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KAREN A. YARBROUGH

COOK COUNTY CLERK

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**DEVELOPMENT, EASEMENT AND MAINTENANCE AGREEMENT
(NORTH UNION OPEN SPACE)**

NOTICE TO MORTGAGEES: THIS AGREEMENT SHALL BE SENIOR TO ANY MORTGAGE LIEN RECORDED AFTER THE DATE HEREOF AND SHALL NOT BE SUBJECT TO FORECLOSURE BY ANY SUCH LIEN

This **DEVELOPMENT, EASEMENT AND MAINTENANCE AGREEMENT** ("Agreement") is made as of the 25th day of April, 2022 by and between the CITY OF CHICAGO, an Illinois municipal corporation and home rule unit of government ("City"), acting by and through its Department of Planning and Development ("DPD") and North Union Land Owner LLC, a Delaware limited liability company ("North Union") and 920 North Wells Street Owner, LLC, a Delaware limited liability company ("920 Owner", together with North Union, the "Developer"). As used in this Agreement, "Developer" shall also include, and this Agreement shall be binding upon; the Developer's Successors and Assigns, as defined in Section 16.7 below or, to the extent applicable, an Association, as defined in Section 16.7 below.

RECITALS

WHEREAS, the City, as a home rule unit of government under the 1970 Constitution of the State of Illinois, has the authority to promote the health, safety and welfare of its inhabitants, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes; and

WHEREAS, North Union is the owner of the real property designated as the "North Union Parcel" and legally described on Exhibit A and 920 Owner is the owner of the real property designated as the "920 Parcel" and legally described on Exhibit A (collectively, the "Property"), which includes the portions of the real property depicted on Exhibit B (the "Open Space Parcel"); and

WHEREAS, by ordinance adopted on May 26, 2021, and published in the *Journal of the Proceedings of the City Council of the City of Chicago* for such date at pages 31021 through 31135, the City Council rezoned the Property and certain additional property that the Developer or its affiliates intends to acquire to Business-Residential Planned Development No. 1503 (the

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"PD"); and

WHEREAS, the Developer is developing a mixed-use project (the "Project") on the Property in accordance with the PD; and

WHEREAS, Statement 19 of the PD requires the Developer to design, construct and maintain certain open space improvements on the Open Space Parcel as depicted in the Landscape Plan attached to the PD (as such plan may be amended from time to time by minor or legislative change, the "Open Space Improvements"), and provide public access to such improvements; and

WHEREAS, the Developer has agreed to grant the City an easement interest in the Open Space Parcel for public open space and public park purposes in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Developer acknowledges and agrees this it will realize material benefits from the establishment of the Open Space Parcel as part of the Project; and

WHEREAS, the parties are entering into this Agreement (referred to in the PD as the "DEMA") pursuant to Statement 19 of the PD;

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

SECTION 1. INCORPORATION OF RECITALS.

The recitals set forth above (including, without limitation, the definitions set forth therein), and the exhibits attached hereto, constitute an integral part of this Agreement and are incorporated herein by this reference as agreements of the parties.

SECTION 2. CERTIFICATE OF COMPLETION.

Upon the completion of the Open Space Improvements (defined below), the Developer shall request in writing from the City a certificate of completion (the "Certificate of Completion"). Within 30 days thereof, the City shall provide the Developer with either the Certificate of Completion or a written statement indicating in adequate detail how the Developer has failed to complete the Open Space Improvements in compliance with this Agreement, and what measures or acts are necessary, in the reasonable discretion of DPD, for the Developer to take or perform in order to obtain the Certificate of Completion. If DPD requires additional measures or acts to assure compliance, the Developer shall resubmit a written request for the Certificate of Completion upon compliance with the City's response. The Certificate of Completion shall be in recordable form and include a legal description of the Open Space Parcel, and shall, upon recording, constitute a conclusive determination of satisfaction of the Developer's obligations to construct the Open Space Improvements.

SECTION 3. GRANT OF EASEMENT.

The Developer hereby grants and conveys to the City an easement commencing on the date of completion of the Open Space Improvements (as evidenced by the issuance of a Certificate of Completion) and continuing thereafter in perpetuity in, over, across and through the

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Open Space Parcel for public open space and public park purposes, as more fully described herein (the "Easement"), together with access thereto, to have and to hold unto the City and the City's permitted successors and assigns under Section 16.7 below. Such Easement shall be an exclusive easement, subject to the Developer's reservation of rights in Section 5 hereof.

SECTION 4. PURPOSE AND SCOPE OF EASEMENT.

4.1 It is the purpose of this Easement that the Open Space Parcel will be utilized only as public open space and for public park purposes, as further described in this Section 4, and subject to the provisions of this Agreement.

4.2 The Developer shall not discriminate based upon race, color, religion, sex, national origin or ancestry, military status, sexual orientation, source of income, age, or handicap, in the use of the Open Space Parcel by the public.

4.3 Except as expressly set forth in Section 6 below, this Agreement does not confer any special use rights upon the Developer, the Developer's Successor and Assigns, any tenant or occupant of the Property, or any other person or entity.

4.4 The use of alcohol on the Open Space Parcel is strictly prohibited, unless permits for such use are obtained from the City in accordance with the City liquor license provisions.

4.5 The Developer shall not store any toxic or hazardous materials on the Open Space Parcel.

4.6 Each Developer shall construct the open space improvements on the Open Space Parcel located on the portion of the Property owned by such Developer in accordance with the sequencing and Landscape Plan approved in the PD (the "Open Space Improvements"), as such plan may be amended from time to time. The Developer may not construct any other permanent improvements on the Open Space Parcel, unless expressly authorized in this Agreement.

4.7 In order to assure compliance with the public purpose of this Agreement, the City shall have the right, in addition to the remedies set forth in Section 13 below: (a) to enter upon the Open Space Parcel at reasonable times to monitor compliance with and otherwise enforce the terms of this Agreement and the Easement granted herein; (b) if the Developer fails to maintain, repair and replace the Open Space Improvements in accordance with the terms of this Agreement, to enter upon the Open Space Parcel at reasonable times to perform the necessary maintenance, repairs and replacements, and to be paid all costs and expenses in connection with such work within thirty (30) days after receipt by the Developer of a written statement of the City's costs therefor, and (c) to enforce the terms of this Agreement and the Easement by appropriate legal proceedings so as to prevent any activity on or use of the Open Space Parcel that is inconsistent with the purpose of this Agreement and the Easement granted herein, and to require the restoration of such areas or features of the Open Space Parcel that may be damaged by any inconsistent activity or use.

SECTION 5. DEVELOPER'S RESERVATION OF RIGHTS.

The Developer hereby reserves the following rights for itself and its agents, contractors, subcontractors, employees, and representatives with respect to the Open Space Parcel:

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(a) the right to use the Open Space Parcel on a temporary basis for the purpose of constructing the Project and the Open Space Improvements, staging materials and equipment in connection with such construction and other activities in furtherance of such construction, provided that any damage to the Open Space Improvements shall be repaired following such activities;

(b) the right to grant easements and/or licenses encumbering the Open Space Parcel for utility, maintenance and access purposes in furtherance of the operation of the improvements on the Property; provided, however, any such encumbrances shall be subordinate to the Easement and shall not unreasonably interfere with or materially and adversely affect the public's use and enjoyment of the Open Space Parcel;

(c) the right to perform its maintenance obligations set forth herein;

(d) when reasonably necessary, including in the event of any casualty, condemnation, or reconstruction of the Project, the right to use the Open Space Parcel on a temporary basis for the repair, maintenance or reconstruction of the improvements located on the Property, including any improvements located below the Open Space Parcel, and to suspend public access if necessary for such use, provided the Developer shall provide advance written notice to the City of at least 30 days if such suspension will last 15 days or more, and provided the Developer diligently performs any such work and

(e) the right to restrict public access to the Open Space Parcel to the hours of 6:00 a.m. to 11:00 p.m. (the "Park Hours").

The Commissioner of DPD (the "Commissioner"), in the Commissioner's sole discretion, shall also have the authority to consent to additional grants of easements or licenses for purposes other than utilities, maintenance and access provided they are subordinate to the Easement.

SECTION 6. PARK PROGRAMMING; LIMITED PRIVATE USE

6.1 The Developer may organize daily activity programming on the Open Space Parcel, including, without limitation, outdoor dining for businesses located on portions of the Developer Parcel that are adjacent to the Open Space Parcel; provided, however, any outdoor dining space that exceeds 1,500 square feet shall require review and approval by DPD. Any such programming shall be open to the public and shall consist of functions and amenities similar to what is then offered at the Chicago Park District parks.

6.2 The Developer and tenants and occupants of the Property ("Permitted Private Users") shall be permitted to use the Open Space Parcel on an Occasional Limited Basis (as defined in the next paragraph) for special functions and special programmed events (each such event, a "Permitted Special Event"), provided such functions and events are (a) related to activities of the Permitted Private Users, and (b) are non-revenue generating events or charitable fund-raising events. When only a portion of the Open Space Parcel is used for a Permitted Special Event, the remainder of the Open Space Parcel shall remain open to and available for use by the public during Park Hours, and in all cases the public shall have access through the Open Space Parcel during such closures (which may be limited to a designated path).

6.3 The term "Occasional Limited Basis" shall mean up to twelve (12) days in a calendar year. Any additional use of the Open Space Parcel by the Permitted Private Users for private functions or events shall be subject to the approval of DPD, which approval shall not be

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unreasonably withheld, conditioned or delayed. The Permitted Private Users shall secure all necessary permits, if any, from the City to use the Open Space Parcel for the Permitted Special Event. Except for normal permit fees applicable to such use, and in view of the Developer's ongoing responsibility for the maintenance, repair and replacement of the Open Space Improvements as set forth herein, no rent, compensation, additional fees or charges shall be due and payable to the City for the use of the Open Space Parcel for any Permitted Special Event.

SECTION 7. COVENANTS, REPRESENTATIONS AND WARRANTIES.

7.1. Covenants, Representations and Warranties of Developer. The Developer hereby covenants, represents and warrants to the City as follows:

(a) The Developer is duly organized and in good standing under the laws of the State of Illinois and other states in which it is required to register as a business entity.

(b) No litigation or proceedings are pending or, to the best of the Developer's knowledge, are threatened against the Developer which could affect the ability of the Developer to perform its obligations pursuant to this Agreement.

(c) The execution, delivery and performance by the Developer of this Agreement has not constituted or will not, upon the giving of notice or lapse of time, or both, constitute a breach or default under any other agreement to which the Developer is a party or may be bound or affected, or a violation of any law or court order which may affect the Property or Open Space Parcel, or any part thereof, any interest therein or use thereof.

(d) The party executing this Agreement on behalf of the Developer has been duly authorized by all appropriate action to enter into, execute and deliver this Agreement and perform the terms and obligations contained therein.

(e) The Developer has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with this Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("City Contract") as an inducement for the City to enter into this Agreement or any City Contract with the Developer in violation of Chapter 2-156-020 of the Municipal Code of Chicago

(f) The Developer shall develop, construct, maintain, repair and replace the Open Space Improvements in accordance with the terms and provisions of this Agreement.

7.2. Covenants, Representations and Warranties of the City. The City hereby covenants, represents and warrants to the Developer that the City has the authority under its home rule powers granted in the Constitution of the State of Illinois to enter into, execute, deliver and perform its obligations thereunder.

7.3. Survival of Representations and Warranties. The representations and warranties of the Developer and the City set forth in this Agreement are true as of the execution date of the

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Agreement and will be true in all material respects at all times hereafter, except with respect to matters that have been disclosed in writing and approved by the other party.

SECTION 8. INTENTIONALLY OMITTED

SECTION 9. CONTINUING OBLIGATIONS OF DEVELOPER.

9.1 Following the completion of the Open Space Improvements, the Developer shall comply with the covenants set forth in this Section 9, and the other provisions of this Agreement applicable to the continuing use of the Open Space Parcel and the maintenance, repair and replacement of the Open Space Improvements, all of which shall run with the Property and shall be binding upon each Developer party with respect to the portion of the Property owned by such Developer, and such Developer party's Successors and Assigns. Any such assignee or successor shall, at the time of such assignment or succession, execute a written acknowledgment in favor of the City acknowledging such party's obligations under this Agreement. The Developer and the Developer's Successors and Assigns shall not be obligated under this Agreement to provide private security service or police protection in the Open Space Parcel.

9.2 On-Going Maintenance of the Open Space Improvements. Following completion of the Open Space Improvements, each Developer party, at its sole cost and expense, shall: (a) maintain, repair and, if required, replace, the trees, plants, and vegetation (including annual and seasonal flower beds), the brick paves, sidewalks, paving, fixtures, benches, fencing, furnishings, improvements and the sprinkler systems (including draining the sprinkler lines when and as appropriate) and all other Open Space Improvements on the portion of the Property owned by such Developer party, whether above ground or below ground; (b) provide light bulb replacement for all light fixtures located on the portion of the Open Space Parcel owned by such Developer party and pay for all utility costs associated with the portion of the Open Space Parcel owned by such Developer party; (c) provide trash pickup and disposal services for the daily use of the portion of the Open Space Parcel owned by such Developer party; and (d) remove snow from hardscaped areas and arrange for the removal of leaves, litter, debris and other waste materials from the portion of the Open Space Parcel owned by such Developer party (collectively "Ordinary Maintenance Obligations").

9.3 Security for Maintenance Obligations. Prior to the City's issuance of the Certificate of Completion, the Developer or an Association (defined below) shall fund an initial maintenance reserve in the amount of \$1.50 per square foot of Open Space Parcel site area to secure the performance of the Developer's obligations under this Agreement (together with any interest earned thereon, the "Maintenance Reserve"). Such account shall be named or otherwise identified as the "Open Space Maintenance Reserve Trust Account" or words of similar effect to identify the custodial nature of such account, but shall be under the Developer's control. No other funds shall be deposited into such account, nor shall any funds be withdrawn from such account except to pay for costs incurred pursuant to this Agreement. At DPD's written request, the Developer shall submit to the Commissioner account statements reflecting the current balance of such trust account. This Agreement shall be recorded as an encumbrance against the Property to secure the (a) establishment of the Maintenance Reserve, (b) replenishment of the Maintenance Reserve from time to time, and (c) performance of the maintenance obligations of the Developer under this Agreement, which, if not performed, and if instead performed by the City, shall give rise to a lien against the Property, which lien may be enforced by the City and shall be in the amount of the cost of curing such default.

9.4 Inspection Requirements. Every two years after the completion of the Open Space

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Improvements (or such other interval as may be agreed upon by the parties), the Developer shall cause a licensed structural engineer to inspect the structural elements of the Open Space Improvements on the portion of the Property owned by such Developer party and prepare a written report summarizing the physical condition of such structural elements and, if applicable, setting forth any recommended maintenance, repair and/or replacement work. The Developer shall also permit any applicable City departments charged with making structural inspections to inspect such structural elements. If City inspectors make findings that (a) the structural elements do not comply with applicable code requirements, or (b) the condition of such structural elements otherwise poses a direct and immediate threat to public health and safety, the Developer shall remedy such code deficiencies and undertake such maintenance, repair and replacement work as may be necessary or appropriate to address the conditions that pose such a direct and immediate threat. The Developer retains the right to challenge or dispute alleged code deficiencies, to the same extent as any other property owner.

9.5 Rules and Regulations. The Developer may establish reasonable rules and regulations for the use of the Open Space Parcel by the public, including without limitation the prohibition of any sleeping, cooking, soliciting or loitering therein. The Developer shall be obligated to obtain prior written approval by the City of any such rules and regulations but not any specific instances of enforcement thereof, so long as such rules and regulations are enforced in a uniform and non-discriminatory fashion against the users of the Open Space Parcel. The Developer may also establish reasonable rules and regulations for animal access. The Developer shall have the right to enforce such rules and regulations by personnel employed by the Developer's property manager or other agents and contractors in the same manner as the Developer would enforce similar rules and regulations applicable to other portions of the Developer Parcel which are open to entry by the public. Notwithstanding anything herein to the contrary, the Developer shall have the right to close the Open Space Parcel and deny public access through the Open Space Parcel outside of the Park Hours. The Developer shall indemnify the City from and against any claims arising in connection with such rules and regulations and the enforcement thereof.

SECTION 10. INSURANCE.

The Developer shall at all times following the completion of the Open Space Improvements maintain or cause to be maintained (i) All Risk Property Insurance at replacement value of the Open Space Improvements to protect against loss of, damage to, or destruction of the Open Space Improvements, with the City named as additional loss payee on such policy, and (ii) comprehensive general liability insurance (including any liability insurance carried under so called excess or "umbrella" policies) with respect to such Open Space Parcel in such amount as the Developer shall be required to carry with respect to the Project under any mortgage(s) and the related security documents, and (iii) all such other insurance coverage(s) as the Developer is required to maintain under any mortgage(s) and the related security documents. The Developer shall, on or before January 15th of each calendar year, provide the City with evidence of the then applicable insurance requirements of such mortgage(s) and security documents and evidence of compliance with the foregoing requirements. All insurance proceeds shall be the property of the Developer and shall be applied to restoration of the Open Space Improvements to the extent such proceeds are necessary to repair any damage to or destruction of such Open Space Improvements. If such proceeds are insufficient to restore such Open Space Improvements, the Developer shall be required to fund any shortfall amount to complete such restoration. The Commissioner of DPD shall have authority to administratively amend this Agreement to document such continuing insurance requirements.

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SECTION 11. INDEMNITY.

The Developer agrees to indemnify, defend and hold the City, its elected officials and employees, harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorneys' fees and court costs) (collectively, "Indemnified Costs") suffered or incurred by the City or such persons arising from or in connection with the construction of the Open Space Improvements or the Developer's failure to perform its obligations under this Agreement. The foregoing indemnity, defense and hold harmless obligation shall not be construed to require the Developer to indemnify such indemnitees where the Indemnified Costs arise out of the sole negligence and/or sole willful and wanton misconduct of one or more indemnitees. Without limiting the generality of the foregoing, such Indemnified Costs shall include any amounts payable by reason of the environmental condition of Open Space Parcel. This indemnification shall survive any termination of this Agreement.

SECTION 12. TERM OF THE AGREEMENT.

The term of this Agreement shall commence as of the date hereof and, unless otherwise terminated by the City in writing, pursuant to an ordinance approved by the City Council, shall run in perpetuity.

SECTION 13. PERFORMANCE, EVALUATION AND BREACH; REMEDIES.

13.1 Time of the Essence. Time is of the essence in the parties' performance of their obligations under this Agreement. Should any milestone date fall on a weekend or holiday, the deadline for compliance shall not occur until the next regular business day.

13.2 Permitted Delays. The Developer shall not be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of the Developer to discharge its obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, promptly give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

13.3 Breach. Except as otherwise provided in this Agreement, in the event of a default by the Developer in the performance of its obligations under this Agreement, the Developer, upon written notice from the City, shall cure or remedy the default not later than sixty (60) days after receipt of such notice. If the default is not capable of being cured within the sixty (60) day period but the Developer has commenced action to cure the default and is diligently proceeding to cure the default within the sixty (60) day period, then the sixty (60) day period shall be extended for the length of time that is reasonably necessary to cure the default. If the default is not cured in the time period provided for herein, the City may institute such proceedings at law or in equity as may be necessary or desirable in its sole discretion to cure and remedy the default, including but not limited to, proceedings to compel specific performance. The City shall also have the right to receive an assignment of the unspent Maintenance Reserve from the Developer where the

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Developer fails to perform its maintenance obligations pursuant to Section 9. The City shall also have the remedies specified in Section 4.7.

13.4 Events of Default. For purposes of this Agreement, the occurrence of any one or more of the following shall constitute an "event of default":

(a) The Developer fails to perform, keep or observe any of the material covenants, conditions, promises, agreements or obligations required under this Agreement; or

(b) The Developer makes or furnishes a warranty, representation, statement or certification to the City which is not true and correct in any material respect; 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 hereinafter existing, which is not vacated, stayed or set aside within sixty (60) days after filing and which impairs the ability of the Developer to perform its obligations as and when required under this Agreement; or

(d) Subject to the permitted delays provision of Section 13.2, the Developer abandons or suspends construction of the Open Space Improvements, and such abandonment or suspension is not cured within one hundred twenty (120) days of the date the Developer receives written demand by the City to cure such default; or

(e) The Developer suffers or permits any lien or encumbrance that is not a Permitted Encumbrance or discharged or contested pursuant to Section 16.8 to attach to or encumber the Open Space Parcel.

13.5 Notice of Default to Lender. The City shall use reasonable efforts to cause any notice of default delivered to the Developer to also be delivered to any lender at the address set forth in Section 16.5, if any, but failure to deliver such notice shall not prevent the City from exercising its remedies. Such lender shall have the same opportunities to cure any such default(s) as are afforded to the Developer herein.

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

13.7 Access to the Property. Until the expiration of the Term of this Agreement, any duly authorized representative of the City shall have access to the Open Space Parcel at all reasonable times for the purpose of confirming the Developer's compliance with its obligations under this Agreement.

13.8 Evaluation. Upon written request by the City, but not more frequently than once on an annual basis, the Developer shall submit to the City a written report describing the maintenance of the Open Space Improvements and all costs attendant thereto. After delivery of the report, at the City's request, representatives of the City and the Developer shall meet and address any issues and concerns. If the City determines, as a result of its review of the report or

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after a site visit pursuant to Section 9.4 or Section 13.7 hereof, that the Developer is not complying with the terms and provisions of this Agreement, the City may deliver a notice of default and the Developer shall thereafter have an opportunity to cure as provided for in Section 13.3.

SECTION 14. 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, nor shall any such agent, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, 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 15. BARRICADES, SIGNS AND PUBLIC RELATIONS.

Prior to the commencement of any demolition or construction activity requiring barricades, the Developer shall install a barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. The City shall retain the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades. The City reserves the right to include the name, photograph, artistic rendering of the Open Space and other pertinent information regarding the Developer and the Open Space Improvements in the City's promotional literature and communications.

SECTION 16. MISCELLANEOUS.

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

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

16.3 Entire Agreement. This Agreement constitutes the entire contractual agreement between the parties and supersedes and replaces completely any prior agreements between the parties with respect to the development, use and operation of the Open Space Parcel. This Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

16.4 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.

16.5 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) overnight courier; (c) registered or certified first class mail, postage prepaid, return receipt requested; or (d) by e-mail transmission:

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If to the City: City of Chicago
Department of Planning and Development
121 North LaSalle Street
Room 1000 - City Hall
Chicago, Illinois 60602
Attn: Commissioner

With a copy to: City of Chicago
Department of Law
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Attn: Deputy Corporation Counsel, Real Estate Division

If to the Developer: c/o JDL Development LLC
900 N Halsted
Chicago, Illinois 60642
Attn: James Letchinger

With a copy to: DLA Piper LLP (US)
144 W. Lake Street, Suite 900
Chicago, Illinois 60606
Phone: (312)368-2153
Attn: Paul Shadle & Katie Jahnke Dale

Any notice, demand or communication given pursuant to clause (a) hereof shall be deemed received upon such personal service. If such transmission occurred on a non-business day or after 5:00 p.m. on a business day, it shall be deemed to have been given on the next business day. Any notice, demand or communication given pursuant to clause (b) shall be deemed received on the business day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (c) shall be deemed received three (3) business days after mailing. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received upon the first business day following transmission. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 16 shall constitute delivery. The parties agree that any notice on behalf of a party may be sent by such party's attorney specified above in lieu of being sent by such party itself.

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

16.7 Assignability and Transfer.

(a) Developer. The Developer shall have no right to assign, transfer or convey any of its rights, duties or obligations under this Agreement as they relate to the Open Space Parcel, except (i) to an Affiliate, (ii) to an entity that succeeds to the Developer's

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ownership interest in the Property or any portion thereof (such parties, "Developer's Successors and Assigns"), or (iii) to a homeowners or master association whose purpose includes maintaining all or part of the Open Space Parcel as set forth in the PD (an "Association"), and provided (w) the City receives prior written notice of at least ten (10) days of such transfer or assignment, (x) such entity assumes this Agreement in writing pursuant to a written assignment and assumption agreement in the form of Exhibit C to this Agreement, or such other form as shall be reasonably acceptable to the City, (y) at the time of such transfer or assignment, the Maintenance Reserve is replenished to the initial amount set forth in Section 9.3 and (z) to the knowledge of a certifying party, no "event of default" (as defined in Section 13 below) exists under this Agreement. If one or more of (w) through (z) is not satisfied, the Commissioner shall have the authority to consent to such transfer or assignment, subject to the cure of any unsatisfied conditions and such other reasonable requirements as the Commissioner may deem necessary or appropriate. Where the Developer seeks to convey or assign its rights and obligations under this Agreement, the City shall reasonably cooperate with such transferee or assignee to inform such party of the status of the Developer's performance of its obligations under this Agreement, provided, however, in no instance shall the City be bound by any such information, except to the extent the City would be estopped from denying or rejecting such information under then-current case law applicable to municipal estoppel. If the Developer transfers all or part of the Property as permitted under this Section 16.7 (a), the Developer shall be released from all liability and/or obligations accruing after such transfer or assignment with respect to the applicable portion of the Property and shall have no further rights or obligations under this Agreement with respect to such portion, except in the case of a transfer to an Association to the extent provided for in the governing documents for such Association.

(b) City. The City shall have no right to assign, transfer or convey any its rights under this Agreement, including but not limited to its easement rights as set forth in Section 3, without the Developer's consent, which consent shall not be unreasonably withheld; provided, however, that no such consent shall be required with respect to an assignment, transfer or conveyance to the Chicago Park District or another unit of local government that, consistent with its enabling legislation, is authorized to own (or hold an access easement interest in) park and open space

16.8 No Liens. At no time may the Developer grant, suffer or permit any lien, claim, or encumbrance upon the Open Space Parcel or any portion thereof, except for such liens and encumbrances as the Commissioner may consent to, in the exercise of the Commissioner's reasonable discretion, including specifically, but without limitation, the lien of a mortgage (the "Permitted Encumbrances"). If any lien shall be filed or claim of lien made upon the Open Space Parcel, then Developer shall either discharge or contest the lien or claim in good faith by appropriate proceedings. Nothing herein shall be construed as limiting the rights of any lender to exercise its rights pursuant to the provision of its mortgage or limiting the Developer's performance of its obligations in connection with such mortgage.

16.9 Further Assurances. The Developer and the City agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

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16.10 Survival. All representations and warranties contained in this Agreement are made as of the execution date of this Agreement and the execution, delivery and acceptance hereof by the parties shall not constitute a waiver of rights arising by reasons of any misrepresentation.

16.11 Cumulative Remedies. Subject to any express limitation of the scope of remedies provided herein, the remedies of any party hereunder are cumulative and the exercise of any one or more of the remedies provided by this Agreement shall not be construed as a waiver of any of the other remedies of such party unless specifically so provided herein.

16.12 Disclaimer. No provision of this Agreement, nor any act of the City, shall be deemed or construed by any of the parties, or by third persons, to create or imply to create the relationship of third-party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the City, the Developer or any owner of any portion of the Property.

16.13 Approval. Wherever this Agreement provides for the approval or consent of the City, DPD or the Commissioner, or any matter is to be to the City's, DPD's or the Commissioner's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City, DPD or the Commissioner in writing and in the reasonable discretion thereof and not unreasonably delayed. The Commissioner or other person designated by the Mayor shall act for the City or DPD in making all approvals, consents and determinations of satisfaction or otherwise administering this Agreement for the City.

16.14 Venue and Jurisdiction. If there is a lawsuit under this Agreement, each party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois, or the United States District Court for the Northern District of Illinois.

16.15 Subordination. No mortgage shall be executed with respect to the Open Space Parcel unless the holder of such mortgage executes a Subordination Agreement in the form attached hereto as Exhibit D or such other form as may be reasonably acceptable to the City which subordinates the lien of the mortgage to this Agreement.

[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.

CITY OF CHICAGO, an Illinois municipal corporation

By: _____

Maurice D. Cox

Commissioner

Department of Planning and Development

NORTH UNION LAND OWNER LLC, a Delaware limited liability company

By: _____

Name: _____

Its: _____

520 NORTH WELLS STREET OWNER, LLC, a Delaware limited liability company

By: _____

Name: _____

Its: _____

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

Lisa Misher
City of Chicago Department of Law
Real Estate and Land Use Division
121 North LaSalle Street, Suite 600
Chicago, Illinois 60602
(312) 742-3932

UNOFFICIAL COPY

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

CITY OF CHICAGO, an Illinois municipal corporation

By: _____
 Maurice D. Cox
 Commissioner
 Department of Planning and Development

NORTH UNION LAND OWNER LLC, a Delaware limited liability company

By: _____
 Name: James D. Letchinger
 Its: Authorized Signatory

320 NORTH WELLS STREET OWNER, LLC, a Delaware limited liability company

By: _____
 Name: James D. Letchinger
 Its: Authorized Signatory

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

Lisa Misher
 City of Chicago Department of Law
 Real Estate and Land Use Division
 121 North LaSalle Street, Suite 600
 Chicago, Illinois 60602
 (312) 742-3932

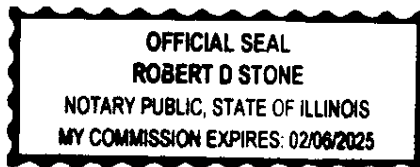
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that James D. Letchinger the Authorized Signatory of North Union Land Owner LLC, a Delaware limited liability company (the "LLC"), 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 such Authorized Signatory, s/he signed and delivered the foregoing instrument pursuant to authority given by said LLC, as her/his free and voluntary act and as the free and voluntary act and deed of said LLC, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 25th day of April, 2022

Robert D. Stone
 NOTARY PUBLIC

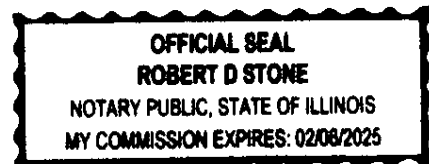


STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

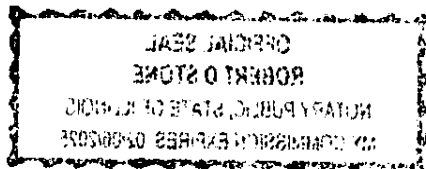
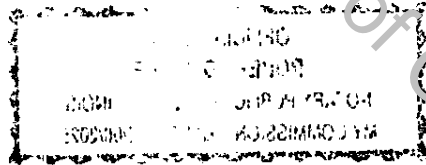
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that James D. Letchinger, the Authorized Signatory of 920 North Wells Street Owner, LLC, a Delaware limited liability company (the "LLC"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that, as such Authorized Signatory, s/he signed and delivered the foregoing instrument pursuant to authority given by said LLC, as her/his free and voluntary act and as the free and voluntary act and deed of said LLC, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 25th day of April, 2022

Robert D. Stone
 NOTARY PUBLIC



UNOFFICIAL COPY



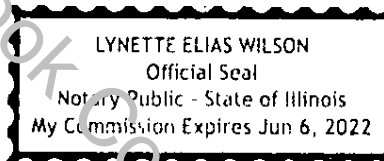
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Maurice D. Cox, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that, as such 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 said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 22 day of April, 2022

Suzette Elias Wilson
NOTARY PUBLIC



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

NORTH UNION PARCEL

LOTS 1 THROUGH 7 IN ASSESSOR'S DIVISION OF LOTS 1 THROUGH 4 AND 9 THROUGH 12 IN THE SUBDIVISION OF BLOCK 19 OF JOHNSTON, ROBERTS AND STORR'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

LOTS 1, 2, 9, 10 AND THE EAST 10 FEET OF LOT 8 IN ASSESSOR'S DIVISION OF LOTS 5 THROUGH 8 IN THE SUBDIVISION OF BLOCK 19 OF JOHNSTON, ROBERTS AND STORR'S ADDITION TO CHICAGO, AFORESAID, IN COOK COUNTY, ILLINOIS

THE VACATED 66 FOOT WIDE FRANKLIN STREET AS VACATED BY THE ORDINANCE RECORDED OCTOBER 7, 1987 AS DOCUMENT 87544797 LYING WEST OF AND ADJOINING TO LOTS 1 TO 8 IN THE SUBDIVISION OF BLOCK 18 IN JOHNSTON, ROBERTS AND STORR'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND LYING EAST OF AND ADJOINING TO LOTS 1 TO 7 IN ASSESSOR'S DIVISION OF LOTS 1 TO 4 AND 9 TO 12 IN THE SUBDIVISION OF BLOCK 19 IN JOHNSTON, ROBERTS AND STORR'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPTING THEREFROM THE EAST 35 FEET THEREOF, IN COOK COUNTY, ILLINOIS.

THE NORTH SOUTH 10 FOOT WIDE VACATED ALLEY AS VACATED BY THE ORDINANCE RECORDED AS DOCUMENT 14776319 LYING WEST OF AND ADJOINING TO LOTS 1 TO 7 IN ASSESSOR'S DIVISION OF LOTS 1 TO 4 AND 9 TO 12 IN THE SUBDIVISION OF BLOCK 19 IN JOHNSTON, ROBERTS AND STORR'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND LYING EAST OF AND ADJOINING TO LOTS 1 AND 10 IN ASSESSOR'S DIVISION OF LOTS 5 TO 8 IN THE SUBDIVISION OF BLOCK 19 IN JOHNSTON, ROBERTS AND STORR'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

ALL THAT CERTAIN PARCEL OR PARCELS OF LAND LOCATED IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: A TRACT OF LAND COMPRISING ALL OR A PART OF THE FOLLOWING MENTIONED LOTS, ALLEYS AND STREETS, TO WIT: PART OF LOTS 11 AND 12 IN THE SUBDIVISION OF BLOCK 10; LOTS 7, 8, 9 AND PART OF LOTS 6 AND 10 TOGETHER WITH PART OF THE NORTH-SOUTH 18 FOOT ALLEY, ALL IN THE ASSESSOR'S DIVISION OF BLOCK 11; LOTS 1 THROUGH 10 AND LOT 12 TOGETHER WITH THE NORTH-SOUTH 16 FOOT ALLEY AND PART OF THE EAST-WEST 18 FOOT ALLEY ALL IN THE SUBDIVISION OF BLOCK 14; PART OF LOTS 1 THROUGH 8 IN THE SUBDIVISION OF BLOCK 15, ALSO PART OF WEST WENDELL STREET AND NORTH FRANKLIN STREET ADJOINING SAID BLOCKS 10, 11, 14 AND 15, ALL OF THE ABOVE BEING IN JOHNSTON, ROBERTS AND STORR'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; THE ABOVE SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING

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AT THE SOUTH WEST CORNER OF LOT 10 IN SAID SUBDIVISION OF BLOCK 14, BEING ALSO ON THE NORTH LINE OF WEST OAK STREET; THENCE EAST ALONG THE NORTH LINE OF WEST OAK STREET, A DISTANCE OF 265.00 FEET TO A POINT WHICH IS 304.50 FEET WEST OF THE WEST LINE OF NORTH WELLS STREET, AS MEASURED ON THE NORTH LINE OF WEST OAK STREET; THENCE NORTH PERPENDICULAR TO THE NORTH LINE OF WEST OAK STREET, A DISTANCE OF 370.00 FEET; THENCE WEST PARALLEL TO THE NORTH LINE OF WEST OAK STREET, A DISTANCE OF 239.16 FEET TO A POINT ON THE WEST LINE OF LOT 10 IN ASSESSOR'S DIVISION OF BLOCK 11; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT AND SAID WEST LINE EXTENDED SOUTH, A DISTANCE OF 118.83 FEET TO THE CENTER LINE OF WEST WENDELL STREET, THENCE WEST ALONG THE CENTER LINE OF WEST WENDELL STREET, A DISTANCE OF 30.05 FEET TO ITS INTERSECTION WITH THE WEST LINE OF LOTS 12 AND 10 IN THE SUBDIVISION OF BLOCK 14, AFORESAID, EXTENDED NORTH; THENCE SOUTH ALONG THE EXTENSION NORTH OF THE WEST LINE OF SAID LOTS 12 AND 10, A DISTANCE OF 251.18 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

LOTS 1, 2, 3, 4 AND 24 TO 24, INCLUSIVE IN BLOCK 23 IN JOHNSTON ROBERT'S AND STORR'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LOTS 5, 6, 7 AND 8 IN BLOCK 23 IN JOHNSTON, ROBERTS, AND STORR'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

920 PARCEL

LOTS 13 TO 16, INCLUSIVE IN BLOCK 23 IN JOHNSTON ROBERT'S AND STORR'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

LOTS 1 TO 4 INCLUSIVE IN RICHS SUBDIVISION OF LOTS 9, 10, 11 AND 12 IN BLOCK 23 OF JOHNSTON ROBERT'S AND STORR'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINS:

17-04-426-020-0000
17-04-426-021-0000
17-04-420-026-0000
17-04-416-015-0000
17-04-417-018-0000
17-04-421-024-0000
17-04-430-024-0000
17-04-430-022-0000
17-04-430-023-0000

ADDRESSES:

820 North LaSalle Drive, Chicago, IL 60610
917 North Franklin Street, Chicago, IL 60610
221 W. Walton Street, Chicago, IL 60610-3102
920 North Wells Street and 917 N. Franklin Street, Chicago, IL 60610

UNOFFICIAL COPY

EXHIBIT B

DEPICTION OF OPEN SPACE PARCEL

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST, ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST, ROOM 120
CHICAGO, IL 60602-1387



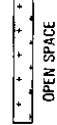
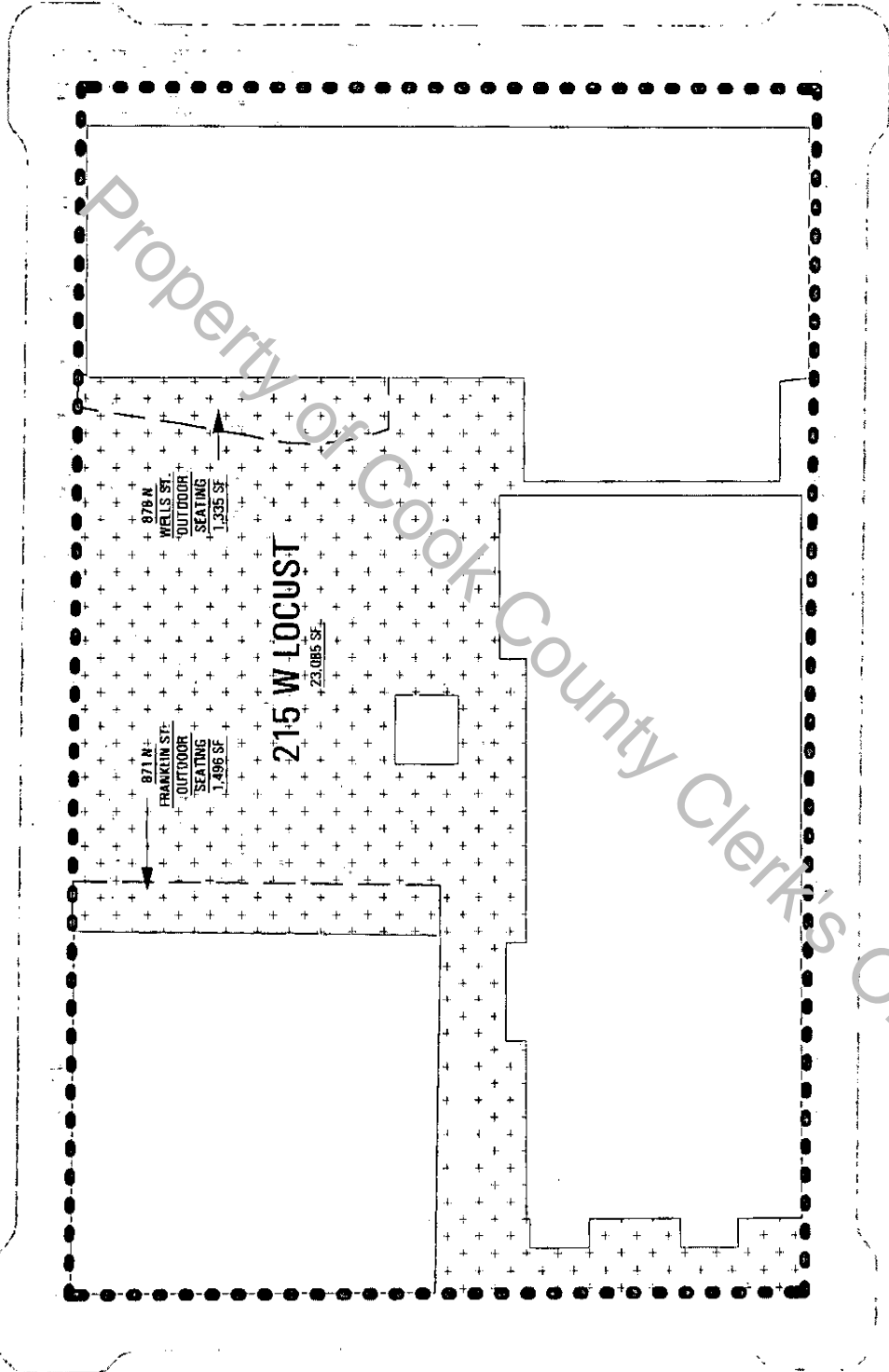
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W LOCUST ST

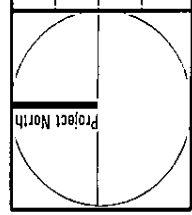
N WELLS ST

W CHESTNUT ST

N FRANKLIN ST



SCALE	DRAWING	SK #
1" = 50'-0"	NORTH UNION	
DATE	SUB AREA E	
04/05/2022	OPEN SPACE	



878 N WELLS

HARTSHORNE PLUNKARD ARCHITECTURE

HPA

232 NORTH CARPENTER STREET
CHICAGO, IL 60607
312.225.4488
HPARCHITECTURE.COM

PLANS AND ALL SPECIFICATIONS ARE SUBJECT TO REVISION AS DEEMED NECESSARY ON ADVISABLE BY BUILDER, ARCHITECT, OR AS REQUIRED BY LAW.

UNOFFICIAL COPY

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This document prepared by
and after recordation should
be returned to:

City of Chicago
Department of Law
121 N. LaSalle Street, Room 600
Chicago, Illinois 60602

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT, EASEMENT AND MAINTENANCE AGREEMENT (NORTH UNION)

This Assignment and Assumption Agreement ("Agreement") is made and entered as of [____], by and between North Union LLC, an Illinois limited liability company (the "Seller"), and [____] (the "Purchaser"). Capitalized terms not otherwise defined herein shall have the meanings given to them in that certain Development, Easement and Maintenance Agreement (North Union) by and between Seller and the City of Chicago ("City") dated ____, 20__ and recorded in the Recorder's Office of Cook County on [____], 20__ as document no. [____] (the "DEMA").

RECITALS

A. Pursuant to that certain [____] dated as of [____] (the "Purchase and Sale Agreement"), the Seller has contracted to sell, and the Purchaser has contracted to purchase, the Property legally described on Exhibit 1 to this Agreement, subject to the terms and conditions of such Purchase and Sale Agreement.

B. The Open Space Parcel constitutes a portion of the Property, and is separately described on Exhibit 1.

C. Section 16.7 of the DEMA requires the execution and delivery of this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree to the following:

1. Assignment and Assumption. Seller hereby assigns, and Purchaser hereby assumes, the liabilities and obligations to be performed after the date hereof by the Developer under the DEMA.

2. Release. Purchaser acknowledges that upon the transfer of the Open Space Parcel to the Purchaser, and Purchaser's assumption of the DEMA pursuant to this Agreement, Seller shall be released from any and all obligations under the DEMA, except to the extent any such obligations (if any) are expressly set forth in and survive under the terms of the Purchase and Sale Agreement.

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3. No Event of Default. Seller and Purchaser each represent and warrant to the other (and to the City, which is an intended third party beneficiary of this Agreement) that it has no knowledge of any "event of default" under the DEMA, or of any circumstance or condition which, with the giving of notice and lapse of any applicable cure period provided for in the DEMA, would give rise to such an "event of default."

4. Maintenance Reserve. Unless the Purchase and Sale Agreement provides for the Purchaser to provide such funding, on the date of the transfer of the Property and Open Space Parcel to the Purchaser, the Seller shall fund the Maintenance Reserve with sufficient funds so that, as of such transfer date, the Maintenance Reserve balance is \$_____.

5. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

6. Binding Obligations; Illinois Law Controlling. This Agreement shall be binding upon and inure to the benefit of each party's respective successors and assigns. Illinois law shall control the interpretation of this Agreement.

7. Amendments in Writing Only. The terms of this Agreement shall not be amended unless such amendment is in writing executed by all parties hereto.

8. Recording. Purchaser shall promptly cause this Agreement to be recorded in the Recorder's Office of Cook County, Illinois.

9. Notices. Purchaser agrees that for purposes of notices delivered pursuant to Section 16.5 of the DEMA, the Developer's address shall hereafter be:

If to the Developer:

Attn: _____

With a copy to:

Attn: _____

In addition, the Purchaser's day-to-day contact person shall be:

10. Third Party Beneficiary. The parties acknowledge that the City is an intended third party beneficiary of this Agreement, which has been executed pursuant to Section 16.7 of the DEMA.

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of North Union LLC, an Illinois limited liability company (the "LLC"), 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 such _____, s/he signed and delivered the foregoing instrument pursuant to authority given by said LLC, as her/his free and voluntary act and as the free and voluntary act and deed of said LLC, for the uses and purposes therein set forth.

GIVEN under my notarial seal this ____ day of _____, 20__.

 NOTARY PUBLIC

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of _____, an Illinois limited liability company (the "Purchaser"), 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 such _____, s/he signed and delivered the foregoing instrument pursuant to authority given by the Purchaser, as her/his free and voluntary act and as the free and voluntary act and deed of the Purchaser, for the uses and purposes therein set forth.

GIVEN under my notarial seal this ____ day of _____, 20__.

 NOTARY PUBLIC

UNOFFICIAL COPY

(SUB) EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

LEGAL DESCRIPTION OF OPEN SPACE PARCEL
(A PORTION OF THE PROPERTY)

UNOFFICIAL COPY

EXHIBIT D

FORM OF SUBORDINATION AGREEMENT

This document prepared by
and after recordation should
be returned to:

City of Chicago
Department of Law
121 N. LaSalle Street, Room 600
Chicago, Illinois 60602

SUBORDINATION AGREEMENT

This Subordination Agreement ("Agreement") is made and entered into as of the ____ day of _____, 20____, between the City of Chicago, an Illinois corporation (the "City"), acting by and through its Department of Planning and Development ("DPD"), and [INSERT NAME OF LENDER] ("Lender").

RECITALS

a. Lender is or will be (a) mortgagee under that certain [INSERT NAME OF MORTGAGE] ("Mortgage") dated _____, 20____ granted by North Union LLC, an Illinois limited liability company (the "Developer") in favor of Lender and to be recorded in the Office of the Cook County Clerk (the "Clerk's Office"), (b) assignee under that certain [INSERT NAME OF ASSIGNMENT OF RENTS] dated _____, 20____ granted by the Developer in favor of Lender and to be recorded in the Clerk's Office, and (c) as secured party under that certain financing statement executed by the Developer, as debtor, in favor of Lender, as secured party, and to be filed with the Secretary of State of Illinois ((a), (b) and (c), collectively, together with all other documents evidencing or securing the Lender's financing, the "Lender's Documents"). The Lender's Documents secure that certain [INSERT NAME OF PROMISSORY NOTE] made by the Developer and payable to Lender in the original principal amount of [\$_____] (the "Note") and certain other amounts specified in the Lender's Documents.

B. The Developer intends to construct certain public open space improvements on the real property legally described on Exhibit 1 attached hereto and made a part hereof (the "Open Space Parcel"), in which the Developer shall grant the City a permanent easement interest for such public open space purpose and use, pursuant to the terms and conditions of that certain Development, Easement and Maintenance Agreement by and between the Developer and the City dated as of _____, 20__ (the "DEMA"), [which is being executed concurrently herewith] (such project, as more fully described in the DEMA, the "Open Space Project").

C. Pursuant to the DEMA, the Developer will agree to be bound by the obligations of

UNOFFICIAL COPY

the Developer set forth therein (such obligations, the "DEMA Obligations"), which DEMA Obligations will run with the Open Space Property in perpetuity.

D. The City has agreed to enter into the DEMA with the Developer subject to, among other things: (a) the recording of the DEMA as an encumbrance against the Open Space Property, and (b) the agreement by the Lender to subordinate its liens under the Lender's Documents to the DEMA Obligations pursuant to this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Lender and the City agree as hereinafter set forth:

AGREEMENTS

1. Subordination. All rights, interests and claims of Lender in the Open Space Parcel, or any portion thereof, pursuant to the Lender's Documents are and shall be subject and subordinate to the Developer's DEMA Obligations, which shall survive any foreclosure of the Lender's Mortgage or exercise of any other remedy by Lender under the Lender's Documents. Subject to the foregoing, however, nothing herein shall be deemed to limit any of Lender's other rights, remedies or other priorities under the Lender's Documents, including, without limitation, Lender's rights to receive, and the Developer's obligation to make, payments and prepayments of principal and interest on the Note, Lender's right to foreclose the Mortgage, and Lender's right to exercise Lender's other rights and remedies pursuant to the Lender's Documents, except as provided herein.

2. Notice of Default. Lender shall use reasonable efforts to give to the City, and the City shall use reasonable efforts to give to Lender, (a) copies of any notices of default which it may give to the Developer with respect to the Project or the Open Space Improvements pursuant to the Lender's Documents or the City's DEMA, as applicable, and (b) copies of waivers, if any, of the Developer's default in connection therewith. Neither the Developer nor any other third party is an intended beneficiary of this Section 2. Failure of any party to deliver such notices or waivers shall in no instance alter the rights or remedies of such party under the Lender's Documents or the City's DEMA, as applicable.

3. Waivers. No waiver shall be deemed to be made by the City or the Lender of any of their respective rights hereunder, unless the same shall be in writing, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the City or the Lender in any other respect at any other time.

4. Governing Law; Binding Effect. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws and decisions of the State of Illinois, without regard to its conflict of laws principles, and shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Lender.

5. Section Titles; Plurals. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the plural form.

6. Notices. Any notice required hereunder shall be in writing and addressed to the party to be notified as follows:

UNOFFICIAL COPY

If to the City: City of Chicago
 Department of Planning and Development
 121 North LaSalle Street
 Room 1000 - City Hall
 Chicago, Illinois 60602
 Attn: Commissioner

With a copy to: City of Chicago
 Department of Law
 121 North LaSalle Street, Room 600
 Chicago, Illinois 60602
 Attn: Deputy Corporation Counsel, Real Estate Division

If to the Lender: _____

 Attn: _____

With a copy to: _____

 Attn: _____

or to such other address as either party may designate for itself by notice. Notice shall be deemed to have been duly given (i) if delivered personally or otherwise actually received, (ii) if sent by overnight delivery service, or (iii) if mailed by first class United States mail, postage prepaid, registered or certified, with return receipt requested. Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) business days after its deposit in the United States mail. Notice given in any other manner described in this paragraph shall be effective upon receipt by the addressee thereof; provided, however, that if any notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

[SIGNATURES APPEAR ON NEXT PAGE]

UNOFFICIAL COPY

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

CITY OF CHICAGO, an Illinois municipal corporation

By: _____
[Name]
Commissioner
Department of Planning and Development

LENDER:

[_____]

By: _____

Name: _____

Its: _____

COOK COUNTY CLERK'S OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Maurice D. Cox, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that, as such 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 said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this _____ day of _____, 20____.

NOTARY PUBLIC

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of _____, an Illinois limited liability company (the "Lender"), 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 such _____, s/he signed and delivered the foregoing instrument pursuant to authority given by the Lender, as her/his free and voluntary act and as the free and voluntary act and deed of the Lender, for the uses and purposes therein set forth.

GIVEN under my notarial seal this _____ day of _____, 20____.

NOTARY PUBLIC

UNOFFICIAL COPY

(SUB) EXHIBIT 1

LEGAL DESCRIPTION OF OPEN SPACE PARCEL

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387