2005, or (b) the date the City approached the Developer, or the date the Developer approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

28.3 The Developer agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

28.4 The Developer agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

28.5 Notwithstanding anything to the contrary contained herein, the Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Section 28 or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Agreement, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

UNOFFICIAL COPY

28.6 If the Developer intentionally violates this provision or Mayoral Executive Order No. 05-1 prior to the Closing, the City may elect to decline to close the transaction contemplated by this Agreement.

28.7 For purposes of this provision:

(a) “Bundle” means to collect contributions from more than one source, which contributions are then delivered by one person to the Mayor or to his political fundraising committee.

(b) “Other Contract” means any other agreement with the City to which the Developer is a party that is (i) formed under the authority of Chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property, or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council.

(c) “Contribution” means a “political contribution” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

(d) Individuals are “domestic partners” if they satisfy the following criteria:

(i) they are each other's sole domestic partner, responsible for each other's common welfare; and

(ii) neither party is married; and

(iii) the partners are not related by blood closer than would bar marriage in the State of Illinois; and

(iv) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and

(v) two of the following four conditions exist for the partners:

(1) The partners have been residing together for at least 12 months.

(2) The partners have common or joint ownership of a residence.

(3) The partners have at least two of the following arrangements:

(A) joint ownership of a motor vehicle;

(B) joint credit account;

(C) a joint checking account;

(D) a lease for a residence identifying both domestic partners as tenants.

UNOFFICIAL COPY

(4) Each partner identifies the other partner as a primary beneficiary in a will.

(e) “Political fundraising committee” means a “political fundraising committee” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

SECTION 29. MISCELLANEOUS.

The following general provisions govern this Agreement:

29.1 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single, integrated instrument.

29.2 Cumulative Remedies. The remedies of any party hereunder are cumulative and the exercise of any one or more of such remedies shall not be construed as a waiver of any other remedy herein conferred upon such party or hereafter existing at law or in equity, unless specifically so provided herein.

29.3 Date for Performance. If the final date of any time period set forth herein falls on a Saturday, Sunday or legal holiday under the laws of Illinois or the United States of America, then such time period shall be automatically extended to the next business day.

29.4 Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations and discussions. This Agreement may not be modified or amended in any manner without the prior written consent of the parties hereto. No term of this Agreement may be waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party benefited by such term.

29.5 Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.

29.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

29.7 Headings. The headings of the various sections and subsections of this Agreement have been inserted for convenience of reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

29.8 No Merger. The terms of this Agreement shall not be merged with the Deed, and the delivery of the Deed shall not be deemed to affect or impair the terms of this Agreement.

29.9 No Waiver. No waiver by the City with respect to any specific default by the Developer shall be deemed to be a waiver of the rights of the City with respect to any other

UNOFFICIAL COPY

defaults of the Developer, nor shall any forbearance by the City to seek a remedy for any breach or default be deemed a waiver of its rights and remedies with respect to such breach or default, nor shall the City be deemed to have waived any of its rights and remedies unless such waiver is in writing.

29.10 Severability. If any term of this Agreement or any application thereof is held invalid or unenforceable, the remainder of this Agreement shall be construed as if such invalid part were never included herein and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

29.11 Successors and Assigns. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall apply to and bind the successors and assigns of the parties.

SECTION 30. COOPERATION WITH OFFICE OF COMPLIANCE.

In accordance with Chapter 2-26-010 et seq. of the Municipal Code of Chicago, the Developer acknowledges that every officer, employee, department and agency of the City shall be obligated to cooperate with the Executive Director of the Office of Compliance in connection with any activities undertaken by such office with respect to this Agreement, including, without limitation, making available to the Executive Director the department's premises, equipment, personnel, books, records and papers. The Developer agrees to abide by the provisions of Chapter 2-26-010 et seq.

SECTION 31. COMPLIANCE WITH "WASTE" PROVISIONS.

Any duly authorized representative of the City shall have access to the Property and to the real property on which the Addition Work is performed at all reasonable times for the purpose of determining whether the Developer is constructing the Project in accordance with the terms of this Agreement and all applicable federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders and judgments, including, without limitation, Sections 7-28 and 11-4 of the Municipal Code of Chicago relating to waste disposal (collectively, the "Waste Sections"). Developer's violation of the Waste Sections (including, but not limited to, Sections 7-28-390 Dumping on public way; 7-28-440 Dumping on real estate without permit; 11-4-1410 Disposal in waters prohibited; 11-4-1420 Ballast tank, bilge tank or other discharge; 11-4-1450 Gas manufacturing residue; 11-4-1500 Treatment and disposal of solid or liquid waste; 11-4-1530 Compliance with rules and regulations required; 11-4-1550 Operational requirements; and 11-4-1560 Screening requirements), whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement and entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Developer, general contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement.

(Signature Page Follows)

UNOFFICIAL COPY

SECTION 32. FAILURE TO MAINTAIN ELIGIBILITY TO DO BUSINESS WITH THE CITY.

Failure by Developer or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of the Agreement and the transactions contemplated thereby. Developer shall at all times comply with Section 2-154-020 of the Municipal Code of Chicago.

SECTION 33. INSPECTOR GENERAL AND LEGISLATIVE INSPECTOR GENERAL.

It is the duty of every officer, employee, department, agency, contractor, subcontractor, developer and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the City's Legislative Inspector General and with the City's Inspector General in any investigation or hearing undertaken pursuant to Chapters 2-55 and 2-56, respectively, of the Municipal Code of Chicago. The Developer and the Sponsor understand and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code of Chicago.

(Signature Page Follows)

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on or as of the date first above written.

CITY OF CHICAGO, an Illinois municipal corporation

By: *Christine A. Raguso*
Christine A. Raguso,
Acting Commissioner
Department of Community Development

NORFOLK SOUTHERN RAILWAY COMPANY,
a Virginia for-profit corporation

By: *Mark D. Manion*
Name: Mark D. Manion
Its: Vice President

THIS INSTRUMENT PREPARED BY, AND
AFTER RECORDING, ~~PLEASE RETURN TO:~~

Arthur Dolinsky
Senior Counsel
City of Chicago
Department of Law, Real Estate Division
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
(312) 744-1041

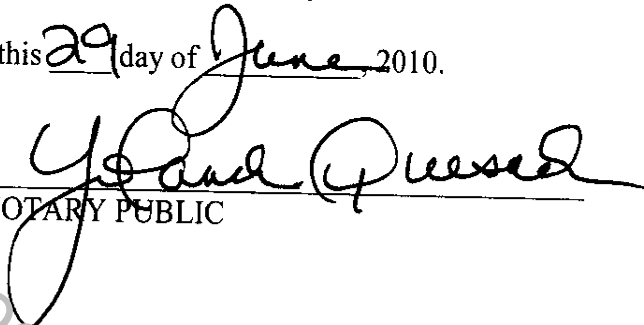
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Christine A. Raguso, the Acting Commissioner of the Department of Community Development of the City of Chicago, an Illinois municipal corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that, as said Acting Commissioner, she signed and delivered the foregoing instrument pursuant to authority given by the City of Chicago as her free and voluntary act and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 29 day of June, 2010.



NOTARY PUBLIC

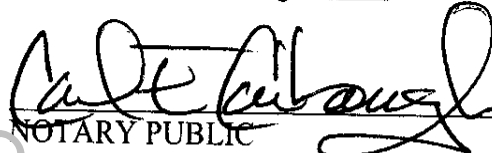


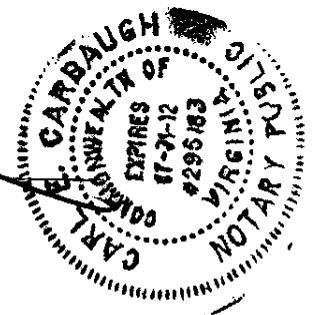
UNOFFICIAL COPY

~~STATE OF ILLINOIS~~)
)
~~CITY OF NORFOLK~~) SS.
~~COUNTY OF COOK~~)

I, CARLE CARBAUGH, a Notary Public in and for said ~~County~~ ^{CITY} in the State aforesaid, do hereby certify that MARK D MANSON the ~~VICE PRESIDENT~~ of Norfolk Southern Railway Company, a Virginia for-profit corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that he signed and delivered the foregoing instrument pursuant to authority given by said corporation, as his free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 14 day of JUNE, 2010.


 NOTARY PUBLIC



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

NARRATIVE DESCRIPTION OF PROJECT

Intermodal Yard Work

The Developer shall complete the following Intermodal Yard Work by October 31, 2011:

1. Develop the area bounded by West 54th Place, South Normal Avenue, West Garfield Boulevard, and the railroad embankment on the west as a parking lot for its intermodal operations.
2. Not later than October 31, 2011, complete the following landscape improvements:
 - a. Install a new 10-foot, concrete perimeter wall along the frontage of Garfield Boulevard from the Norfolk Southern rail line on the west to South Normal Avenue on the east. The perimeter wall will be set back 15 feet from the public right of way (or such other setback as may be approved by the Zoning Board of Appeals) and will be screened by trees, ground cover, deciduous plantings and shrubbery.
 - b. Repair the existing wall from South Normal Avenue on the west to the Norfolk Southern rail line on the east along the north side of West Garfield Boulevard.
3. Design and construct the employee entrance at West Garfield Boulevard and South Normal Avenue to the Developer's intermodal yard in a manner that ensures that there is no direct line of sight from the public way into the intermodal yard.

Additional Work

1. The Developer shall make the following improvements to the existing retaining wall between West 42nd Street and South 51st Street along South Stewart Avenue and South Shields Avenue:
 - a. Complete renewal of the retaining wall between West 46th Place and West 47th Street in March 2010.
 - b. Promptly following the Developer's obtaining easement rights to two (2) feet of right-of-way along South Stewart Avenue from 43rd Place to 45th Street and South Shields Avenue from about West 49th Street to West 51st Street, complete a new wall in front of the existing wall.
 - c. Complete engineering plans for a replacement wall from West 44th Place to West 45th Street on South Stewart Avenue and on South Shields Avenue from West 51st Street to a point 1100 feet north of West 51st Street, and complete additional engineering plans for the elimination of the retaining wall south of West 47th Street. Such engineering plans are subject to review by the City's Department of Transportation ("CDOT").
 - d. All design work shall be in accordance with the Developer's Engineering Design Standards and in compliance with AREMA (American Railway Engineering and Maintenance-of-Way Association) Recommended Practices.

UNOFFICIAL COPY

- e. The Developer shall complete the following work by December 31, 2010 (the Developer estimates that such work will cost approximately \$2.6 million, but its obligation to perform such work is not contingent on the final cost of such work):
- i. Replace the wall from West 45th Street to West 44th Place along South Stewart Avenue
 - ii. Eliminate the wall south of 47th Street
 - iii. Repair the retaining wall and replace the top cap of the wall from West 43rd Street to West 42nd Street along the apartment complex west of South Shields Avenue.
 - iv. Replace the wall from West 51st Street to a point 1100 feet north of West 51st Street along South Shields Avenue (length of work subject to final bids). Should the cost of performing the work described in item 1.e. of this Additional Work section of Exhibit B exceed \$2.6 million, then the Developer will perform the work described in this item 1.e.iv. in 2010 to the extent it has funds available and appropriated for such work and shall complete any remaining work described in this item 1.e.iv. by December 31, 2011.
 - v. Complete engineering to replace the rest of the retaining wall along South Shields Avenue north of West 51st Street and from West 44th Place to West 43rd Place.
 - vi. Complete an engineering analysis of both the Developer's wall and the Fuller Park wall on either side of South Stewart Avenue from West 46th Place to West 45th Street with the Chicago Park District subject to an agreement with the Chicago Park District.
- f. The Developer shall complete the following work by December 31, 2011 (the Developer estimates that such work will cost approximately \$3.2 million, but its obligation to perform such work is not contingent on the final cost of such work):
- i. Replace the remainder of the wall along South Shields Avenue north of West 51st Street.
 - ii. Replace the wall along South Stewart Avenue from West 44th Place to West 43rd Place.
 - iii. Implement the plan agreed on with the Chicago Park District to improve or replace the walls along South Stewart Avenue at Fuller Park.
2. As long as the Developer is the owner of the Property, the Developer will participate with the CREATE Railroads with job fairs and Dawson Technical Institute or other Chicago Junior Colleges and develop programs with the schools.
 3. Until the Certificate of Completion is issued, the Developer will provide information on job fairs and employment opportunities to community based organizations, such as The Urban League Club and Grand Boulevard Federation. The Developer will continue to maintain a web site listing job opportunities.

UNOFFICIAL COPY

4. As long as the Developer is the owner of the Property, the Developer will remove litter from both sides of West Garfield Boulevard from South Stewart Avenue to South Lowe Avenue on an ongoing basis.
5. As long as the Developer is the owner of the Property, the Developer will not stack containers more than single high in the area between West Garfield Boulevard and 54th Place west of Normal.
6. Bridges over West 51st Street from South Shields Avenue to the Metra Bridge near South Lowe Avenue.
 - a. The Developer will develop plans to rebuild, replace or rehabilitate, as applicable, the bridges over West 51st Street in 2010. Such plans are subject to CDOT review.
 - b. Depending on the availability of funding, the Developer will rebuild the bridges over a three year period, 2011-2013.
7. By June 30, 2010, the Developer will modernize the truck entrance on West 47th Street with greater queuing space and improved technology to process trucks into the yard more quickly, eliminating truck queuing on West 47th Street.

Every six (6) months, the Developer shall submit a progress report to DCD and the alderman (aldermen) in whose ward(s) the Intermodal Yard Work and Additional Work is located. Such progress report shall identify any delays or anticipated delays in the work, the reason(s) for such delays, and the manner by which the Developer will remedy such delays.

UNOFFICIAL COPY

EXHIBIT C

WORKING DRAWINGS AND SPECIFICATIONS

[Attached]

Property of Cook County Clerk's Office

