

**JACKSON PARK
CONSTRUCTION AND DONATION AGREEMENT**

This Donation Agreement (this **"Agreement"**) is made as of August _____, 2016, by and among the Chicago Park District (**"Park District"**), an Illinois municipal corporation, and Project 120 Chicago (**"120"**), an Illinois not-for-profit corporation. The Park District, and 120 are sometimes referred to below each as a **"Party"** and collectively as the **"Parties."**

RECITALS

WHEREAS, the Park District is the owner of over 8,000 acres of land in the City of Chicago, County of Cook and the State of Illinois and one of these properties within the Park System (the **"System"**) is commonly known as Jackson Park, with an address of 6401 S Stony Island Ave, Chicago, IL 60637; and,

WHEREAS, Project 120 Chicago is developing and implementing projects in partnership with the Chicago Park District and the Community to revitalize Frederick Law Olmsted's South Parks (Jackson, Washington, and Midway).;

WHEREAS, the Park District has designated an area within Jackson Park as described on attached Exhibit A (the **"Site"**), as land fit for installation of **"SKYLANDING"** (the **"Sculpture"**), a significant work of art by Yoko Ono;

WHEREAS, 120 has agreed to fund the construction of a Sculpture and Gardens at the designated site (the **"Project"**), as further described in the plans set forth in Exhibit B, attached and incorporated by this reference (the **"Final Plans and Specifications"**);

WHEREAS, the Park District desires to allow the siting of the Project at the Site; and

NOW THEREFORE, for and in consideration of the foregoing recitals incorporated by this reference, the promises, mutual covenants, representations, warranties and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. THE PROJECT.

- 1.01. 120 will cause the Project to be built according to the Final Plans and Specifications (Exhibit B). At a minimum the Project must conform to the plans approved by the Parties as set forth on attached Exhibit B and, to be maintained according to Exhibit E.
- 1.02. The Park District and 120 will negotiate in good faith to modify the Final Plans and Specifications if necessary to comply with all applicable laws and regulations related to any Site (the **"Required Changes"**). The cost of any Required Changes shall be paid by 120.

1.03. The Park District may request changes or upgrades to the Project not required by law or governmental permit rules or unforeseen conditions that arise during construction, (the "Optional Changes"). Upon request of Optional Changes, 120 shall provide the cost of such Optional Changes to the Park District, which shall either approve the cost or withdraw the request for such Optional Change. If the Park District does not withdraw the request, 120 will include the Optional Change(s) in the Project and the Park District will fully fund the cost of such change in advance as further described in Section 2.02.

1.04. 120 shall have the following responsibilities regarding the Project:

- a. Obtain all necessary permits authorizing construction of the Project from all public agencies having jurisdiction over the Project, in compliance with all applicable laws, regulations, codes and the permitting process.
- b. Be responsible for negotiating, gathering, collecting, and in all other ways collaborating with potential and actual donors for any and all costs—except those otherwise specified herein—associated with the development and construction of the Project.
- c. Fulfilling any financial obligations to the Park District for any and all costs overruns associated with the development and construction of the Project caused by unfulfilled donor obligations or commitments;
- d. Indemnification of CPD by all donors.
- e. Commence construction of the Project and proceed on a steady and consistent basis so all work is completed in a commercially reasonable prompt manner. 120 will confer and coordinate with the Park District on a mutually acceptable construction timetable.
- f. Provide all labor and materials necessary for construction of the Project. Engage a contractor for the Project (each, a "General Contractor") pursuant to a construction contract to perform services and construct the Project. 120 agrees the Project will be completed substantially in accordance with the Final Plans and Specifications approved by the Park District, as amended by change orders. All work will be done in a workmanlike manner and shall be in compliance with all local, state and federal building codes, laws and regulations.
- g. By appropriate provision in all contracts for the construction of the Project, require each General Contractor to insure, indemnify, save and hold harmless the Park District, as more fully described in Sections 6 and 7 below.

- h. Communicate regularly with the Park District throughout the construction of the Project. Upon reasonable request by the Park District, 120 or its designee will provide written reports describing the status of the Project and whether the Project is proceeding in accordance with this Section 1.
- i. Prior to authorizing any material change to the Final Plans and Specifications or extending the scope of work or time of performance, 120 shall submit such change order to the Park District for its review and approval. The approval by 120 of all change orders described in this Section 1.04.f. is subject to the prior written consent of the Park District, which shall not be unreasonably withheld or delayed. In the event 120 or its agents, assigns, officers, contractors or subcontractors, employees, invitees or anyone under direction of 120 exceeds the scope of work agreed to with the Park District, then 120 shall be solely responsible for any direct or indirect costs associated with any material changes or expansion of their scope of work extension of their time of performance.
- j. Notify the Park District upon substantial completion of the Project, and cooperate with inspection of the Project by the Park District. The notice of substantial completion for the Project must be accompanied by final waivers of lien from all contractors and subcontractors engaged by 120 or the General Contractor who performed work in connection with such Project. Within ten business days from the receipt of notice of substantial completion, the Park District shall inspect the Project and notify 120 in writing of any deficiency in the inspected Project which would prevent the Project from complying with this Agreement, the Final Plans and Specifications or from securing all use, occupancy and operation permits required by law. 120 shall make changes necessary to the Project, if any are required to comply with applicable law or the Final Plans and Specifications, pursuant to the Park District's response to the completion notice. This notice and inspection procedure shall repeat itself until the Park District issues a final acceptance notice or if the Park District does not provide notice of objection within ten business days of receipt of a substantial completion notice, the Park District shall be deemed to have approved the Project to which the completion notice relates. The date on which the Park District accepts the Project (or is deemed to have provided acceptance) shall be the "Acceptance Date" for such Project.
- k. As of the Acceptance Date of the Project, 120 will deliver a statement listing any known and then-filed suits brought by any third-party, contractor, subcontractor, employee, agent or assignee in connection with such Project. In addition, 120 will disclose to the Park District any losses, damages, injuries, costs, liabilities, potential causes of action, liens or expenses brought or claimed by any third-party, contractor, subcontractor, employee, agent or assignee in connection with such Project that are actually known by 120, provided however responsibility for such losses, damages, injuries, costs, liabilities, potential causes of action, liens or expenses shall be as set forth in Section 7.02 below.

- l. Payment of all costs not otherwise specifically assigned or attributed to the Park District by this Agreement.
- m. 120 shall be responsible for all maintenance regarding the Project, including cleaning the Project on an as-needed basis, but at least twice a year in the spring and fall, in order to keep the Project in a sightly and attractive condition befitting its importance. 120 shall hire a professional sculpture maintenance service which shall be subject to the approval of the Park District, which shall not be unreasonably withheld. 120 shall also be responsible for all unforeseen repairs and maintenance of the Project, including vandalism, graffiti removal, storm and general weather damage, acts of God, or any other causes which shall require timely attention by 120. Park District staff will alert 120 to any observed damage, but 120 shall be expected to routinely monitor the Project, either as an organization or through their designated agents or assigns. 120 shall make any needed repairs to the Project in a timely and professional fashion, using an art restoration service which shall be approved by the Park District, and whose approval shall not be unreasonably withheld.
- n. 120 shall provide the Park District with a yearly payment in the amount of \$3500 for the purpose of providing hand cutting of grass around the petals of *SKYLANDING* during the period of grass growth (approximately April-October). Payment shall be sent by March 1 of each year to:

Department of Natural Resources
Chicago Park District
541 N. Fairbanks
Chicago IL 60611

- 1.05. The Park District hereby engages 120 as its representative in the construction of the Project as set forth in this Agreement, including the Final Plans and Specifications. 120 shall carry out its activity in a commercially reasonable manner and consistent with the terms of this Agreement. 120 agrees that any contracts it enters into for construction of the Project will require such contractor to correct any deficient or defective work or materials for a period of one (1) year from the date of final acceptance of the subject work, or such longer period as may be provided by any applicable special warranty in such contract. 120 shall cause the Park District to be named as an additional beneficiary on any such special warranties. During the construction phase, 120 shall cause the contractors to secure the Site, to utilize designated parking and staging areas and not to unreasonably interfere with or impede routine Park District programs in the vicinity of the Site.

- 1.06. No later than 30 days after the Acceptance Date of the Project, 120 must deliver a complete set of as-built construction documents for the Project on paper and electronically to the Park District. All construction documents, data, schematics, design documents, copyrights and contract documents with regard to the construction of the Project shall be the property of the Park District. After Final Acceptance of the Project, 120 shall promptly assign all of its rights in and to such documents to the Park District and shall deliver such documents to the Park District.
- 1.07. Subject to Section 5.03, as of the Acceptance Date of the Project, 120 shall require the General Contractor, landscape subcontractor or manufacturer of materials for the Project to document all third party guarantees and warranties on such Project or any applicable portion thereof for the limited benefit of the Park District.
- 1.08. The Park District represents and warrants the Project Site is suitable for the construction of the Project, including environmental fitness. No further testing is requested, or may be undertaken without written approval of the Park District, and any circumvention of this shall subject 120 to a change of scope liability regarding any costs associated with said testing, including delays, changes of scope of work and termination costs.

SECTION 2. BUDGETS.

- 2.01 120 shall be responsible for the entire cost of the project, with the exception of any Optional Changes requested by the Park District, which shall be billed at 120's cost.
- 2.02 Unless otherwise specifically stated in this Agreement, the only costs the Park District shall be responsible for are costs of Optional Changes. The Park District shall pay such costs within 30 days of demand by 120.

SECTION 3. OBLIGATIONS OF THE PARK DISTRICT.

- 3.01. The Park District agrees to assist 120 in securing all permits required for the construction, use and occupancy of the Project and to the extent permitted by law, execute and submit applications for such permits as owner of the Site.
- 3.02. Without the Park District having been deemed to convey a real estate interest in any area of the Park or granted possession thereof to 120, the Park District hereby grants 120, its employees, consultants and contractors, a license to enter the Site for the sole purpose of constructing the Project commencing on the date hereof, and ending on the earlier of: (i) with respect to the Project, the Acceptance Date of such Project (plus an appropriate period thereafter to complete any punch list items) or (ii) the date of termination of this Agreement pursuant to any early termination provision in this Agreement. The Park District retains all rights to enter and remain upon the Site during

construction. 120 shall not enter the Site without prior notice to the Park District, except in the ordinary course of construction. The Park District shall have the right, at the Park District's sole cost, to have one or more of its representatives present at the Site at all times during the construction of the Project. The Park District shall not allow any third party to use or enter the Site until 120 notifies the Park District in writing that the Project is complete.

3.03. During the construction of the Project, the Park District shall have the following responsibilities in connection with the Project:

- a. Allow a reasonable number of parking spaces for construction personnel within the construction fencing for the Site.
- b. Allow access to existing utility hook-ups during construction.
- c. Designate an employee of the Park District as Project Manager responsible for facilitating communication between 120 and the Park District regarding the Project.
- d. To the extent allowed by law, waive all permit and other fees related to the construction of the Project and associated permits and applications, provided, however, 120, as applicable, the General Contractor for the Project and their subcontractors shall substantially comply with the permit provisions attached as Exhibit D.

3.04. Upon the Acceptance Date for the Project, the Park District shall take full and unencumbered ownership of *SKYLANDING*. Any liens, lawsuits, claims, perfected interests or any other encumbrance attached to *SKYLANDING* which dates from actions prior to the Acceptance Date shall be the sole responsibility of 120.

3.05. From and after the Acceptance Date for the Project, the Park District shall have the following responsibilities in connection with the Project:

- a. Maintain all utilities for the Project and the Site, including water and electricity, as the Park District may deem appropriate.
- b. The Park District may install additional security features for the Project, which may include additional fencing, security cameras and other reasonable security measures.
- c. If the Project or any part of it is destroyed during the Term, 120 shall have the option of repairing, rebuilding or replacing the Project at 120's cost, subject to the approval of the Park District, which approval shall not be unreasonably withheld. 120 may choose in its discretion to purchase insurance for the Project during the

Term to protect against this cost and the Park District shall cooperate with 120 to purchase insurance for this purpose. Notwithstanding this Section 3.05(e), 120 shall not be required to repair, rebuild or replace the Project.

- d. The Park District shall be responsible for all routine Project and Site maintenance not covered by Sections 1.04 (m) and (n) of this Agreement, *supra*.

- 3.06. The Park District is solely responsible for determining the hours of use of a Project in accordance with the Park District's permit policies and procedures. It is the intent of 120 and the Park District that this Project is being undertaken to primarily benefit the Project's neighboring community and people seeking to understand the history of Fair Housing. In furtherance of that goal, the Park District will waive Project use permit fees for youth sports organizations or recognized community groups who apply for a permit at least thirty (30) days in advance for use of the Project (the "Local Use Times"). At all other times, the Project shall be managed in accordance with applicable Park District permitting fee schedules.

SECTION 4. NAMING RIGHTS AND PUBLICITY FOR THE PROJECT.

- 4.01. 120 shall have the right to designate one or more sponsors (each a "Project Sponsor") for the Project to be recognized with the right to name the Project and provide signage for the Project ("120 Signage"), providing that any potential sponsorship materials, logo or signage to be affixed to the Project be reviewed and authorized by the Park District in advance of placement. 120 shall not allow any such right to designate a Project Sponsor to extend beyond the useful life of the Project. The Park District is not responsible for the maintenance, repair or replacement of any 120 Signage that may become damaged, destroyed, removed, vandalized or otherwise defaced in any manner, but 120 shall have the right to repair or replace any damaged or destroyed 120 Signage at its own cost during the term of this Agreement. If 120 fails to remedy the condition of any 120 Signage within 30 days of notice, the Park District may repair, replace or remove the 120 Signage without incurring any liability and all costs associated with the Park District's actions will be paid or reimbursed by 120. The Park District shall not permit identification or promotional messages, logos, names or signs of any third party, including without limitation any other sponsor or donor on or associated with the Project, that visually interfere with 120 Signage for the Project or that promotes a company in the same line of business as Project Sponsors (e.g., a sign for the State Farm Insurance will not be placed on the Project for which, for example, The Allstate Corporation might be the Project Sponsor).
- 4.02. The Park District and 120 shall coordinate mutually agreeable schedules and activities in connection with groundbreaking and opening day ceremonies for the Project.
- 4.03. 120 will not use the name of the Park District in any publicity or news release without

the prior approval of the Park District, which approval shall not be unreasonably withheld.

- 4.04. The Park District shall not have the right to use the name or logo of any Project Sponsor without the written consent of the Project Sponsor, in such Project Sponsor's sole discretion.
- 4.05. Subject to Section 10.15(b)(2)(B), each Party shall have the right, at any time in its sole election and at its sole respective cost, to cause its own signage to be removed from any of the Projects.

SECTION 5. REPRESENTATIONS AND WARRANTIES.

- 5.01. The Park District represents and warrants it has the right and authority to enter into this Agreement and to take all actions necessary to fulfill its obligations hereunder and to permit 120 to fulfill its obligations hereunder. The Park District represents and warrants, to its knowledge, this Agreement does not conflict with the Chicago Park District Act (the "Act"), the Park District Code, or with the Public Officer Prohibited Activities Act or any other applicable law, rule, code or regulation.
- 5.02. 120 represents and warrants it is authorized to enter into this Agreement and carry out its obligations hereunder.
- 5.03. To the extent permitted by law and applicable contract, on and after the Acceptance Date of the Project, 120 shall assign to the Park District warranties of third parties relating to the Project, if any, either express or implied, as to any matter including, but not limited to, implied warranty of fitness or otherwise related to the Project or performance by any contractor of any products or services related to the Project.

SECTION 6. INSURANCE

- 6.01. 120 agrees that each General Contractor and any subcontractors performing activities pursuant to the implementation of this Agreement with regard to the Project, whether such persons are performing the activities for compensation or in-kind, must secure, pay for and maintain prior to the Acceptance Date, insurance in the following minimum coverages and limits of liability:
 - a. **Worker's Compensation and Employer's Liability Insurance** in accordance with the laws of the State of Illinois, with statutory limits covering all employees, and Employer's Liability Insurance with limits of not less than \$1,000,000.00 for each accident or illness.
 - b. **Commercial General Liability Insurance** on an occurrence basis or equivalent with limits of liability not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in

the aggregate for bodily injury, property damage and personal injury. Coverage shall include Premises and Operations, Products/Completed Operations, Broad Form Property Damage, Independent Contractors and Contractual Liability and Explosion/Collapse/Underground Hazards (if applicable). The Chicago Park District are each to be endorsed as an additional insured on a primary, non-contributory basis.

- c. **Commercial Automobile Liability Insurance** covering all owned, non-owned and hired motor vehicles, including the loading and unloading thereof, with limits not less than \$1,000,000.00 combined single limit. The Chicago Park District is to be endorsed as an additional insured on a primary, non-contributory basis.
- d. **Excess Liability Insurance** shall be maintained with limits not less than \$5,000,000.00. The Chicago Park District is to be endorsed as an additional insured on a primary, non-contributory basis.
- e. **All Risk Property Insurance** coverage for the contractor/vendors personal business property, business interruption and extra expenses. Coverage shall include property on premise and in transit of equipment, including electronic data processing equipment, owned by the Park District and leased or used by the contractor/vendor in connection with the operation of the contract. This coverage may be included as part of the CGL policy noted in this Section 6.

6.02. 120 shall carry insurance in connection with the Project comparable to and in no event less than the insurance 120 carries in its normal course of business.

6.03. Prior to starting work at the Site, all policies (except the worker's compensation policy) related to work performed at the Site shall be endorsed to include the Park District as additional insured with respect to the responsibilities of 120 under this Agreement. Such policies shall also provide the Park District and 120, as applicable, be given 30 days' prior written notice of any reduction, cancellation or non-renewal of coverage affecting the coverage required under this Agreement which notice the carrier shall endeavor to provide (except ten days' notice shall be sufficient in the case of cancellation for non-payment of premium) and shall provide the insurance coverage afforded to the Park District shall be primary to any insurance carried independently by the Park District, if any, with respect to the responsibilities of 120 under this Agreement. Each such policy shall also contain, whether by endorsement or otherwise, a waiver of subrogation clause in favor of the Park District and 120 the effect of which shall be to waive the insurers' rights of recovery against all such entities.

6.04. The Parties acknowledge the Park District is a self-insured entity and commencing on the Acceptance Date of the Project, the Park District shall be responsible for all insurance coverage related to such Project, if any, in the coverage and amounts the Park District determines in its own discretion.

SECTION 7. INDEMNIFICATION.

- 7.01. 120 agrees to defend, indemnify, keep and hold harmless the Park District, its Commissioners, officers, representatives, employees, volunteers and agents (the "**Park District Indemnified Parties**") from and against any and all third party claims, demands, losses, costs, damages, liabilities, suits, actions, causes of action and expenses the Park District Indemnified Parties may each suffer, incur or sustain or for which the indemnified party may become liable resulting from, arising out of, or relating to: (i) any claims including personal injury, death or property damage on any Site occurring prior to the Acceptance Date of the Project on such Site which claims are related to the Project (but excluding claims for personal injury, death or property damage which are unrelated to the Project), (ii) any claims arising from the gross negligence or intentional misconduct in 120's performance under this Agreement as it relates to a Project, or (iii) the filing of any liens affecting any Site or the Project, or any part thereof, by any contractor, subcontractor or agent of 120 at any time. 120's obligations under this Section 7.01 shall survive the termination of this Agreement.

Notwithstanding the foregoing, for claims in any way related to a Project filed after the Acceptance Date of such Project but related to events or occurrences prior to the Acceptance Date of such Project, the Parties agree to submit such claims to the insurance carrier of the General Contractor for the Site (see Section 6 above). To the extent such claims are covered by such insurance, 120's indemnity obligation shall be reduced by the amount actually paid by the insurer.

- 7.02. No Party waives any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute or judicial decision.
- 7.03. Each Party acknowledges the requirements set forth in this Section 7 to indemnify, keep and save harmless and defend are apart from and not limited by any duties and representations under the Agreement, including the insurance requirements.
- 7.04. Notwithstanding anything expressed or implied to the contrary in Sections 7.01 or 7.02, 120 shall not be required to indemnify any Park Indemnified Party and the Park District shall not be required to indemnify any 120 Indemnified Party for any act or omission that constitutes a material breach of this Agreement by the party seeking indemnification.

SECTION 8. EVENTS OF DEFAULT AND REMEDIES.

- 8.01. In the event the Park District fails to satisfy the foregoing terms and conditions or breaches this Agreement at any time and if such failure or breach has not been cured or steps to cure such failure or breach have not been taken to the reasonable satisfaction

of 120 within 60 days following written notice from 120 of such failure or breach, then, upon written notice to the Park District, this Agreement shall terminate and all obligations of 120 and the Park District under this Agreement (other than those obligations set forth in Section 7) shall cease. If termination under this Section 8.01 occurs prior to Acceptance of all Projects the Park District shall pay 120 for the following costs incurred in connection with the Project prior to the date of termination: costs of materials, architectural fees in connection with the preparation of the Final Plans and Specifications, governmental permit applications and in connection with construction of the Project and general contractor fees in connection with Site preparation, preparation of the Final Plans and Specifications, governmental permit applications and preparation of bid documents and any subcontractor claims for payment for work performed against 120 or the general contractor not yet paid under this Agreement.

8.02. In the event of a material breach of this Agreement by 120 not cured within 60 days of written notice of such breach by the Park District and if the Park District has satisfied the terms and conditions of this Agreement and is not in breach of its obligations under this Agreement, then from and after the conclusion of such 60 day period, upon written notice to 120, this Agreement shall terminate and all of the obligations of 120 and the Park District under this Agreement (other than those obligations set forth in Section 7) shall cease. If termination under this Section 8.02 occurs prior to the Acceptance Date of all Projects, the Park District shall determine in good faith whether to continue building or scale back the Project regardless of whether the project continues. Should the Park District determine to continue building the Project, 120's sole liability and responsibility under this Agreement shall be to forfeit its contribution to the Project and turn over control of the Projects to the Park District. However, should the Park District determine in good faith that it is not financially able to continue building the Site still under construction at time of 120's breach, then 120 will be solely responsible for providing the funding necessary to restore the Site to its previous condition, to the reasonable satisfaction of the Park District. Notwithstanding Section 8.03, the remedies set forth in this Section 8.02 shall be each Party's sole and exclusive remedy for a 120 breach.

8.03. Each Party agrees monetary damages could be inadequate to compensate the other Parties for any breach of any covenant or agreement set forth herein. Accordingly, each Party agrees and acknowledges any such violation or threatened violation could cause irreparable injury to the other Parties and in addition to any other remedies which may be available, in law, in equity or otherwise, the other Parties shall be entitled to seek injunctive relief against the threatened breach of this Agreement or continuation of any such breach, without the necessity of proving actual damages. However, the Parties agree prior to seeking the remedy contained in this Section 8.03, 120, the General Superintendent of the Park District and the General Counsel of the Park District will use good faith efforts to resolve any disputes between the Parties.

8.04. Notwithstanding anything in this Section 8 to the contrary, nothing in this Section 8 shall in any way limit any Party's rights to indemnification under Section 7.

SECTION 9. COMPLIANCE.

- 9.01. In the event of a conflict between any provisions of this Agreement and the provisions of the Act, the Act shall prevail and control.
- 9.02. Each Party must observe and 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 Agreement.
- 9.03. Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.
- 9.04. This Agreement shall not be legally binding on the either Party if entered into in violation of the provisions of the Public Officer Prohibited Activities Act, 50 ILCS 105/0.01 et seq. The Park District's Ethics Code, Chapter III of the Code shall be incorporated into and made part of the Agreement.
- 9.05. Any agreement lawfully entered into for a period of more than one year shall be executory only for the amounts for which the Park District may become liable in succeeding fiscal years pursuant to Section 17(i) of the Act. Any expenditure beyond the current fiscal year is subject to appropriation in the subsequent fiscal year budget.
- 9.06. 120 must pay all fees and obtain all licenses, certificates and other authorizations required of 120 by law in connection with the Project.
- 9.07. Provisions required by law, ordinance, rules, regulations or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or upon application by either Party or upon application by either Party, this Agreement will be amended to make the insertion.
- 9.08. If any law, code, rule, regulation or any provision referenced in this Section 9 has a material adverse impact on the rights, benefits or obligations of 120 under this Agreement, then the Parties shall meet and discuss in good faith an equitable resolution. If the Parties are unable to otherwise agree, then all of the affected rights and obligations of the Parties shall cease and either Party may immediately terminate this Agreement by written notice to the other Party.

SECTION 10. MISCELLANEOUS.

- 10.01. Amendment. This Agreement may not be amended or modified without the prior written consent of the Parties hereto.
- 10.02. Assignment. No Party may sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the prior written consent of the other Party, which consent shall be in each Party's sole discretion.
- 10.03. Binding Effect and Disclaimer of Third-Party Beneficiaries. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Parties and their respective successors and permitted assigns (as provided herein). Nothing contained in this Agreement, nor any act of a Party, shall be deemed or construed by any of the Parties or by any person, to create or imply any relationship of third-party beneficiary, principal, agent, limited or general partnership, joint venture or any association or relationship involving the Park District or 120.
- 10.04. Construction. The term "include" (in all its forms) means "include without limitation," unless the context clearly states otherwise. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof. All references to a number of days mean calendar days, unless indicated otherwise. "Business Day" means any day other than a Saturday, a Sunday or any day in which banks in Illinois are authorized or obligated by law or executive order to close.
- 10.05. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.
- 10.06. Entire Agreement. This Agreement (including the preamble, recitals and each attached Exhibit), reflects and constitutes the entire Agreement between the Parties and it supersedes all prior agreements, negotiations and discussions between the Parties relative to the subject matter hereof. There are no other representations, inducements or other rights or obligations being extended to any party with regard to the Project or any Project.
- 10.07. Further Assurances. 120 and the Park District each agrees to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.
- 10.08. Force Majeure. No Party shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, terrorist act, declaration of emergency by government authorities, shortage of material, unusually adverse weather conditions such as, by way of

illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones which in fact interferes with the reasonable ability of such Party to discharge its obligations hereunder. The Party relying on this Section 10.08 with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other Parties and may only rely on this Section with respect to any such delay to the extent of the actual number of days of delay effected by any such events described above.

10.09. Governing Law, Venue and Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois or the United States District Court for the Northern District of Illinois.

10.10. Limitation of Liability. No member, official, director, officer, trustee, agent, contractor, subcontractor, volunteer or employee of the Park District or 120 shall be personally liable to any other Party or any successor in interest in the event of any default or breach by any of the Parties, as applicable, or for any amount which may become due to or from such Party or any permitted successor in interest or on any obligation under the terms of this Agreement.

10.11. Notice. All notices pursuant to this Agreement shall be made via reputable overnight courier to the following addresses:

if to the Park District: General Superintendent
Chicago Park District
541 N. Fairbanks
Chicago, IL 60611

with a copy to: General Counsel
Chicago Park District
541 N. Fairbanks
Chicago, IL 60611

if to 120: Project 120 Chicago
203 N. LaSalle Street Suite 2500
Chicago IL 60601

with a copy to:

Any notice, demand or request sent by guaranteed overnight courier shall be deemed received on the business day immediately following acceptance for delivery by the overnight courier.

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

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

10.14. Term. The term of this Agreement (the “Term”) shall commence upon the date hereof and, unless terminated as permitted herein, terminate on the earlier of: (a) Ten (10) years after the effective date of this agreement or (b) upon 60 day prior notice to 120 from the Park District that the Park District will terminate this Agreement without cause for convenience. The Park District and 120 shall have the joint option to extend this agreement automatically for another ten (10) year term, unless either parties opts, within sixty (60) days of the natural expiration of the initial term, not to renew. Further, there shall be a series of four (4) twenty (20) year extensions available which will each individually take effect upon the written approval of both parties at any time during the preceding term, but no later than sixty (60) days from the expiration of the present extension term then in effect

10.15 Effect of Termination.

a. Termination under 10.14(a). If the Park District desires to terminate the Agreement pursuant to Section 10.14(a), it shall notify 120 in writing and provide 120 the right to extend this Agreement by providing the funds necessary to resurface and otherwise improve the Project (the “Improvement Items”). In the event 120 determines to provide or obtain for the Park District the funds necessary for the Improvement Items, then this Agreement shall continue in full force and effect until such time as the newly installed Improvement Items have exceeded their useful life and 120 no longer provides funds for Improvement Items. For the avoidance of doubt, nothing in this Section 10.15(a) shall reduce the Park District’s obligation to maintain the Project consistent with the Park District’s standards for similar facilities nor shall it limit the obligations of the parties to pursue remedies and warranties available from the manufacturer, installer or other vendors related to the Project.

b. Termination for Convenience.

(i) If the Park District terminates this Agreement for convenience before the Final Acceptance Date of the Project under Section 10.14(b), the Park District shall notify 120 in writing and shall reimburse 120 for the following

costs incurred in connection with the Project that have not been accepted prior to the date of termination: costs of materials, architectural fees in connection with the preparation of the Final Plans and Specifications, governmental permit applications in connection with construction of the Project and general contractor fees in connection with Site preparation, any subcontractor claims for payment for work performed against 120 or the general contractor resulting from or related to the termination of the Agreement by Park District.

(ii) If the Park District terminates this Agreement for convenience under Section 10.14(b) after the Final Acceptance Date or after 120 has installed the Project, then:

(A) The Park District shall on the effective date of such termination for convenience reimburse 120 for the aggregate cost of the Project or, if applicable the aggregate cost of a Improvement Item, less depreciation of 12.5% annually, assuming the average life span of a Project or Improvement Item to be ten years (an illustration of the calculation of the reimbursement amount is set forth on attached Exhibit F); and

(B) The Park District shall have the right to remove any 120 Signage after the date of termination in its discretion and the Park District shall have the obligation to remove the signage of any Project Sponsor upon written notice to the Park District from such Project Sponsor. In either case, the cost of removing the 120 Signage shall be borne solely by the Park District.

c. Termination after Improvement Items. In the event that the term is extended due to 120's providing Improvement Items, then the Termination Fee shall continue to be calculated and reduced on the basis set forth above except that the years remaining shall be reset at the number then remaining for the extended term and starting in the year of such additional expenditure, but in no case may it exceed ten years. Notwithstanding the foregoing, in all circumstances such fee in the eighth year shall be \$0.00.

d. No Limitation of Remedies. Notwithstanding this Section 10.14, nothing in this Agreement including the Park District's right to terminate for convenience under Section 10.14(b) precludes 120 from pursuing all of their rights and remedies available at law or in equity, including without limitation right to seek injunctive relief to prevent any change conflicting with the provisions of Section 4.01.

10.15. Waiver. Waiver by 120 or the Park District with respect to any breach of this Agreement

shall not be considered or treated as a waiver of the rights of the respective Party with respect to any other default or with respect to any particular default, except to the extent specifically waived by 120 or the Park District in writing.

- 10.16 Dispute Resolution. A dispute between the Park District and 120 involving this Agreement or the Project that has not been resolved, shall be referred to the Park District's General Superintendent and Chief Executive Officer (the "General Superintendent") and the Executive Director of 120 (the "ED"). Either party may give written notice of the dispute to both the General Superintendent and the ED, who shall meet within 10 days of notification to resolve the dispute. In the event the General Superintendent and the ED fail to resolve the dispute, each party may pursue its remedies at law, and shall endeavor to do so within one (1) year of the date notification of the dispute is given.
- 10.17 Funding Assurance Prior to the issuance of any permits necessary to begin construction of the Project or disbursement of any Park District funds in support of the Project, 120 shall submit a copy to the Park District of any bank statements indicating the total funds raised for the Project, as well as any other information reasonably requested by the Park District demonstrating the specific purpose of the funds.
- 10.18 Waiver of VARA 120 represents that it has authority to waive, and does hereby waive, the filing any claims under The Visual Artist Rights Act (VARA) of 1990 regarding the Project or its contents. The Park District shall not undertake to make any changes, modifications, alterations, repairs, restoration, relocations (except in emergency situations concerning public safety) or perform any work on the Project whatsoever without the express consent of 120 or its designated representative, which shall not be unreasonably withheld.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

CHICAGO PARK DISTRICT,
an Illinois municipal corporation

PROJECT 120 CHICAGO,
an Illinois not-for-profit corporation

By: Cathy Breitenbach
Cathy Breitenbach
Director of Cultural & Natural Resources

By: Robert W. Karr, Jr.
Robert W. Karr, Jr.
President

EXHIBIT A

JACKSON PARK

PROPOSED LOCATION AND SITE PLAN

EXHIBIT B

PROJECT DESCRIPTION

Plans and Specifications: