



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
www.chicityclerk.com

## Legislation Text

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**File #:** O2011-4504, **Version:** 1

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RAHM EMANUEL MAYOR  
OFFICE OF THE MAYOR  
CITY OF CHICAGO

June 8, 2011

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

Ladies and Gentlemen:

At the request of the Commissioner of General Services, I transmit herewith ordinances authorizing the execution of lease agreements.

Your favorable consideration of these ordinances .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 Revenue ("DOR") 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 ("DHED") has determined that the Fee-Paying Developments built in the Washington Park Community Area have deepened the already significant deficit of open space in the Washington Park 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, the City of Chicago owns parcels of land located at 5702-26 South Lafayette, 'Chicago, Illinois, and legally described on Exhibit A hereto (subject to final survey and title commitment, the "Property"); and

WHEREAS, Washington Park Consortium, a 501(C)(3) Illinois not-for-profit corporation ("WPC"), is dedicated to preserving and creating open space; and

WHEREAS, the City desires to lease the Property to WPC, and WPC desires to lease the Property from the

City, in order to operate a raised bed vegetable garden and farm stand (the "Project") for the benefit and use of the Washington Park Community Area; and

WHEREAS, WPC has agreed to undertake the Project pursuant to the terms and conditions of a lease agreement in substantially the form attached hereto as Exhibit B (with such changes as the Commissioner, as defined below, or the Commissioner's designee determine are reasonable, the "Lease"); and

WHEREAS, the City desires to grant WPC impact fee funds to pay for construction costs associated with the Project; and

, WHEREAS, DHED desires to provide to WPC Open Space Fees in an amount not to exceed \$21,115 (the "Grant") for the Project, and to create open spaces and recreational facilities in the Community Area; 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 developments 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

j WHEREAS, DHED 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, DHED has determined that Open Space Fees to be used for the purposes set forth herein have come from the specific fund set up by DOR for the corresponding Community Area in which a Fee-Paying Development is located and from which the Open Space Fees were collected; and

WHEREAS, DHED 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, DHED 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 lease of the Property to WPC for annual rent in the amount of \$1.00 is hereby approved. This approval is expressly conditioned upon the City entering into the Lease with WPC. The Commissioner of DHED (the "Commissioner") and a designee of the Commissioner are each hereby authorized, subject to the approval of the Corporation Counsel, to negotiate, execute and deliver the Lease, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Lease, with such changes, deletions and insertions as shall be approved by the Commissioner or the Commissioner's designee.

SECTION 3. 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 4. 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 WPC in connection with the Project, in substantially the form attached hereto as Exhibit C and to provide Open Space Fees proceeds to WPC in an amount not to exceed \$21,115 from the corresponding funds to pay for expenses permitted under the Open Space Ordinance.

SECTION 5. Open Space Fees in the amount of \$21,115 from the Washington Park Community Area's Open Space Fees Funds are hereby appropriated for the purposes described herein.

SECTION 6. 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 7. This ordinance shall be in full force and effect from and after the date of its passage.

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**EXHIBIT A LEGAL DESCRIPTION OF PROPERTY**

(SUBJECT TO FINAL SURVEY AND TITLE COMMITMENT)

LOTS 7, 8, 9, 10, 11, AND 12 IN PERIOLAT'S SUBDIVISION OF THE SOUTH 147-10/12 FT OF LOT 4 IN SCHOOL TRUSTEE SUBDIVISION IN SECTION 16, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO AND ROCK ISLAND RAILROAD; ALSO THE VACATED ALLEY LYING WEST OF AND ADJOINING LOTS 7, 8, AND 9 AND LYING EAST OF AND ADJOINING LOTS 10, 11, AND 12 IN PERIOLAT'S SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, AND 12 IN BOCK 2 IN HENRY BOTSFORD'S SUBDIVISION OF THAT PART OF LOT 5 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO AND ROCK ISLAND RAILROAD; ALSO THE VACATED ALLEY LYING WEST OF AND ADJOINING LOTS 7 TO 12 AND LYING EAST OF AND ADJOINING LOTS 1 TO 6 IN BLOCK 2 IN HENRY BOTSFORD'S SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 5702-26 SOUTH LAFAYETTE CHICAGO, ILLINOIS

PERMANENT INDEX NO.

20-16-214-028-0000 20-16-214-029-0000

**EXHIBIT B LEASE**

See attached.

**WASHINGTON PARK RAISED BED GARDENING LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease") is made and entered into this \_ day of \_\_, 20\_\_, by and between the CITY OF CHICAGO, an Illinois municipal corporation (the "City"), acting by and through its Department of Housing and Economic Development ("HEP"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602, and its Department of General Services ("DGS"), having its principal offices at 30 North LaSalle Street, Chicago, Illinois 60602, and the WASHINGTON PARK CONSORTIUM, an Illinois non-profit corporation ("Tenant"), having its principal offices at 6357 South Cottage Grove Avenue, Chicago, Illinois 60637.

**RECITALS**

WHEREAS, the City is the owner of approximately 1.7 acres of vacant land in the Washington Park community, as legally described on Exhibit A attached hereto and depicted in the figure attached hereto as Exhibit B (the "City Land"); and

WHEREAS, Tenant desires to use the City Land (a) to operate (i) a raised bed vegetable garden, as depicted on the site plan attached hereto as Exhibit C (the "Site Plan"), and (ii) farm stand to sell produce grown on site, and (b) to offer educational opportunities (collectively, the "Project"); and

WHEREAS, the City has agreed to lease to Tenant, and Tenant has agreed to lease from the City, the City Land for the Project, and for no other purpose; and

WHEREAS, the City has agreed to grade the area depicted on the Site Plan as the "Garden Site" and install a geotextile barrier and' 6" clay cap on the Garden Site, and has also agreed to install a 6' high fence around the perimeter of the City Land (collectively, the "City Work"); and

WHEREAS, the Tenant has agreed to construct and maintain raised garden beds on the Garden Site in accordance with the specifications set forthj on Exhibit D attached hereto (the "Raised Bed Specifications") and all other terms and conditions of this Lease; and

WHEREAS, the City Council of the City ("City Council"), pursuant to an ordinance adopted on \_\_, 2010, and published at pages \_through \_in the

Journal of Proceedings of the City Council of such date, authorized the execution of this Lease;

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

SECTION 1. INCORPORATION OF RECITALS. The foregoing recitals constitute an integral part of this Lease and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

SECTION 2. DEFINITIONS. In addition to the terms defined in the foregoing Recitals and elsewhere in this Lease, the following terms shall have the following meanings:

"City Parties" means the City, and its officers, agents, agencies, departments, employees, representatives, consultants, engineers, contractors, subcontractors, materialmen,

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licensees, guests, and others who may have been or may be on the City Land at the invitation of any one of them.

"Commencement Date" means the date upon which this Lease has been both (a) fully executed, and (b) delivered to Tenant.

"DOE" means the City's Department of Environment and any successor department thereto.

"Environmental Laws" means any and all Laws relating to the regulation and protection of human health, safety, the environment and natural resources now or hereafter in effect, as amended or supplemented from time to time, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents, including, without limitation, the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., and any theory of common law tort or toxic tort, including, without limitation, negligence, trespass, nuisance, strict liability or ultrahazardous activity. (

"Hazardous Substance(s)" means 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 Laws, or any pollutant, toxic vapor, or contaminant, and shall include, but not be limited to, polychlorinated biphenyls (PCBs), crude oil, any fraction thereof, or refined petroleum products such as oil, gasoline, or other petroleum-based fuels, lead paint, asbestos or asbestos-containing materials, urea formaldehyde, any radioactive material or by-product material, radon and mold.

"Laws" means all applicable federal, state, county, municipal or other laws (including common law), statutes, codes, ordinances, rules, regulations or other requirements, now or hereafter in effect, as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative orders, consent decrees or judgments.

"Losses" means any and all debts, liens, claims, causes of action, demands, complaints, legal or administrative proceedings, losses, damages, obligations, liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, interest, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, consultants' and experts' fees and expenses and court costs).

"Municipal Code" means the Municipal Code of the City of Chicago, as amended.

"Taxes" means all ad valorem taxes, assessments and other governmental charges, general and special, ordinary and extraordinary, of any kind or nature whatsoever, including but not limited to assessments for public improvements or benefits.

"Tenant Parties" means Tenant, any subtenant and their directors, officers, employees, agents, representatives, consultants, engineers, contractors, subcontractors, materialmen,

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licensees, guests, invitees and others who may have been or may be on the City Land at the invitation of any one of them.

SECTION 3. GRANT. The City hereby leases to Tenant, and Tenant hereby leases from the City, the City Land for the Lease Term (as defined in Section 4 hereof), upon the terms and conditions hereinafter provided. This Lease is subject to all easements, encroachments, covenants and restrictions of record and not shown of record and such other title defects as may exist on the Commencement Date.

SECTION 4. TERM. The term of this Lease ("Lease Term") shall commence on the Commencement Date, and shall end on the fifth anniversary of the Commencement Date (the "Expiration Date"), unless sooner terminated in accordance with the provisions of this Lease.

SECTION 5. INSPECTION AND ACCEPTANCE OF RISK. Tenant acknowledges that it is fully familiar with the condition of the City Land and has, prior to the Commencement Date, made such inspections as it desires of the City Land and all factors relevant to its use. Tenant accepts the risk that any inspection may not disclose all material matters affecting the City Land. Tenant agrees to accept the City Land in its "as is," "where is" and "with all faults" condition on the Commencement Date without any covenant, representation or warranty, express or implied, of any kind, as to any matters concerning the City Land, including, without limitation: (a) the structural, physical or environmental condition of the City Land; (b) the suitability of the City Land for any purpose whatsoever; (c) the state of repair of the City Land or the condition of soil, geology, groundwater, or any other physical characteristic of the City Land; (d) compliance of the City Land with any applicable Laws, including, without limitation, Environmental Laws; or (e) the presence or removal of Hazardous Substances or environmental conditions in, on, under or about the City Land. Tenant acknowledges that it is relying solely upon its own inspection and due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the City or its agents or employees with respect thereto. Tenant's taking possession of the City Land shall be conclusive evidence that the City has completed the City Work and delivered the City Land to Tenant in the condition-required under this Lease.

**SECTION 6. USE OF PROPERTY.**

6.1 Permitted Use. Tenant may use the City Land for the Project and for no other purpose.

6.2 Prohibited Uses. Tenant shall not use or occupy the City Land, or permit others to use or occupy the City Land, in any manner that would (a) violate any Laws that may be applicable to the City Land or to the use of the City Land, (b) constitute a public or private nuisance, (c) materially damage or waste the City Land, (d) give rise to a claim of adverse possession or usage by any third party, (e) discriminate on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income; (f) damage the reputation of, or otherwise be injurious to, the City Land or neighborhood, or increase the rate of insurance on the City Land; or (g) cause a fire hazard or safety hazard. The City acknowledges and agrees that use of the City Land for the Project shall not constitute a nuisance or waste, or violate the terms of Section 6.2 (f) above. Tenant further covenants that the City Land shall not be used for any religious purposes, and that no alcoholic beverages of any kind or nature shall be sold, given away or consumed on the City Land.

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6.3 Gardening Standards. Tenant shall comply, and require others to comply, with the following gardening standards:

(a) Pesticides and herbicides are prohibited.

(b) Tenant may not grow plants with long tap roots, which may compromise the clay cap, or illicit narcotic plants and fungi (e.g., cannabis, poppies, "magic mushrooms," coca<sup>^</sup>bush, peyote, etc.).

(c) All plants shall be grown in raised garden beds on the Garden Site, as depicted on the Site Plan.

(d) Tenant shall not undertake any activity which could disturb the integrity of the clay cap underlying each raised bed.

(e) Tenant, at its sole cost and expense, shall construct and maintain the raised garden beds in accordance with the Raised Bed Specifications set forth in Exhibit D, including, without limitation, supplementing the soil, compost or other growing or fill material as needed to maintain a minimum 12" layer of such material above the clay cap, and supplementing the wood chips as necessary. Any growing medium that Tenant imports is subject to the testing and approval requirements set forth in subsection (f) below.

(f) Tenant may not bring any soil, compost or other growing or fill material onto the City Land without DOE's prior written approval. Such material must meet TACO Tier 1 remediation objectives for residential and construction worker exposure routes as set forth in 35 IAC Part 742. Tenant shall test such material at a rate of 1 sample per 500 cubic yards for the Target Compound List (TCL) in 35 IAC Part 740, or in accordance with an alternative, testing protocol acceptable to DOE in its sole discretion. In addition to the TACO Tier 1 remedial objectives, compost material must meet the performance standards and testing requirements for general use compost in 35 IAC Part 830. Tenant shall promptly submit all test results to DOE for review, and approval.

(g) Tenant shall dispose of weeds and plant materials in designated compost areas. If Tenant composts more than 25 cubic yards at any one time, Tenant must first obtain all required permits. Tenant may only compost vegetable matter grown on the City Land, and may not use such compost material on other property.

(h) Tenant may not plant, cut down, damage or remove any trees, bushes, shrubs or other landscaping from the City Land without HED's prior written approval.

(i) No on-site parking or motorized vehicles are allowed on the City Land. .

(j) No livestock are allowed on the City Land. No bee hives are allowed on the City Land without DOE's prior written approval.

(k) Tenant shall maintain all fuel-powered equipment used on the City Land in good condition and repair, with no leaks. If fuel-powered equipment breaks, Tenant shall repair such equipment within 30 days or remove it from the City Land. If Tenant performs equipment repairs or fueling on the City Land, Tenant shall implement proper

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petroleum spill prevention and control measures and best management practices, including, without limitation, providing secondary containment for any fuel storage or during fuel transfer, conducting fuel transfer and equipment repairs on a paved surface, and storing and maintaining spill response materials on the City Land.

#### **SECTION 7. RENT, TAXES, AND UTILITIES.**

7.1 Rent. Tenant shall pay annual rent for the City Land ("Rent") in the amount of One Dollar (\$1.00). <sup>v</sup>

7.2 Utilities. Tenant shall be solely responsible for providing all utilities required for the operation of the Project on the City Land. Tenant shall pay when due all charges of every nature, kind or description for utilities furnished to the City Land or chargeable against the City Land during the Lease Term, including all charges for water, electricity, power, garbage or other public or private utility services, and shall contract for the same in its own name. The City shall not be liable for any interruption or failure in the supply or character of any such utility services. The provisions of this Section 7.2 shall survive the expiration or earlier termination of this Lease.

7.3 Taxes. Tenant shall pay when due any Taxes assessed, levied or imposed upon Tenant, the City Land or the Project for any period of time that falls within the Lease Term, provided that Taxes "for" any particular period shall mean Taxes that accrue with respect to such period, regardless of the fact that such Taxes may be due and payable within a different period. Tenant shall contact the appropriate taxing body to ascertain the tax amount assessed on the City Land. Tenant shall provide the City with proof of payment in full, including any penalties or interest, within thirty (30) days after request by the City. Tenant's failure to pay any such Taxes shall constitute a default under this Lease. Tenant's tax responsibilities under this section shall survive the expiration or earlier termination of this Lease. Tenant acknowledges that real estate taxes are one (1) year in arrears in Cook County and that as a result Tenant will be responsible for satisfaction of all real estate or leasehold taxes assessed or levied on the City Land for at least one year after Tenant vacates the City Land.

7.4 Net Lease.. Except for the City Work, it is the intention of the parties that this Lease is a "triple net lease" and the City shall receive the fixed annual Rent due from Tenant to the City under the terms of this Lease, undiminished from all costs, expenses and obligations of every kind relating to the City Land which shall arise or become due during the Lease Term, all of which shall be paid by Tenant.

#### **SECTION 8. ALTERATIONS.**

8.1 No Alterations Without City Consent. Tenant may not make any alterations, construct any improvements or place any fixtures on the City Land, except in accordance with plans submitted to and approved by HED. This includes, without limitation, landscaping, lighting, benches, signs, farm stands, garden sheds and other accessory buildings. Notwithstanding the foregoing, Tenant may build hoop houses over the raised garden beds, install a freezeless hydrant and also make all of the improvements shown on Exhibit C.

8.2 Landscaping. Tenant, at its sole cost and expense, shall install perimeter large shrub landscaping in accordance with the landscaping plan attached hereto as Exhibit E.

8.3 Government Approvals. Except for the City Work, Tenant shall secure all permits ~i and other final governmental approvals necessary to operate the Project, and shall submit

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evidence thereof to HED prior to commencing any work on the City Land. All work undertaken <sup>L</sup> by Tenant pursuant to this Lease shall be performed in compliance with all applicable Laws.

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

**SECTION 9. ENVIRONMENTAL MATTERS.**

9.1 General Terms.

(a) Tenant shall, at its sole expense, comply with all Environmental Laws that are or may become applicable to Tenant's activities on the City Land.

(b) Tenant shall not handle, use, generate, treat, store or dispose of any Hazardous Substances in, on, under or about the City Land.

(c) If there is a release or threatened release of any Hazardous Substances attributable to the operations or activities of Tenant Parties, Tenant shall notify the City as soon as practicable, but in no event more than three (3) days following the date Tenant becomes aware of such release or threatened release, and, if required by any applicable Laws, Tenant shall investigate and remediate the condition in accordance with TACO Tier 1 remediation objectives for residential properties. DOE shall have the right to review and approve all correspondence, work plans, reports and other documents to be submitted to the Illinois Environmental Protection Agency or other regulatory agencies in connection with the City Land.

(d) Upon request, Tenant shall make the results of all sampling, including raw data generated by Tenant or on Tenant's behalf, available to DOE. Tenant shall promptly transmit to DOE copies of all correspondence, work plans, reports and other documents relating to the environmental condition of the City Land, including, without limitation, documents submitted to or received from the IEPA or other regulatory

• agencies. ,. •

9.2 Release and Indemnification. Tenant, on behalf of itself and the other Tenant Parties, or anyone claiming by, through, or under the Tenant Parties, hereby releases, relinquishes and forever discharges the City Parties from and against any and all Losses which the Tenant or any of the Tenant Parties ever had, now have, or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, arising out of or in any way connected with, directly or indirectly, all of the following, to the extent the same did not arise out of the negligent acts or willful misconduct of the City Parties following the Commencement Date: (a) any environmental contamination, pollution or hazards associated with the City Land or any improvements, facilities or operations located or formerly located thereon, including, without limitation, any release, emission, discharge, generation, transportation, treatment, storage or disposal of Hazardous Substances, or threatened release, emission or discharge of Hazardous Substances; (b) the structural, physical or environmental condition of the City Land, including, without limitation, the presence or suspected presence of Hazardous Substances in, on, under or about the City Land

6 or the migration of Hazardous Substances from or to other property; and (c) any violation of, compliance with, enforcement of or liability under any Environmental Laws, including, without limitation, any Losses arising under CERCLA-(collectively, "Released Claims"). Furthermore, Tenant shall defend, indemnify, and hold the City Parties harmless from and against any and all Losses which may be made or asserted by any third parties arising out of or in any way connected with, directly or indirectly, any violation of Environmental Laws arising out of the use of the City Land by Tenant and the other Tenant Parties; provided, however, in no event shall Tenant be liable for the presence of Hazardous Substances or violations of Environmental Laws that existed prior to the Commencement Date ("Pre-Existing Environmental Conditions"), except to the extent any Losses associated with such Pre-Existing Environmental Conditions are caused by the negligent acts or intentional misconduct of any Tenant Parties.

9.3 Survival. This Section 9 shall survive the expiration or earlier termination of this Lease for a period of seven (7) years (regardless of the reason for such termination).

**SECTION 10. MAINTENANCE AND SECURITY.**

10.1 Tenant's Duty to Maintain City Land. Tenant shall, at its sole expense, maintain the City Land in a state of good order, condition and repair, and in compliance with all applicable Laws, including, without limitation, all

applicable provisions of the Municipal Code. Without limiting the foregoing, Tenant, at its sole expense, shall maintain the fencing and landscape screening on the City Land. In addition, Tenant, at its sole expense, shall promptly remove all accumulated snow, ice, litter and debris from the City Land and adjacent sidewalks, and shall keep all portions of the City Land in a clean, orderly and lawful condition. Tenant shall at all times exercise due diligence in protecting the City Land against damage or destruction by fire and other causes. Tenant acknowledges and agrees that, from and after the Commencement Date, the City shall have no maintenance, repair, replacement or other duty of any kind or nature with respect to the City Land.

10.2 Tenant's Duty to Maintain Clay Cap; Annual Report. Tenant shall, at its sole expense, maintain the integrity and condition of the 6" clay cap underlying each raised bed on the City Land. No later than April 30th of each calendar year during the term of this Lease (provided, however, that Tenant shall not be obligated to submit its first report until Tenant has occupied the City Land for a minimum of six (6) months), Tenant shall submit to DOE a written report assessing the condition of the clay cap. The report shall include, without limitation, photographs of the cap and a description of the condition of the cap from a location under a planting bed.

10.3 Security. Tenant shall use commercially reasonable efforts to prevent illegal and unauthorized uses of the City Land, including, without limitation, vandalism and fly dumping. The City assumes no responsibility for providing security to the City Land. Tenant shall notify the City immediately when it becomes aware of any such illegal or unauthorized uses of the City Land.

SECTION 11. ASSIGNMENT AND SUBLETTING. Tenant shall not transfer or assign any of its interest in this Lease, or sublet or permit others to use or occupy any portion of the City Land, or grant any license, concession, franchise or other rights or interest in this Lease or the City Land, voluntarily, by operation of law or otherwise (collectively, "Assignment or Sublease"), without in each case obtaining the prior written consent of the Commissioner of HED. Any attempt by Tenant to transfer an interest in this Lease or the City Land, by document or other agreement or by operation of law in violation of the terms of this Lease, shall be void

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and confer no rights on any third party and shall, at the City's option, constitute a default under this Lease. If the City permits any assignment hereunder, the assignee shall be deemed to have assumed all of the obligations of Tenant under this Lease. No Assignment or Sublease shall relieve Tenant of any of its obligations hereunder. Tenant shall furnish the City, for its prior written consent, a copy of each Assignment or Sublease it proposes to execute. Such consent may include the requirement to delete, add or change provisions in the proposed agreement as the City shall deem necessary to protect its interests, but which shall not materially alter Tenant's rights or obligations under this Lease. Consent to any Assignment or Sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the parties under the Lease. In the event of such Assignment or Sublease, the approved assignee or sublessee shall submit an Economic Disclosure Statement and Affidavit to the City. Notwithstanding anything to the contrary contained herein, the City hereby consents to Tenant's sublease of the City Land to the Resource Center for the purpose of operating all or a portion of the Project.

SECTION 12. LIENS AND ENCUMBRANCES. Tenant shall not engage in any financing or other transaction which would create any mortgage, encumbrance or lien on the City Land. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for any Tenant Parties, in, at, upon or about the City Land and which may be secured by any mechanic's, materialmen's or other lien against the City Land or the City's interest therein. If any lien attaches to the City Land or any portion thereof, and Tenant fails to pay and discharge such lien on or before thirty (30) days after receiving notice thereof, the City may pay and discharge such lien, and the amount of the lien, together with costs and reasonable attorneys' fees, shall become additional rent due immediately hereunder.

SECTION 13. INSURANCE. Tenant shall procure and maintain at all times, at Tenant's own expense, or cause to be procured and maintained, during the Lease Term, insurance coverage as specified in Exhibit F attached hereto, insuring all operations related to this Lease with insurance companies authorized to do business in the State of Illinois.

SECTION 14. GENERAL INDEMNIFICATION AND RELEASE. Tenant is and shall be in exclusive control and possession of the City Land as provided herein, and the City shall have no liability or responsibility for damage or loss to any property or injury or death to any persons on or about the City Land, except such damage, loss,



injury or death as may arise from the negligent acts or willful misconduct of the City and its agents, employees and contractors following the Commencement Date. Tenant agrees to assume all risk of damage or loss to property and injury or death to persons by reason of or incident to the possession and/or use of the City Land, or the activities conducted by Tenant or any Tenant Parties under this Lease, except such damage, loss, injury or death as may arise from the negligent acts or willful misconduct of the City and its agents, employees and contractors following the Commencement Date. Tenant expressly waives all claims against the City Parties for any such loss, damage, personal injury or death caused by or occurring as a consequence of such possession and/or use of the City Land or the conduct of activities under this Lease, except such damage, loss, injury or death as may arise from the negligent acts or willful misconduct of the City and its agents, employees and contractors following the Commencement Date. Tenant further agrees to indemnify, defend (through an attorney reasonably acceptable to the City) and hold the City Parties harmless from and against any and all Losses incurred in connection with, arising out of or incident to any of the following, except Losses that arise from the negligent acts or willful misconduct of the City and its agents, employees and contractors following the Commencement Date: (a) any damage or loss to property or injury or death to any person occurring in, on or

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about the City Land; (b) any act or omission of Tenant or any of the Tenant Parties, (c) any entry upon or use of the City Land by or on behalf of Tenant or any of the Tenant Parties in connection with this Lease, (d) Tenant's performance of or failure to perform any of Tenant's obligations under this Lease, (e) Tenant's noncompliance with or violation of any applicable Laws, or (f) Tenant's possession and/or use of the City Land or any activities conducted or services furnished in connection with or pursuant to this Lease. The foregoing release and indemnity shall survive any termination of this Lease.

**SECTION 15. CITY'S RIGHT TO CURE.** The City may, but shall not be obligated to, cure at any time, with prior written notice of at least thirty (30) calendar days (except in an emergency), any failure by Tenant to perform under this Lease and whenever the City so elects, all reasonable costs and expenses incurred by the City in curing such failure, including, without limitation, reasonable attorney's fees, shall be paid by Tenant to the City on demand.

**SECTION 16. CITY'S RIGHT OF ACCESS.** Without limiting any other rights reserved or available to the City under this Lease, at law or in equity, the City reserves for itself and its employees, contractors, consultants, agents and representatives, the right to enter upon the City Land during Tenant's business hours for the purpose of: (a) inspecting the City Land, and (b) curing any defaults under this Lease. Nothing herein shall imply any duty upon the part of the City to do any such work, and performance thereof by the City shall not constitute a waiver of Tenant's default in failing to perform the same.

**SECTION 17. PERFORMANCE AND BREACH.**

**17.1 Event of Default.** The occurrence of any one or more of the following shall constitute an "Event of Default" under this Lease:

- (a) the failure of Tenant to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Tenant under this Lease, which failure continues for a period of thirty (30) days following notice from the City of such failure;
- (b) the making or furnishing by Tenant of any warranty, representation, statement, certification, schedule or report to the City (whether in this Lease, an Economic Disclosure Statement or another document) which is untrue or misleading in any material respect as of the date made;
- (c) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any mechanic's, laborer's, material supplier's, or any other lien or encumbrance unauthorized by this Lease (unless bonded or insured over) upon the City Land, including any fixtures now or hereafter attached thereto, or the making of any levy, seizure or attachment thereof;
- (d) the commencement of any proceedings in bankruptcy by or against Tenant or for the liquidation or reorganization of Tenant, or alleging that Tenant is insolvent or unable to pay its debts as they mature, or for the readjustment, or arrangement of Tenant'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 Tenant;

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(e) the appointment of a receiver or trustee for Tenant, for any substantial part of Tenant's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of Tenant; and

(f) the dissolution of Tenant.

17.2 Cure. If an Event of Default occurs, Tenant shall have thirty (30) days after written notice of default from the City to cure the default, or such longer period as shall be reasonably necessary to cure such default provided Tenant promptly commences such cure and thereafter diligently pursues such cure to completion (so long as continuation of the default does not create material risk to the City Land or to persons using the Project).

17.3 Remedies. If an Event of Default occurs, and is not cured in the time period provided for in Section 17.2 above, the City, in addition to any other rights or remedies available to it at law or in equity, shall have the right to terminate this Lease. Upon termination of the Lease, Tenant shall surrender possession and vacate the City Land immediately, and deliver possession thereof to the City, and Tenant hereby grants to the City the full and free right to enter into and upon the City Land and to repossess the City Land as the City's former estate and to expel or remove Tenant and any others who may be occupying the City Land, without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damage resulting therefrom and without relinquishing any other right given the City hereunder or by operation of law. Tenant shall pay on-demand all costs and expenses, including attorneys' fees and costs, incurred by the City in recovering sums due hereunder, recovering possession of the City Land, or pursuing the City's rights and remedies against Tenant or any assignee, sublessee or other transferee.

17.4 Remedies Cumulative. All remedies contained in Section 17.3 shall be cumulative, and every remedy contained in Section 17.3 may be exercised by the City from time to time and so often as occasion may arise or as may be deemed expedient.

17.5 No Waiver. No delay or omission of the City to exercise any right or power arising from any default shall impair any such right or power or be construed to be a waiver of any such default or any acquiescence therein. No waiver by the City of any default of any of the covenants of this Lease shall be construed, taken or held to be a waiver of any other default, or as a waiver, acquiescence in or consent to any further or succeeding default of the same covenant. The acceptance by the City of any payment of Rent or other sums due hereunder after the termination by the City of this Lease, or of Tenant's right to possession hereunder, shall not, in the absence of agreement in writing to the contrary by the City, be deemed to restore this Lease or Tenant's rights hereunder, as the case may be, but shall be construed as a payment on account, and not in satisfaction of damages due from Tenant to the City.

SECTION 18. COVENANT OF QUIET ENJOYMENT. So long as Tenant is not in default beyond the applicable cure period, Tenant shall have peaceful and quiet use and possession of the City Land during the Lease Term without hindrance on the part of the City or any persons lawfully claiming under the City, subject to the terms and provisions of this Lease.

SECTION 19. SURRENDER OF PROPERTY. Upon the expiration or earlier termination of this Lease, Tenant shall, at its sole expense, remove all of its trade fixtures, equipment and personal property from, the City Land, and repair any injury or damage to the City Land which may result from such removal. Tenant shall also be responsible, at its sole cost and expense, for removing all wood chips and growing material; provided, however, subject to

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re-testing of the material and written approval from the City, Tenant may elect to leave the growing material on the premises. The City reserves the right to sample the clay cap and growing material. If sample results exceed the standards set forth in Section 6.3(f), Tenant shall, at its sole cost and expense, remove all impacted material and dispose of it in accordance with all applicable local, state and federal regulations. If Tenant does not remove its property and restore the City Land within the appointed time, the City may remove the same and deliver it to any other place of business of Tenant or warehouse the same and restore the City Land pursuant to the requirements of this Lease, and Tenant shall pay the cost of such removal, delivery, warehousing and restoration to the City on demand, or the City may treat such property as being conveyed to the City with this Lease, without further credit, payment or reimbursement by the City to Tenant.

SECTION 20. HOLDING OVER. Any holding over by Tenant shall be construed to be a tenancy from month-to-

-month only. The City may terminate this Lease at any time during such holdover period with prior written notice to Tenant of at least thirty (30) days. During such holdover period, all other provisions of this Lease shall remain in full force and effect.

*SECTION 21. RIGHT TO TERMINATE. Notwithstanding anything to the contrary contained herein, either party may terminate this Lease for any reason upon prior written notice of at least ninety (90) days to the other party; provided, however, that (a) in no event shall the City's termination be effective between the dates of May 1 and September 30 of any given year, and (b) Tenant shall be entitled to terminate this Lease upon thirty (30) days' notice in the event that (i) Tenant reasonably determines that an environmental condition on the City Land will interfere with the operation of the Project, (ii) Landlord does not consent to a requested transfer pursuant to Section 11 of this Lease on or before thirty (30) days after receiving such request for consent, (iii) Tenant is unable to operate on the City Land economically given the requirements of any present or future ordinance with respect to urban farms, or (iv) Tenant is unable to obtain an exemption from the requirement that it pay for utilities and taxes with respect to the City Land, as required by Sections 7.2 and 7.3 above or the City increases the insurance coverage as specified in Exhibit F attached hereto. r*

**SECTION 22. CONFLICT OF INTEREST AND GOVERNMENTAL ETHICS.**

22.1 Conflict of Interest. No official or employee of the City, nor any member of any board, commission or agency of the City, shall have any financial interest (as defined, in Chapter 2-156 of the Municipal Code), either direct or indirect, in the City Land; nor shall any such official, employee, or member participate in making or in any way attempt to use his or her position to influence any City governmental decision or action with respect to this Lease.

22.2 Duty to Comply with City Ethics Ordinance. City and Tenant shall comply with Chapter 2-156 of the Municipal Code, "City Ethics," including but not limited to Section 2-156-120, which states that no payment, gratuity, or offer of employment shall be made in connection with any City of Chicago contract as an inducement for the award of that contract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of Chapter 2-156 shall be voidable as to the City of Chicago.

SECTION 23. BUSINESS RELATIONSHIPS. Tenant acknowledges (a) receipt of a copy of Section 2-156-030 (b) of the Municipal Code, (b) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official,, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom

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the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (c) notwithstanding anything to the contrary contained in this Lease, 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 Lease shall be grounds for termination of this Lease and the transactions contemplated hereby. Tenant hereby represents and warrants that no violation of Section 2-145-030 (b) has occurred with respect to this Lease or the transactions contemplated hereby.

SECTION 24. PATRIOT ACT CERTIFICATION. Tenant represents and warrants that neither Tenant nor any Affiliate (as hereafter defined) thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S.. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable Laws: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this Section 24, an "Affiliate" shall be deemed to be a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Tenant, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

**SECTION 25. PROHIBITION ON CERTAIN CONTRIBUTIONS PURSUANT TO MAYORAL EXECUTIVE**

**ORDER NO; 05-1.**

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

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

25.3 Tenant agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayors political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or

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(  
to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

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

25.5 Notwithstanding anything to the contrary contained herein, Tenant agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Section 25 or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Lease, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Lease, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

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

25.7 For purposes of this provision:

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

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

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

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

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

(ii) neither party is married; and

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

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

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

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- (1) The partners have been residing together for at least 12 months.
- (2) The partners have common or joint ownership of a residence.
- (3) The partners have at least two of the following arrangements:
  - (A) joint ownership of a motor vehicle;
  - (B) joint credit account;
  - (C) a joint checking account;
  - (D) a lease for a residence identifying both domestic partners as tenants.
- (4) Each partner identifies the other partner as a primary beneficiary in a will.
- (e) "Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code, as amended.

**SECTION 26. WASTE ORDINANCE PROVISIONS.** In accordance with Section 11-4-1600(e) of the Municipal Code, Tenant warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code (the "Waste Sections"). During the period while this Lease is executory, a violation of the Waste Sections by Tenant, its general contractor or any subcontractor, whether or not relating to the performance of this Lease, constitutes a breach of and an event of default under this Lease, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Lease, at law or in equity. This section does not limit the duty of Tenant and its general contractor and subcontractors to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Lease. Noncompliance with these terms and conditions may be used by the City as grounds for the termination of this Lease, and may further affect Tenant's eligibility for future contract awards.

**SECTION 27. COOPERATION WITH INSPECTOR GENERAL AND OFFICE OF COMPLIANCE.** In accordance with Chapter 2-26-110 et seq. of the Municipal Code, Tenant acknowledges that every officer, employee, department and agency of the City shall be obligated to cooperate with the Office of the Inspector General and the Executive Director of the Office of Compliance in connection with any activities undertaken by such office with respect to this Lease, including, without limitation, making available to the Inspector General and Compliance the department's City Land, equipment, personnel, books, records, and papers. Tenant agrees to abide by the provisions of Chapter 2-26-110 et seq.

**SECTION 28. MISCELLANEOUS.**

**28.1 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; or (c) registered or certified first class mail, postage prepaid, return receipt requested:

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City of Chicago

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

City of Chicago

Department of General Services Office of Real Estate Management 30 North LaSalle Street, Suite 300 Chicago, Illinois 60602

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

Washington Park Consortium 6357 South Cottage Grove Avenue Chicago, Illinois 60637 Attn: Brandon Johnson, Executive Director

Resource Center 222 E. 135<sup>th</sup> Place Chicago, Illinois 60827 Attn: Ken Dunn

Any notice, demand or communication given pursuant to clause (a), (b) or (c) shall be deemed received upon receipt or refusal of delivery of such notice. 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 28.1 shall constitute delivery.

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

28.3 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of Illinois.

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

If to the City:

With a copy to:

If to the Developer:

With a copy to:

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

28.6 Binding Effect of Lease. The covenants, agreements, and obligations contained in this Lease shall extend to, bind, and inure to the benefit of the parties hereto and their legal representatives, heirs, successors, and assigns.

28.7 Time is of the Essence. Time is of the essence of this Lease and of each and every provision hereof.

28.8 No Principal/Agent or Partnership Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

28.9 Authorization to Execute Lease. The parties executing this Lease hereby represent and warrant that they are duly authorized and acting representatives of the City and

Tenant respectively and that by their execution of this Lease, it became the binding obligation of the City and Tenant respectively, subject to no contingencies or conditions except as specifically provided herein.

28.10 Force Majeure. Neither the City nor Tenant shall be considered in breach of its obligations under this Lease in the event of a delay due to unforeseeable 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, including, without limitation, fires, floods, strikes, shortages of material and unusually severe weather or delays of subcontractors due to such causes. The time for the performance of the obligations shall be extended for the amount of time the party is so delayed.

28.11 Condemnation. If the whole or any substantial part of the City Land are taken or condemned by any competent authority for any public use or purpose, or if any adjacent property or street shall be so condemned or improved in such a manner as to require the use of any part of the City Land, the term of this Lease shall, at the option of City or the condemning authority, be terminated upon, and not before, the date when possession of the part so taken shall be required for such use or purpose, and City shall be entitled to receive the entire award without apportionment with Tenant.

28.12 No Brokers. The City and Tenant warrant to the other that neither of them has had any dealings with any broker or agent in connection with the transactions contemplated hereby.

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

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

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

28.16 No Waiver. No waiver by the City with respect to any specific default by Tenant shall be deemed to be a waiver of the rights of the City with respect to any other defaults of Tenant, nor shall any forbearance by the

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

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

28.18 Amendments. From time to time, the parties hereto may amend any provisions of this Lease reasonably related to Tenant's use of the City Land or the City's administration of the Lease; provided, however, such amendments may not extend the Lease Term or otherwise materially alter the essential provisions contained herein. Such amendments shall be in writing, shall establish the factual background necessitating such alteration/and shall be duly executed by both the City and Tenant. Such amendments shall only take effect upon execution by both parties. Upon execution, such amendments shall become a part of this Lease and all other provisions of this Lease shall remain in full force and effect.

28.19 Economic Disclosure Statement Updates. Throughout the Lease Term, Tenant shall provide the City with any material updates to the information previously submitted in Tenant's Economic Disclosure Statement ("EDS"). The City may also request such updates from time to time. Failure to provide such information on or before thirty (30) days after receiving a request from the City shall constitute a default under this Lease.

*(Signature Page Follows)*

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IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

**CITY:**

CITY OF CHICAGO, an Illinois municipal corporation

Bv: \_\_\_

David Reynolds Commissioner  
Department of General Services

Bv: \_\_\_

Andrew Mooney Commissioner  
Department of Housing and Economic Development

**TENANT:**

**WASHINGTON PARK CONSORTIUM**

By: \_\_,

Print Name: \_\_\_

Title:

Approved as to form:

Deputy Corporation Counsel Real Estate Division

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**EXHIBIT A LEGAL DESCRIPTION OF CITY LAND**

(SUBJECT TO FINAL SURVEY AND TITLE COMMITMENT)

LOTS 7, 8, 9, 10, 11, AND 12 IN PERILOT'S SUBDIVISION OF THE SOUTH 147-10/12 FT OF LOT 4 IN SCHOOL TRUSTEE SUBDIVISION IN SECTION 16, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO AND ROCK ISLAND RAILROAD; ALSO THE VACATED ALLEY LYING WEST OF AND ADJOINING LOTS 7, 8, AND 9 AND LYING EAST OF AND ADJOINING LOTS 10, 11, AND 12 IN PERILOT'S SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, AND 12 IN BLOCK 2 IN HENRY BOTSFORD'S SUBDIVISION OF THAT PART OF LOT 5 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO AND ROCK ISLAND RAILROAD; ALSO THE VACATED ALLEY LYING WEST OF AND ADJOINING LOTS 7 TO 12 AND LYING EAST OF AND ADJOINING LOTS 1 TO 6 IN BLOCK 2 IN HENRY BOTSFORD'S SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 5702-26 SOUTH LAFAYETTE  
CHICAGO, ILLINOIS

. PERMANENT INDEX NO. 20-16-214-028-0000

20-16-214-029-0000

**EXHIBIT B DEPICTION OF CITY LAND**

[TO BE ADDED]

**Exhibit B: Site Location**

(  
**EXHIBIT C SITE PLAN**

[TO BE ADDED; SUBJECT TO HED APPROVAL]

/  
**EXHIBIT D**  
**RAISED GARDEN BED SPECIFICATIONS**

Tenant shall construct raised garden beds containing a minimum of 12 inches of clean top soil, compost or other growing medium, and shall connect the raised beds with footpaths constructed of woodchips. The base of each raised bed shall be surrounded with a minimum of 3 inches of woodchips to absorb rainwater and help manage drainage.

**EXHIBIT E LANDSCAPING PLAN**

[TO BE ADDED; SUBJECT TO HED APPROVAL]

**EXHIBIT F**  
**INSURANCE REQUIREMENTS**

Workers Compensation and Employers Liability Insurance. Workers Compensation and Employers Liability Insurance and Occupational Disease Insurance, as prescribed by applicable law, covering all Tenant's employees and Employer's Liability coverage with limits of not less than \$500,000 each accident or illness. Commercial Liability Insurance. (Primary and Umbrella). Commercial Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence, for bodily injury, personal injury, and property damage liability. Coverage extensions shall include the following: All premises and operations, products/completed operations, defense, separation of insureds, and contractual liability (with no limitation endorsement). The City of Chicago, its employees, elected officials, agents, and representatives are to be named as additional insureds on a primary, non contributory basis for any liability arising directly or indirectly from the Lease.

Automobile Liability Insurance. (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Tenant shall provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence, for bodily injury and property damage.

All Risk Property Insurance. All risk property insurance coverage shall be maintained by Tenant for full replacement value to protect against loss, damage to or destruction of property. The policy shall list the City of Chicago as loss payee. Tenant shall be responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools and supplies), owned or rented by Tenant.

Excess Liability Insurance shall be maintained with limits not less than \$10,000,000. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis. [May not be needed. Confirm with Risk Management.]

Other Terms of Insurance.

Tenant will furnish the City of Chicago, Department of General Services, Office of Real Estate Management, Suite 300, 30 North LaSalle Street, Chicago, Illinois 60602, original Certificates of Insurance evidencing the required coverage to be in force on the Commencement Date, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Lease Term, or a letter of self-insurance. The receipt of any certificates does not constitute agreement by the City that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all Lease requirements. The failure of the City to obtain certificates or other insurance evidence from Tenant shall not be deemed to be a waiver by the City. Tenant shall advise all insurers of the Lease provisions regarding insurance. Non-conforming insurance shall not relieve Tenant of its obligation to provide insurance as specified herein, Non-fulfillment of the insurance conditions may constitute a violation of the Lease, and the City retains the right to terminate the Lease until proper evidence of insurance is provided.

In the event coverage is substantially changed, canceled, or non-renewed, Tenant shall notify City of such



change promptly following the date Tenant receives notice from its insurers.

Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Tenant.

Tenant agrees that insurers shall waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents or representatives.

Tenant expressly understands and agrees that any coverages and limits furnished by Tenant shall in no way limit Tenant's liabilities and responsibilities specified within the Lease or by law.

Tenant expressly understands and agrees that any insurance or self-insurance programs maintained by the City of Chicago shall apply in excess of and not contribute with insurance provided by Tenant under the Lease. The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The City of Chicago, Department of Finance, Office of Risk Management, maintains the rights to modify, delete, alter or change these requirements, provided, however, that Tenant shall be entitled to terminate the Lease pursuant to Section 21(b) following any modification, deletion, alteration or change that increases its costs to comply with this Lease.

### **EXHIBIT C GRANT AGREEMENT**

See attached

#### **GRANT AGREEMENT**

This Grant Agreement (this "Agreement") is entered into as of \_\_, 2011 (the "Closing Date"), between the City of Chicago (the "City"), an Illinois municipal corporation, acting through its Department of Housing and Economic Development ("DHED"), and Washington Park Consortium, an Illinois not-for-profit corporation ("WPC"). WPC and the City are sometimes referred to herein as the "Parties."

#### **RECITALS**

WHEREAS, the Open Space Impact Fee Ordinance, Chapter 18 of Title 16 of the Municipal Code of Chicago (the "Code"), authorizes the collection of fees (the "Open Space Fees") as a condition of issuance of a building permit for proposed new dwelling units to ensure that adequate open space and recreational facilities are available to serve residents of new developments in the City; and

WHEREAS, the Department of Revenue has collected Open Space Fees (the "Open Space Fees Proceeds") for new dwelling units built in the Community of Washington Park ("the Washington Park Community") and has deposited such Open Space Fees Proceeds in a separate fund identified by CAPS Code PS40 131 54 5040 2604; and

WHEREAS, the City of Chicago is the owner of parcels of land located at 5702 South Lafayette legally identified and described on Exhibit A hereto (the "Property");

WHEREAS, the City and WPC desire to create gardens at the Property (the "Project") for the benefit and use of the Washington Park Community;

WHEREAS, WPC is a not-for-profit agency dedicated to preserving and creating open space;

WHEREAS, DHED desires to provide to WPC Open Space Fees in an amount not to exceed \$21,115 (the "Grant") for the Project; and

WHEREAS, on \_\_, 2011, the City Council of the City adopted an ordinance published in the Journal of the Proceedings of the City Council for said date at pages \_\_.' to - finding, among other things, that the Project would provide a direct and

material benefit to the residents of the new developments originating the Open Space Fees and authorizing the Grant subject to certain terms and conditions (the "Authorizing Ordinance"); and

WHEREAS, under the terms and conditions hereof, the City agrees to make the Grant available to WPC; and

WHEREAS, the City and WPC have among their powers the authority to contract with each other to perform the undertakings described herein;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the above recitals which are made a contractual part of this Agreement, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City and WPC agree as follows:

#### **SECTION 1. THE GRANT**

1.1. Subject to the provisions set forth in this Agreement, the City will disburse the Grant to reimburse WPC for all or part of the cost of completing the Project after the City has reviewed and approved a budget for the Project, in such detail and with such supporting documentation as the City may require and after WPC has submitted Certificate(s) of Expenditure (as defined below) to DHED.

1.2 WPC may request that certificate(s) of expenditure substantially in the form attached hereto ("Certificates of Expenditure") as Exhibit E to be processed and executed periodically. The City shall not execute Certificates of Expenditure in the aggregate in excess of the actual cost of the Project. Prior to each execution of a Certificate of Expenditure by the City, WPC shall submit documentation regarding the applicable expenditures to DHED. Delivery by WPC to DHED of any request for execution by the City of a Certificate of Expenditure 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 execution of a Certificate of Expenditure, that,

(a) the total amount of the request for the Certificates of Expenditure represents the actual amount payable to (or paid to) the general contractor, subcontractors, and other parties who have performed work on or otherwise provided goods or services in connection with the Project, and/or their payees;

(b) all amounts shown as previous payments on the current request for a Certificate of Expenditure have been paid to parties entitled to such payment;

(c) WPC has approved all work and materials for the current request for a Certificate of Expenditure, and such work and materials conform to the Plans and Specifications previously approved by DHED; and

(d) WPC is in compliance with all applicable federal, state and local laws, statues, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or WPC as related thereto.

1.3. WPC hereby acknowledges and agrees that the Grant must be used exclusively for the Project. If the Grant should exceed the costs of the Project, WPC must repay any such excess Grant funds to the City.

1.4. WPC is solely responsible for any fees, costs and expenses of the Project in excess of the amount of the Grant and will hold the City harmless from all such excess fees,, costs and expenses.

1.5. The source of funds for the City's obligations under this Agreement are the funds identified by CAPS Code PS40 131 54 5040 2604. WPC hereby acknowledges and agrees that the City's obligations hereunder are subject in every respect to the availability of funds as described in and limited by this Section 1.5. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for disbursements of the Grant, then the City will notify WPC in writing of that occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for disbursement under this Agreement are exhausted.

## **SECTION 2. DEVELOPMENT AND CONSTRUCTION OF THE PROJECT**

A. Title Commitment and Insurance: Survey. WPC shall be responsible for obtaining, at its own expense, any title commitment or title policy and survey with respect to the Property that it deems necessary.

B. Construction Documents and Landscape Plan. WPC have developed the construction documents and a plan for the Project (the "Drawings") as shown on Exhibit C. No material deviation from the Drawings shall be made without the prior written approval of DHED. The approval of the Drawings by DHED are for the purposes of this Agreement only and other than as set forth in the Drawings, no structures or improvements are to be constructed on the Property by WPC without the prior written approval of DHED, which approval shall not constitute the approval required by the City's Department of Buildings, or any other Department of the City.

C. Schedule. WPC has prepared a preliminary schedule for the development and construction of the Project as set forth on Exhibit D. No material deviation from the Drawings shall be made without the prior written approval of DHED.

D. Use. The Project shall be utilized as open space for use by the public for and on behalf of the City. This Agreement does not confer any special rights upon WPC or any other person or entity to use the Project for private parties or events. The use of alcohol on the Property by any person or entity is strictly prohibited.

E. Certification. WPC shall submit a payment certification form as attached as Exhibit E prior to any Grant funds being released.

## **SECTION 3. TERM OF AGREEMENT**

Term of Agreement. The term of this Agreement shall commence as of the date set forth above and, unless otherwise terminated by the City in writing, shall run in perpetuity. The Project must be completed within two

years from the date of execution of this Agreement.

#### **SECTION 4. COVENANTS AND REPRESENTATIONS**

WPC hereby warrants, represents and/or covenants to the City that:

4.1. WPC will use the Grant solely for the Project and to pay for eligible costs as determined in the sole discretion of the City and outlined on Exhibit B.

4.2. WPC will comply with all applicable federal, state, and local statutes, laws, ordinances, rules, regulations and executive orders that are in effect from time to time that pertain to or affect the Project, WPC, or the Grant. Upon the City's request, WPC will provide evidence of such compliance satisfactory to the City.

4.3. WPC agrees that provisions required to be inserted in this Agreement by laws, ordinances, rules, regulations or executive orders are deemed inserted whether or not they appear in this Agreement and that in no event will the failure to insert such provisions prevent the enforcement of this Agreement.

4.4. WPC has full power and authority to enter into and perform its obligations under this Agreement, and the signing and delivery of this Agreement and the performance of its obligations under this Agreement have been duly authorized by all requisite corporate action.

4.5. Signing, delivery and performance by WPC of this Agreement does not violate its bylaws, articles of incorporation, resolutions or any applicable provision of law, or constitute a material breach of, default under or require any consent under, any agreement, instrument or document, including any related to borrowing monies, to which WPC is party or by which it is bound.

4.6. There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting WPC that would materially impair its ability to perform under this Agreement.

4.7. WPC is not in default on any loan or borrowing that may materially affect its ability to perform under this Agreement.

4.8. If the Grant, or a portion thereof, is used for construction, WPC and all its contractors and subcontractors shall meet labor standards and prevailing wage standards required by federal, state and City laws, regulations and ordinances.

4.9. WPC shall maintain and keep in force, at its sole cost and expense, at all times during its existence, insurance in such amounts and of such type as set forth in Section 6 below.

4.10. WPC shall at all times perform its work in fulfilling its corporate mission with the utmost care, skill and diligence in accordance with the applicable standards currently recognized in the community.

4.11. WPC is an Illinois not-for-profit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986; and has provided the City a copy of the Internal Revenue Service Determination Letter evidencing such exemption. WPC shall at all times maintain such tax-exempt status.

4.12. WPC shall comply with all policies issued by the City relating to Illinois not-for-profit corporations and federal tax-exempt entities, as such policies may be modified, amended or supplemented from time to time.

4.13. The Parties agree that the Board will maintain the project improvements on the Property in a condition and manner acceptable to the City.

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

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

#### **SECTION 5. ENVIRONMENTAL MATTERS**

5.1. It shall be the responsibility of WPC to investigate and determine the soil and environmental condition of the Property, if deemed necessary, including obtaining phase I and, if applicable, phase II environmental audits

for the Property. The City makes no covenant, representation or warranty as to the environmental condition of the Property or the suitability of the Property for any use whatsoever.

5.2. WPC agrees to carefully inspect the Property and all easements or other agreements recorded against the Property prior to commencement of any activity on the Property to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. WPC shall be solely responsible for the safety and protection of the public on the portions of the Property affected by the Project, until the portion of the Project on each portion of the Property is completed.. The City reserves the right to inspect the work being done on the Property. WPC agrees to keep the Property free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for WPC.

5.3. Prior to inspecting the Property, WPC or its contractors, if any, must obtain insurance in accordance with Section 4 below, all necessary permits and, if applicable, a right of entry.

## **SECTION 6. INSURANCE**

6.1. WPC shall provide and maintain at WPC's own expense, or cause to be provided during the term of this Agreement, the insurance coverages and requirements specified below, as applicable, insuring all operations related to this Agreement.

6.1.1. Workers Compensation and Employers Liability: Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement, if any, and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

6.1.2. Commercial General Liability (Primary and Umbrella): Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work, if any.

6.1.3. Automobile Liability (Primary and Umbrella): When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, if any, WPC shall provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

6.1.4. Professional Liability: When any architects, engineers or professional consultants perform work, if any, in connection with this Agreement, WPC shall cause to be provided, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000.

6.2. WPC will furnish to DHED original Certificates of Insurance evidencing the required coverage to be in force on the Closing Date, if any, 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. WPC shall submit evidence of insurance on the City's Insurance Certificate Form or equivalent prior to disbursement of the Grant. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all the requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence shall not be deemed to be a waiver by the City.

6.3. WPC shall advise all insurers of the provisions of this Agreement regarding insurance. Non-conforming insurance shall not relieve WPC of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop Work, if any, until proper evidence of insurance is provided, or this Agreement may be terminated.

6.4. The required insurance shall provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

6.5. Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by WPC and its contractors.

6.6. WPC agrees that insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives.

6.7. WPC expressly understands and agrees that any coverage and limits furnished by WPC shall in no way limit WPC's liabilities and responsibilities specified by this Agreement or by law.

6.8. WPC expressly understands and agrees that any insurance or self insurance programs maintained by the

City shall not contribute with insurance provided by WPC under this Agreement.

6.9. The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

6.10. WPC shall require all subcontractors to provide the insurance required herein or WPC may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of WPC unless otherwise specified herein.

6.11. The City's Risk Management Department maintains the right to modify, delete, alter or change these requirements.

#### **SECTION 7. INDEMNIFICATION**

WPC will indemnify and defend the City, its officials, agents and employees (the "City Indemnitees") against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorneys' and expert witnesses' fees and court costs) the City Indemnitees suffer or incur arising from or in connection with the actions or omissions of WPC and/or any contractors or subcontractors in implementing the Project, if any, or WPC's breach of this Agreement. This defense and indemnification obligation survives any termination or expiration of this Agreement.

#### **SECTION 8. NO LIABILITY OF OFFICIALS**

No elected or appointed official or member or employee or agent of the City shall be charged personally by WPC or by an assignee or subcontractor, with any liability or expenses of defense or be held personally liable under any term or provision of this Agreement because of their execution or attempted execution or because of any breach hereof.

#### **SECTION 9. DEFAULT AND REMEDIES**

9.1. If WPC, without the City's written consent (which consent shall not be unreasonably withheld) defaults by failing to perform any of its obligations under this Agreement then the City may terminate this Agreement if such default is not cured as provided in Section 9.2 below. If the City so terminates this Agreement, WPC shall repay the City promptly any amounts received pursuant to this Agreement.

9.2. Prior to termination, the City will give WPC 30 days' advance written notice of the City's intent to terminate stating the nature of the default. If WPC does not cure the default within the 30-day period, the termination will become effective at the end of the period. With respect to those defaults that are not capable of being cured within the 30-day period, WPC will

not be deemed to be in default if it has begun to cure the default within the 30-day period and thereafter diligently and continuously prosecutes the cure of the default until cured.

9.3. The City may, in any court of competent jurisdiction, by any proceeding at law or in equity, seek the specific performance of this Agreement, or damages for failure of performance, or both.

#### **SECTION 10. NO BUSINESS RELATIONSHIPS WITH ELECTED OFFICIALS**

10.1. Pursuant to Section 2-156-030(b) of the Code, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this Agreement shall be grounds for termination of this Agreement. The term business relationship is defined in Section 2-156-080 of the Code.

10.2. Section 2-156-080 of the Code defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than 1 percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from

an insurance company. A "contractual or other private business dealing" shall not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

**SECTION 11. GENERAL CONDITIONS**

11.1. Assignment. This Agreement, or any portion thereof, shall not be assigned by either Party without the express prior written consent of the other Party.

11.2. Construction of Words. As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

11.3. Counterparts. This Agreement may be executed in counterparts and by different Parties in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

11.4. Entire Agreement. This Agreement contains the entire agreement between the City and WPC and supersedes all prior agreements, negotiation and discussion between them with respect to the Project.

11.5. Exhibits. Any exhibits to this Agreement will be construed to be an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein.

11.6. Governing Law, Venue and Consent to Jurisdiction. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its principles of conflicts of law. If there is a lawsuit under this Agreement, each Party agrees 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.

11.7. Inspection and Records. WPC shall provide the City with reasonable access to its books and records relating to the Project and the Grant as shall be required by the City and necessary to reflect and disclose fully the amount and disposition of the Grant. Any duly authorized representative of the City shall, at all reasonable times, have access to all such books and records which shall continue for [five years from the later of the expiration or the termination of this Agreement].

11.8. Modification. This Agreement may not be modified or amended except by an agreement in writing signed by both Parties.

11.9. Notice. Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the address set forth below by any of the following means: (a) personal service; (b) electronic communication, whether by telegram or fax; (c) overnight courier; or (d) registered or certified first class mail postage prepaid, return receipt requested.

To the City: City of Chicago  
Department of Housing and Economic Development  
Attention: Commissioner  
121 N. LaSalle Street, Room 1000  
Chicago, Illinois 60602  
(312)744-4190

(312)744-2271 (Fax)  
With copies to: Department of Law  
City of Chicago

Attention: Finance and Economic Development Division  
121 N. LaSalle Street, Room 600  
Chicago, Illinois 60602  
(312)744-0200

(312) 744-8538 (Fax)

To WPC  
Washington Park Consortium 6357 S. Cottage Grove Ave. Chicago, Illinois 60637

( )  
( ) (fax)

Attention:

with copies to:

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed

received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause (c) hereof shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication given pursuant to clause (d) hereof shall be deemed received three business days after mailing. The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

11.10. Parties' Interest / No Third Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the Parties. 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. Nothing contained in this Agreement, nor any act of the City or WPC shall be deemed or construed by any of the Parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or WPC .

11.11. Severability. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein.

11.12. Term. The term of this Agreement (the "Term") begins on the Closing Date and shall expire upon completion of the Parties' compliance with their respective obligations hereunder or termination of this Agreement according to its terms, whichever occurs first.

11.13. Titles and Headings. Titles and headings in this Agreement are inserted for convenience and are not intended to be part of or affect the meaning or interpretation of this Agreement.

11.14. Waiver. Waiver by the City with respect to the breach of this Agreement shall not be considered or treated as a waiver of the rights of the City with respect to any other default or with respect to any particular default except to the extent specifically waived by the City in writing.

11.15 Foreign Assets Control Lists. Neither WPC , nor any affiliate thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control, of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For the purposes of this paragraph "Affiliate," when used to indicate a relationship with a specified person or entity, shall mean 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.

*[The remainder of this page is intentionally blank. Signatures appear on the following page.]*

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered as of the Closing Date.

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

By: \_\_\_\_\_

Andrew J. Mooney Commissioner

**WASHINGTON PARK CONSORTIUM**

an Illinois not-for-profit corporation

By:

Shaan Trotter President

**EXHIBIT A Legal Description**

**EXHIBIT B**

**Budget and Eligible Costs Total: \$21,115**

**EXHIBIT C Drawings**

[To be attached at Closing]

(  
(

**EXHIBIT D Project Schedule**

[To be attached at Closing]

**EXHIBIT E Certificate of Expenditure**

STATE OF ILLINOIS )

) SS

COUNTY OF COOK )

The affiant,\_, an Illinois municipal corporation, hereby certifies

that with respect to that certain Agreement between the \_ and the City of Chicago

dated \_,\_(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 Open Space Impact Fee-Funded Improvements for the Project reimbursed by the City to date:

\$ \_

C. The \_ requests reimbursement for the following cost of Open Space Impact Fee-Funded Improvements:

" \$ \_

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

E. The \_ 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 \_ 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 a Default, exists or has occurred.

3. The \_ has approved all work and materials for the current request for a Certificate of Expenditure, and such work and materials conform to the Plans and Specifications. )

4. The \_ is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the \_ as related thereto.

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

By:

Name Title:

Subscribed and sworn before me this \_ day of

My commission expires: \_

Agreed and accepted:

Name Title:

City of Chicago

Department of Housing and Economic Development

Meg Gustafson

Department of Housing and Economic Development

City Hall, Room 1000

312.744.0524