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## AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND

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Cook County Recorder of Deeds  
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First American Title Order # 463254 2 of 12

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This **AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND** ("Agreement") is made on or as of the 23rd day of November, 2011, by and between the **CITY OF CHICAGO**, an Illinois municipal corporation ("City"), acting by and through its Department of Housing and Economic Development ("DHED"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 and **NEW MOMS HOUSING DEVELOPMENT LLC** ("Developer"), an Illinois limited liability company with its offices located at 2845 West McLean Avenue, Chicago, Illinois 60647.

### RECITALS

**WHEREAS**, Developer desires to purchase from the City certain real property having the newly assigned common address of 5317 West Chicago Avenue and legally described on **Exhibit A** attached hereto and made a part hereof (the "City Land"); and

**WHEREAS**, the City Land is improved with a two story building which was formerly commonly known as 5327 West Chicago Avenue and which formerly served as the 15<sup>th</sup> District Police Station (the "Police Station," and together with the City Land, the "Property"); and

**WHEREAS**, in accordance with Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq. (the "Act"), and pursuant to ordinances adopted by the City Council of the City ("City Council") on September 27, 2007 and published at pages 8741-8874 of the Journal of the Proceedings of the City Council for such date, the City Council has previously approved a redevelopment plan (the "Redevelopment Plan") for the Austin Commercial TIF Redevelopment Area (the "Redevelopment Area"), designated the Redevelopment Area as a "redevelopment area" pursuant to the Act, and adopted tax increment financing with respect to the Redevelopment Area; and

**WHEREAS**, the Property is located in the Redevelopment Area; and

**WHEREAS**, the Developer intends to demolish the Police Station and construct a new mixed-use facility that will include a day care, program offices and residential rental units to house up to forty persons (as more fully described on **Exhibit B** attached hereto and made a part hereof, the "Project"); and

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**WHEREAS**, pursuant to Resolution 10-CDC-18 adopted on March 9, 2010, the Community Development Commission (the "CDC") has recommended to the City Council that the City enter into a negotiated sale with Developer for the Property whereby the City will sell the Property, which has an appraised market value of Two Hundred Fifteen Thousand and No/100 Dollars (\$215,000.00), to the Developer for One Dollar (\$1.00); and

**WHEREAS**, the City will have no obligation to thereafter convey the Property to Developer unless and until the City Council has also approved certain City financing for the Project and all conditions precedent to closing set forth in this Agreement and the other City financing documents ("City Financing Documents") have been satisfied; 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, and is consistent with the goals and objectives of the Redevelopment Plan;

**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 recitals set forth above 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 agrees to sell the Property to Developer, and the Developer agrees to purchase the Property from the City for the land write down amount of One and No/100 Dollars (\$1.00) ("Purchase Price").

## **SECTION 3. EARNEST MONEY AND PERFORMANCE DEPOSIT.**

No earnest money or performance deposit shall be required.

## **SECTION 4. CLOSING.**

The closing of the transfer of the Property from the City to the Developer (the "Closing") shall take place at the downtown offices of such reputable title companies as may be selected by the Developer and as approved by the City (collectively referred to as, the "Title Company"), or such other downtown location as agreed to by the parties, after the Developer has applied for all necessary building permits and zoning approvals for the Project, as required pursuant to Section 7 hereof, or on such date as the parties mutually agree upon in writing (the "Closing Date"); provided, however, in no event shall the Closing occur (1) until and unless the conditions precedent set forth in Sections 5.A. and 9 are all satisfied, unless DHED, in its sole discretion

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waives such conditions, and (2) any later than December 15, 2011 (the "Outside Closing Date"), unless DHED, in its sole discretion, extends the Outside Closing Date. DHED, by its execution of this Agreement, consents to the extension of the Outside Closing Date to such December 15, 2011 date.

## SECTION 5. CONVEYANCE OF TITLE.

A. Form of Deed. The City shall convey the Property to the Developer by quitclaim deed ("Deed"), subject to the terms of this Agreement and the following ("Permitted Exceptions").

1. the Redevelopment Area Plan for the Redevelopment Area;
2. standard exceptions in an ALTA title insurance policy;
3. general real estate taxes and any special assessments or other taxes;
4. all easements, encroachments, covenants and restrictions of record and not shown of record;
5. such other title defects that may exist; and
6. any and all exceptions caused by the acts of the Developer or its respective agents.

B. 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.

C. Escrow. If the Developer requires conveyance through escrow, the Developer shall pay all escrow fees.

## SECTION 6. TITLE, SURVEY AND REAL ESTATE TAXES.

6.1 Title Commitment and Insurance. Not less than 30 days before the anticipated Closing Date, the Developer shall order a current title commitment issued by the Title Company for the Project. The Developer shall pay the cost of, and shall be responsible for, obtaining on the Closing Date, any title insurance, extended coverage, endorsements required by this Agreement, and any other endorsements 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, any "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. Survey. The Developer shall be responsible for obtaining, at the Developer's expense, all surveys for the Property, and all other surveys necessary to complete the Project.

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6.3. Real Estate Taxes. The City shall use reasonable efforts to obtain the waiver of any delinquent real estate tax liens on the Property prior to the Closing Date. If the City is unable to obtain the waiver of any such tax liens, either party may terminate this Agreement. If the City is unable to obtain the waiver of such taxes and the Developer elects to close, the Developer shall assume the responsibility for any such delinquent real estate taxes. The Developer shall also be responsible for all taxes accruing after the Closing. Until a Certificate of Completion (as described in Section 13) is issued by the City, the Developer shall notify the City that either the Property is certified as exempt from taxation or that the real estate taxes have been paid in full within ten (10) days of such payments.

## SECTION 7. BUILDING PERMITS AND OTHER GOVERNMENTAL APPROVALS.

The Developer shall apply for all necessary building permits and other required permits and government approvals for the Project after the City Council authorizes the sale of the Property to the Developer, shall pursue such permits and approvals in good faith and with all due diligence, and shall provide evidence that all such permits have been issued prior to the Closing or provide evidence or other information satisfactory to the City that such permits are ready to be issued but for the Closing. A list of fee waivers applicable to the Project is attached hereto as Exhibit C and made a part hereof.

## SECTION 8. PROJECT BUDGETS AND PROOF OF FINANCING.

The Project Budget ("Project Budget") is currently estimated to be Twelve Million Thirty-Five Thousand Eight Hundred Forty-Six and No/100 Dollars (\$12,035,846) (together, the "Preliminary Project Budget"). The Developer shall provide the City with a Preliminary Project Budget, which shall reflect the MBE/WBE budget for the Project ("Preliminary Project MBE/WBE Budget") representative of the Project MBE/WBE amounts. The Preliminary Project MBE/WBE Budget may designate hard and soft costs that shall be subject to the City's sole discretionary review and approval of such costs.

Not less than fourteen (14) days prior to the Closing Date, the Developer shall submit to DHED for approval a final Project Budget, (the "Final Project Budget") materially consistent with the Preliminary Project Budget and Preliminary Project MBE/WBE Budget, and evidence of funds adequate to finance the purchase of the Property and construct the Project ("Proof of Developer's Financing").

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

This Agreement is not effective unless each of the following is satisfied at least seven (7) days prior to the Closing Date, or by such other date as may be specified, unless waived in writing by the Commissioner of DHED (the "Commissioner"):

9.1 Final Governmental Approvals. The Developer shall have delivered to the City evidence of all building permits for the Project, and other final governmental approvals, including but not limited to all requisite zoning approvals, necessary to construct the Project or provide evidence or other information satisfactory to the City that such permits and governmental approvals are ready to be issued but for the Closing.

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9.2 Developers' Agreements. The Developer shall have delivered to the City an escrow or intercreditor agreement or similar agreement dealing with funding assurances by the providers of the Developer's financing of funding for completion of the Project and also dealing with issues such as lender cure rights, protection of lien priority and funding procedures. All such agreements shall be subject to review and approval by the City, which approval shall be in the City's sole discretion.

9.3 Budgets and Proof of Financing. City shall have approved the Final Project Budget, as set forth in Section 8 herein, and proof of developer's financing sufficient to all pay all costs set forth in such Final Project ("Developer's Financing"), as evidenced by fully executed loan, grant and financing documents.

9.4 Simultaneous Loan Closing. On or before the Closing Date, the Developer shall also close on the Developer's Financing and be in a position to commence construction of the Project, as described in Section 12 herein.

9.5 Insurance. The Developer shall provide evidence of insurance on the Project as required by this Agreement, as reasonably acceptable to the City. Prior to the issuance of a Certificate, the City shall be named as an additional insured on any liability insurance policies and as a loss payee (subject to the prior rights of any first mortgagee) on any property insurance policies from the Closing Date through the date the City issues the Certificate of Completion (as defined in Section 13). With respect to property insurance, the City will accept an ACORD 28 form. With respect to liability insurance, the City will accept an ACORD 25 form, together with a copy of all endorsements that are added to the Developer's policies showing the City as an additional insured.

9.6 Legal Opinions. The Developer shall have delivered to the City a legal opinion for the Developer in a form reasonably acceptable to the City.

9.7 Due Diligence. The Developer shall each have delivered to the City due diligence searches in its name (UCC, State and federal tax lien, 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.

9.8 Organization and Authority Documents. The Developer shall have delivered to the City, as applicable, its certified articles of incorporation, articles of organization, by-laws, resolutions, including all amendments thereto, of the Developer, as furnished and certified by the Secretary of State of the State of Illinois; 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 dated no more than thirty (30) days prior to the Closing Date, issued by the Office of the Secretary of State of the State of Illinois, as to the good standing of the Developer; and such other organizational documents as the City may reasonably request.

9.9 Subordination Agreement. Subject to the rights of third party senior lenders providing Developer's Financing, the Developer shall, if requested by the City, deliver to the City a subordination agreement substantially in the City's standard form (the "Subordination Agreements").

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9.10 MBE/WBE and Local Hiring Compliance Plan. At least fourteen (14) days prior to the Closing Date, the Developer and the Developer's general contractor, which shall be the general contractor for the Project, and all major subcontractors shall meet with DHED staff's monitoring section regarding compliance with the MBE/WBE and local hiring requirements set forth in this Agreement pursuant to 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.

9.12 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.

9.13 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, and other the other City Financing Documents, 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 period provided for herein, and are not waived by DHED, in the exercise of its sole discretion, 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 this Agreement shall be null and void and, except as otherwise specifically provided, 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. SITE PLANS AND ARCHITECTURAL DRAWINGS.

10.1. Site Plans. The Developer agrees to construct the Project on the Property in accordance with the site plans and architectural drawings prepared by McBride Kelley Baurer, Inc. dated November 30, 2010, as all are attached hereto as Exhibit D, which have been approved by DHED as of the date hereof and which are incorporated herein by reference ("Drawings"). No material deviation from the Drawings may be made without the prior written approval of DHED.

10.2. Relocation of Utilities, Curb Cuts and Driveways. To the extent necessary to complete the Project, the Developer shall be solely responsible for and shall pay all costs in regard to: (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 the Developer's redevelopment; (c) the removal of existing pipes, utility equipment or building foundations; and (d) the termination of existing water or other services. Any streetscaping, including any paving of sidewalks, landscaping and lighting provided by the Developer, as part of the Project must be approved by the City.

10.3. Inspection by the City. For the period commencing on the Closing Date and continuing through the date the City issues a Certificate(s) of Completion of the Project, any duly authorized representative of the City shall have access to the Property at all reasonable times, with reasonable notice, for the purpose of determining whether the Developer is constructing the Project in accordance with the terms of this Agreement and all applicable

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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.** The Developer agrees to erect such signs as the City may reasonably require identifying the Property as a City redevelopment project. The Developer may erect signs of its own incorporating such approved identification information upon the execution of this Agreement, prior to Closing. Prior to the commencement of any construction activity requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. The City shall have the right to approve all barricades, the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades, and all signage, which approval shall not be unreasonably withheld or delayed.

## SECTION 11. LIMITED APPLICABILITY.

DHED's approval of the Drawings are for the purposes of this Agreement only and do not constitute the approval required by the City's Department of Buildings, or any other City department; nor does the approval by DHED pursuant to this Agreement constitute an approval of the quality, structural soundness or the safety of any improvements located or to be located on the Property. The approval given by DHED shall be only for the benefit of the Developer and any lienholder authorized by this Agreement.

## SECTION 12. COMMENCEMENT AND COMPLETION OF PROJECT.

The conveyance of the Property to the Developer shall not occur unless and until the Developer is prepared to commence construction of the Project and no later than thirty (30) days after the Closing Date. In no instance shall (a) the Closing Date occur later than December 15, 2011, (b) construction of the Project commence later than December 15, 2011, and (c) completion of Project construction be completed later than December 31, 2012. DHED may, in its sole discretion, extend the dates in (b) and (c) by up to six months each (i.e. 12 months, in aggregate) by issuing a written extension letter. The Project shall be constructed substantially in accordance with the Drawings and in accordance with all applicable laws, regulations and codes.

## SECTION 13. CERTIFICATE OF COMPLETION.

Upon the completion of the applicable portion of the Project in accordance with this Agreement, the Developer shall request from the City a Certificate of Completion ("Certificate") in recordable form for the Project. Recordation of such Certificate shall constitute a conclusive determination of satisfaction and termination of certain covenants in this Agreement and the Deed solely with respect to the obligations of the Developer to construct the Project. Within thirty (30) days after receipt of a written request by the Developer for a Certificate for the Project, the City shall provide the Developer with either the Certificate or a written statement indicating in adequate detail how the Developer failed to complete those portions of the Project in conformity with this Agreement, or is otherwise in default, and what measures or acts will be

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necessary, in the sole opinion of the City, for the Developer to take or perform in order to obtain the requested Certificate. If the City requires additional measures or acts to assure compliance, the Developer shall resubmit a written request for the Certificate upon compliance with the City's response. Prior to issuance of a Certificate, the Developer shall not obtain any additional or replacement financing for the Project, in whole or in part, without the City's prior written consent, which such consent shall be in the City's sole discretion.

## SECTION 14. RESTRICTIONS ON USE.

The Developer agrees that:

14.1 The Developer shall devote the Property or any part thereof solely for the purpose of constructing the Project and thereafter operating the day care facilities and program and Grantee's offices, and renting the residential apartments, contained therein.

14.2 The residential units shall at all times be rented to Eligible Households at an Affordable Rent, unless DHED, in its sole discretion, consents otherwise.

14.3 The Property shall at all times be used for a use that complies with the Redevelopment Plan until September 28, 2031.

14.4 The Developer shall not use the Property for any religious services and shall not condition any Eligible Household's rental of a housing unit, or participation in any service offered at the Property, on any household member's participation in a religious program.

14.5 The Developer shall not unlawfully 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 sale, lease, rental, use or occupancy of the Property or any part thereof. If the Developer and the City should determine that the Developer's compliance with the covenant set forth in Section 14.2 above constitutes unlawful discrimination, the Developer and the City shall cooperate to amend such covenant so that covenant eliminates such unlawful discrimination but, to the extent feasible, preserves the programmatic objectives of the Developer's Moms program.

## SECTION 15. PROHIBITION AGAINST TRANSFER OF PROPERTY.

Prior to the issuance of the Certificate for the Project, and except as provided herein or in any City Financing Documents, the Developer shall not, without the prior written consent of DHED, which consent shall be in DHED's sole discretion: (a) directly or indirectly sell or convey (i) the real estate that comprises the Project or any part thereof or any interest therein, or (ii) any of the Developer's controlling interests therein; or (b) directly or indirectly assign this Agreement. In the event of a proposed sale, the City shall be provided copies of any and all sales contracts, legal descriptions, descriptions of intended use, certifications from the proposed buyer regarding this Agreement and such other information as the City may reasonably request. The proposed buyer must be qualified to do business with the City (including but not limited to an Economic Disclosure Statement and anti-scofflaw requirement). Notwithstanding the foregoing, the Developer shall be permitted to encumber the Property in accordance with the terms of Section 16 hereof.



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## SECTION 16. LIMITATION UPON ENCUMBRANCE OF PROPERTY.

After the transfer of the Property to Developer, and prior to the issuance of the Certificate for the Project, the Developer shall not, without DHED's prior written consent, which shall be in DHED's sole discretion, engage in any financing or other transaction which creates an encumbrance or lien on the Property, except for the purposes of obtaining (i) funds necessary to acquire the Property; (ii) funds necessary to construct the Project in accordance with the financing approved by DHED pursuant to Section 8 and (iii) after construction, funds necessary to own, maintain and operate the Project in accordance with the requirements of this Agreement.

## SECTION 17. MORTGAGEES NOT OBLIGATED TO CONSTRUCT.

Notwithstanding any other provision of this Agreement or 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, at the Closing, shall execute Subordination Agreements (as defined in Section 9.8). If any such mortgagee or its affiliate succeeds to any of the Developer's interest in the Property, or any portion thereof, prior to the issuance of the Certificate of Completion, whether by foreclosure, deed-in-lieu of foreclosure or otherwise, and hereafter transfers its interest in the Property, or any portion thereof, to another party, such transferee shall be obligated to complete the applicable portions of the Project in which it holds an interest as transferee, 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 expressly provide that the covenants provided in Section 12 (Commencement and Completion of Project), Section 14 (Restrictions on Use), Section 15 (Prohibition Against 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 limitations 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 Sections 12, 15 and 16 shall terminate with respect to the Project, upon the issuance of a final Certificate for the completed Project. The covenants contained in Sections 14.1, 14.2 and 14.3 shall terminate as of the date the Redevelopment Plan expires, which is September 26, 2031. The covenants contained in Section 14.4 and 14.5 shall have no expiration date.

## SECTION 19. PERFORMANCE AND BREACH.

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

B. Permitted Delays. The Developer shall not be considered in breach of its obligations for the Project under this Agreement in the event of a delay due to unforeseeable

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causes beyond such Developer's control and without such Developer's fault or negligence, including but not limited to, acts of God, acts of public enemies, 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 requests it in writing of the City within twenty (20) days after the beginning of any such delay.

## C. Breach.

1. Generally. Subject to Section 19.B, if the Developer default in performing its obligations under this Agreement and the City shall deliver written notice of such default, the Developer shall have a 60 day cure period to remedy such default from the City's delivery of such notice. If the default is not capable of being cured within the sixty day period, then provided the Developer has commenced to cure the default and is diligently proceeding to cure the default within the sixty day period, and thereafter diligently prosecutes such cure through to completion, then the sixty day period shall be extended for the length of time that is reasonably necessary to cure the default. If the default is not cured in the time period provided for herein, the City may institute such proceedings at law or in equity as may be necessary or desirable to cure and remedy the default, including but not limited to, proceedings to compel specific performance.

No notice or cure period shall apply to a failure to close by the respective dates as set forth in Section 4 herein. Unless the failure to close is due to circumstances described in Section 19.B. above or caused by a breach by the City under the terms of this Agreement such failure shall constitute an immediate "Event of Default". Failure to close by such Closing Date shall entitle the City to terminate this Agreement.

In the event that an Event of Default occurs under this Agreement, and if, as a result thereof, the City intends to exercise any right or remedy available to it that could result in the termination of this Agreement, the City shall send notice of such intended exercise to the parties identified in Section 29.

2. Event of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" after written notice from the City, (if required) and the applicable cure or grace period (if any):

a. The Developer fails to perform any obligation under this Agreement; which default is not cured pursuant to Section 19.C.1; or

b. The Developer makes or furnishes a warranty, representation, statement or certification to the City (whether in this Agreement, an Economic Disclosure Form, or another document) which is not true and correct, which default is not cured pursuant to Section 19.C.1; or

c. A petition is filed by or against the Developer under the Federal Bankruptcy Code or any similar state or federal law, whether now

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or hereinafter existing, which is not vacated, stayed or set aside within thirty days after filing; or

d. Except as excused by Section 19.B. above, the Developer abandons or substantially suspends the construction work (no notice or cure period shall apply);

e. The Developer fails to timely pay real estate taxes or assessments affecting the Property or suffers or permits any levy or attachment, material suppliers' or mechanics' lien, or any other lien or encumbrance unauthorized by this Agreement to attach to the Property, which default is not cured pursuant to Section 19.C.1; or

f. The Developer makes an assignment, pledge, unpermitted financing, encumbrance, transfer or other disposition in violation of this Agreement (no notice or cure period shall apply); or

g. The Developer's financial condition or operation adversely changes to such an extent that would materially affect the completion of the Project which default is not cured pursuant to Section 19.C.1; or

h. The Developer fails to comply with the terms of any other written agreement entered into with the City with respect to the Project, which default is not cured pursuant to Section 19.C.1; and

3. Prior to Conveyance. Prior to Closing, if an Event of Default occurs and is continuing, the City may terminate this Agreement.

4. After Conveyance. After Closing, if an Event of Default occurs and is continuing, beyond the applicable cure period under Section 19.C.1., if any, the City, may exercise any and all remedies available to the City at law or in equity. Notwithstanding the foregoing, after the issuance of a Certificate for the completed Project, the City shall be entitled to all other remedies, including, without limitation, specific enforcement of the covenants that run with the land that shall survive any termination and/or release of this Agreement.

D. Waiver and Estoppel. Any delay by the City in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive the City of or limit such rights in any way. No waiver made by the City with respect to any specific default by the Developer shall be construed, considered or treated as a waiver of the rights of the City with respect to any other defaults of the Developer.

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

The Developer warrants that no agent, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement or the Property, 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 entity or association 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 of its successors 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 its successors or on any obligation under the terms of this Agreement. It is expressly understood and agreed to by and between the parties hereto, anything herein to the contrary notwithstanding, that no individual member of the Developer, its officers, members of its board of directors, officials, agents, representatives or employees shall be personally liable for the Developer's obligations or any undertaking or covenant of the Developer contained in 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 the following: (i) an Event of Default that has occurred (irrespective of whether any cure period or extended cure period may be applicable); (ii) the failure of the Developer or any contractor to pay contractors, subcontractors or material suppliers in connection with the construction of the Project; (iii) the failure of the Developer to redress any misrepresentations or omissions in this Agreement or any other agreement relating hereto; and (iv) any actions, including but not limited to, conducting environmental tests on the Property as set forth in Section 22 herein, resulting from any activity undertaken by the Developer on the Property prior to or after the conveyance of said Property to the Developer by the City. The Developer's indemnifications shall survive any termination and/or release of this Agreement.

## SECTION 22. INSPECTION; ENVIRONMENTAL REMEDIATION; CONDITION OF PROPERTY AT CLOSING.

A. "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 AND THE DEVELOPER AGREES TO ACCEPT THE PROPERTY IN SUCH CONDITION AND ON SUCH TERMS. THE DEVELOPER ACKNOWLEDGES THAT IT HAS HAD ADEQUATE OPPORTUNITY TO INSPECT AND EVALUATE THE STRUCTURAL, PHYSICAL AND ENVIRONMENTAL CONDITION AND RISKS OF THE PROPERTY AND ACCEPTS THE RISK THAT ANY INSPECTION MAY NOT DISCLOSE ALL MATERIAL MATTERS AFFECTING THE PROPERTY. THE DEVELOPER ACKNOWLEDGES THAT IT IS RELYING SOLELY UPON ITS OWN INSPECTION AND OTHER DUE DILIGENCE ACTIVITIES AND NOT UPON ANY INFORMATION (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL STUDIES

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OR REPORTS OF ANY KIND) PROVIDED BY OR ON BEHALF OF THE CITY OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. THE DEVELOPER AGREES THAT IT IS THE DEVELOPER'S SOLE RESPONSIBILITY AND OBLIGATION TO PERFORM AT ITS EXPENSE THE ENVIRONMENTAL REMEDIATION WORK (AS HEREINAFTER DEFINED) AND TAKE SUCH OTHER ACTION AS IS NECESSARY TO PUT THE PROPERTY IN A CONDITION WHICH IS SUITABLE FOR ITS INTENDED USE. "Environmental Remediation Work" shall mean all investigation, sampling, monitoring, testing, removal, response, disposal, storage, remediation, treatment and other activities necessary for the removal of urban fill and other impacted material, and the construction of an engineered barrier that is not a part of the proposed development plan (i.e., parking lots, building foundations and building concrete floors) or other structures to limit or reduce exposure to contamination ("Engineered Barriers"), all in accordance with all requirements of the Illinois Environmental Protection Agency ("IEPA"), and all applicable Laws, including, without limitation, all applicable Environmental Laws.

B. NFR Letter. The City has advised the Developer of the presence on the Property of petroleum impacted soils that exceeded soil remediation objectives, inhalation exposure pathways and migration to groundwater pathways, as a result of contamination. The Property is also identified as an underground storage tank ("UST") and leaking UST ("LUST") incident site. Two USTs have been found abandoned in place, one on the Property and the other under an adjacent City alley. Asbestos and lead have been identified in the Police Station.

The Developer covenants and agrees that it will enroll the Property in the IEPA Site Remediation Program ("SRP"), and take all necessary and proper steps to obtain a draft No Further Remediation letter for the Property ("Draft NFR Letter"), including, without limitation, submitting to the IEPA a Site Investigation Report, a Remediation Objectives Report ("ROR"), a Remedial Action Plan (as amended or supplemented from time to time, the "RAP"), and any supplemental or additional reports required by the IEPA. The Developer shall keep the City informed at all times of the status of the Developer's request for the Draft NFR Letter, including, without limitation, giving the City copies (without charge (therefore)) of all reports, correspondence, field data, applications and any other information reasonably requested by the City.

The Developer covenants and agrees that it will take all necessary and proper steps to obtain a Comprehensive No Further Remediation Letter (as defined by the IEPA, hereafter the "Comprehensive NFR Letter"). The City shall withhold issuing the Certificate until the Comprehensive NFR Letter has been submitted to DHED, unless DHED, in its sole discretion, waives such requirement.

C. Responsibility for Remediation. The Environmental Remediation Work required for the Property pursuant to the NFR Letter shall be the sole responsibility of the Developer and shall be performed at the Developer's sole cost. The City will address and remove the UST abandoned under the City alley adjacent to the Property through the LUST program and after the Closing Date.

D. Right of Entry. Prior to the Closing, the Developer shall have the right to request a right of entry for the purpose of conducting environmental tests on the Property. If such a request is made, the City shall grant the Developer a right of entry for such purpose. The granting of the right of entry, however, shall be contingent upon the Developer obtaining all

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necessary permits and the following types and amounts of insurance: a) commercial general liability insurance with a combined single limit of not less than \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage liability with the City named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the environmental testing on the Property; b) automobile liability insurance with limits of not less than \$2,000,000.00 per occurrence, combined single limit for bodily injury and property damage; and c) worker's compensation and occupational disease insurance in statutory amounts covering all employees and agents who are to do any work on the Property. All insurance policies shall be from insurance companies authorized to do business in the State of Illinois, and shall remain in effect until completion of all activity on the Property. The City shall be named as an additional insured on all policies. The Developer shall deliver duplicate policies or certificates of insurance to the City prior to commencing any activity on the Property. The Developer expressly understands and agrees that any coverage and limits furnished by the Developer shall in no way limit the Developer's liabilities and responsibilities set forth in this Agreement.

The Developer agrees to carefully inspect the Property prior to the commencement of any activity on the Property to make sure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Developer shall be responsible for the safety and protection of the public. The City reserves the right to inspect any work being done on the Property. The Developer's activities on the Property shall be limited to those reasonably necessary to perform the environmental testing. The Developer shall keep the Property free from any and all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Developer, and agrees to indemnify and hold the City harmless against any such liens.

The Developer agrees to deliver to the City a copy of each report prepared by or for the Developer regarding the environmental condition of the Property. If prior to the Closing, the Developer's environmental consultant determines that contamination exists on the Property to such an extent that the City and the Developer agrees that the estimated cost of remediation (such estimated cost being determined by the consultant) is too excessive for the Developer, the Developer may declare this Agreement null and void by giving written notice thereof to the City. The Developer agrees that a request to terminate this Agreement shall not be made until the City has reviewed all reports concerning the condition of the Property.

If after the Closing, the environmental condition of the Property is not in all respects entirely suitable for the use to which the Property is to be utilized, it shall be the sole responsibility and obligation of the Developer to take such action as is necessary to put the Property in a condition which is suitable for the intended use of the Property. The Developer agrees to waive, release and indemnify the City from any claims and liabilities relating to or arising from the environmental condition of the Property (including, without limitation, claims arising under CERCLA) and to undertake and discharge all liabilities of the City arising from any environmental condition which existed on the Property prior to the Closing.

## SECTION 23. DEVELOPER'S EMPLOYMENT OBLIGATIONS.

A. Employment Opportunity. The Developer agrees, and shall contractually obligate any of 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

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respect to the provision of services in connection with the construction of the Project on the Property or occupation of the Property during the construction period:

- (i) Neither the Developer nor any Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, 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 race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including, without limitation: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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 solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.
- (ii) 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.
- (iii) 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.
- (iv) The Developer and each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.
- (v) The Developer and each Employer shall include the foregoing provisions of subparagraphs (i) through (iv) in every contract entered into in connection with the construction of the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with

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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.

- (vi) Failure to comply with the employment obligations described in this Section 23 shall be a basis for the City to pursue remedies under the provisions of Section 19.

**B. City Resident Employment Requirement.** The Developer agrees, and shall contractually obligate each Employer to agree, that during the construction of the Project they shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in Section 3-92-330 of the Municipal Code of Chicago (at least fifty percent of the total worker hours worked by persons on the construction of the Project shall be performed by actual residents of the City of Chicago); provided, however, 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 of Chicago in both unskilled and skilled labor positions.

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 Purchasing Agent of the City of Chicago.

"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.

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 Project. The Developer and the Employers shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the DHED Commissioner 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 company hired the employee should be written in after the employee's name.~~

The Developer and the Employers shall provide full access to their employment records to the Chief Procurement Officer, the DHED Commissioner, the Superintendent of the Chicago Police Department, and the Inspector General, or any duly authorized representative thereof. The Developer and the Employers shall maintain all relevant personnel data and records for a period of at least three (3) years from and after the issuance of the Certificate(s) of Completion for the Project.

At the direction of DHED, 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.

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



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the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section concerning the worker hours performed by actual Chicago residents.

If the City determines that the Developer or an Employer failed to ensure the fulfillment of the requirements of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. If such non-compliance is not remedied in accordance with the breach and cure provisions of Section 19.C., the parties agree that 1/20 of 1 percent (0.0005%) of the aggregate hard construction costs set forth in the final Project Budget shall be surrendered by the Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Developer and/or the other Employers or employees to prosecution.

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.

The Developer shall cause or require the provisions of this Section 23.B. to be included in all construction contracts and subcontracts related to the construction of the Project.

C. Developer's MBE/WBE Commitment. The Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate its general contractors to agree that during the construction of the Project:

- (i) Consistent with the findings which support, as applicable, (a) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "Procurement Program"), and (b) 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 22.C., during the course of the Project, the following percentages of the Project's MBE/WBE Budget shall be expended for contract participation by minority-owned businesses ("MBEs") and by women-owned businesses ("WBEs"): (1) At least 24% by MBEs; and (2) At least 4% by WBEs.
- (ii) For purposes of this Section 23.C. only:
  - (a) The Developer (and any party to whom a contract is let by the Developer in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by the Developer in connection with the Project) shall be deemed a "contract" or a "construction contract" as such

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terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

- (b) 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.
- (c) 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.
- (iii) 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 Project by the Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (a) the MBE or WBE participation in such joint venture, or (b) the amount of any actual work performed on the Project by the MBE or WBE); by the Developer utilizing a MBE or a WBE as the general contractors (but only to the extent of any actual work performed on the Project by the general contractors); by subcontracting or causing the general contractors to subcontract a portion of the construction of the Project to one or more MBEs or WBEs; by the purchase of materials or services used in the construction of the Project from one or more MBEs or WBEs; or by any combination of the foregoing. Those entities which constitute both an MBE and a WBE shall not be credited more than once with regard to the Project's MBE/WBE commitment as described in this Section 22.C. In accordance with Section 2-92-730, Municipal Code of Chicago, the Developer shall not substitute any MBE or WBE general contractors or subcontractors without the prior written approval of DHED.
- (iv) The Developer shall deliver quarterly reports to the City's monitoring staff during the Project 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 contractors to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist 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 Developer's utilization of MBEs and WBEs in connection with the Project for at least five years after completion of the Project, and the City's monitoring staff shall have access to all such records maintained by the, on five business days notice, to allow the City to review the Developer's compliance with its commitment to MBE/WBE

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participation and the status of any MBE or WBE performing any portion of the Project.

- (v) Upon the disqualification of any MBE or WBE general contractors or subcontractors, if such status was misrepresented by the disqualified party, the Developer shall be obligated to discharge or cause to be discharged the disqualified general contractors or subcontractors, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this subsection (v), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.
- (vi) Any reduction or waiver of any of the Project's MBE/WBE commitment as described in this Section 22.C. shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.
- (vii) Prior to the commencement of the Project, the Developer shall meet with the City's monitoring staff with regard to the Developer's compliance with its obligations under this Section 23.C. The general contractors and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Developer shall demonstrate to the City's monitoring staff its plan to achieve its obligations under this Section 23.C, the sufficiency of which shall be approved by the City's monitoring staff. During the Project, the Developer shall submit the documentation required by this Section 23.C. to the City's monitoring staff, including the following: (a) MBE/WBE utilization plan and record; (b) subcontractor's activity report; (c) contractor's certification concerning labor standards and prevailing wage requirements (if applicable); (d) contractor letter of understanding; (e) monthly utilization report; (f) authorization for payroll agent; (g) certified payroll; (h) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (i) evidence of compliance with job creation 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.C., 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: (1) issue a written demand to the Developer to halt the Project, (2) withhold any further payment of any City funds to the Developer or the general contractors, or (3) 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 respective 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 business entity duly organized, validly existing and in good standing under the laws of the State of Illinois with full power and authority to

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acquire, own and redevelop the Property, and the persons signing this Agreement on behalf of the Developer has the authority to do so.

- (b) All certifications and statements contained in the Economic Disclosure Statements 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 respective 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, any other 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.
- (e) To the best of the Developer's knowledge, the Project will not violate: (i) any Laws, including, without limitation, any zoning and building codes and environmental regulations; or (ii) any building permit, restriction of record or other agreement affecting the Property.

**24.2 Representations and Warranties of the City.** To induce the Developer to execute this Agreement and perform its obligations hereunder, the City hereby represents and warrants to the Developer that the City has authority under its home rule powers to execute and deliver this Agreement and perform the terms and obligations contained herein.

**24.3 Survival of Representations and Warranties.** Each of the parties agrees that all of its representations and warranties set forth in this Section 24 or elsewhere in this Agreement are true as of the date of this Agreement and will be true in all material respects at all times thereafter, except with respect to matters which have been disclosed in writing and approved by the other party.

## **SECTION 25. PROVISIONS NOT MERGED WITH DEED.**

The provisions 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 provisions of this Agreement.

## **SECTION 26. HEADINGS.**

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

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## SECTION 27. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties and supersedes and replaces completely any prior agreements between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

## SECTION 28. SEVERABILITY.

If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

## SECTION 29. NOTICES.

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) electronic communications, whether by email or facsimile, provided that there is written confirmation of such communications; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If to the City:

City of Chicago  
Department of Housing and  
Economic Development  
121 North LaSalle Street  
Room 1000 - City Hall  
Chicago, Illinois 60602

With a copy to:

City of Chicago  
Department of Law  
121 North LaSalle Street  
Room 600  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel  
Real Estate and Land Use Division

If to the Developer:

c/o New Moms, Inc.  
2845 West McLean Avenue  
Chicago, Illinois 60647  
Attention: Executive Director

With a copy to:

Baker and McKenzie, LLP  
130 East Randolph Street, Suite 3900

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Chicago, Illinois 60601  
Attention: Robert Deignan

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively, provided that such electronic dispatch is confirmed as having occurred prior to 5:00 p.m. on a business day. If such dispatch 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 day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three business days after mailing. The parties, by notice given here-under, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

## **SECTION 30. ORGANIZATION AND AUTHORITY.**

The Developer represents and warrants that it is duly organized, validly existing under the laws of the State of Illinois, with full power and authority to acquire, own and redevelop the Property, and that the persons signing this Agreement on behalf of the Developer has the authority to do so.

## **SECTION 31. 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 32. TERMINATION.**

In the event that the Closing have not occurred by the Closing Dates, or any extensions thereof in DHED's sole discretion, defined herein, then the City may terminate this Agreement upon written notice to the Developer.

## **SECTION 33. RECORDATION OF AGREEMENT.**

Any of the parties may record this Agreement at the Office of the Cook County Recorder of Deeds. The Developer shall pay the recording fees.

## **SECTION 34. CONSENT AND APPROVAL.**

Except where otherwise specified, whenever the consent or approval of the City is required hereunder, such consent or approval shall not be unreasonably withheld or delayed.

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## SECTION 35. OTHER ACTS

The parties agree to perform such other acts and to execute, acknowledge and deliver such other instruments, documents and materials as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

## SECTION 36. 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 represent and warrant that no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

## SECTION 37. PATRIOT ACT CERTIFICATION.

The Developer represents and warrants that neither the Developer nor any Affiliate thereof (as defined in the next paragraph) 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 its successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List

As used in the above paragraph, 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.

## SECTION 38. PROHIBITION ON CERTAIN CONTRIBUTIONS-MAYORAL EXECUTIVE ORDER NO. 2011-4.

The Developer agrees that the respective Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in Developer of more than 7.5 percent

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("Owners"), spouses and domestic partners of such Owners, Developer's contractors (i.e., any person or entity in direct contractual privity with 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 respective 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 (i) after execution of this Agreement by Developer, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between the respective Developer and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

The Developer represents and warrants that from the later to occur of (a) May 16, 2011, and (b) the date the City approached the respective Developer or the date the respective 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.

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.

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. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

The Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 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, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

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

For purposes of this provision:

"Bundle" means to collect contributions from more than one source, which is then delivered by one person to the Mayor or to his political fundraising committee.

"Other Contract" means any other agreement with the City of Chicago 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



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materials, supplies, equipment or services which are approved or authorized by the City Council of the City of Chicago.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) 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
- (E) 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. a joint credit account;
    - c. a joint checking account;
    - d. a lease for a residence identifying both domestic partners as tenants.
  - 4. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

## SECTION 39. COOPERATION WITH OFFICE OF COMPLIANCE

In accordance with Chapter 2-26-010 *et seq.* of the Municipal Code, 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.*

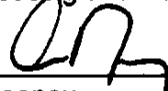
## SECTION 40. COUNTERPARTS.

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. This Agreement amends, restates and supersedes the prior agreement relating to the Project executed by the City and the Developer, or its affiliate.

# UNOFFICIAL COPY

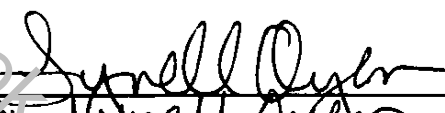
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on or as of the date first above written.

**CITY OF CHICAGO,**  
an Illinois municipal corporation, and home rule  
unit of government, acting by and through its  
Department of Housing and Economic Development

By:   
Andrew J. Mooney  
Commissioner

**NEW MOMS HOUSING DEVELOPMENT LLC,**  
an Illinois limited liability company

By: **NEW MOMS, INC.,**  
An Illinois not-for-profit corporation, its sole member

By:   
Name: Syreeta Oyler  
Its: Chairman

This instrument was prepared by: *7 Mail to*

Steven J. Holler  
Deputy Corporation Counsel  
Real Estate Division  
City of Chicago  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
(312) 744-6934



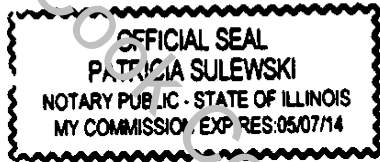
# UNOFFICIAL COPY

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 Andrew J. Mooney, personally known to me to be the Commissioner of the Department of Housing and Economic Development of the City of Chicago, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that as the Commissioner, he signed and delivered the instrument pursuant to authority given by the City of Chicago, as his free and voluntary act and as the free and voluntary act and deed of the corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 23<sup>RD</sup> day of NOVEMBER, 2011.

*Patricia Sulewski*  
\_\_\_\_\_  
NOTARY PUBLIC



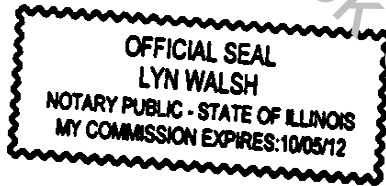
# UNOFFICIAL COPY

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 Lynell Oyer, personally known to me to be the Chairman of New Moms, Inc., an Illinois not-for-profit corporation (the "Corporation") in its capacity as the sole member of New Moms Housing Development LLC, an Illinois limited liability company, 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 such Chairman, s/he signed and delivered the instrument pursuant to authority given by the Corporation as her/his free and voluntary act and as the free and voluntary act and deed of the Corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 23<sup>rd</sup> day of November, 2011.

Lyn Walsh  
NOTARY PUBLIC



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

LOTS 43, 44, 45, 46, 47, 48, 49 AND 50 IN BLOCK 1 IN W.M. WALKER'S SUBDIVISION OF THE WEST ½ OF THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Commonly known as: 5317 West Chicago Avenue, Chicago, IL  
(formerly known as 5327 West Chicago Avenue, Chicago, IL)

P.I.N.s: 16-09-104-048-0000 and 16-09-104-001-0000

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT B

### **NARRATIVE DESCRIPTION OF PROJECT**

The Developer shall lawfully demolish and dispose of the Police Station. The Developer shall thereafter construct a new mixed-use four (4) story building having approximately 49,561 square feet. Approximately 16,195 square feet shall be used for day care facilities and program offices. Approximately 33,366 square feet shall be developed for forty (40) residential apartments (approximately thirty (30) of which shall be studio apartments and the remaining ten (10) of which shall be one bedroom apartments), which shall be leased to persons whose household income is at or below fifty percent (50%) of the area median income (such a household, an "Eligible Household"), at rents affordable to households earning fifty percent (50%) or less of the area median income (such rent, an "Affordable Rent").

As part of such project, the Developer shall remove one underground storage tank that was previously abandoned in place on the Property, shall address all known and discovered environmental conditions, shall enroll the Property in the Illinois Environmental Protection Agency's Site Remediation Program ("SRP"), prepare and file all necessary SRP reports and complete all SRP-required work, and receive a final Comprehensive No Further Remediation Program letter covering the Property. The cost of such environmental remediation shall be the sole responsibility of the Developer.

The City shall remove the underground storage tank located in an adjacent City alley and perform, at the City's expense, any required remediation work incident to such removal.

The new building shall have green design elements including but not be limited to: an energy efficient roof meeting the requirements of DECE's Energy Efficiency Program and permeable pavers.

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## EXHIBIT C

### FEE WAIVERS

#### Department of Buildings

Waiver of Plan Review, Permit and Inspection Fees:

- A. Building Permit:
  - Zoning
  - Construction/Architectural/Structural
  - Internal Plumbing
  - HVAC
  - Water for Construction
  - Smoke Abatement
- B. Electrical Permit Service and Wiring
- C. Elevator Permit (if applicable)
- D. Wrecking Permit (if applicable)
- E. Fencing Permit (if applicable)
- F. Fees for the review of building plans for compliance with accessibility codes by the Mayor's Office for People with Disabilities imposed by Section 13-32-310(2) of the Municipal Code of Chicago

#### Department of Water Management

Tap Fees  
 Cut and Seal Fees  
 (Fees to purchase B-Boxes and remote read-outs are not waived)

Permit (connection) and Inspection Fees  
 Sealing Permit Fees

#### Department of Transportation

Street Opening Fees  
 Driveway Permit Fees  
 Use of Public Way Fees

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## EXHIBIT D

### **SITE PLANS AND ARCHITECTURAL DRAWINGS**

[Drawings Prepared by McBride Kelley Baurer, Inc. dated November 30, 2010 Delivered Separately to DHED and Not Attached For Recording Purposes]

Property of Cook County Clerk's Office