

UNOFFICIAL COPY



Doc#: 1223322091 Fee: \$110.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/20/2012 11:12 AM Pg: 1 of 37

REDEVELOPMENT AGREEMENT

(Demolition/Land Bank
MPS LLC Interim Ownership/
Convey to City Model)
(07-30-12 Version)

Property Address: 6316 South Rhodes Avenue
PIN: 20-22-202-022-0000

This instrument was prepared by:

Eva L. Garrett, Esq.
Mercy Portfolio Services
120 S. LaSalle, Suite 1850
Chicago, Illinois 60603

and after recording, please return to:

Steven J. Holler
Deputy Corporation Counsel
Department of Law
City of Chicago
121 N. LaSalle Street, Room 600
Chicago, Illinois 60602

(The Above Space For Recorder's Use
Only)

This **REDEVELOPMENT AGREEMENT** ("**Agreement**") is made as of the 17th day of August 2012, by and between the City of Chicago, an Illinois municipal corporation, home rule unit of government and land bank authority (the "**City**"), acting by and through its Department of Housing and Economic Development ("**HED**"), having its principal office at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602, Mercy Portfolio Services, a Colorado non-profit corporation ("**MPS**"), having its principal office at 120 South LaSalle Street, Suite 1850, Chicago, Illinois 60603, and MPS Community I, LLC, an Illinois limited liability company ("**MPS LLC**"), having its principal office at 120 South LaSalle Street, Suite 1850, Chicago, Illinois 60603. As used in this Agreement, references to the "**Developer**" shall refer to MPS LLC until such time as MPS LLC has conveyed title to the NSP Property (as defined below) to the City.

8890880 Fall 2012

UNOFFICIAL COPY

RECITALS

A. The City has or will receive certain funds in the approximate amount of \$55,238,017, \$98,008,384 and \$15,996,360 (collectively, the "**Program Funds**") from the United States Department of Housing and Urban Development ("**HUD**") pursuant to the provisions of the Housing and Economic Recovery Act of 2008, Public Law 110-289 – July 30, 2008, Title III – Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 2301 *et seq.* ("**HERA**"), as amended by the American Recovery and Reinvestment Act of 2009, H.R.1 (the "**Recovery Act**"), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, H.R. 4173 (the "**Dodd-Frank Act**"), as the same may be hereafter amended, restated or supplemented from time to time (HERA, the Recovery Act and the Dodd-Frank Act are collectively referred to as the "**Act**"), the Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Developers under the Housing and Economic Recovery Act, 2008 issued by HUD and found at the Federal Register/Vol. 73, No. 194/Monday, October 6, 2008/Notices, as the same may be hereafter amended, restated or supplemented from time to time; the Notice of Fund Availability for the Neighborhood Stabilization Program 2 under the Recovery Act (Docket No. FR-5321-N-01, May 4, 2009), the Notices of Fund Availability for Fiscal year 2009 NSP2 Program under the Recovery Act, Correction (Docket No. FR-5321-C-02, June 11, 2009; Docket No. FR-5321-C-03, November 9, 2009, Docket No. FR 5321-C-04, and Docket No. FR-5321-N-04); the Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants (Docket No. FR-5447-N-01, October 19, 2010 (the "**NOFA**") and the HUD regulations at 24 CFR Part 570 (as modified by the NOFA as now in effect and as may be amended from time to time) (collectively, the "**Regulations**").

B. The City has submitted to HUD, and HUD has approved, the City's NSP1 Substantial Amendment application to HUD NSP2 application to HUD and NSP3 Substantial Amendment to HUD governing the City's use of the Program Funds in a City neighborhood stabilization program (the "**Program**") in accordance with the Act and the Regulations to address the critical impact of increasing numbers of foreclosed properties within the City of Chicago. Pursuant to such approval, the City and HUD have entered into that certain Grant Agreement dated effective as of March 27, 2009, that certain Funding Approval and Grant Agreement dated effective as of February 11, 2010, and that certain Funding Approval and Grant Agreement dated effective as of March 17, 2011 (collectively, the "**Grant Agreement**"). The Act, the Regulations, and the Grant Agreement are collectively referred to herein as the "**NSP Legal Requirements**").

C. The NSP Legal Requirements require the City to use the Program Funds for certain eligible activities, including, without limitation: (a) establishing financing mechanisms for the purchase and redevelopment of abandoned, foreclosed or vacant homes and residential properties; (b) acquisition and rehabilitation of homes and residential properties that have been abandoned, foreclosed upon or vacant in order to sell, rent, or redevelop such homes and properties; (c) establishing a land bank for homes that have been abandoned or foreclosed; (d) demolition of blighted structures; and (e) redevelopment of demolished or vacant properties (collectively, the "**Eligible Activities**").

D. The NSP Legal Requirements require that the City use 25% of the Program Funds to purchase and redevelop abandoned, foreclosed upon or vacant residential properties for housing individuals whose incomes do not exceed 50% of the area median income.

UNOFFICIAL COPY

E. The NSP Legal Requirements further require that the City use 100% of the Program Funds to Eligible Activities benefiting communities and households whose incomes do not exceed 120% of the area median income.

F. The City and MPS, have entered into that certain Agreement Between The City of Chicago and Mercy Portfolio Services For Neighborhood Stabilization Program dated as of June 30, 2009, that certain Agreement Between The City of Chicago and Mercy Portfolio Services For Neighborhood Stabilization Program 2 dated as of July 1, 2010, and that certain Agreement Between The City of Chicago and Mercy Portfolio Services For Neighborhood Stabilization Program 3 dated as of September 1, 2011 (collectively, the "**Subgrant Agreement**"), pursuant to which the City has agreed to make the Program Funds available to MPS for Eligible Activities subject to the terms and conditions of such Subgrant Agreement.

G. The City and MPS have determined that the property legally described on **Exhibit A**, attached hereto and improved with the improvements described on **Exhibit A** to this Agreement (the parcel of real property and the improvements, an "**NSP Property**") should be acquired in furtherance of the Program objectives, but that the existing improvements are beyond rehabilitation and should be demolished due to their deteriorated condition.

H. MPS has agreed to provide Program Funds in the form of a grant in the amount of \$47,000 to MPS LLC in connection with the acquisition and demolition of the NSP Property.

I. In furtherance of the Program, MPS LLC shall assist by taking title to the NSP Property acquired pursuant to the Program. MPS LLC shall hold title only on an interim basis in order to facilitate the initial acquisition and demolition of the blighted structure, and shall thereafter convey the vacant property to the City which shall then maintain and facilitate the disposition of the land-banked property.

J. Pursuant to the Real Estate Purchase and Sale Agreement dated June 19, 2012 (the "**REO Purchase Agreement**") between Bank of America, N.A., a Texas Limited Partnership (the "**REO Lender**") and MPS LLC, MPS LLC has contracted to acquire the NSP Property for the acquisition price specified in such exhibit (the "**NSP Acquisition Price**").

K. Pursuant to the NSP Legal Requirements, prior to such acquisition, the City and MPS have (i) completed the environmental review required pursuant to 24 CFR Part 58, (ii) obtained a current market value appraisal in conformity with the appraisal requirements of 49 CFR Part 24.105, and (iii) prepared a HUD Housing Quality Standards inspection report and scope of work with respect to the NSP Property.

L. Pursuant to that certain Loan Agreement dated September 2, 2009 by and between the Local Initiatives Support Corporation ("**LISC**") and MPS (the "**Acquisition Loan Agreement**"), as the same may be hereafter amended, restated or supplemented from time to time, LISC has agreed to make an acquisition financing facility available to MPS to enable the timely purchase of the NSP Property under the REO Purchase Agreement and to hold title to such property on an interim basis prior to conveying the property to the City. In connection with the acquisition and holding of the NSP Property, LISC has agreed to advance funds to MPS (which may make such funds available to MPS LLC) for the NSP Property in the allocable amount specified in **Exhibit A** to this Agreement (the "**NSP Acquisition Loan Amount**").

UNOFFICIAL COPY

M. No later than ninety (90) days from the date of this Agreement, the City shall pay Program Funds to LISC in an amount equal to the NSP Acquisition Loan Amount, plus any accrued interest thereon, in order to repay the LISC acquisition loan described above.

N. Upon acquiring the NSP Property, MPS LLC shall secure the property and promptly contract for the demolition of the improvements. Upon completion of the demolition, MPS LLC shall thereafter convey the NSP Property to the City, which shall thereafter hold and maintain the property for a period not to exceed 10 years (the "Land Banking Period"), provided that during such 10 year period the City shall obligate the NSP Property for an eligible redevelopment in accordance with the NSP Legal Requirements.

O. After the date hereof, MPS LLC shall enter into a contract with a to-be-identified contractor acceptable to MPS and the City, for the demolition of the NSP Property. The demolition of the NSP Property shall be financed with NSP grant assistance provided by MPS to MPS LLC. The sum of the NSP Acquisition Loan Amount and the demolition costs shall equal the "NSP Total Development Cost," as specified in Exhibit A to this Agreement.

P. After completion of the demolition of the NSP Property, the Developer shall convey such vacant property in accordance with the NSP Legal Requirements and this Agreement to the City, which shall thereafter hold the property during the Land Banking Period. During the Land Banking Period, the City shall take such action as may be reasonably necessary to secure the land-banked NSP Property.

Q. The NSP Legal Requirements require the Developer's execution of this Redevelopment Agreement in favor of the City and MPS (collectively, the "NSP Parties"), which secures certain performance and payment covenants intended to assure that the Developer complies with such legal requirements and achieves the affordable housing objectives of the Program.

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 AND EXHIBITS.

The recitals set forth above, together with the information set forth in the Exhibits attached hereto, 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. ACQUISITION.

Subject to its receipt of sufficient Program Funds, MPS LLC agrees to purchase the NSP Property on the Closing Date (as defined below) for the NSP Acquisition Price set forth in Exhibit A to this Agreement. Based on such Exhibit, the NSP Acquisition Price shall be \$7,000.

SECTION 3. CLOSING COSTS.

Subject to its receipt of the NSP Acquisition Loan Amount, MPS LLC shall pay all due diligence, closing and other reasonable and customary costs associated with its acquisition of the NSP Property, including, without limitation: (a) a survey of such NSP Property, which may or may not be an

UNOFFICIAL COPY

ALTA/ASCM survey, but which shall be sufficient to enable a title insurer to issue extended coverage over the standard exceptions that relate to survey issues; (b) an owner's policy of title insurance in the amount of the NSP Acquisition Price with respect to the NSP Property (the "**Title Policy**"); and (c) an inspector's report prepared by Accurate Inspections & Consulting dated May 25, 2012, detailing the condition of the NSP Property and setting forth a required scope of demolition work for such NSP Property prior to its conveyance to the City, which scope of work, together with any additional work items identified by MPS LLC as a result of its inspection of the NSP Property, shall serve as the basis for the required demolition work applicable to such NSP Property (the "**Required Work**").

MPS LLC shall also provide customary purchaser closing documents, such as, for example, transfer tax declarations, and ALTA statements, in connection with the acquisition by MPS LLC of the NSP Property, and customary seller documents in connection with the disposition by MPS LLC of the NSP Property.

SECTION 4. TERMS OF CONVEYANCE OF NSP PROPERTIES.

MPS LLC acknowledges that, upon acquiring the NSP Property, it shall hold title to such property subject to the NSP Legal Requirements and this Agreement. Notwithstanding the foregoing, the City acknowledges and agrees that MPS LLC's primary obligations under this Agreement are to: (i) facilitate the acquisition of the NSP Property; (ii) hold title to the NSP Property acquired by MPS LLC until completion of demolition and title to such property is conveyed to the City; (iii) secure and provide property management services for the NSP Property acquired by MPS LLC until completion of demolition and conveyance of such property to the City; and (iv) convey the NSP Property acquired by MPS LLC to the City and to assign to the City MPS LLC's right, title and interest in the NSP Property. On or before the conveyance of the NSP Property to the City, MPS LLC shall, with respect to the improvements presently located on the NSP Property, (i) disconnect any utilities serving such improvements in accordance with the NSP Legal Requirements and City municipal requirements; (ii) demolish any existing improvements on such NSP Property in accordance with the NSP Legal Requirements and City municipal requirements; (iii) remove all below-grade walls, foundations and other structural improvements; (iv) backfill the NSP Property with fill material compliant with NSP Legal Requirements, including the Illinois Environmental Protection Act; and (v) dispose of such demolition materials in accordance with the NSP Legal Requirements (a demolition satisfying (i) through (v), a "**Lawful Demolition**"). Upon completion of the foregoing, MPS LLC will provide notice thereof to the City certifying to such Lawful Demolition in accordance with Section 6 below (a) such notice, a "**Certificate of Lawful Demolition**"). The NSP Property shall be conveyed by special warranty deed to the City with MPS LLC bearing all costs and fees associated with the conveyance. At the time of such conveyance, MPS LLC shall be released from any further obligations under this Agreement with respect to the NSP Property, except with respect to any claims, costs or liabilities arising out of a failure to carry out a Lawful Demolition.

MPS LLC shall select a general contractor (the "General Contractor") and shall cause such General Contractor to complete the Required Work for the NSP Property in accordance with the NSP Legal Requirements, all applicable Laws (as defined in Section 8 hereof), and the terms of this Agreement.

Prior to purchasing the NSP Property under the REO Purchase Agreement, the City, MPS and MPS LLC have conducted such due diligence as is appropriate to reasonably satisfy themselves as to all title, survey, real estate tax, environmental, zoning, accessibility, and other matters, including, without limitation, the physical condition of such NSP Property and the Required Work for the property. MPS LLC shall (in arriving at the NSP Acquisition Price paid to the REO Lender, or otherwise) pay-off, cause

UNOFFICIAL COPY

to be paid-off or otherwise cause the termination and release all liens (other than real estate taxes, which are dealt with below) of a definite and ascertainable amount. The Title Policy shall insure title in MPS LLC free and clear of any such liens.

MPS LLC shall also (in arriving at the NSP Acquisition Price paid to the REO Lender, or otherwise) pay or cause to be paid all general real estate taxes due and payable as of the Closing Date (as defined below). MPS LLC shall also pay all general real estate taxes that become due and payable during the period in which MPS LLC is in title to the NSP Property (including any taxes attributable to the period prior to the Closing Date, but which become due and payable during the period in which MPS LLC is in title).

SECTION 5. CLOSING DATE.

Provided that the conditions precedent set forth in Section 6 below have been satisfied, MPS LLC shall acquire the NSP Property on the closing date established under the REO Purchase Agreement at such location as MPS LLC and the REO Lender may designate. If such conditions precedent have not been satisfied by such closing date, the closing date shall occur upon MPS LLC's satisfaction of such conditions, provided the REO Lender agrees to extend the closing date. One or more closings may occur under this Agreement. The date on which any such closing occurs, as determined pursuant to this Section 5, is referred to herein as a "Closing Date".

SECTION 6. CONDITIONS PRECEDENT TO CLOSING.

Prior to the Closing Date, MPS LLC shall have prepared, obtained or delivered to MPS and, at the City's request, delivered to the City, each of the following, unless the City, in its sole discretion, elects to waive such a closing condition.

A. Insurance. Evidence of insurance satisfying the requirements of Exhibit B attached hereto.

B. Project Budget and Cash Flow Statements. A project budget for the NSP Property, as the same may be hereafter revised from time to time, in the form of Exhibit C attached hereto, setting forth: (i) the cost of the Required Work for such NSP Property, including any emergency work needed to address immediate health and safety issues, necessary to bring such NSP Property into compliance with the NSP Legal Requirements and applicable Laws (as defined in Section 8 hereof), taking into account the planned demolition of the existing improvements; and (ii) any initial holding costs prior to the time of the conveyance of such NSP Property to the City, including all real estate taxes for the period of the ownership of such NSP Property by MPS LLC prior to the conveyance of such NSP Property, as shall be acceptable to the City (collectively, the "Approved Budget").

C. Organizational and Authority Documents. With respect to MPS LLC, copies of its good standing certificate or certificate of existence; certified copies of its articles of organization and operating agreement; and an officer's certificate identifying the persons authorized to act on behalf of MPS LLC and including specimen signatures.

D. Reconveyance Deed. A deed from MPS LLC for the NSP Property conveying such NSP Property to the City, which the City shall hold in trust as security for MPS LLC's performance of its obligations under this Agreement. Upon completion of the demolition of the NSP Property, such deed shall be cancelled by the City and returned to MPS LLC concurrently with the conveyance of such property by MPS LLC to the City.

UNOFFICIAL COPY

E. Preliminary Scope of Work. Preliminary scope of work ("**Preliminary Scope**") for the Required Work for the NSP Property, which shall be limited to any emergency work needed to address immediate health and safety issues and demolition work required for a Lawful Demolition .

F. Construction Contract. The construction contract for the Required Work for the NSP Property, and any contract riders required by the City in its sole discretion, to the extent that MPS LLC engages a General Contractor for the Required Work.

G. Sworn Statements. An owner's sworn statement from MPS LLC and a general contractor's sworn statement from the General Contractor for the Required Work for the NSP Property.

H. Any other documents required by the City, in its sole discretion.

If any closing conditions in this Section 6 have not been satisfied to the reasonable satisfaction of the City with respect to the NSP Property within forty-five (45) days of the date of this Agreement, the City may, at its option, terminate this Agreement as to the NSP Property, in which event, except as otherwise specifically provided, neither party shall have any further right, duty or obligation hereunder with respect to the NSP Property. Alternatively, at its option, the City may opt to delay the Closing until such time as any unsatisfied closing conditions have been satisfied as to the NSP Property.

As a condition to the conveyance of the NSP Property by MPS LLC to the City, MPS LLC and the City shall obtain the deliveries required under this Section 6 and the certificate of Lawful Demolition required under Section 4 above, except that the Preliminary Scope shall have been finalized into a final scope of work ("**Final Scope**").

SECTION 7. LIMITED APPLICABILITY.

The approval of any Preliminary Scope or Final Scope by the City is for the purposes 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 any approval by the City pursuant to this Agreement constitute an approval by the City of the quality, structural soundness or safety of any improvements located on the NSP Property, or their compliance with the NSP Legal Requirements, any Laws (as defined in Section 8 below), or any covenants, conditions or restrictions of record.

The submission of any Preliminary Scope by MPS LLC for the purposes of satisfying condition precedent Section 6.E. does not constitute a representation or warranty by the MPS LLC of such preliminary scope's compliance with the NSP Legal Requirements, any Laws (as defined in Section 8 below), or any covenants, conditions or restrictions of record. The Final Scope shall comply with the NSP Legal Requirements, any applicable Laws, and any applicable covenants, conditions and restrictions.

SECTION 8. DEMOLITION OF IMPROVEMENTS.

The Developer shall: commence the Required Work for the NSP Property promptly upon acquiring title to such property and shall thereafter diligently proceed to complete such Required Work and use commercially reasonable efforts to transfer the NSP Property to the City (i.e., actually close on the transfer) within six (6) months after the date of such acquisition. If, despite such commercially reasonable efforts, the Developer has failed to transfer such NSP Property within such six (6) month period, such failure shall not be deemed a default under this Agreement. However, such failure shall entitle the City to elect, at its sole option, to repurchase such NSP Property from the Developer for an amount equal to the sum of (i) the NSP Acquisition Price and (ii) the costs reasonably incurred by the

UNOFFICIAL COPY

Developer in performing the Required Work for such property (not to exceed the amount thereof included in the Approved Budget). The City may offset against such purchase price an amount equal to any subsidies from Program Funds provided by the City with respect to such NSP Property (or pledged to any lender providing acquisition in repayment of any such financing), and may also offset any other amounts owed by the Developer under this Agreement. The City may cause the Reconveyance Deed deposited pursuant to Section 6.D to be recorded in order to consummate such repurchase in accordance with Section 8 below. The Developer shall cooperate in executing any additional documents required in connection therewith.

The Required Work for the NSP Property shall be completed in accordance with the NSP Legal Requirements, this Agreement, the Final Scope and all applicable Laws and include adherence to the HUD Quality Standards (24 CFR, Subtitle B, Chapter IX, Part 982, Subpart I) and all aspects of the Municipal Code of Chicago, specifically Title 7 (Health and Safety) and Title 13 (Buildings and Construction). "Laws" shall mean and include all federal, state and local laws, statutes, ordinances, rules, regulations, OMB Circulars, and executive orders as are now or may be in effect during the term of the Agreement, which may be applicable to the Developer, such Required Work, and the Developer's obligations under this Agreement, including but not limited to: (i) the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. Section 4831(b); (ii) the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 327 *et seq.*, as supplemented by U.S. Department of Labor regulations at 29 C.F.R. Part 5; (iii) the Copeland "Anti-kickback" Act, 18 U.S.C. Section 874, as supplemented by U.S. Department of Labor regulations at 29 C.F.R. Part 3; (iv) Section 104(g) of the Housing and Community Development Act of 1974, 42 U.S.C. Section 5301 *et seq.*, and 24 C.F.R. Part 58; (v) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794 and implementing regulations at 24 C.F.R. Part 8, Subpart C; (vi) 24 C.F.R. Part 24; (vii) the Americans with Disabilities Act of 1990, Public Law 101-336 dated July 26, 1990; (viii) the Fair Housing Amendments Act of 1988, Public Law 100-430 dated September 13, 1988; (ix) the Davis-Bacon Act (unless determined by HUD to be inapplicable); (x) the City of Chicago Landlord - Tenant Ordinance, Municipal Code of Chicago, Chapter 5-12; (xi) Title I of the Housing and Community of Development Act of 1974, as amended and as applicable, and the Community Development Block Grant Regulations promulgated pursuant thereto at 24 CFR Part 570; and (xii) all environmental laws, including but not limited to the Municipal Code of Chicago, Section 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560, whether or not in the performance of this Agreement.

SECTION 9. CERTIFICATE OF COMPLETION.

Upon the completion of the Required Work for the NSP Property, the Developer may request from MPS a certificate of completion ("Certificate of Completion") for such property. The Developer may execute a contract to convey the NSP Property to the City, but may not close under such contract prior to the issuance of a Certificate of Completion for such property and the Developer's delivery to the City of the certificate of Lawful Demolition required under Section 5 above. If, at the time that MPS receives such a request from the Developer with respect to the NSP Property, the Developer has not completed the Required Work for such property satisfactorily, as reasonably determined by the NSP Parties, or has otherwise failed to perform its obligations under this Agreement, the NSP Parties shall so advise the Developer. The Developer shall have the right to satisfactorily complete any Required Work for such property and perform any unperformed obligation and to re-request the issuance of a Certificate of Completion for such property. The Reconveyance Deed delivered to the City shall be cancelled by the City and returned to MPS LLC concurrently with the transfer of the NSP Property to the City, in accordance with the NSP Legal Requirements and as provided in Sections 10 and 11 of this Agreement.

UNOFFICIAL COPY

SECTION 10. RESTRICTIONS ON USE.

The Developer agrees that it:

10.1 Shall not discriminate based upon race, color, religion, sex, gender identity, disability, marital status, parental status, national origin or ancestry, military discharge status, sexual orientation, source of income, age or handicap, in the conveyance, sale, lease, rental, use or occupancy of the NSP Property; and

10.2 Shall cause to be demolished the improvements located on NSP Property acquired by the Developer by causing the Required Work to be performed for such NSP Property in a Lawful Demolition and, upon completion of the Required Work for such NSP Property, convey such vacant NSP Property only to the City; and

10.3 Shall, in connection with the closing of the conveyance of such NSP Property to the City, execute and deliver a special warranty deed encumbering such property and cause such instrument to be recorded in the Recorder's Office.

SECTION 11. PROHIBITION AGAINST TRANSFER OF NSP PROPERTY.

Prior to the issuance of the Certificate of Completion for an NSP Property, the Developer may not, without the prior written consent of MPS and the City, which consent shall be in the sole discretion of MPS and the City: (a) directly or indirectly sell or convey such NSP Property or any part thereof or any interest therein or the Developer's controlling interests therein; or (b) directly or indirectly assign this Agreement. 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 Developer prior to the issuance of the Certificate of Completion for all NSP Properties acquired by the Developer to anyone other than another principal party of the Developer without the prior written consent of MPS and the City, which consent shall be in the sole discretion of MPS and the City. Any transfer of an NSP Property shall be subject to the NSP Legal Requirements and this Agreement.

SECTION 12. LIMITATION UPON ENCUMBRANCE OF NSP PROPERTY.

Prior to the issuance of the Certificate of Completion for an NSP Property, the Developer shall not, without the prior written consent of MPS and the City, which consent shall be in the sole discretion of MPS and the City, engage in any financing or other transaction which creates an encumbrance or lien on such NSP Property, except for the financing provided under the Acquisition Loan Agreement.

SECTION 13. [INTENTIONALLY OMITTED].

SECTION 14. COVENANTS RUNNING WITH THE LAND.

The parties agree that, in addition to the NSP Legal Requirements, the covenants provided in Sections 8 (Demolition of Improvements), 10 (Restrictions on Use), 11 (Prohibition Against Transfer of NSP Property) and 12 (Limitation Upon Encumbrance of NSP Property) will be covenants running with the land, binding on the Developer and its successors and assigns to the fullest extent permitted by law and equity, for the benefit and in favor of the NSP Parties, and shall be enforceable by either of the NSP Parties. The covenant contained in Section 10.1 shall have no limitation as to time. The covenants provided in Sections 8, 10.2, 10.3, 11 and 12 shall terminate as to an NSP Property upon the transfer of such NSP Property in accordance with Section 10.2 and the recording of the special warranty deed in accordance with Section 10.3.

UNOFFICIAL COPY

SECTION 15. PERFORMANCE AND BREACH.

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

15.2 Permitted Delays. The Developer shall not be considered in breach of its obligations under this Agreement in the event of "force majeure" delays due to unforeseeable causes beyond the Developer's control and without the Developer's fault or negligence. The time for the performance of the obligations shall be extended only for the period of the delay. This Section 15.2 shall not operate to excuse the performance of any action required under the NSP Legal Requirements.

15.3 Cure. If the Developer defaults in the performance of its obligations under this Agreement, including any obligation under the NSP Legal Requirements incorporated herein by reference, the Developer shall have thirty (30) days after written notice of default from the NSP Parties to cure the default. Notwithstanding the foregoing, no notice or cure period shall apply to defaults under Sections 15.4 (d) or (f).

15.4 Event of Default. The occurrence of any one or more of the following, which is not cured within the cure period provided for in Section 15.3, shall constitute an "Event of Default" under this Agreement:

- (a) The Developer fails to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations under this Agreement, including any obligation under the NSP Legal Requirements; or
- (b) The Developer makes or furnishes a warranty, representation, statement or certification to any of the NSP Parties (whether in this Agreement, an Economic Disclosure Statement, or another document) that is not true and correct; 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 or hereafter existing, which is not vacated, stayed or set aside; or
- (d) The Developer abandons or substantially suspends completion of the Required Work with respect to the NSP Property acquired by the Developer; or
- (e) The Developer fails to timely pay real estate taxes or permits any levy or attachment, lien, or any other encumbrance unauthorized by this Agreement to attach to the NSP Property acquired by the Developer; or
- (f) The Developer makes an assignment, pledge, unpermitted financing, encumbrance, transfer or other disposition in violation of this Agreement; or
- (g) There is a change in the Developer's financial condition or operations that would materially affect the Developer's ability to complete any Required Work for the NSP Property acquired by the Developer.

UNOFFICIAL COPY

15.5. Remedies. If an Event of Default occurs prior to the issuance of the Certificate of Completion for the NSP Property, and the default is not cured in the time period provided for herein, either of the NSP Parties may exercise any and all remedies available at law or in equity, including, without limitation, the right to record the Reconveyance Deed, re-enter and take possession of such NSP Property, terminate the Developer's estate in such NSP Property, and vest title to such NSP Property in the City. In addition, the NSP Parties shall be entitled to recover from the Developer any costs incurred in enforcing the remedies of the NSP Parties or in curing the Event of Default, and shall be entitled to exercise any other rights and remedies available under this Agreement. The terms of this Section 15.5 shall in no way limit the rights of the NSP Parties under Section 8 hereof.

15.6 Reimbursement of City from Transfer Proceeds. If, as a result of the exercise of the remedies provided for under this Section 15, the City reacquires title to the NSP Property, or causes title to the NSP Property to be conveyed to a new developer, the transfer proceeds from any such transfer of such NSP Property after payment of any permitted indebtedness, shall be utilized to reimburse the NSP Parties for:

- (a) costs and expenses incurred (including, without limitation, salaries of personnel) in connection with the reacquisition of title, management and resale of such NSP Property (less any income derived from such NSP Property in connection with such management); and
- (b) all unpaid taxes, assessments, and water and sewer charges assessed against such NSP Property; and
- (c) any payments made (including, without limitation, reasonable attorneys' fees and court costs) to release or discharge encumbrances or liens due to obligations, defaults or acts of the Developer; and
- (d) any expenditures made or obligations incurred with respect to the Required Work for such NSP Property; and
- (e) any other amounts owed to the NSP Parties, or either of them, by the Developer; and
- (f) any reserves that the City, in its sole discretion, determines should be established to assure the continued maintenance of such NSP Property in accordance with the NSP Legal Requirements and this Agreement prior to its resale.

MPS shall be entitled to receive any such remaining proceeds up to the amount of the permitted project services fee payable under the Management Agreement dated June 30, 2009 between the City and MPS, as amended by that certain First Amendment to Management Agreement dated as of December 21, 2010, as the same may be hereafter amended or supplemented from time to time.

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

UNOFFICIAL COPY

15.8 Direct Enforcement By City or MPS. If, after the date hereof, the City elects to directly enforce the rights of the NSP Parties under this Agreement, and delivers written notice of such election to the Developer, then the City, and not MPS, shall be entitled to exercise the rights afforded and the remedies provided for herein. The Developer acknowledges that, in such event, it shall continue to be subject to the enforcement of such rights and remedies. Without limiting the generality of the foregoing, in such event, the City shall be entitled to record the Reconveyance Deed to the City conveying the NSP Property held by the Developer (other than an NSP Property for which a Certificate of Completion has been issued). In the alternative, MPS, with the written consent of the City, shall be entitled to exercise the rights afforded and the remedies provided for herein.

SECTION 16. CONFLICT OF INTEREST; CITY'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 NSP 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 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 on any obligation under the terms of this Agreement.

SECTION 17. INDEMNIFICATION

The Developer agrees to indemnify, defend and hold the NSP Parties 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 any NSP Party arising from or in connection with: (a) the failure of such Developer to perform its obligations under the NSP Legal Requirements or under this Agreement; (b) the failure of such Developer or any contractor to pay contractors, subcontractors or material suppliers in connection with the construction of the Required Work for the NSP Property acquired by such Developer; (c) any misrepresentation or omission made by such Developer or agents, employees, contractors or other persons acting under the control or at the request of such Developer; (d) the failure of such Developer to redress any misrepresentations or omissions in this Agreement or any other agreement relating hereto; and (e) any activity undertaken by such Developer on the NSP 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).

SECTION 18. ENVIRONMENTAL MATTERS.

The NSP Parties make no covenant, representation or warranty as to the environmental condition of the NSP Property or the suitability of the NSP Property for any purpose whatsoever, and the Developer agrees to accept the NSP Property "as is."

If the environmental condition of the NSP 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 such NSP Property in a condition which is suitable for its intended use. The Developer hereby waives, releases and indemnifies the NSP Parties from any claims and liabilities relating to or arising from the environmental condition of the NSP Property, including, without limitation, claims

UNOFFICIAL COPY

arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), and shall undertake and discharge all liabilities of the NSP Parties arising from any environmental condition which existed on the NSP Property prior to the Closing, including, without limitation, liabilities arising under CERCLA. The provisions of this paragraph shall survive the Closing or any termination of this Agreement (regardless of the reason for such termination).

SECTION 19. DEVELOPER’S EMPLOYMENT OBLIGATIONS.

19.1 Employment Opportunity. The Developer agrees, and shall contractually obligate its various contractors, subcontractors and any affiliate of the Developer operating on the NSP 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 Required Work:

(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 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 Required Work for the NSP Property acquired by the Developer 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, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) The Developer and each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the construction of the Required Work for the NSP Property acquired by the Developer, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every

UNOFFICIAL COPY

agreement with any affiliate operating on such NSP 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 19.1 shall be a basis for the City to pursue remedies under the provisions of Section 15.

19.2 City Resident Employment Requirement.

(a) The Developer agrees, and shall contractually obligate each Employer to agree, that during the construction of the Required Work for the NSP Property acquired by the Developer, it and they 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 of the total worker hours worked by persons on the construction of the Required Work for such NSP Property 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.

(b) The Developer and the Employers may request a reduction or waiver of this minimum percentage level of actual residents of the City of Chicago 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 residents of the City of Chicago are employed on the construction of the Required Work for the NSP Property acquired by the Developer. 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 the Department of Housing and Economic Development of the City 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, HED, the Superintendent of the Chicago Police Department, 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 of Completion.

(g) At the direction of HED, 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.

UNOFFICIAL COPY

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

(i) 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 residents of the City of Chicago 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 actual residents of the City of Chicago to the degree stipulated in this Section. If such non-compliance is not remedied in accordance with the breach and cure provisions of Section 15.3, 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 actual residents of the City of Chicago 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 19.2 to be included in all construction contracts and subcontracts related to the construction of the Required Work for the NSP Property acquired by the Developer.

19.3 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 the General Contractor to agree that during the construction of the Required Work for the NSP Property acquired by the Developer:

(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 19.3, during the course of construction of the Required Work for such NSP Property, at least 24% of the aggregate hard construction costs shall be expended for contract participation by minority-owned businesses ("MBEs") and at least 4% of the aggregate hard construction costs shall be expended for contract participation by women-owned businesses ("WBEs").

UNOFFICIAL COPY

(b) For purposes of this Section 19.3 only:

(i) The Developer (and any party to whom a contract is let by the Developer in connection with the Required Work) shall be deemed a “contractor” and this Agreement (and any contract let by the Developer in connection with the Required Work for such NSP Property) 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 by the Developer on the Required Work for the NSP Property acquired 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 Required Work for such NSP Property 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 Required Work for such NSP Property by the General Contractor); by subcontracting or causing the General Contractor to subcontract a portion of the construction of the Required Work for such NSP Property to one or more MBEs or WBEs; by the purchase of materials or services used in the construction of the Required Work for such NSP Property 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 19.3. 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 HED.

(d) The Developer shall deliver quarterly reports to the City's monitoring staff and MPS during the construction of the Required Work for the NSP Property acquired by the Developer 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 Required Work for such NSP Property, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the construction of the Required Work for such NSP Property, 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

UNOFFICIAL COPY

and WBEs in connection with the construction of the Required Work for such NSP Property for at least five years after completion of the Required Work for such NSP Property, and the City's monitoring staff and MPS shall have access to all such records maintained by the Developer, on prior notice of at least five 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 Required Work for such NSP Property.

(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 19.3 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable. Evidence of any such reduction or waiver shall be delivered to MPS and the City.

(g) Prior to the commencement of the construction of the Required Work for the NSP Property acquired by the Developer, the Developer shall meet with the City's monitoring staff with regard to the Developer's compliance with its obligations under this Section 19.3. The General Contractor 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 and MPS its plan to achieve its obligations under this Section 19.3, the sufficiency of which shall be approved by the City's monitoring staff. During the construction of the Required Work for such NSP Property, the Developer shall submit the documentation required by this Section 19.3 to the City's monitoring staff and MPS, including the following: (i) subcontractor's activity report; (ii) contractor's certification concerning labor standards and prevailing wage requirements (unless such prevailing wage requirements are determined by the Corporation Counsel of the City to be inapplicable to the Required Work for such NSP Property); (iii) contractor letter of understanding; (iv) monthly utilization report; (v) authorization for payroll agent; (vi) certified payroll; and (vii) evidence that MBE/WBE contractor associations have been informed of the Required Work for such NSP Property via written notice and hearings. 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 19.3, 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 Required Work for such NSP Property, (2) withhold any further payment of any City funds to the Developer or the General Contractor, or (3) seek any other remedies against the Developer available at law or in equity.

(h) Notwithstanding anything to the contrary in Section 19, any obligation of MPS LLC, in its capacity as a Developer under this Section 19, shall be tested on an aggregate basis, and not for each individual NSP Property.

UNOFFICIAL COPY

SECTION 20. HEADINGS.

The headings of the various sections 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.

SECTION 21. 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. The Commissioner of HED, without further action of the City Council, but subject to the approval of the Corporation Counsel, shall have the right to execute such amendments to this Agreement as may be necessary, appropriate or desirable to implement the purposes and objectives of this Agreement, including amendments in connection with a "work-out" of this Agreement and transfer of any NSP Property (or a portion thereof) to a new developer.

SECTION 22. 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 23. 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) facsimile; (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
 Chicago, Illinois 60602
 Attention: Commissioner

With copies to:

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

And to:

City of Chicago
 Department of Law
 121 N. LaSalle Street, Room 600
 Chicago, Illinois 60602
 Attn: Finance Division

UNOFFICIAL COPY

If to MPS LLC or MPS: Mercy Portfolio Services
 120 South LaSalle Street, Suite 1850
 Chicago, Illinois 60603
 Attn: William L. Goldsmith

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon confirmed transmission by facsimile, 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.

SECTION 24. ORGANIZATION AND AUTHORITY.

The Developer represents and warrants that it is a duly organized and validly existing legal entity under the laws of the state of its organization and, to the extent applicable, qualified to transact business as a foreign entity in the State of Illinois, with full power and authority to acquire, own and redevelop the NSP Property acquired by the Developer, and that the person signing this Agreement on behalf of the Developer has the authority to do so.

SECTION 25. 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 26. RECORDATION OF AGREEMENT.

This Agreement shall be recorded at the Office of the Cook County Recorder of Deeds as part of the Closing.

SECTION 27. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall constitute an original instrument.

SECTION 28. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the law of the State of Illinois.

SECTION 29. PATRIOT ACT CERTIFICATION.

Neither the Developer nor any Affiliate thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or

UNOFFICIAL COPY

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 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 30. CITY PAYMENT OF PROGRAM FUNDS.

Subject to the terms and conditions of the NSP Legal Requirements, the City has agreed to fund to MPS for payment to LISC (or to fund directly to LISC and, Program Funds in an amount sufficient to repay the funds borrowed by MPS pursuant to the Acquisition Loan Agreement. The City agrees to execute such documents as may be reasonably requested by LISC and other third parties to assure the City's payment of such Program Funds, provided such documents are consistent with the NSP Legal Requirements and this Agreement.

SECTION 31. MAINTENANCE OF RECORDS; RIGHT TO INSPECT.

The Developer shall keep and maintain such books, records and other documents as shall be required by the NSP Parties and HUD for not less than five years from its disposition of the NSP Property to reflect and disclose fully the amount and disposition of the total cost of activities paid for in whole or in part, with the Program Funds, and the nature of all activities of the Developer in connection with the NSP Property which are supplied or to be supplied by other sources. All such books, records and other documents shall be available at the offices of the Developer (or, if HUD requests, at the offices of MPS or the City) for inspection, copying (including excerpts and transcriptions), audit and examination at all reasonable times by any authorized representative of any of the NSP Parties and HUD. Any authorized representative of the City or of HUD shall, at all reasonable times, have access to all portions of the NSP Property.

SECTION 32. NO BUSINESS RELATIONSHIP WITH CITY ELECTED OFFICIALS.

Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago, 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 official 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. Violation of Section 2-156-030(b) by any elected official, or any person acting at the direction of such official, with respect to this Agreement or in connection with the transactions contemplated thereby, shall be grounds for termination of this Agreement and the transactions contemplated thereby. The Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to this Agreement or the transactions contemplated thereby.

UNOFFICIAL COPY

SECTION 33. JOINT AND SEVERAL LIABILITY.

In the event that more than one person or entity has signed this Agreement on behalf of the Developer, the obligations of such signatories under this Agreement shall be joint and several.

SECTION 34. NON-LIABILITY OF PUBLIC OFFICIALS.

The Developer and any assignee or contractor of the Developer must not charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Agreement or because of the City's execution or any breach of this Agreement.

SECTION 35. PROHIBITION ON CERTAIN CONTRIBUTIONS - MAYORAL EXECUTIVE ORDER NO. 2011-4

Consistent with the intent of Mayoral Executive Order No. 2011-4, compliance with the substance of which is intended by this Section 35, the Developer hereby 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, the General Partner or Managing Member, any person or entity who directly or indirectly has an ownership or beneficial interest in the General Partner or Managing Member of more than 7.5 percent, Owner, any person or entity who directly or indirectly has an ownership, beneficial or other controlling interest in Owner of more than 7.5 percent (collectively, "**Controlling Owners**"), spouses and domestic partners of such Controlling Owners, (collectively, all the preceding classes of persons and entities are hereinafter referred to as the "Ownership Parties") shall not make a contribution of any amount to the Mayor of the City ("**Mayor**") or to his political fundraising committee (i) after execution of this Agreement by the Developer, and (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between the 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 hereby agrees to require that the General Contractor, any person or entity who directly or indirectly has an ownership or beneficial interest in the General Contractor of more than 7.5 percent, any Subcontractor, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent (collectively, "**Interested Parties**"), and spouses and domestic partners of such Interested Parties (collectively, all the preceding classes of persons and entities are hereinafter referred to, together with the Ownership Parties, as the "**Identified Parties**") shall not make a contribution of any amount to the Mayor or to his political fundraising committee (i) after execution of this Agreement by the Developer, and (ii) while the Construction Contract or any Subcontract is executory, (iii) during the term of the Construction Contract or any Subcontract, or (iv) during any period while an extension of the Construction Contract or any Subcontract is being sought or negotiated.

The Developer represents and warrants that as of the later of (i) May 16, 2011, or (ii) the date that the City approached the Developer, or 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.

UNOFFICIAL COPY

The Developer agrees that it shall not and it shall require all other Identified Parties to 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 it must not and it shall require all other Identified Parties to 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 shall impose the restrictions of this Section 35 in the Construction Contract and shall specifically require the General Contractor to impose the restrictions of this Section 35 in all Subcontracts.

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. 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.

For purposes of this provision:

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

"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 NSP Property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council.

"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

UNOFFICIAL COPY

- (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 36. TERMINATION OF SUBGRANT AGREEMENT.

In the event that the Subgrant Agreement is terminated, and if at such time MPS LLC is in title to the NSP Property, the City may, at its election, either (a) allow MPS LLC to continue to serve as Developer under this Agreement, or (b) record the Reconveyance Deed previously deposited with the City. If the City elects option (b), then provide that MPS LLC is not otherwise in default under this Agreement at the time of such election and, after such election, reasonably cooperates with the City by assigning such contracts and taking such other actions as may be reasonably necessary for the City to complete the Required Work, MPS LLC shall be released from its obligations under this Agreement.

SECTION 37. COOPERATION WITH OFFICE OF COMPLIANCE.

In accordance with Chapter 2-26-110 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 NSP Properties and the Developer's equipment, personnel, books, records and papers. The Developer agrees to abide by the provisions of Chapter 2-26-110 et seq.

SECTION 38. SECTION 3 COMPLIANCE

The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701), as implemented by the regulations set forth at 24 CFR Part 135. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located. The Developer agrees to comply with such Section 3 requirements.

UNOFFICIAL COPY

SECTION 39. DEBARMENT CERTIFICATION.

Failure by the Developer or any controlling person, as defined in Section 1-23-010 of the Municipal Code of Chicago (the "Municipal Code"), thereof to maintain eligibility to do business with the City as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of the Documents and the transactions contemplated thereby.

SECTION 40. INSPECTOR GENERAL AND LEGISLATIVE INSPECTOR GENERAL.

It is the duty of any Subgrantee, bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of any such Subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. The Developer represents that it understands and will abide by all provisions of Chapter 2-56 of the Municipal Code and that the Developer will inform subcontractors of this provision and require their compliance.

It is the duty of any Subgrantee, bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of any such Subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Legislative Inspector General in any investigation undertaken pursuant to Chapter 2-55 of the Municipal Code. The Developer represents that it understands and will abide by all provisions of Chapter 2-55 of the Municipal Code and that the Developer will inform subcontractors of this provision and require their compliance.

[SIGNATURES APPEAR ON NEXT PAGE]

UNOFFICIAL COPY

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

MPS COMMUNITY I, LLC, an Illinois limited liability company

By: Mercy Portfolio Services, a Colorado non-profit corporation and its sole member

By: _____

Name: Darlene A. Dugo

Title: Vice President

CITY OF CHICAGO, an Illinois municipal corporation, acting by and through its Department of Housing and Economic Development

By: _____

Name: Andrew J. Mooney

Title: Commissioner

MERCY PORTFOLIO SERVICES, a Colorado non-profit corporation

By: _____

Name: Darlene A. Dugo

Title: Vice President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

MPS COMMUNITY I, LLC, an Illinois limited liability company

By: Mercy Portfolio Services, a Colorado non-profit corporation and its sole member

By: Darlene A. Dugo
Name: Darlene A. Dugo
Title: Vice President

CITY OF CHICAGO, an Illinois municipal corporation, acting by and through its Department of Housing and Economic Development

By: _____
Name: Andrew J. Mooney
Title: Commissioner

MERCY PORTFOLIO SERVICES, a Colorado non-profit corporation

By: Darlene A. Dugo
Name: Darlene A. Dugo
Title: Vice President

Property of Cook County Clerk's Office

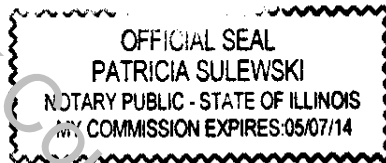
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Patricia Sulewski, 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, 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 foregoing 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 15th day of August, 2012.

Patricia Sulewski
NOTARY PUBLIC



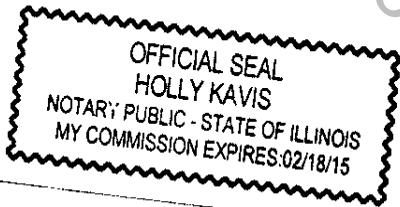
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, Holly Kavis, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Darlene A. Dugo, personally known to me to be the Vice President of MERCY PORTFOLIO SERVICES, a Colorado non-profit corporation and the sole member of MPS COMMUNITY I, LLC, an Illinois limited liability company, 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 she signed and delivered the foregoing instrument pursuant to authority given by said company, as her free and voluntary act and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 16th day of August, 2012.



Holly Kavis

 NOTARY PUBLIC

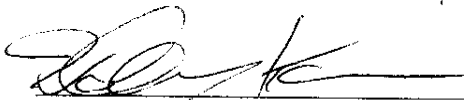
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Holly Kavis, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Darlene A. Dugo, personally known to me to be the Vice President of MERCY PORTFOLIO SERVICES, a Colorado non-profit 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 she signed and delivered the foregoing instrument pursuant to authority given by said company, as her free and voluntary act and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 16th day of August, 2012.



NOTARY PUBLIC



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

NSP PROPERTY INFORMATION

Legal Description of Land: LOT 47 IN BLOCK 2 IN HULING & JOHNSON'S SUBDIVISION OF THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING THEREFROM THE SOUTH 75 FEET OF THE EAST 122 22/100 FEET OF ST. LAWRENCE AVENUE AND NORTH 64TH STREET), IN COOK COUNTY, ILLINOIS.

Common Address: 6316 South Rhodes Avenue, Chicago, Illinois 60637

PIN: 20-22-202-022-0000

Existing Improvements on the Land: 2 UNIT RESIDENTIAL BUILDING

NSP Acquisition Price: \$7,000

¹Estimated NSP Acquisition Loan Amount, including holding costs: \$10,500

²Estimated NSP demolition cost: \$40,000

³Estimated NSP Total Development Cost: \$47,000

¹As more particularly set forth in that certain Settlement Agreement dated as of even date herewith.

²As more particularly set forth in the Approved Budget.³As more particularly set forth in the Approved Budget.

UNOFFICIAL COPY

EXHIBIT B

INSURANCE REQUIREMENTS

[SEE ATTACHMENT]

Property of Cook County Clerk's Office



UNOFFICIAL COPY

EXHIBIT B

INSURANCE REQUIREMENTS

The Developer shall provide and maintain at Developer's own expense or cause to be provided, during the term of this Agreement, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$500,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Construction contractors and subcontractors performing work for the Developer must maintain limits of not less than \$1,000,000 with the same terms herein.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Developer must provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

4) Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Developer must provide or cause to be provided with respect to the operations that Developer or subcontractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than the requirement of the operating railroad for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

5) Builders Risk/Installation

When Developer undertakes any construction, including improvements, betterments, and/or repairs, the Developer must provide or cause to be provided, All Risk Builders Risk/Installation insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility/project. The City of Chicago is to be named as an additional insured and loss/payee mortgagee if applicable.

UNOFFICIAL COPY

6) Professional Liability

When any architects, engineers, construction managers, project managers or other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

7) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

8) Contractors Pollution Liability

When any environmental remediation work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided or cause to be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Contract scope of services with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

ADDITIONAL REQUIREMENTS

The Developer must furnish the City of Chicago, Department of Community Development, 121 North LaSalle Street, Room 1000, Chicago, 60602 and Comptroller Office, Special Accounting Division, 33 North LaSalle, Suite 800, Chicago, 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Developer must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain certificates or other insurance evidence from Developer is not a waiver by the City of any requirements for the Developer to obtain and maintain the specified coverages. The Developer must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not

UNOFFICIAL COPY

relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance must provide for 30 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Developer.

The Developer hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Developer in no way limit the Developer's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Developer under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Developer is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Developer must require all contractors and subcontractors to provide the insurance required herein, or Developer may provide the coverages for contractor and subcontractors. All contractors and subcontractors are subject to the same insurance requirements of Developer unless otherwise specified in this Agreement.

If Developer, contractors or subcontractors desire additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Agreement to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

UNOFFICIAL COPY

INSURANCE CERTIFICATE OF COVERAGE

Name Insured: _____
 Address _____
 (Number and Street)

(City) _____ (State) _____ (Zip) _____ Project Description _____

Description of Operation/Location	
-----------------------------------	--

The Insurance policies and endorsements indicated below have been issued to the designated named insured with the policy limits as set forth herein covering the operation described within the Contract involving the named insured and the City of Chicago. The Certificate issuer agrees that in the event of cancellation, non-renewal or material change involving the indicated policies, the issuer will provide at least sixty (60) days prior written notice of such change to the City of Chicago at the address shown on this Certificate. This certificate is issued to the City of Chicago in consideration of the Contract entered into with the named insured, and it is mutually understood that the City of Chicago relies on this certificate as a basis for continuing such agreement with the named insured.

Type of Insurance	Insurer Name	Policy Number	Expiration Date	Limits of Liability All Limits in Thousands
General Liability <input type="checkbox"/> Claims made <input type="checkbox"/> Occurrence <input type="checkbox"/> Premises-Operations <input type="checkbox"/> Explosion/Collapse Underground <input type="checkbox"/> Products/Completed-Operations <input type="checkbox"/> Blanket Contractual <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Personal Injury <input type="checkbox"/> Pollution				CSL Per Occurrence \$ _____ General Aggregate \$ _____ Products/Completed Operations Aggregate \$ _____
Automobile Liability				CSL Per Occurrence \$ _____
<input type="checkbox"/> Excess Liability <input type="checkbox"/> Umbrella Liability				Each Occurrence \$ _____
Worker's Compensation and Employer's Liability				Statutor/ Illinois Employers Liability \$ _____
Builders Risk/Course of Construction				Amount of Contract
Professional Liability				\$ _____
Owner Contractors Protective				\$ _____
Other				\$ _____

a) Each Insurance policy required by this agreement, excepting policies for worker's compensation and professional liability, will read: "The City of Chicago is an additional insured as respects operations and activities of, or on behalf of the named insured, performed under contract with or permit from the City of Chicago."

UNOFFICIAL COPY

- b) The General, Automobile and Excess/Umbrella Liability Policies described provide for severability of interest (cross liability) applicable to the named insured and the City.
- c) Workers Compensation and Property Insurers shall waive all rights of subrogation against the City of Chicago.
- d) The receipt of this certificate by the City does not constitute agreement by the City that the insurance requirements in the Contract have been fully met, or that the insurance policies indicated by this certificate are in compliance with all contract requirements.

<p>Name and Address of Certificate Holder and Recipient of Notice</p> <p>Certificate Holder/Additional Insured</p> <p>City of Chicago Department of _____ 121 N. LaSalle St. # _____ Chicago, IL 60602</p>	<p>Signature of Authorized Rep.</p> <p>_____</p> <p>Agency/Company:</p> <p>_____</p> <p>Address:</p> <p>_____</p> <p>Telephone:</p> <p>_____</p>
---	--

UNOFFICIAL COPY

EXHIBIT C

APPROVED BUDGET

[SEE ATTACHMENTS]

(final term sheet and final owner's sworn statement)

Property of Cook County Clerk's Office

