

PROFESSIONAL SERVICES AGREEMENT

This Agreement (“*Agreement*”) is made on the ____ day of October, in the year 2011 by and among Fifth Third Bank “*Lender*”, the Village of Orland Park, an Illinois municipal corporation, whose principal address is 14700 S. Ravinia Avenue, Orland Park, Illinois 60462 “*Village*” and U. S. Equities Development, LLC, whose principal address is 20 North Michigan Avenue, Chicago, IL 60602, hereinafter called “*USE*”. The project for which USE shall provide the professional services (as set forth in Exhibit A attached hereto; hereinafter called the “*Services*”) is the Village’s Ninety 7 Fifty on the Park Project (“*Project*”).

Now, therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Term of Agreement.**

USE shall provide the Services to Lender and Village, and Lender and Village shall compensate USE for the performance of such Services as provided for in Exhibit A hereof.

- a. Final completion of the Project; Twenty eight (28) months after the execution of this Agreement.

2. **Contractual Status.**

- a. In performing the Services under this Agreement, USE shall operate as, and have the status of, an independent contractor and shall not act as, or be an agent or employee of, Lender or Village. Furthermore, USE agrees that personnel used in performance of this Agreement shall not at any time or for any reason be considered employees of Lender or Village.
- b. USE agrees that none of the personnel or entities providing Services hereunder have or shall have any contractual, financial or familial relationship with Lender or Village or any of their officers, employees or agents (to the extent that USE is informed of the identities of such officers, employees or agents) except that Lender and Village acknowledge that entities employed by USE may also be employed by Lender and Lender may employ USE or affiliates pursuant to other agreements.
- c. The parties hereto agree that Arnie Tupuritis and Steven Belcaster shall be considered “*Key Personnel*” for the performance of certain of the required Services. USE shall not remove or reduce the level of participation of such Key Personnel prior to the completion of their work pursuant to this Agreement without the prior written approval of Lender and Village.
- d. All of USE’s personnel providing Services under the Agreement shall be technically and professionally qualified and acceptable to Lender and Village to perform the Services required hereunder.

3. **Furnishing Delivery of Services.**

USE covenants that it shall perform the Services in a timely, professional and workmanlike manner and shall comply with the requirements of this Agreement.

4. **Lender’s and Village’s Responsibilities.**

The Lender and Village agree:

- a. To furnish USE with drawings and project information regarding the pre-planning, existing site and structures, etc. that is available.
- b. To advise USE of the Lender's and Village's policies and procedures.
- c. To examine information submitted by USE and to render timely decisions pertaining thereto.
- d. Provide required information and approvals in a timely manner and adhere to the time conditions for such Lender and Village activities as set forth in approved schedules for the Project.
- e. To negotiate agreements between itself and other vendors and contractors that are compatible and consistent with this Agreement.

5. Indemnification.

USE will indemnify, defend and hold Lender and Village, their directors, officers, trustees, agents, servants and employees harmless from and against any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including reasonable attorneys' fees and court costs, arising out of claims, demands or causes of action by third parties ("Claims") sustained or incurred by or asserted against Lender and/or Village by reason of or arising out of USE's negligent acts, omissions or willful misconduct in connection with the performance or nonperformance of USE's duties and activities within the scope of this Agreement, except if and to the extent caused by or arising out of Lender's or Village's negligence, gross negligence or willful misconduct.

Lender and Village shall defend, indemnify and hold harmless USE, its trustees, directors, officers, managers, members, agents and employees from any claims, liability, damage suits, and expenses (including reasonable attorneys' fees) arising out of or resulting from the acts or omissions of Lender or Village, or their employees or agents or contractors in the conduct of its business which result in injuries (including death) to third parties and damage to property of USE and/or third parties. Lender shall obtain a similar indemnity from any contractor Lender contracts with to perform any portion of the work for the Project, protecting USE, its trustees, directors, officers, managers, members, agents and employees. Lender shall also require that its other contracts for the Project require the inclusion of USE, its managers, members, agents and employees as additional insureds on all insurance provided for the Project, such as a contractor's general liability policy, for example.

6. Insurance.

- a. Insurance Generally. USE shall procure and maintain at all times during the term of this Agreement, at its own cost and expense, the insurance specified below. Upon request, USE shall furnish Lender and Village with a certificate of insurance giving evidence of the required coverage prior to the commencement of any Services under this Agreement.
- b. Worker's Compensation Insurance. Complying with the requirements of the statutes of the State of Illinois covering all employees of USE with Employers' Liability coverage with limits of liability not less than \$1,000,000 each accident or illness shall be included.
- c. Commercial General Liability Insurance. Issued to and covering liability imposed upon USE with respect to the operations of USE, and all obligations performed by USE under the terms of

this Agreement. Independent contractors, contractual, and personal and advertising injury liability coverages are to be included. Lender and Village are to be named as an additional insured with respect to USE's operations in connection with this Agreement. Coverage under this policy shall have limits of liability of not less than one million dollars (\$1,000,000) combined single limit for bodily injury (including disease or death), personal injury, and property damage (including loss of use) liability or its primary policy. USE shall maintain at least ten million dollars (\$10,000,000.00) in total liability coverage for bodily injury, but the coverage may exist under any combination of primary and umbrella/blanket policies.

- d. Professional Liability Insurance. USE shall also at all times maintain errors and omissions insurance in an amount not less than Five Million and 00/100 Dollars (\$5,000,000.00).
- e. Automobile Liability Insurance. Issued to and covering the liability of USE arising out of USE of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered by General Liability Insurance of USE. The policy shall name Lender and Village as additional insureds with respect to USE's operations in connection with this Agreement. Coverage under this policy shall have limits or liability of not less than three hundred thousand dollars (\$300,000) per occurrence, combined single limit, for bodily injury and property damage liability.

7. Confidentiality.

- a. USE agrees that it, its employees, subcontractors, other personnel and agents shall not either during or at any time after the expiration or termination, for any reason, of this Agreement, directly or indirectly publish or disclose to any third party any information acquired, derived or in any way arising out of the Services performed for Lender or Village, which is of a proprietary nature such that it would damage the financial position of Lender or Village, if disclosed and is not then otherwise disclosed ("*Confidential Information*") without the prior written authorization of Lender and Village. This Section 7 shall survive the expiration or termination (for any reason) of this Agreement.
- b. USE shall hold in trust and confidence all Confidential Information obtained directly or indirectly in or through the files or records of Lender or Village, or disclosed by Lender or Village to USE in connection with the Services provided under this Agreement, and shall disclose and utilize such information only in connection with and to the extent USE, in good faith, believes it is reasonably necessary for the accomplishment of the Services. Nothing in this Section 7 shall prevent disclosure of any information (i) in connection with a legal proceeding, (ii) to USE's consultants, advisors and attorneys, or (iii) which has been otherwise disclosed.
- c. In the event that any legal, regulatory or other entity requests USE to disclose any information obtained during the performance of this Agreement, USE shall give Lender and Village written notice within a reasonable time prior to the date of requested disclosure to give Lender and Village the opportunity to object or take such other actions it may, in their sole discretion, deem necessary to preclude the disclosure of such information.

8. Compensation.

- a. During the term of this Agreement, as payment for the Services performed, Village to pay USE an amount not to exceed Two hundred seventy thousand four hundred twenty-seven dollars (\$270,427) (the "*Base Fee*").

- b. The Base Fee is to be billed as follows: Pre-construction – lump sum \$3,168(1 month); Monthly Construction oversight \$9,594 per month (24 months); Executive Meetings \$947 per month (24 months); Close-out \$4,760 per month (3 months).
- c. Village agrees to pay the reasonable and necessary out-of-pocket expenses of USE (“*Expenses*”), at the actual cost to USE with no mark-up, for document reproduction services, messenger services, mail and courier expenses, travel expenses for USE personnel and other reasonable and necessary expenses incurred by USE for the benefit of Lender and directly related to the performance of the Services. USE estimates that the Expenses for the Project will not exceed \$10,500.
- d. In the event Final completion of the Project is not achieved within the term set forth in Section 1(b), then to the extent the additional time required to achieve Final completion was not caused by USE, Lender, Village and USE shall in good faith mutually agree upon supplemental reasonable compensation for the additional resources expended by USE as a result of the additional time required to achieve Final completion.

9. Termination.

- a. Lender and Village may terminate or suspend performance of this Agreement at any time, for any reason whatsoever, upon thirty (30) days’ written notice to USE. In the event Lender and Village terminate the Agreement for its convenience, then Lender’s obligations to USE shall be payment for all Services performed and Expenses incurred prior to the effective date of such termination. Lender shall make such payment to USE within thirty (30) days of termination.
- b. Upon termination of the Agreement, USE shall cooperate with Lender and Village to facilitate the orderly transfer of all materials and information pertaining to the Project to Lender and Village.
- c. If either Lender or Village commit a material breach of this Agreement or if the Project is suspended for a period of six (6) months or more, USE may terminate this Agreement after providing Lender and Village with seven (7) days written notice. The Lender and Village shall have no less than seven (7) days within which to cure or evidence its intention to cure the material breach in question. If the Lender and Village have either cured the material breach or demonstrated their intention to cure the material breach within the notice period, USE shall not be entitled to terminate the Agreement. In the event of termination by USE, USE’s sole remedy shall be payment of those amounts due as well as termination expenses comprised of the actual costs incurred by USE to terminate its services for the Lender and Village.

10. Audit and Inspection of Records.

- a. Lender and Village reserve the right to inspect, copy and audit the reimbursable expense records of USE with respect to the Project (“*USE’s Records*”) in connection with all matters related to this Agreement in order to evaluate compliance of USE with all Expenses claimed to have been incurred directly in the performance of the Services. Lender and Village reserve the right to examine and audit USE’s Records, if necessary, to permit adequate evaluation of incurred cost data, along with the computations and projections used therein, subsequent to execution of this Agreement.
- b. If such audit discloses that Lender has been charged an unreasonable amount, or for an unreasonable Expense not otherwise permitted to be reimbursed hereunder, such sum shall be deducted from the next payment due USE, if any, or repaid by USE.

11. Works for Hire.

USE agrees (except with respect to items which have pre-existing copyrights) that copies of all reports furnished to Lender and Village by USE shall be the property of Lender and Village. Should Lender or Village elect to use work products or writings for other than the original project or purpose, Lender or Village (as the case may be) will indemnify USE against any responsibilities or liabilities arising from such reuse. This provision shall survive the termination of this Agreement for any reason.

12. Notices.

Any notice, request or other communication to either party by the other as provided herein shall be given in writing, sent by first-class mail, return receipt requested or by overnight courier, and shall be deemed given upon actual receipt by the addressee. Notices shall be addressed as follows:

If to Lender: Fifth Third Bank
Public Funds Group
222 N. Riverside
Chicago, Illinois 60606
Attention: Laura Shallow

If to Village: Village of Orland Park
14700 S. Ravinia Avenue
Orland Park, Illinois 60462
Attention: Paul Grimes, Village Manager

If to USE: US Equities Development, LLC
20 North Michigan Avenue
2nd Floor
Chicago, IL 60602
Attention: Arnie Tupuritis

13. Modification.

This Agreement constitutes the entire agreement between the parties and supersedes any and all prior representations, understandings or agreements between the parties, whether oral or written, concerning the subject matter hereof. This Agreement or any part hereof may not be changed, amended or modified, except by written agreement of the parties as signed by the duly authorized officers of all parties.

14. No Assignment.

This Agreement and the obligations hereunder may not be assigned or transferred by USE unless, in Lender's and Village's sole discretion, Lender and Village agree in writing prior to any assignment or transfer.

15. Severability.

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this

Agreement; and the remaining parts shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

16. Headings.

The headings contained herein are inserted for convenience of reference only and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof.

17. Priority of Documents.

To the extent there are conflicts between this Agreement and Exhibit A, the provisions of this Agreement shall be controlling.

18. Governing Law.

This Agreement shall be interpreted under and governed by the laws of the State of Illinois.

19. Reasonable Consent.

Wherever Lender or Village consent or approval is required by the terms of this Agreement, it shall not be unreasonably withheld, conditioned or delayed.

In witness thereof, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

U.S. Equities Development, LLC

By: _____

Name Printed: _____

Title: _____

Fifth Third Bank

By: _____

Name Printed: _____

Title: _____

Village of Orland Park

By: _____

Name Printed: _____

Title: _____

EXHIBIT A

SCOPE OF SERVICES

Preconstruction	
General Management	
	Attend project team meetings, write minutes
	Review and participate in Development Team's monthly reports or project progress. Provide written, as required or requested independent perspective on project progress. Prepare monthly report in format approved by Bank/ Village
	Monitor all consultant and vendor contracts on an as needed basis for compliance and completeness
Project Accounting	
	Track invoices/pay outs to all contractors and consultants
Schedule	
	Provide contact at principal levels to monitor schedule compliance
	Track milestone schedule and coordinate with Developer's schedule
Design Overview	
	Review of Contract Documents for completeness, coordination of disciplines, constructability, and quality assurance.
	Payment and performance bonds - 1) review if payment and performance bonds, and/or labor and material payment bonds, are needed/legally required and make recommendations to the Village of Orland Park and the Lender. 2) if required, advise to proper amount of bond coverage, review and verify bonds, and evaluate proposed sureties for acceptability
Construction	
General Management / Developer Oversight	
	Monitor all consultant and vendor contracts for compliance to terms
	Assist with conflict resolution at principal levels as required
	Ensure conformance with contract documents
	Prepare meeting minutes of OAC meeting
	Ensure project documentation
	Provide periodic updates for senior level management, as requested
	Provide monthly reports on project progress in form as required
	Participate in all construction meetings
	Observe construction practices and issue

Participate in coordination meetings
Participate in site conflict resolution as needed including project cost overruns or changes to contract
Attend all presentations related to the project as required
Provide / Assist in interpretation of Contract Documents as needed
Interact with architect; call all observed deviance from construction design documents to architect's attention for remedy or rejection; coordinate site observation visits

Construction (continued)
Budget
Evaluate cost estimate for design proposal requests which modify the final GMP documents
Track general contractor's GMP contract and expenditure for "allowance" items
Review updated project budget information on monthly basis or as required
Provide oversight of the overall development process to assure the budget is maintained
Review and determine rationale of cost overruns, claims for extra work, and claims of delay, and evaluation of same
Project Accounting / Monthly Draw Review
Attend pencil draw meetings
Perform monthly site visit to ascertain and verify stated percentage of completion and general compliance with project documents.
Generate inspection report
Track cost overruns and impacts
Allow line item change at predetermined amount per item, but not to exceed predetermined amount without consent
Review and recommend approval of draws
Change Order/Change Tracking
Review all Construction Change Directives and recommend approval or rejection
Review all change orders – review scope of proposed change
Evaluate all requests for change orders against GMP document requirements
Insure change orders are within legal limits and have proper written authorization
Schedule
Review updated project schedule information
Provide contact at principal levels to monitor schedule compliance
Executive Meeting
Participate in executive meeting (every two weeks expected) - Michael Tobin or Arnie Tupuritis
Close-out / Operational Integration
General Management
Attend meetings of the project team to monitor the project close out, and operational integration plan and schedule
Assist on any contractor claim issues that may arise
Assist in the financial, and legal close-out of project contracts and accounts
Assist in achieving the full operational integration of the project
Punch List
Monitor the creation of a punch list
Monitor punch list work
Occupancy
Monitor the application process for the C of O

Monitor contractor coordination of all inspections including fire and life safety, plumbing, HVAC, electrical and Health, leading to certification, and the full intended use of the project for final occupancy
--

Additional Services if requested	
	Construction
	Coordinate with independent testing company
	Collect, process, review, and approve all vendor, contractor, consultants and Lender contracted work, pay applications
	Manage overall development process to ensure the budget is maintained
	Manage Lenders Contingency
	Maintain detailed accounting of project cash flows
	LEED Coordination/ Commissioning
	Prepare Sustainability Plan and monitor execution
	Coordinate LEED Certification Application
	Coordinate Commissioning of completed building to comply with LEED requirements
	Value Engineering
	Lead value engineering exercise and prepare value engineering recommendations
	Assure value engineering analyses and life-cycle analyses are conducted where required.
	Make recommendations for alternate systems and cost saving building options

Additional Services will be billed at the Hourly rates listed below:

Michael Tobin	\$275.00 / Hr
Arnie Tupuritis	\$275.00 / Hr
Steven Belcaster	\$250.00 / Hr
Celia Egleston	\$58.00 / Hr

	Pre-Construction	Construction	Executive Meetings	Close-out
	A	B	C	D
	Pre-construction (review of; drawing, bid packages, subcontractor awards, construction sequencing, site logistic plan, attend pre-construction meetings)	Monthly Construction oversight (Weekly construction updates, attend meetings, review change requests, review monthly draws, verify waivers, monthly schedule and budget updates, issue monthly reports)	Participate in Executive Meetings (every two weeks expected)	Oversight of project close-out
Hours / Month				
<i>Michael Tobin/Arnie Tupuritis</i>	2	8	3	2
<i>Steven Belcaster</i>	15	45	0	24
<i>Celia Egleston</i>	6	10	2	10
Total Hours per month	23	63	5	36
Cost / Month				
<i>Michael Tobin/Arnie Tupuritis</i>	554	2,215	831	554
<i>Steven Belcaster</i>	2,266	6,798	0	3,626
<i>Celia Egleston</i>	348	581	116	581
Total Cost per month	\$3,168	\$9,594	\$947	\$4,760
Pre-construction 1 month	1	-	-	-
Construction 24 months	-	24	24	-
Close-out 3months	-	-	-	3
Totals	\$3,168	\$230,255	\$22,723	\$14,280
Total Contract Value		\$270,427		

Note: These estimates of time are based on a total project cost of approximately \$63.4 million and a project construction duration of 24 months; and a close-out duration of 3 months.

Additional Services will be billed at the hourly rates listed below

- Michael Tobin \$275.00 /Hr
- Arnie Tupuritis \$275.00 /Hr
- Steven Belcaster \$250.00 /Hr
- Celia Egleston \$58.00 /Hr