



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
[www.chicityclerk.com](http://www.chicityclerk.com)

## Legislation Text

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**File #:** O2013-5542, **Version:** 1

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### CITY COUNCIL

#### City of Chicago

##### COUNCIL CHAMBER

City Hall-Second Floor 121 North LaSalle Street Chicago, Illinois 60602 telephone: 312-744-4096  
FAX: 312-744-8155

##### COMMITTEE MEMBERSHIPS

##### Transportation & Public Way (Chairman)

Budget and Government Operations

Committees, Rules and Ethics

Education and Child Development

Finance Public Safety

### ANTHONY A. BEALE

Alderman, 9th Ward 34 East 112th Place Chicago, Illinois 60628 telephone: (773) 785-1100  
Fax: (773) 785-2790 e-mail: [ward09@cityofchicago.org](mailto:ward09@cityofchicago.org) <<mailto:ward09@cityofchicago.org>>

To the President and Members of the City Council:

Your Committee on Transportation and Public Way begs leave to report and recommend that Your Honorable Body pass a proposed long-term easement for a pedestrian overpass at North Union Avenue and West Kinzie Avenue in the 42<sup>nd</sup> Ward. This ordinance was referred to the Committee on July 24, 2013.

This recommendation was concurred unanimously by a viva voce vote of the members of the Committee with no dissenting vote.

(Ward 42)

Respectfully submitted,

**BRENDAN REILLY**

**Alderman - 42nd Ward**

**CITY COUNCIL**

**City Hall Office**

**CITY OF CHICAGO**

325 West Huron Street

Suite 510 Chicago, Illinois 60654 Telephone (312) 642-4242

**42nd Ward Office**

City Hall-Room 200 121 North LaSalle Street  
Chicago, Illinois 60602 Telephone (312) 744-3062

Budget and Governmental Operations (Vice-Chairman)

**Alderman Anthony Beale Chairman  
Committee on Transportation and Public Way 121 North  
LaSalle Street Chicago, Illinois 60602**

**Re: Long Term Easement - SP5 WOOD K2 APARTMENTS, LLC at 365 N. Halsted**

**Dear Chairman Beale,**

**Please be advised that I have no objection to the application filed by SP5 Wood K2 Apartments, LLC for a long term easement for a pedestrian bridge over Union Avenue.**

**Please contact me with any questions.**

**Cc: Commissioner Gabe Klein, CDOT**

**Sincerely,**

**Chicago Department of Transportation**

**CITY OF CHICAGO**

06/24/2013

Mr. Stephen Patton Corporation Counsel  
Room 600 - City Hall Chicago, IL 60602-  
1289

Attention: Mr. Rick Wendy Deputy Corporation  
Counsel

**Re: Long Term Easement for a Pedestrian Overpass File No. 09-27-13-  
3611/SP5 Wood K2 Apartments, LLC**

Dear Mr. Patton:

Pursuant to a request from Mr. Richard Klawiter we are transmitting herewith for your review and approval as to form and legality an original and three (3) copies of a proposed long term easement for a pedestrian overpass at North Union Avenue and West Kinzie Avenue. This property is located in the 27th Ward.

SP5 Wood K2 Apartments, LLC is the applicant and owner of record to the property west of Union Avenue. Hubbard'Cave LLC is the owner of record east of Union Avenue and adjoining the public street over which the overpass is being erected. The two entities have entered into a separate easement agreement to allow for the construction and use of the overpass. The people to contact in connection with this proposed ordinance are Mr. Richard Klawiter, Attorney at 312-368-7243 and Ms. Katherine Jahnke Dale at 312-368-2153.

The project has been reviewed by the Office of Underground Coordination and all utility agencies are not involved. Section 2 requires the execution and recording of the Long Term Easement Agreement and Plat of Easement. Sections 3, 4 and 5 are standard language regarding the ordinance.  
Gabe Klein I Commissioner

Originated by:

Luann Hamilton Deputy  
Commissioner

GK: LH: MW: RD cc: Alderman Walter Burnett

Alderman Anthony Beale

Sandra Foreman/w Attach. Dwg.-s.f. & Ord.(3) file copies Maps & Plats  
File (2)

30 NORTH LASALLE STREET, SUITE 11.00, CHICAGO, ILLINOIS 60602

### **ORDINANCE FOR LONG TERM EASEMENT**

WHEREAS, the City of Chicago ("City") is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970 and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City Council of the City of Chicago, after due investigation and consideration, has determined that the nature and extent of the public use and the public interest to be subserved is such as to warrant a long term easement for an existing pedestrian overpass over the public alley described in the following ordinance; now therefore,

WHEREAS, SP5 Wood K2 Apartments, LLC, a Delaware limited liability company ("Grantee") is the owner of the property commonly identified as 365 North Halsted Street, Chicago, Illinois ("Grantee's Property"); and

WHEREAS, Grantee has proposed the development of a pedestrian overpass (the "Overpass") to bridge the public right of way between the Grantee's Property and the existing commercial building occupied by a grocery store located at 370 North Des Plaines Avenue (the "Des Plaines Building"); and

WHEREAS, the Overpass will promote safety and welfare by allowing the residents of the Grantee's Property to traverse between the Grantee's Property and the Des Plaines Building protected from the weather and vehicular traffic on N. Union Avenue; and

WHEREAS, Grantee has expended a substantial sum in constructing the Overpass, and related

construction, in order to facilitate the interconnection between the Grantee's Property and the Des Plaines Building; and

WHEREAS, the Overpass will require the use of the public right-of-way, specifically the limited air rights above the grade of the alley, as more fully described on the Plat of Easement attached hereto and make a part hereof as Exhibit A; and

WHEREAS, the Department of Transportation has determined that the Overpass will not interfere with the City's traffic infrastructure and will benefit the business; and

WHEREAS, the City is willing to grant Grantee an easement on the same terms and conditions set forth in the Public Way Easement Agreement (the "Public Way Easement Agreement") attached hereto and incorporated herein as Exhibit B; now, therefore,

***Be it Ordained by the City Council of the City of Chicago;***

SECTION 1. The foregoing recitals are hereby incorporated herein and adopted as the findings of the City Council.

SECTION 2. The Commissioner of the Department of Transportation (the "Commissioner") or a designee of the Commissioner is each hereby authorized, along

/s/ /I  
  
**I**

**EXHIBIT A**

**PLAT OF EASEMENT  
(Attached)**

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## EXHIBIT B PUBLIC WAY EASEMENT AGREEMENT

This Instrument Prepared By and After  
Recording Return to: Karen Bielarz Senior  
Counsel City of Chicago Department of Law 121  
North LaSalle Street Room 600  
Chicago, Illinois 60602

(The Above Space For Recorder's Use Only)

### Public Way Easement Agreement (North Union Street Pedestrian Bridge)

This Agreement (the "Agreement") is entered into as of this                      day of                      2013,  
by and between the CITY OF CHICAGO, an Illinois home rule municipal corporation, by and through its  
Department of Transportation, (the "City") and SP5 WOOD K2 APARTMENTS, LLC, a Delaware limited  
liability company ("Grantee"). City and Grantee together shall be referred to herein from time to time as the

"Parties".

*Witnesseth:*

WHEREAS, Grantee is the owner of a to be constructed multi-story residential property commonly known as 365 North Halsted Street, Chicago, Illinois, as legally described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Grantee has proposed the construction and development of a pedestrian overpass ("Overpass") to connect the Property to an existing commercial building occupied by a grocery store located at 370 North Des Plaines Avenue (the "Des Plaines Building") over and above the grade of the City's public right-of-way ("Street") by approximately 1,128 square feet, more or less ("Easement Area"), as more fully described on the Plat of Easement ("Plat") attached hereto as Exhibit B; and

WHEREAS, the Property and Des Plaines Building together shall be referred to herein as the "Overpass Buildings"; and

WHEREAS, the Overpass will require the use of the Street, specifically use of certain of the air rights above North Union Avenue, as more fully depicted on the Plat; and

WHEREAS, the Grantee requires the use of the Overpass, which lies above the grade of the Street, and the Easement Area, for safe pedestrian movement within the Overpass Buildings; and

WHEREAS, the Overpass will promote public safety and welfare by allowing the residents of the Property to traverse between the Property and the Des Plaines Building protected from the weather and vehicular traffic on N. Union Avenue; and

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

Grant of Easement Area. The City hereby grants to Grantee an easement ("Easement") to use and occupy, in accordance with this Agreement, those certain limited air rights in and above the Street in the Easement Area, as identified and legally described on the Plat, for the installation, operation, maintenance, use, repair and replacement of the Overpass at Grantee's sole cost and expense. The Parties hereto may, upon review and approval of the Commissioner ("Commissioner") of the Department of Transportation, or any successor department ("CDOT"), may substitute a revised Easement legal description for the Easement legal description set forth on Exhibit C attached hereto and made a part hereof, subject to review and approval of the City's Corporation Counsel.

1. Terms. The following terms and conditions apply to the Easement:
  - a) The Easement is an easement appurtenant in favor of the Grantee's Property.
  - b) The Easement is granted for a term of twenty (20) years ("Term")
  - b) provided that the Grantee pays to the City of Chicago the appraised fair market
  - b) value of the Easement in the amount of (\$        ).
  - c) The Easement shall burden the Easement Area as the servient tenement.

d) Grantee warrants to the City that it is the owner ("Owner") of the Property and will be the Owner of the Overpass upon its completion and that the Grantee has sufficient title and fee interest to/in the Property to enter into this Agreement.

e) The public way Easement granted pursuant to this Agreement constitutes a contemporaneous grant of interest in real property and is not executory in nature.

f) Grantee shall not transfer any interest in the Easement without prior written consent by the CDOT Commissioner.

## **2. Grantee's Obligations.**

(a) The Grantee, at its own cost and expense, shall design, construct and diligently pursue completion of the Overpass in accordance with the plans ("Plans") contained in Exhibit D, attached hereto and incorporated herein.

b) Prior to the commencement of the construction of the Overpass, the Grantee shall develop and deliver to the Commissioner for his review and approval proposed Plans. The Grantee expressly warrants that the Overpass shall be designed and constructed in compliance with all federal, state and local laws and regulations. The Grantee expressly warrants that the Overpass shall be designed and constructed in compliance with accessibility standards, including, but not limited to: (1) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., and the regulations promulgated thereunder; (2) the Illinois Environmental Barriers Act (410 ILCS 25/ 1 et seq. (1996)); (3) The Illinois Accessibility Code, 71 Ill. A. Code 400; (4) all local City ordinances, codes, regulations.

c) The Grantee shall be responsible for obtaining approvals of and paying for any and all removals, relocations, alterations, additional maintenance and restorations of or to any utility or public service structures or facilities, or any structures or facilities located in or adjacent to the Easement Area which are owned by the City, including pavements, bridges, poles, and other facilities and utilities, which are or may be necessary or appropriate to facilitate construction of or work related to the Overpass. The Grantee shall be responsible for obtaining the consent of and making suitable arrangements with all entities owning and having an interest in such structures and facilities, including any City department.

d) The Grantee shall secure all necessary permits, including but not limited to, building permits.

e) Prior to commencement of the construction of the Overpass, the Grantee shall provide evident reasonably acceptable to the Commissioner that the owner of the Des Plaines Building has consented to the attachment of the Overpass to the Des Plaines Building; and

f) In the event Grantor or any other party proceeds with construction of the high speed rail project, the planned route of which runs through Union Avenue under the Easement Area, Grantor hereby reserves the right to attach emergency pedestrian egress facilities relating to such high speed rail project to the Overpass, and Grantee hereby agrees to cooperate with Grantor and any other party construction the high speed rail project in connection therewith, provided such emergency egress facilities do not unreasonably interfere with Grantee's use of the Overpass for the purposes herein described.

## **3. Uses Within the Easement Area.**



a) The Overpass shall be open for use by the public at such times that the Overpass Buildings are open to the public.

b) The Grantee may not authorize the Overpass for any purpose that will substantially interfere with the use of the Overpass by the public.

c) The Grantee may utilize the Overpass for exhibits, displays and the like that shall not substantially interfere with the public's use described in this Agreement.

d) Grantee may establish reasonable rules and regulations related to the use by the public of the Overpass. Grantee may at its sole discretion control the use of and access to the Overpass Buildings through the Overpass. Notwithstanding the foregoing, the City reserves a right to access the Overpass and Easement Area for City business purposes and services available to all similarly situated improvements.

#### **4. Overpass Alterations.**

Grantee may from time to time replace, remodel or demolish all or any portion of the Overpass so long as the Grantee secures the prior written approval of the Commissioner (or any successor department's Commissioner) and City Council for alterations that may affect the Easement Area or other portions of the public right-of-way before making any alterations to the Overpass that would change the description provided on the Plat.

5. Removal and Restoration. Grantee shall have the right to terminate this Easement at any time. Upon termination of the Easement granted by this Agreement the Grantee, without cost or expense to the City, shall promptly remove the Overpass, and all other structures and facilities related to the Overpass as may be located in the Easement Area and other affected public way. Grantee shall restore the public way to the extent altered, disturbed, or damaged by the installation, construction, use, operation, inspection, maintenance, repair, replacement or removal of the Overpass, and all work related thereto, to a proper condition under the supervision and to the satisfaction of the Commissioner and in accordance with the Municipal Code of Chicago.

6. Indemnity. Except with respect to the negligent or wrongful intentional acts of City (to the extent the same are the cause of an injury or loss to a third person), Grantee hereby indemnifies and agrees to hold harmless and defend City from and against any and all claims, demands, damages, lawsuits, legal proceedings, losses, liens, liabilities, judgments, orders or decrees, and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, court costs, and other reasonable expenses related to litigation), arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to the City, any natural person, or the City's property, including but not limited to the Easement Area and all other impacted City right-of-way, the property of any person, arising out of, or occurring in any manner relating to the Easement Area, or the Overpass. In the event any legal action is taken against City or its agents or any claim is made relating to the Easement Area or the Overpass, the City may elect to tender said defense to Grantee which shall and must defend such action or claim at Grantee's own expense and City shall cooperate with Grantee in the defense thereof. Grantor shall have the right to join Grantee as a party defendant in any such legal action. This indemnity shall not be the exclusive remedy of the City, and City shall maintain whatever other right of indemnity it may have under common law, by statute, or by ordinance. This indemnification shall survive any termination or expiration of this Agreement.

**7. Grantee's Operation, Maintenance and Security of the Easement Area and Overpass during the Term of this Agreement.**

a) Grantee shall maintain the Easement Area and Overpass at its sole cost and expense.

b) Grantee shall maintain the Easement Area and Overpass so that the improvement does not unduly interfere with any use of the public way by the City, the public, or any person or entity authorized to use or occupy the public way.

(c) Grantee shall conduct regular, documented inspections of the

Overpass and the Easement Area and maintain the Overpass and

Easement Area in a structurally sound, clean, aesthetically attractive, and usable condition consistent with the public use required by this Agreement. All Overpass and Easement Area maintenance records shall be made available to CDOT upon CDOT's written request for such documentation to Grantee.

d) Grantee shall attach no fixtures, post no verbiage, signage, symbols, art or advertising of any kind on the structure, or on the interior of the structure that may be visible from the exterior. The Grantee shall not lease nor enter into any agreement for the Overpass or Easement Area lying over, under, on or in the public way for advertising space purposes, or for any other promotional use(s) for the Grantee or any third parties.

e) Grantee shall cooperate with the City concerning the coordination of uses of the public way, including prompt responses to inquiries, attending meetings and site visits, and providing complete disclosure of information concerning the Easement Area and Overpass.

(f) Grantee shall pay for any and all utility expenses incurred with respect to the operation, maintenance, repair, and/or replacement of the Overpass, or any part thereof, within the Easement Area.

(g) Grantee shall provide security over the Easement Area and Overpass at its sole cost and expense.

8. City Has No Maintenance and Operational Duties. The Grantee acknowledges that City is not responsible for the operation, maintenance, repair, and/or replacement of or security of the Easement Area and the Overpass, and City has no obligations with respect thereto (other than the provision, through the exercise of the City's right to access the Overpass and Easement Area for City business purposes and services available to all similarly situated improvements).

**9. Insurance.**

(a) The Grantee shall procure and maintain, at all times, including but not limited to, prior to

commencement of construction of the Overpass, all of the types and coverages of insurance specified below, with insurance companies authorized to do business in the State of Illinois, covering all operations under this

Agreement, whether performed by the Grantee or any of its contractors or subcontractors ("Contractor"). Grantee shall procure and maintain, or shall cause any/all Contractors to procure and maintain, all of the types and coverages of insurance specified below, with insurance companies authorized to do business in the State of Illinois, covering all operations under this Agreement, whether performed by Grantee or any of its Contractors.

(b) The kinds and amounts of insurance required are as follows:

(i) Workers' Compensation and Occupational Disease Insurance.

Workers' Compensation and Occupational Disease Insurance, in statutory amounts, covering all employees who are to provide Work under this Agreement. Employers' liability coverage with limits of not less than One Million Dollars (\$1,000,000) each accident, illness or disease.

ii) Commercial Liability Insurance (Primary and Umbrella).

Commercial General Liability Insurance, or equivalent, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury, and property damage liability. All premises and operations, products/completed operations, independent contractors, explosion, collapse, underground, pollution, separation of insureds, defense and contractual liability coverages are to be included. The City is to be named as an additional insured on a primary non-contributory basis for any liability related directly or indirectly to this Agreement.

Contractors performing work for Grantee must maintain limits of not less than \$2,000,000 with the same terms herein.

iii) Automobile Liability Insurance. (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Grantee provide or cause to be provided, Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage. The Grantor is to be named as an additional insured on a primary, non-contributory basis.

Contractor performing work for Grantee must maintain limits of not less than \$1,000,000 with the same terms herein.

(c) Additional Requirements

At least thirty (30) days prior to commencement of any construction in or use of the Easement Area and/or Overpass, the Grantee must provide and cause any of its contractors to provide the City of Chicago, Department of Transportation, 30 North LaSalle Street, Room 500, Chicago, Illinois 60602-2570, original Certificates of Insurance, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The receipt of any certificate

does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Grantee and contractor is not a waiver by the City of any requirements for the Grantee to obtain and maintain the specified coverages. The Grantee and contractor must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Grantee and contractor of the obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided.

Grantee agrees to make commercially reasonable efforts to obtain from its insurers, when and if available in the industry, a certificate providing that such coverage shall not be suspended, voided, canceled, non-renewed, or reduced in scope or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Grantee and Contractor.

The Grantee hereby agrees and will cause its Contractors to agree that insurers waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

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

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Grantee and Contractor under the Agreement.

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

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

The Grantee must require the contractor to provide the insurance required herein. All contractors are subject to the same insurance requirements of Grantee unless otherwise specified in this Agreement.

Notwithstanding any provisions in this Agreement to the contrary, the City's Risk Management Department maintains the right to modify, delete, alter or change these requirements.

10. Default. The Grantee shall be in default hereunder in the event of a material breach by Grantee of any term or condition of this Agreement including, but not limited to, a representation or warranty, where Grantee has failed to cure such breach within sixty (60) days after written notice of breach is given to Grantee by City setting

forth the nature of such breach. Failure of City to give written notice of breach to Grantee shall not be deemed to be a waiver of the City's right to assert such breach at a later time. If the default is not capable of being cured within the sixty (60) day period, then provided Grantee has commenced to cure the default and is diligently proceeding to cure the default within the sixty (60) day period, and thereafter diligently prosecutes such cure through to completion, then the sixty (60) day period shall be extended for the length of time that is

reasonably necessary to cure the default. If the default is not cured in the time period provided for herein, the City may institute such proceedings at law or in equity as may be necessary or desirable to cure and remedy the default, including but not limited to, termination of this Agreement and removal of the Overpass at the Grantee's sole expense.

11. No Lien. Grantee shall not permit any lien to stand against the Easement Area, North Union Avenue or any improvement thereon for any labor or material in connection with work of any character performed on the Easement Area or North Union Avenue at the discretion or sufferance of Grantee.

12. Compliance With Law. The Grantee agrees that the Easement Area and Overpass shall be used, and any alterations to the Overpass shall be constructed, installed, used, operated, inspected, maintained, repaired and replaced in complete compliance with all applicable laws, statutes and ordinances.

13. Partial Invalidity. If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion hereof shall remain in full force and effect.

14. Notices. Any and all notices or other communications required or permitted pursuant hereto shall be in writing and shall be deemed to have been given if and when personally delivered or on the next following business day if transmitted by reputable overnight carrier. Notices shall be addressed to Grantee and City at their respective addresses set forth below, or to such substitute address as Grantee or City may have designated by notice in accordance herewith:

If to City:

Commissioner of Transportation 30 North LaSalle Street,  
Room 500 Chicago, Illinois 60602 Attn: Maps and  
Plats /Easements

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

If to Grantee:

Fifield Realty Co. 222 S. Riverside Plaza Suite  
600  
Chicago, IL 60606

Attn: Alan Schachtman, Senior Vice President

With a copy to:

DLA Piper LLP  
203 N. LaSalle Street  
Suite 1900  
Chicago, IL 60601

Attn: Richard F. Klawiter, Esq.

Addressees may be changed by the Parties by notice given in accordance with the provisions hereof.

15) Illinois Law. This Agreement has been negotiated, executed and delivered at Chicago, Illinois and shall be construed and enforced in accordance with the laws of Illinois, including the law of public trust with respect to the use and occupation of the public way.

16) Execution And Recordation of Agreement. The execution and recordation of this Agreement shall be subject to the finalization of all utility negotiations and further provided that the Grantee supplies the City with sufficient proof of ownership of the Property, and when completed, the Overpass and Property, and any other documents that the City may deem necessary.

17) No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit solely of Grantee and City and their respective successors, assigns, licensees and legal representatives. This document and the terms hereof are intended solely for the benefit of the parties hereto and their successors, licensee and assigns, as expressly referred to herein. No other, person shall have any rights, responsibilities or obligations hereunder nor may such person enforce any of the terms or be entitled to any of the benefits hereof.

18) Authority and Validity. Each party represents and warrants to the other party that (i) this Agreement has been duly authorized, executed and delivered by it and (ii) this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms.

19) **Miscellaneous.**

a) The terms, benefits, and privileges set forth in this Agreement shall be deemed and taken to be covenants running with the Property and shall be binding upon the Grantee, its successors and assigns having any interest in the Property.

b) If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word or the application thereof is held invalid, illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remainder of

this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that this Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of either of the Parties.

c) In the event the time for performance hereunder falls on a Saturday, Sunday, or legal holiday, the actual time for performance shall be the next business day.

d) This Agreement and the accompanying Plat shall be governed by, and construed in accordance with, the internal laws of the State of Illinois. In the event that an adjudication of any kind shall be required in connection with this Agreement, the Parties agree that the venue therefor shall be the state or federal courts located in Cook County, Illinois, whichever may be applicable.

e) This Agreement constitutes the entire contract between the Parties with respect to the subject matter of this Agreement, and may not be modified except by an instrument in writing signed by all the Parties and dated a date subsequent to the date of this Agreement.

f) Each Party agrees that it will execute and deliver such other reasonable documents and take such other reasonable actions as may be reasonably requested by the other party to effectuate the purposes and intention of this Agreement.

20) **Business Relationships.**

The Grantee acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (c) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Grantee hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

21) **Patriot Act Certification.**

The Grantee represents and warrants that neither the Grantee nor any Affiliate thereof (as defined in the next paragraph) is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or 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.

As used in the above paragraph, an "Affiliate" shall be deemed to be a person or entity related to the Grantee that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Grantee, 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.

**22) Prohibition on Certain Contributions Mayoral Executive Order 2011-4.**

Grantee agrees that Grantee, any person or entity who directly or indirectly has an ownership or beneficial interest in Grantee of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Grantee's contractors (i.e., any person or entity in direct contractual privity with Grantee regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Grantee and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this Agreement by

Grantee, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Grantee and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Grantee represents and warrants that from the later to occur of (a) May 16, 2011, and (b) the date the City approached the Grantee or the date the Grantee approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Grantee agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) Bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Grantee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Grantee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure.

Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Grantee intentionally violates this provision or Mayoral Executive Order No. 2011-4 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

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

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

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

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

- A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- B) neither party is married; and
- C) the partners are not related by blood closer than would bar marriage in



- the State of Illinois; and
- D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- E) two of the following four conditions exist for the partners:
1. The partners have been residing together for at least 12 months.
  2. The partners have common or joint ownership of a residence.
  3. The partners have at least two of the following arrangements:
    - a. joint ownership of a motor vehicle;
    - b. a joint credit account;
    - c. a joint checking account;
    - d. a lease for a residence identifying both domestic partners as tenants.
  4. Each partner identifies the other partner as a primary beneficiary in a

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

### **23) Failure To Maintain Eligibility To Do Business With The City.**

Failure by Grantee or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City

of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of the Agreement and the transactions contemplated thereby. Grantee shall at all times comply with Section 2-154-020 of the Municipal Code of Chicago.

### **24) Inspector General and Legislative Inspector General.**

It is the duty of every officer, employee, department, agency, contractor, subcontractor, Grantee and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the City's Legislative Inspector General and with the City's Inspector General in any investigation or hearing undertaken pursuant to Chapters 2-55 and 2-56, respectively, of the Municipal Code of Chicago. The Grantee understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code of Chicago.

### **25) Waste Ordinance Provisions.**

In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Grantee 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 Amendment is executory, Grantees, any general contractors or any subcontractors violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Amendment, at law or in equity. This section does not limit Grantee=s, general contractors and its subcontractor's duty 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 Amendment. Noncompliance with these terms and conditions may be used by the City as grounds for the termination of this Amendment, and may further affect Grantee's eligibility for future contract awards.

26) **Shakman Accord.**

(a) The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007 "City of Chicago Hiring Plan" ( the "City Hiring Plan") entered in Shakman v. Democratic Organization of Cook County, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Grantee is aware that City policy prohibits City employees from directing any individual to apply for a position with Grantee, either as an employee or as a subcontractor, and from directing Grantee to hire an individual as an employee or as a subcontractor. Accordingly, Grantee must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Grantee under this Agreement are employees or subcontractors of Grantee, not employees of the City of Chicago. This Agreement is not intended to and does not

constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Grantee.

c) Grantee will not condition, base, or knowingly prejudice or affect any term or aspect to the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

d) In the event of any communication to Grantee by a City employee or City official in violation of Section 26 (ii) above, or advocating a violation of Section 26 (ii) above, Grantee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("IGO Hiring Oversight"), and also to the head of the relevant City Department utilizing services provided under this Agreement. Grantee will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to the contract.

THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Grantee and City have caused this Agreement to be executed by their duly authorized officers, as of the day and year first written  
above.

By: \_ Name: Title:

CITY OF CHICAGO,  
a municipal corporation,  
by and through its Department of Transportation

By:

Name: Gabe Klein Title: Commissioner

Approved As To Form And Legality (excluding the Legal  
Descriptions):

CITY OF CHICAGO Department of Law

By:

Name: Richard Wendy

Title: Deputy Corporation Counsel

**EXHIBIT A LEGAL DESCRIPTION OF THE  
PROPERTY**

LOTS 1 TO 14, BOTH INCLUSIVE, AND THE NORTH HALF OF THE VACATED ALLEY LYING SOUTH OF  
AND ADJOINING SAID LOTS IN BLOCK 60 IN CANAL TRUSTEES' SUBDIVISION OF LOTS AND BLOCKS  
IN THE ORIGINAL TOWN OF CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH,  
RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**EXHIBIT B**

**PLAT OF EASEMENT (Attached)**

**EXHIBIT C LEGAL DESCRIPTION OF  
EASEMENT AREA**

THAT PART OF NORTH UNION STREET, A 66 FOOT WIDE PUBLIC RIGHT OF WAY, LYING ABOVE AN  
ELEVATION OF +31.00 FEET ABOVE CHICAGO CITY DATUM, LYING BELOW AN ELEVATION OF +45.00  
FEET ABOVE CHICAGO CITY DATUM AND LYING EAST OF AND ADJOINING BLOCK 60 AND LYING  
WEST OF AND ADJOINING BLOCK 59 IN CANAL TRUSTEES' SUBDIVISION OF LOTS AND BLOCKS IN  
THE ORIGINAL TOWN OF CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH,  
RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED AUGUST 31, 1848 ANTE-FIRE AND  
RE-RECORDED APRIL 9, 1872 AS DOCUMENT 23136 AND RE-RECORDED SEPTEMBER 24, 1877 AS  
DOCUMENT 151607, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE  
NORTHERLY EXTENSION OF THE EAST LINE OF BLOCK 60 AFORESAID WITH A LINE 14 FEET NORTH  
OF AND PARALLEL WITH THE NORTH LINE OF SAID BLOCK 60, BEING ALSO WEST LINE OF NORTH  
UNION STREET AFORESAID; THENCE SOUTH 00 DEGREES 12 MINUTES 33 SECONDS EAST ALONG  
SAID WEST LINE OF NORTH UNION STREET, 115.79 FEET TO THE POINT OF BEGINNING; THENCE  
SOUTH 55 DEGREES 05 MINUTES 57 SECONDS EAST 80.57 FEET TO THE EAST LINE OF SAID NORTH  
UNION STREET, BEING ALSO THE WEST LINE OF BLOCK 59 AFORESAID; THENCE SOUTH 00  
DEGREES 13 MINUTES 38 SECONDS EAST ALONG SAID EAST LINE OF NORTH UNION STREET, 17.12  
FEET; THENCE NORTH 55 DEGREES 05 MINUTES 57 SECONDS WEST 80.57 FEET TO THE WEST LINE  
OF SAID NORTH UNION STREET, BEING ALSO THE EAST LINE OF BLOCK 60 AFORESAID; THENCE

NORTH 00 DEGREES 12 MINUTES 33 SECONDS WEST ALONG SAID WEST LINE OF NORTH UNION STREET, 17.11 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

CONTAINING 1,128 SQUARE FEET OF LAND, MORE OR LESS.

**EXHIBIT D**

**PLANS (Attached)**

with the approval of the City's Corporation Counsel as to form and legality, to execute and deliver the Public Way Easement Agreement between Grantee and the City, in the form attached thereto as Exhibit B and made a part hereof, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Public Way Easement Agreement.

SECTION 3. If any provision of this ordinance shall be, held to be ~~invalid~~ invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance. •

SECTION 4. The long term easement herein provided for is made upon the express condition that within 180 days after the passage of this ordinance-Grantee shall pay or cause to be paid to the City of Chicago as compensation for the benefits which will accrue to the owner of the property abutting said part of the public, alley hereby bridged the sum of Three Hundred Eleven Thousanddollars (\$ 311, 000 . 0 0) which sum in the judgment of this body will be equal to such benefits.

SECTION 5. The Public Way Easement Agreement herein provided for is made upon the express condition that within one hundred eighty (180) days after the passage of this ordinance, SP5 Wood K2 Apartments, LLC shall file or cause to be filed for recording in the Office of the Recorder of Deeds of Cook County, Illinois a copy of the Public Way Easement Agreement, together with its accompanying Plat of Easement as approved by the Department of Transportation's Superintendent of Maps and Plats; as well as a separately recorded oversized and legible copy of the same Plat of Easement for greater clarity.

SECTION 6. This ordinance shall take effect upon its passage and need not be recorded. The Public Way Easement Agreement will take effect upon recording.

Commissioner of Transportation

Approved as to form and legality:

Honorable            Walter            Burnett,            Jr.            Alderman  
27th Ward