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City Council Document Tracking Sheet

Meeting Date:	3/14/2012
Sponsor(s):	Emanuel, Rahm (Mayor)
Type:	Ordinance
Title:	Expenditure of open space impact fee funds for School Street Park
Committee(s) Assignment:	Committee on Special Events, Cultural Affairs and Recreation



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

March 14, 2012

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Housing and Economic Development, I transmit herewith an ordinance authorizing an expenditure of open space impact fee funds for School Street Park.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

WHEREAS, the City of Chicago (the "City"), is a home rule unit of government under Article VII, Section 6(a) of the Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City is authorized under its home rule powers to regulate the use and development of land; and

WHEREAS, it is a reasonable condition of development approval to ensure that adequate open space and recreational facilities exist within the City; and

WHEREAS, on April 1, 1998, the City Council of the City (the "City Council") adopted the Open Space Impact Fee Ordinance codified at Chapter 18 of Title 16 (the "Open Space Ordinance") of the Municipal Code of Chicago (the "Code") to address the need for additional public space and recreational facilities for the benefit of the residents of newly created residential developments in the City; and

WHEREAS, the Open Space Ordinance authorizes, among other things, the collection of fees from residential developments that create new dwelling units without contributing a proportionate share of open space and recreational facilities for the benefit of their residents as part of the overall development (the "Fee-Paying Developments"); and

WHEREAS, pursuant to the Open Space Ordinance, the Department of Finance ("DOF") has collected fees derived from the Fee-Paying Developments (the "Open Space Fees") and has deposited those fees in separate funds, each fund corresponding to the Community Area (as defined in the Open Space Ordinance), in which each of the Fee-Paying Developments is located and from which the Open Space Fees were collected; and

WHEREAS, the Department of Housing and Economic Development ("HED") has determined that the Fee-Paying Developments built in the Lake View Community Area have deepened the already significant deficit of open space in the Lake View Community Area, which deficit was documented in the comprehensive plan entitled "The CitySpace Plan," adopted by the Chicago Plan Commission on September 11, 1997 and adopted by the City Council on May 20, 1998 pursuant to an ordinance published at pages 69309-69311 of the Journal of the Proceedings of the City Council (the "Journal") of the same date; and

WHEREAS, Openlands, an Illinois not-for-profit corporation, is dedicated to preserving and creating open space; and

WHEREAS, the City desires to grant Openlands impact fee funds to reimburse Openlands for the acquisition of 1234-36 West School Street, Chicago Illinois (the "Property") (the acquisition of the Property shall be known herein as the "Project"), for eventual conveyance to the Chicago Park District for the development of and use as a public park; and

WHEREAS, HED desires to provide to Openlands Open Space Fees in an amount not to exceed \$77,853 for the Project; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees be used for open space acquisition and capital improvements, which provide a direct and material benefit to the new development from which the fees are collected; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees be expended within the same or a contiguous Community Area from which they were collected after a legislative finding by the City Council that the expenditure of the Open Space Fees will directly and materially benefit the developments from which the Open Space Fees were collected; and

WHEREAS, HED has determined that the use of the Open Space Fees to fund the Project will provide a direct and material benefit to each of the Fee-Paying Developments from which the Open Space Fees were collected; and

WHEREAS, HED has determined that Open Space Fees to be used for the purposes set forth herein have come from the specific fund set up by DOF for the Lake View Community Area in which the Fee-Paying Developments are located and from which the Open Space Fees were collected; and

WHEREAS, HED has recommended that the City Council approve the use of the Open Space Fees for the purposes set forth herein through this ordinance; and

WHEREAS, HED has recommended that the City Council make a finding that the expenditure of the Open Space Fees as described herein will directly and materially benefit the Fee-Paying Developments from which the Open Space Fees were collected; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made part of this ordinance as though fully set forth herein.

SECTION 2. The City Council hereby finds that the expenditure of the Open Space Fees will directly and materially benefit the residents of those Fee-Paying Developments from which the Open Space Fees were collected and approves the use of the Open Space Fees for the purposes described herein.

SECTION 3. The Commissioner of HED (the "Commissioner") and a designee of the Commissioner are each hereby authorized, subject to the approval of the Corporation Counsel to enter into a Grant Agreement with Openlands in connection herewith, in substantially the form attached hereto as Exhibit 1 and to provide Open Space Fees proceeds to Openlands in an amount not to exceed \$77,853 from the corresponding funds to pay for expenses permitted under the Open Space Ordinance.

SECTION 4. Open Space Fees in the amount of \$77,853 from the Lake View Community Area's Open Space Fees Funds are hereby appropriated for the purposes described herein.

SECTION 5. To the extent that any ordinance, resolution, rule, order or provision of the Code, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be

held invalid; the invalidity of such section, paragraph, clause or provision shall not affect any other provisions of this ordinance.

SECTION 6. This ordinance shall be in full force and effect from and after the date of its passage.

EXHIBIT 1

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OPENLANDS GRANT AGREEMENT

This Openlands Grant Agreement (this "Agreement") is made as of the ____ day of ____, 2012 by and between the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Housing and Economic Development ("HED"), and Openlands, an Illinois not-for-profit corporation (the "Grantee").

RECITALS

A. Constitutional Authority: As a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois (the "State"), the City has the power to regulate for the protection of the public health, safety, morals and welfare of its inhabitants, and pursuant thereto, has the power to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals.

B. The Project: On or about June 23, 2011, the Grantee purchased (the "Acquisition") the certain property located at 1234-36 West School Street, Chicago, Illinois 60657 (the "Property"), and, within the time frames set forth in Section 3.01 hereof, shall convey the Property to the Chicago Park District, a body politic and corporate and a unit of local government under Article VII, Section 1 of the 1970 Constitution of the State of Illinois (the "Park District"), for use as a public park (such conveyance of the Property shall be known herein as the "Conveyance"). The Acquisition and the Conveyance are collectively referred to herein as the "Project." The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

C. Bond Proceeds: On _____, the City Council of the City (the "City Council") adopted an ordinance published in the Journal of Proceedings of the City Council (the "Journal") for such date at pages ____ through ____, inclusive (the "Bond Ordinance"). Pursuant to the Bond Ordinance, the City issued its _____ (the "Bonds"). Pursuant to the Bond Ordinance, the proceeds of the Bonds ("Bond Proceeds") may be used to finance, among other things, grants to assist not-for-profit organizations or educational or cultural institutions, or to assist other municipal corporations, units of local government, school districts, the State of Illinois or the United States of America. Pursuant to Section ___ of the Bond Ordinance, the City is authorized to enter into grant agreements for such aforesaid purposes.

D. Open Space Fees: The City is authorized under its home rule powers to regulate the use and development of land. It is a reasonable condition of development approval to ensure that adequate open space and recreational facilities exist within the City. On April 1, 1998, the City Council adopted the Open Space Impact Fee Ordinance codified at Chapter 18 of Title 16 (the "Open Space Ordinance") of the Municipal Code of Chicago (the "Code") to address the need for additional public space and recreational facilities for the benefit of the residents of newly created residential developments in the City. The Open Space Ordinance authorizes, among other things, the collection of fees from residential developments that create new dwelling units without contributing a proportionate share of open space and recreational facilities for the benefit of their residents as part of the overall development (the "Fee-Paying Developments"). Pursuant to the

Open Space Ordinance, the Department of Finance ("DOF") has collected fees derived from the Fee-Paying Developments (the "Open Space Fees") and has deposited those fees in separate funds, each fund corresponding to the Community Area (as defined in the Open Space Ordinance), in which each of the Fee-Paying Developments is located and from which the Open Space Fees were collected. HED has determined that the Fee-Paying Developments built in the Lake View Community Area have deepened the already significant deficit of open space in the Lake View Community Area, which deficit was documented in the comprehensive plan entitled "The CitySpace Plan," adopted by the Chicago Plan Commission on September 11, 1997 and adopted by the City Council on May 20, 1998 pursuant to an ordinance published at pages 69309-69311 of the Journal of the same date. The Grantee is dedicated to preserving and creating open space. The City desires to grant the Grantee impact fee funds to reimburse the Grantee for a portion of the costs of the Project. The Open Space Ordinance requires that: (1) the Open Space Fees be used for open space acquisition and capital improvements, which provide a direct and material benefit to the new development from which the fees are collected, and (2) the Open Space Fees be expended within the same or a contiguous Community Area from which they were collected after a legislative finding by the City Council that the expenditure of the Open Space Fees will directly and materially benefit the developments from which the Open Space Fees were collected. HED has determined that: (1) the use of the Open Space Fees to fund the Project will provide a direct and material benefit to each of the Fee-Paying Developments from which the Open Space Fees were collected, and (2) the Open Space Fees to be used for the purposes set forth herein have come from the specific fund set up by DOF for the Lake View Community Area in which the Fee-Paying Developments are located and from which the Open Space Fees were collected. HED recommended that the City Council: (1) approve the use of the Open Space Fees for the purposes set forth herein through this ordinance and (2) make a finding that the expenditure of the Open Space Fees as described herein will directly and materially benefit the Fee-Paying Developments from which the Open Space Fees were collected. The City Council gave such approval and made such finding pursuant to an ordinance adopted on [April] ____, 2012 and published at pages ____ - ____ of the Journal of the same date.

F. City Funds: The City agrees to grant (1) Bond Proceeds in an amount not to exceed \$250,000 and (2) Open Space Fees in an amount not to exceed \$77,853 (collectively, the "City Funds") to the Grantee to reimburse the Grantee for a portion of the costs of the Acquisition pursuant to the terms and conditions of this Agreement. On _____, pursuant to Section __ of the Bond Ordinance, the City's Chief Financial Officer, with the concurrence of the City's Budget Director, designated HED to administer the grant of the Bond Proceeds portion of the City Funds and the Commissioner of HED to sign this Agreement.

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 hereto agree as follows:

SECTION 1. RECITALS

The foregoing recitals are hereby incorporated into this agreement by reference.

SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below:

"Actual residents of the City" shall mean persons domiciled within the City.

"Acquisition" shall have the meaning set forth in the Recitals hereof.

"Affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Grantee.

"Business Relationship" shall have the meaning set forth for such term in Section 2-156-080 of the Municipal Code of Chicago.

"City Contract" shall have the meaning set forth in Section 8.01(l) hereof.

"City Council" shall have the meaning set forth in the Recitals hereof.

"City Funds" shall mean the funds described in Section 4.03(b) hereof.

"City-Funded Costs" shall mean those costs of the Project which the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement. Exhibit C lists the City-Funded Costs for the Project.

"Closing Date" shall mean the date of execution and delivery of this Agreement by all parties hereto, which shall be deemed to be the date appearing in the first paragraph of this Agreement.

"Corporation Counsel" shall mean the City's Office of Corporation Counsel.

"Employer(s)" shall have the meaning set forth in Section 10 hereof.

"Environmental Laws" shall mean any and all federal, state or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago.

"Equity" shall mean funds of the Grantee (other than funds derived from Lender/Grantor Financing) irrevocably available for the Project, in the amount set forth in Section 4.01 hereof, which amount may be increased pursuant to Section 4.06 (Cost Overruns) or Section 4.03(b).

"Event of Default" shall have the meaning set forth in Section 15 hereof.

"Hazardous Materials" shall mean any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Law, or any pollutant or contaminant, and shall include, but not be limited to, petroleum (including crude oil), any radioactive material or by-product material, polychlorinated biphenyls and asbestos in any form or condition.

"Human Rights Ordinance" shall have the meaning set forth in Section 10 hereof.

"In Balance" shall have the meaning set forth in Section 4.07 hereof.

"Indemnitee" and "Indemnitees" shall have the meanings set forth in Section 13.01 hereof.

"Lender/Grantor Financing" shall mean funds borrowed by the Grantee from lenders and/or granted to the Grantee from grantors other than the City and irrevocably available to pay for Costs of the Project, in the amount set forth in Section 4.01 hereof.

"Municipal Code" shall mean the Municipal Code of the City of Chicago.

"New Mortgage" shall have the meaning set forth in Article 16 hereof.

"Non-Governmental Charges" shall mean all non-governmental charges, liens, claims, or encumbrances relating to the Grantee, the Property or the Project.

"Permitted Liens" shall mean those liens and encumbrances against the Property and/or the Project set forth on Exhibit G hereto.

"Permitted Mortgage" shall have the meaning set forth in Article 16 hereof.

"Project" shall have the meaning set forth in the Recitals hereof.

"Project Budget" shall mean the budget attached hereto as Exhibit H, showing the total cost of the Project by line item, furnished by the Grantee to HED, in accordance with Section 3.03 hereof.

"Property" shall have the meaning set forth in the Recitals hereof.

"Requisition Form" shall mean the document, in the form attached hereto as Exhibit L, to be delivered by the Grantee to HED pursuant to Section 4.04 of this Agreement.

"Survey" shall mean a survey of the Property.

"Term of the Agreement" shall mean the period of time commencing on the Closing Date and ending on the Conveyance, as evidenced by the recording of a deed to the Property from the Grantee to the Park District.

"Title Company" shall mean Chicago Title Insurance Company.

"Title Policy" shall mean a title insurance policy in the most recently revised ALTA or equivalent form, showing the Grantee as the insured, issued by the Title Company.

SECTION 3. THE PROJECT

3.01 The Project. With respect to the Facility, the Grantee shall convey the Property to the Park District by not later than December 31, 2013 (which date may be extended by the City in its sole discretion).

3.02 [intentionally omitted]

3.03 Project Budget. The Grantee has furnished to HED, and HED has approved, a Project Budget showing total costs for the Project in an amount not less than \$1,274,218. The Grantee hereby certifies to the City that (a) it has Lender/Grantor Financing and Equity in an amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects.

3.04-3.05 [intentionally omitted]

3.06 Other Approvals. Any HED approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, the Grantee's obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals) hereof.

SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$1,274,218, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Equity (subject to <u>Sections 4.03(b)</u> and 4.06)	\$ _____
Lender/Grantor Financing	\$ _____
Chicago Park District	\$ 500,000
Estimated City Funds (subject to <u>Section 4.03</u>)	
Bond Proceeds	\$ 250,000
Open Space Fees	\$ 77,853
ESTIMATED TOTAL	\$1,274,218

4.02 Grantee Funds. Equity and/or Lender/Grantor Financing may be used to pay any Project cost.

4.03 City Funds.

(a) Uses of City Funds. City Funds may only be used to pay directly or reimburse the Grantee for costs of City-Funded Costs. Exhibit C sets forth, by line item, the City-Funded Costs for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to Section 4.03(b)), contingent upon receipt by the City of documentation satisfactory in form and substance to HED evidencing such cost.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5 hereof, the City hereby agrees to provide City funds from the sources and in the amounts described directly below (the "City Funds") to pay for or reimburse the Grantee for the costs of the City-Funded Costs:

<u>Source of City Funds</u>	<u>Maximum Amount</u>
Bond Proceeds	\$250,000
Open Space Fees	\$ 77,853

4.04 Requisition Form. On the Closing Date, the Grantee shall provide HED with a Requisition Form, along with the documentation described therein.

4.05 [intentionally omitted]

4.06 Cost Overruns. If the aggregate cost of the City-Funded Costs exceeds City Funds available pursuant to Section 4.03 hereof, or if the cost of completing the Project exceeds the Project Budget, the Grantee shall be solely responsible for such excess cost, and shall hold the City harmless from any and all costs and expenses of completing the City-Funded Costs in excess of City Funds and of completing the Project.

4.07 Preconditions of Disbursement. Prior to the disbursement of City Funds hereunder, the Grantee shall submit documentation regarding the applicable expenditures to HED, which shall be satisfactory to HED in its sole discretion. Delivery by the Grantee to HED of any request for disbursement of City Funds hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

(a) the total amount of the disbursement request represents the actual cost of the Acquisition;

(b)-(c) [intentionally omitted]

(d) the representations and warranties contained in this Grant Agreement are true and correct and the Grantee is in compliance with all covenants contained herein;

(e) the Grantee has received no notice and has no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens;

(f) no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred; and

(g) the Project is In Balance. The Project shall be deemed to be in balance ("In Balance") only if the total of the available Project funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. "Available Project Funds" as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender/Grantor Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by the Grantee pursuant to this Agreement. The Grantee hereby agrees that, if the Project is not In Balance, the Grantee shall, within 10 days after a written request by the City, make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require the Grantee to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Grantee. In addition, the Grantee shall have satisfied all other preconditions of disbursement of City Fund, including but not limited to requirements set forth in this Agreement.

4.08 Conditional Grant. The City Funds being provided hereunder are being granted on a conditional basis, subject to the Grantee's compliance with the provisions of this Agreement. The City Funds are subject to being reimbursed as follows: if the Grantee does not convey the Property to the Park District by not later than December 31, 2013 (which date may be extended by the City in its sole discretion) then the Grantee shall repay the City Funds to the City.

SECTION 5. CONDITIONS PRECEDENT

The following conditions have been complied with to the City's satisfaction on or prior to the Closing Date:

5.01 Project Budget. The Grantee has submitted to HED, and HED has approved, a Project Budget in accordance with the provisions of Section 3.03 hereof.

5.02 [intentionally omitted]

5.03 Other Governmental Approvals. The Grantee has secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to HED.

5.04 Financing. The Grantee has furnished proof reasonably acceptable to the City that the Grantee has Equity and Lender/Grantor Financing in the amounts set forth in Section 4.01 hereof to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender/Grantor Financing, the Grantee has furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by the Grantee as needed and are sufficient (along with the Equity or other sources set forth in Section 4.01) to complete the Project.

5.05 Acquisition and Title. On the Closing Date, the Grantee has furnished the City with a copy of the Title Policy for the Property, certified by the Title Company, showing the Grantee as the named insured. The Title Policy contains only those title exceptions listed as Permitted Liens on Exhibit G hereto. The Grantee has provided to HED, on or prior to the Closing Date, documentation related to the purchase of the Property and certified copies of all easements and encumbrances of record with respect to the Property not addressed, to HED's satisfaction, by the Title Policy and any endorsements thereto.

5.06 [intentionally omitted]

5.07 Surveys. The Grantee has furnished the City with a copy of the Survey.

5.08 Insurance. The Grantee, at its own expense, has insured the Property in accordance with Section 12 hereof, and has delivered certificates required pursuant to Section 12 hereof evidencing the required coverages to HED.

5.09-5.12 [intentionally omitted]

5.13 Environmental. The Grantee has provided HED with copies of any "no further remediation" letters with respect to the Property.

5.14 Corporate Documents; Economic Disclosure Statement. The Grantee has provided a copy of its Articles of Incorporation containing the original certification of the Secretary of State of

Illinois; certificates of good standing from the Secretary of State of Illinois; a secretary's certificate in such form and substance as the Corporation Counsel may require; by-laws of the corporation; and such other corporate documentation as the City has requested. The Grantee has provided to the City an Economic Disclosure Statement, in the City's then current form, dated as of the Closing Date.

5.15 Litigation. Following is a description of all pending or threatened litigation or administrative proceedings involving the Grantee and/or the Property, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance: _____.

SECTION 6. [intentionally omitted]

SECTION 7. COMPLETION OF PROJECT

7.01-7.02 [intentionally omitted]

7.03 Failure to Complete. If the Grantee fails to complete the Project in accordance with the terms of this Agreement, then the City has, but shall not be limited to, any of the following rights and remedies:

(a) the right to terminate this Agreement and cease all disbursement of City Funds not yet disbursed pursuant hereto;

(b) [intentionally omitted]; and

(c) the right to seek reimbursement of the City Funds from the Grantee, provided that the City is entitled to rely on an opinion of counsel that such reimbursement will not jeopardize the tax-exempt status of the Bonds.

SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE GRANTEE.

8.01 General. The Grantee represents, warrants and covenants, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder, that:

(a) the Grantee is an Illinois not-for-profit corporation duly organized, validly existing, qualified to do business in Illinois;

(b) the Grantee has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(c) the execution, delivery and performance by the Grantee of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate its Articles of Incorporation or by-laws as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the Grantee is now a party or by which the Grantee is now or may become bound;

(d) unless otherwise permitted or not prohibited pursuant to or under the terms of this Agreement, the Grantee has and shall maintain good, indefeasible and merchantable fee simple title to the Property (and all improvements thereon) free and clear of all liens (except for the Permitted Liens, Lender/Grantor Financing as disclosed in the Project Budget and non-governmental charges that the Grantee is contesting in good faith pursuant to Section 8.15 hereof) until the Conveyance;

(e) the Grantee is now and for the Term of the Agreement shall remain solvent and able to pay its debts as they mature;

(f) there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Grantee which would impair its ability to perform under this Agreement;

(g) the Grantee has and shall maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and to complete the Project;

(h) the Grantee is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which the Grantee is a party or by which the Grantee is bound;

(i) [intentionally omitted];

(j) prior to the Conveyance, the Grantee shall not do any of the following without the prior written consent of HED: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business; (3) enter into any transaction outside the ordinary course of the Grantee's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (5) enter into any transaction that would cause a material and detrimental change to the Grantee's financial condition;

(k) the Grantee has not incurred, and, prior to the Conveyance, shall not, without the prior written consent of the Commissioner of HED, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon); or any fixtures now or hereafter attached thereto, except Lender/Grantor Financing disclosed in the Project Budget;

(l) the Grantee has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the 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 the Agreement or any City Contract with the Grantee in violation of Chapter 2-156-120 of the Municipal Code of the City; and

(m) neither the Grantee nor any affiliate of the Grantee 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 judgment: the Specially Designated Nationals List, the Denied Persons

List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (m) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, 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.

8.02 Covenant to Convey. The Grantee shall convey the Property to the Park District as set forth in this Agreement.

8.03 [intentionally omitted]

8.04 Use of City Funds. City Funds disbursed to the Grantee shall be used by the Grantee solely to pay for (or to reimburse the Grantee for its payment for) the City-Funded Costs as provided in this Agreement.

8.05-8.09 [intentionally omitted]

8.10 Arms-Length Transactions. Unless HED has given its prior written consent with respect thereto, no Affiliate of the Grantee may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided or materials supplied in connection with any City-Funded Cost. The Grantee shall provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to the Affiliate by the Grantee and reimbursement to the Grantee for such costs using City Funds, or otherwise), upon HED's request, prior to any such disbursement.

8.11-8.13 [intentionally omitted]

8.14 Insurance. The Grantee, at its own expense, shall comply with all provisions of Section 12 hereof.

8.15 Non-Governmental Charges. (a) Payment of Non-Governmental Charges. Except for the Permitted Liens, the Grantee agrees to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the Project, the Property or any fixtures that are or may become attached thereto, which creates, may create, or appears to create a lien upon all or any portion of the Property or Project; provided however, that if such Non-Governmental Charge may be paid in installments, the Grantee may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. The Grantee shall furnish to HED, within thirty (30) days of HED's request, official receipts from the appropriate entity, or other proof satisfactory to HED, evidencing payment of the Non-Governmental Charge in question.

(b) Right to Contest. The Grantee has the right, before any delinquency occurs:

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the

sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend the Grantee's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 8.15); or

(ii) at HED's sole option, to furnish a good and sufficient bond or other security satisfactory to HED in such form and amounts as HED shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charge and all interest and penalties upon the adverse determination of such contest.

8.16 Grantee's Liabilities. The Grantee shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder or to repay any material liabilities or perform any material obligations of the Grantee to any other person or entity. The Grantee shall immediately notify HED of any and all events or actions which may materially affect the Grantee's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements.

8.17 Compliance with Laws. To the best of the Grantee's knowledge, after diligent inquiry, the Property and the Project are and shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project and the Property. Upon the City's request, the Grantee shall provide evidence satisfactory to the City of such compliance.

8.18 [intentionally omitted]

8.19 Real Estate Provisions.

(a) Governmental Charges.

(i) Payment of Governmental Charges. The Grantee agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon the Grantee, the Property or the Project, or become due and payable, and which create, may create, a lien upon the Grantee or all or any portion of the Property or the Project. "Governmental Charge" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties of the State other than Cook County, and municipalities other than the City) relating to the Grantee, the Property or the Project including but not limited to real estate taxes.

(ii) Right to Contest. The Grantee has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the Property. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Grantee's covenants to pay any such Governmental Charge at the time and in the manner provided in

this Agreement unless the Grantee has given prior written notice to HED of the Grantee's intent to contest or object to a Governmental Charge and, unless, at HED's sole option,

(i) the Grantee shall demonstrate to HED's satisfaction that legal proceedings instituted by the Grantee contesting or objecting to a Governmental Charge shall conclusively operate to prevent or remove a lien against, or the sale or forfeiture of, all or any part of the Property to satisfy such Governmental Charge prior to final determination of such proceedings; and/or

(ii) the Grantee shall furnish a good and sufficient bond or other security satisfactory to HED in such form and amounts as HED shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

(b) Grantee's Failure To Pay Or Discharge Lien. If the Grantee fails to pay any Governmental Charge or to obtain discharge of the same, the Grantee shall advise HED thereof in writing, at which time HED may, but shall not be obligated to, and without waiving or releasing any obligation or liability of the Grantee under this Agreement, in HED's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which HED deems advisable. All sums so paid by HED, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be promptly disbursed to HED by the Grantee. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate the City to pay any such Governmental Charge.

8.20-8.22. [intentionally omitted]

8.23 Survival of Covenants. All warranties, representations, covenants and agreements of the Grantee contained in this Section 8 and elsewhere in this Agreement shall be true, accurate and complete at the time of the Grantee's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and shall be in effect throughout the Term of the Agreement.

SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY

9.01 General Covenants. The City represents that it has the authority as a home rule unit of local government to execute and deliver this Agreement and to perform its obligations hereunder.

9.02 Survival of Covenants. All warranties, representations, and covenants of the City contained in this Section 9 or elsewhere in this Agreement shall be true, accurate, and complete at the time of the City's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and be in effect throughout the Term of the Agreement.

SECTION 10. GRANTEE'S EMPLOYMENT OBLIGATIONS

10.01 Employment Opportunity. The Grantee, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the Grantee operating on the Property (collectively, with the Grantee, the "Employers" and individually an "Employer") to agree, that for the Term of this Agreement with respect to Grantee and during the period of any other party's provision of services in connection with the construction of the Project or occupation of the Property:

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "Human Rights Ordinance"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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 Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

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

(c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's 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) Each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) Each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this Section 10.01 shall be a basis for the City to pursue remedies under the provisions of Section 15.02 hereof.

SECTION 11. ENVIRONMENTAL MATTERS

The Grantee hereby represents and warrants to the City that the Grantee has conducted environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto.

Without limiting any other provisions hereof, the Grantee agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Grantee: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from (A) all or any portion of the Property or (B) any other real property in which the Grantee, or any person directly or indirectly controlling, controlled by or under common control with the Grantee, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by the Grantee), or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Grantee or any of its Affiliates under any Environmental Laws relating to the Property.

SECTION 12. INSURANCE

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

- (a) Prior to execution and delivery of this Agreement and until Project Completion.
- (i) 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 \$100,000 each accident, illness or disease.

- (ii) 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 independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). 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.

- (iii) All Risk Property

All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

(b)-(c) [intentionally omitted]

(d) Other Requirements:

The Grantee must furnish the City of Chicago, Department of Housing and Economic Development, City Hall, Room 1000, 121 North LaSalle Street 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 Grantee 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 Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Grantee is not a waiver by the City of any requirements for the Grantee to obtain and maintain the specified coverages. The Grantee shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Grantee 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 and/or terminate agreement until proper evidence of insurance is provided.

The insurance must provide for 60 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 Grantee and Contractors.

The Grantee 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 Grantee in no way limit the Grantee'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 Grantee 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 Grantee 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 Grantee must require Contractor and subcontractors to provide the insurance required herein, or Grantee may provide the coverages for Contractor and subcontractors. All Contractors and subcontractors are subject to the same insurance requirements of Grantee unless otherwise specified in this Agreement.

If Grantee, any Contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

SECTION 13. INDEMNIFICATION

13.01 General Indemnity. Grantee agrees to indemnify, pay, defend and hold the City, and its elected and appointed officials, employees, agents and affiliates (individually an "Indemnitee," and collectively the "Indemnities") harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (and including without limitation, the reasonable fees and disbursements of counsel for such Indemnities in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnities shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnities in any manner relating or arising out of:

(i) the Grantee's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or

(ii) [intentionally omitted]; or

(iii) the existence of any material misrepresentation or omission in this Agreement or any other document related to this Agreement that is the result of information supplied or omitted by the Grantee or any Affiliate of the Grantee or any agents, employees, contractors or persons acting under the control or at the request of the Grantee or any Affiliate of Grantee; or

(iv) the Grantee's failure to cure any misrepresentation in this Agreement or any other agreement relating hereto;

provided, however, that Grantee shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Grantee shall contribute the maximum portion that it is permitted to pay and satisfy under the applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnities or any of them. The provisions of the undertakings and indemnification set out in this Section 13.01 shall survive the termination of this Agreement.

SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

14.01 Books and Records. The Grantee shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents shall be available at the Grantee's offices for inspection, copying, audit and examination by an authorized representative of the City, at the Grantee's expense.

14.02 Inspection Rights. Upon three (3) business days' notice, any authorized representative of the City has access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

SECTION 15. DEFAULT AND REMEDIES

15.01 Events of Default. The occurrence of any one or more of the following events, subject to the provisions of Section 15.03, shall constitute an "Event of Default" by the Grantee hereunder:

(a) the failure of the Grantee to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Grantee under this Agreement or any related agreement;

(b) the failure of the Grantee to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Grantee under any other agreement with any person or entity if such failure may have a material adverse effect on the Grantee's business, property, assets, operations or condition, financial or otherwise;

(c) the making or furnishing by the Grantee to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

(d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

(e) the commencement of any proceedings in bankruptcy by or against the Grantee or for the liquidation or reorganization of the Grantee, or alleging that the Grantee is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of the Grantee's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving the Grantee; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

(f) the appointment of a receiver or trustee for the Grantee, for any substantial part of the Grantee's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of the Grantee; provided, however, that if such

appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within sixty (60) days after the commencement thereof;

(g) the entry of any judgment or order against the Grantee which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution;

(h) the occurrence of an event of default under the Lender/Grantor Financing, which default is not cured within any applicable cure period;

(i) [intentionally omitted]; or

(j) the institution in any court of a criminal proceeding (other than a misdemeanor) against the Grantee which is not dismissed within thirty (30) days, or the indictment of the Grantee for any crime (other than a misdemeanor).

15.02 Remedies. Upon the occurrence of an Event of Default, the City may terminate this Agreement and any other agreements to which the City and the Grantee are or shall be parties, suspend disbursement of City Funds, place a lien on the Project in the amount of City Funds paid, and/or seek reimbursement of any City Funds paid. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to damages, injunctive relief or the specific performance of the agreements contained herein.

15.03 Curative Period. In the event the Grantee shall fail to perform a monetary covenant which the Grantee is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Grantee has failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Grantee shall fail to perform a non-monetary covenant which the Grantee is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Grantee has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, the Grantee shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

SECTION 16. MORTGAGING OF THE PROJECT

All mortgages or deeds of trust in place as of the date hereof with respect to the Property or any portion thereof are listed on Exhibit G hereto (including but not limited to mortgages made prior to or on the date hereof in connection with Lender/Grantor Financing) and are referred to herein as the "Existing Mortgages." Any mortgage or deed of trust that the Grantee may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof is referred to herein as a "New Mortgage." Any New Mortgage that the Grantee may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof with the prior written consent of the City is referred to herein as a "Permitted Mortgage." It is hereby agreed by and between the City and the Grantee as follows:

(a) In the event that a mortgagee or any other party shall succeed to the Grantee's interest in the Property or any portion thereof pursuant to the exercise of remedies under a New Mortgage (other than a Permitted Mortgage), whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Grantee's interest hereunder in accordance with Section 18.15 hereof, the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to the Grantee for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement.

(b) In the event that any mortgagee shall succeed to the Grantee's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Grantee's interest hereunder in accordance with Section 18.15 hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Grantee for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "the Grantee" hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of the Grantee's interest under this Agreement, such party has no liability under this Agreement for any Event of Default of the Grantee which accrued prior to the time such party succeeded to the interest of the Grantee under this Agreement, in which case the Grantee shall be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of the Grantee's interest hereunder, such party shall be entitled to no rights and benefits under this Agreement.

(c) Prior to the Conveyance, no New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of HED.

SECTION 17. NOTICE

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) telecopy or facsimile; (c) overnight courier, or (d) registered or certified mail, return receipt requested.

If to the City: City of Chicago
Department of Housing and Economic Development
121 North LaSalle Street, Room 1000
Chicago, Illinois 60602
Attention: Commissioner

With Copies To: City of Chicago
Department of Law
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Attention: Finance and Economic Development Division

If to the Grantee: Openlands
25 East Washington Street, Suite 1650
Chicago, Illinois 60602
Attention:

With Copies To: Drinker Biddle & Reath LLP
191 North Wacker Drive
Chicago, Illinois 60606
Attention: Barnett P. Ruttenberg

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to subsection (d) shall be deemed received two (2) business days following deposit in the mail.

SECTION 18. MISCELLANEOUS

18.01 Amendment. This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto.

18.02 Entire Agreement. This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

18.03 Limitation of Liability. No member, official or employee of the City shall be personally liable to the Grantee 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 Grantee from the City or any successor in interest or on any obligation under the terms of this Agreement.

18.04 Further Assurances. The Grantee agrees 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.

18.05 Waiver. Waiver by the City or the Grantee with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with

respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Grantee in writing. No delay or omission on the part of a party in exercising any right shall operate as a waiver of such right or any other right unless pursuant to the specific terms hereof. A waiver by a party of a provision of this Agreement shall not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing between the parties hereto, shall constitute a waiver of any such parties' rights or of any obligations of any other party hereto as to any future transactions.

18.06 Remedies Cumulative. The remedies of a party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

18.07 Disclaimer. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

18.08 Headings. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

18.09 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

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

18.11 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the Bond Ordinance, such ordinance shall prevail and control.

18.12 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles.

18.13 Form of Documents. All documents required by this Agreement to be submitted, delivered or furnished to the City shall be in form and content satisfactory to the City.

18.14 Approval. Wherever this Agreement provides for the approval or consent of the City, HED or the Commissioner, or any matter is to be to the City's, HED'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, HED or the Commissioner in writing and in the reasonable discretion thereof. The Commissioner or other person designated by the Mayor of the City shall act for the City or HED in making all approvals, consents and determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City.

18.15 Assignment. The Grantee may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City. Any successor in interest to the Grantee under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement for the Term of the Agreement. The Grantee

consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

18.16 Binding Effect. This Agreement shall be binding upon the Grantee, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Grantee, the City and their respective successors and permitted assigns (as provided herein): Except as otherwise provided herein, this Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right.

18.17 Force Majeure. Neither the City nor the Grantee nor any successor in interest to either of them shall 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 such party 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, immediately 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.

18.18 Exhibits. All of the exhibits attached hereto are incorporated herein by reference.

18.19 [intentionally omitted]

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

18.21 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, Grantee agrees to pay upon demand the City's out-of-pocket expenses, including attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement. This includes, subject to any limits under applicable law, attorney's fees and legal expenses, whether or not there is a lawsuit, including attorney's fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services. Grantee also will pay any court costs, in addition to all other sums provided by law.

18.22 Business Relationships. The Grantee acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Grantee has read such provision and understands that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of

the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Grantee 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 hereby.

18.23 Inspector General. It is Grantee's duty and the duty of any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all of Grantee's officers, directors, agents, partners, and employees and any such bidder, proposer, contractor, subcontractor or such applicant: (a) to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code and (b) to cooperate with the Legislative Inspector General in any investigation undertaken pursuant to Chapter 2-55 of the Municipal Code. Grantee represents that Grantee understand and will abide by all provisions of Chapters 2-56 and 2-55 of the Municipal Code and that Grantee will inform subcontractors of this provision and require their compliance.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed on or as of the day and year first above written.

OPENLANDS

By: _____
Name: _____
Its: _____

CITY OF CHICAGO

By: _____
Name: Andrew Mooney
Its: Commissioner
Department of Housing and Economic Development

EXHIBITS A-B
[intentionally omitted]

EXHIBIT C
CITY-FUNDED COSTS

<u>Line Item</u>	<u>Cost</u>
Property Purchase	\$1,274,218
*TOTAL	\$1,274,218

*Notwithstanding the total of City-Funded Costs, the assistance to be provided by the City is limited to \$327,853; provided, however, that the foregoing shall not preclude the City, in its sole discretion and subject to any necessary approvals (including but not limited to that of the City Council), from providing additional financial assistance to the Grantee for the Project in the future.

EXHIBITS D-F
[intentionally omitted]

EXHIBIT G
PERMITTED LIENS

1. Liens or encumbrances against the Property:

Those matters set forth as Schedule B title exceptions in the owner's title insurance policy issued by the Title Company as of June 23, 2011, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.

2. Liens or encumbrances against the Grantee or the Project, other than liens against the Property, if any: _____.

EXHIBIT H
PROJECT BUDGET

Line Item
Property Purchase

Cost
\$1,274,218

EXHIBITS I-K
[intentionally omitted]

EXHIBIT L
REQUISITION FORM

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The affiant, _____ of Openlands, an Illinois not-for-profit corporation (the "Grantee"), hereby certifies that with respect to that certain Openlands Grant Agreement between the Grantee and the City of Chicago dated as of _____, 2012 (the "Agreement"):

A. Expenditures for the Project, in the total amount of \$ _____, have been made.

B. This paragraph B sets forth and is a true and complete statement of all costs of City-Funded Costs for the Project reimbursed by the City to date:

\$0

C. The Grantee requests reimbursement for the following cost of City-Funded Costs:

\$327,853

D. None of the costs referenced in paragraph C above have been previously reimbursed by the City.

E. The Grantee hereby certifies to the City that, as of the date hereof:

1. Except as described in the attached certificate, the representations and warranties contained in the Agreement are true and correct and the Grantee is in compliance with all applicable covenants contained herein.

2. No event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default, exists or has occurred.

All capitalized terms which are not defined herein has the meanings given such terms in the Agreement.

Openlands

By: _____
Name: _____ Title: _____

Subscribed and sworn before me this ____ day of _____, 2012.

_____ My commission expires: _____

Agreed and accepted:

_____, Cmmr. Andrew Mooney, HED