

**RELEASE AND SETTLEMENT AGREEMENT**

This Release and Settlement Agreement (the "Agreement") is entered into as of JANUARY 27, 20 17 (the "Effective Date"), by and between LSCD of Jefferson Park, LLC, an Illinois limited liability company, and LSC Development, LLC, an Illinois limited liability company (collectively, "Plaintiffs") and the City of Chicago and Judy Frydland, Commissioner of the Chicago Department of Buildings (the "City," and together with Plaintiffs, the "Parties"). Alderman of the 45th Ward of Chicago John Arena is a signatory to this Agreement only with respect to his specific obligations set forth below.

**WHEREAS**, Plaintiffs filed a Verified Complaint for Writ of Mandamus and Declaratory Relief against the City in the Circuit Court of Cook County, Illinois, in a lawsuit captioned *LSCD of Jefferson Park, LLC and LSC Development, LLC v. City of Chicago and Judy Frydland, Commissioner of the Chicago Department of Buildings*, Case No. 2016-CH-08259 (the "Lawsuit");

**WHEREAS**, the Lawsuit involves a dispute concerning a building permit issued to Plaintiffs, and later allegedly revoked, for construction on a parcel of property that Plaintiffs purchased in September 2015 that is located at 5150 N. Northwest Highway in Chicago (the "Property"), and an amendment of the zoning classification for the Property from M1-1 to B1-1;

**WHEREAS**, in the Lawsuit, Plaintiffs seek a declaration that they have vested property rights in the zoning classification applicable to the Property at the time they purchased the Property and began to renovate it, and a writ of mandamus directing and compelling the City to issue a building permit for Plaintiffs' planned construction;

**WHEREAS**, Plaintiffs intend to construct a five (5) story, approximately 133,000 gross square foot residential storage warehouse (the "Construction"), which is described in a Planned

Development Application filed on January, 18, 2017, Application Number 19084 (the "PD Application"), but the Property's current zoning does not permit such construction;

**WHEREAS**, Plaintiffs, the City, and Alderman Arena have read this Agreement, consulted with counsel about this Agreement, and they understand their obligations pursuant to this Agreement;

**WHEREAS**, the Parties desire to settle and compromise fully the Lawsuit on the basis of the terms set forth in this Agreement; and

**WHEREAS**, it is in the best interests of the Parties to settle the Lawsuit, to develop the Property as described herein, and to execute this Agreement.

**NOW THEREFORE**, for and in consideration of the promises, covenants, and conditions set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Recitals Incorporated in Agreement.** The foregoing recitals are incorporated in and made a part of the Agreement by this reference.

**2. No Admission of Liability.** The Parties agree that nothing contained in this Agreement shall constitute or be deemed to be an admission of any fault, liability, or wrongdoing of any kind whatsoever on the part of any Party or the Party's future, current, or former officers, agents, and employees. The Parties further acknowledge and agree that settlement is made to avoid the uncertainty and expense of litigation and to promote judicial economy.

**3. Construction of Building.** Plaintiffs shall construct the Construction as follows, as described in the PD Application: the northern 33,768 square feet of the Property will be developed as a five (5) story, approximately 133,000 gross square foot residential storage warehouse of approximately seventy-five (75) feet in height. The facility will be improved with

seven (7) outdoor parking spaces. The remainder of the Property will be developed as a multi-unit residence in accordance with the PD Application and any subsequent amendments to the PD.

**4. Zoning Change.** In order to facilitate the Construction, insofar as its height, density, and bulk exceed the limits imposed by the B1-1 zoning district that currently governs the Property, Plaintiffs, on January 18, 2017, applied for (i) a map amendment to rezone the property from a B1-1 zoning district into a B3-5 zoning district, and (ii) an elective planned development. All expenses incurred in connection with Plaintiffs' PD Application shall be borne solely by Plaintiffs.

**5. Support for Zoning Change.** Alderman Arena agrees to support and not to challenge Plaintiffs' PD Application. No less than ten (10) calendar days before the Chicago Plan Commission's hearing on Plaintiffs' PD Application, Alderman Arena shall issue a letter of support for the PD Application to the Chicago Plan Commission and to the Committee on Zoning of the Chicago City Council. The City agrees that it will provide a copy of such letter to Plaintiffs and to the members of the Chicago Plan Commission within one business day of its receipt. The City's Zoning Administrator also agrees to support the PD Application before both the Plan Commission and the Committee on Zoning.

**6. Chicago City Council Denial of Request to Rezone the Property.** If the Chicago City Council does not enact an ordinance changing the zoning for the Property as described in the PD Application within one-hundred eighty (180) calendar days of Plaintiffs' submission of the PD Application, such decision by the Chicago City Council shall not constitute a breach of this Agreement, and the Parties shall have all of the rights expressed in this Agreement.

**7. Permit Application.** Within one-hundred and sixty (160) calendar days of the

effective date of the enactment of an ordinance rezoning the Property in accordance with the PD Application and the granting of necessary and appropriate administrative adjustments and/or variances as may be required for the Construction, LSC Development, LLC agrees to submit a permit application for the Construction to the City's Department of Buildings. Plaintiffs agree to notify Alderman Arena that they have filed their application within five (5) business days of the filing. The City agrees to use its reasonable best efforts to complete its review of the permit application expeditiously so that a building permit can issue as soon as practicable, provided Plaintiffs have submitted all required plans, specifications, and other materials necessary for the City's review.

**8. Dismissal of Lawsuit.** Within five (5) business days from the Effective Date, Plaintiffs and Defendants will ask the Court to enter an Agreed Order in the Lawsuit dismissing the Lawsuit without prejudice. If the Chicago City Council enacts an ordinance rezoning the Property in accordance with the PD Application within one-hundred eighty (180) calendar days of Plaintiffs' submission of the PD Application, Plaintiffs obtain the administrative adjustments and/or variances as stated in Paragraph 7 of this Agreement, and the City issues a permit for the Construction, within seven (7) calendar days of the last of these events to occur, Plaintiffs and Defendants shall ask the Court to enter an Agreed Order in the Lawsuit dismissing the Lawsuit with prejudice. If the Chicago City Council does not enact an ordinance rezoning the Property in accordance with the PD Application within one-hundred eighty (180) calendar days of Plaintiffs' submission of the PD Application, Plaintiffs are not granted the variances and/or administrative adjustments stated in Paragraph 7, or the City does not issue a permit for the Construction, Plaintiffs shall be entitled in their sole discretion to develop the Property consistent with the current zoning classification, and to reassert their claims in the Lawsuit. If Plaintiffs fail to apply

for a rezoning of the Property, any zoning variance and/or administrative adjustment stated in Paragraph 7, or a building permit for the Construction within the time specified herein, the City shall not be bound by the terms of this Agreement.

**9. Tolling of Time-Based Limitations.** The Parties agree that the further passage of time eroding any statutes of limitations and other time-based limitations, whether based on statutes, administrative regulations, municipal codes or ordinances, or common law, applicable as of the Effective Date to any rights, claims, causes of action, counterclaims, crossclaims, and defenses relating to the subject matter of the Lawsuit, shall be tolled until the earlier of (i) 12 months from the Effective Date, and (ii) Plaintiffs' reassertion of their claims in the Lawsuit as provided in Paragraph 8 (the "Tolling Period"). The Tolling Period shall be excluded from all computations of any applicable statutes of limitations and other time-based limitations on court proceedings.

**10. Release.** Plaintiffs, after receiving the advice of counsel, understand and agree that, in consideration of this Agreement, Plaintiffs release and forever discharge on behalf of themselves, their assigns, employees, agents, and representatives, all claims they had or have, under local, state, or federal law, against the City, its current or former officers, agents and employees, and anyone acting on their behalf, arising either directly or indirectly out of the incidents which were the basis of the Lawsuit. This release shall become effective on the Effective Date, and shall become null and void in the event that the Chicago City Council does not approve Plaintiffs' application to rezone the Property in accordance with the PD Application within one-hundred eighty (180) calendar days of Plaintiffs' submission of the PD Application, Plaintiffs are not granted all variances and/or administrative adjustments stated in Paragraph 7 of this Agreement, or the City fails to issue a building permit for the Construction.

The City, after receiving the advice of counsel, understands and agrees that, in consideration of this Agreement, the City releases and forever discharges on behalf of itself, its assigns, employees, agents, and representatives, all claims the City had or has, under local, state, or federal law, against Plaintiffs, their current or former officers, agents and employees, and anyone acting on their behalf, arising either directly or indirectly out of the incidents which were the basis of the Lawsuit, including any unasserted claims or counterclaims against Plaintiffs. This release shall become effective on the Effective Date, and shall become null and void in the event that the Chicago City Council does not approve Plaintiffs' application to rezone the Property in accordance with the PD Application within one-hundred eighty (180) calendar days of Plaintiffs' submission of the PD Application, Plaintiffs are not granted all variances and/or administrative adjustments stated in Paragraph 7 of this Agreement, or the City fails to issue a building permit for the Construction.

**11. No Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the Parties and their successors and assigns, and is not intended to create, nor shall it be construed to create, any rights for the benefit of any other person, or to be enforceable by any other person, directly or derivatively in the name of any of the Parties.

**12. No Assignment.** No Party shall assign, in whole or in part, this Agreement or any of their respective rights or obligations under this Agreement, without the prior written approval of all other Parties. Such approval shall not be unreasonably withheld.

**13. No Assignment of Claims.** The Parties represent and warrant that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims or causes of action being released herein.

**14. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of

the Parties, the Individual Signatories, and such successors and assigns approved pursuant to Paragraph 12 of this Agreement. Terms contained herein shall not be construed against a Party merely because that Party is or was the principal drafter of this Agreement.

**15. Governing Law.** The Parties and the Individual Signatories agree that this Agreement shall be governed by and construed in accordance with the internal laws, but not the conflict of law rules, of the State of Illinois.

**16. Legal Authority.** The individuals signing this Agreement represent and warrant that they are duly authorized to enter into and execute this Agreement on behalf of the Parties on behalf of which or whom they are signing.

**17. Advice of Counsel.** In entering this Agreement, the Parties and the Individual Signatories represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, and that all of the terms of this Agreement have been interpreted and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted. The Parties also represent and warrant that no other person or entity has or has had any interest in the claims or causes of action referred to herein, that the Parties have the sole right and exclusive authority to execute this Agreement, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims or causes of action referred to herein.

**18. Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with regard to the settlement of the Lawsuit, any and all claims by Plaintiffs, and any and all unasserted claims and counterclaims by Defendants, regarding any of the issues that are raised in or could have been raised in the Lawsuit, and there are no other understandings or agreements between or among any the Parties with respect thereto. This Agreement may not be modified,



amended, waived, or revoked orally, but only by a writing signed by all Parties or their attorneys.

**19. Notice.** Any written notice given hereunder shall be sent by certified mail, return receipt requested, or messenger delivery as follows:

If to the City, Ms. Frydland, and/or Alderman Arena:

William Macy Aguiar  
Senior Counsel  
Department of Law, Constitutional and Commercial  
Litigation Division  
City of Chicago  
30 N. LaSalle, Suite 1230  
Chicago, Illinois 60602

If to Plaintiffs or either of Plaintiffs:

Patrick J. McNerney  
Partner  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, Illinois 60606

**20. Counterparts.** This Agreement may be executed in identical original counterparts, with each counterpart constituting the entire Agreement.

**21. Facsimile Signatures.** A facsimile signature shall be considered the equivalent of an original signature. The original signature shall be sent within ten (10) calendar days after the facsimile signature.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, the Parties hereto execute this Release and Settlement Agreement this 27<sup>th</sup> day of JANUARY, 2017, and this Agreement shall become fully effective upon its execution.

**LSCD of Jefferson Park, LLC**, an Illinois limited liability company

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

Its:

**LSC Development, LLC**, an Illinois limited liability company

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

Its:

**The City of Chicago**, an Illinois municipal corporation and home-rule government

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

Its:

**Judy Frydland**, Commissioner of the Chicago Department of Buildings

\_\_\_\_\_

**John Arena**, Alderman of the 45th Ward of the City of Chicago

\_\_\_\_\_

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By: 

Its: *MANAGE*

**LSC Development, LLC**, an Illinois limited liability company

By: 

Its: *MANAGE*

**The City of Chicago**, an Illinois municipal corporation and home-rule government

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

Its:

**Judy Frydland**, Commissioner of the Chicago Department of Buildings

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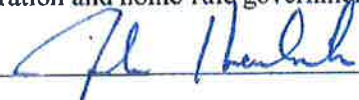
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Its:

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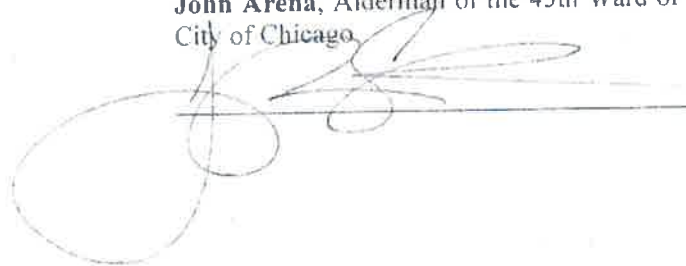
By: \_\_\_\_\_

Its:

**Judy Frydland**, Commissioner of the Chicago Department of Buildings

\_\_\_\_\_

**John Arena**, Alderman of the 45th Ward of the City of Chicago

A handwritten signature in blue ink, appearing to read "John Arena", is written over a horizontal line. The signature is stylized and includes a large circular flourish on the left side.