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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/28/2015 11:59 AM Pg: 1 of 54

This document prepared by,
and after recording return to:

Mark Burkland, Esq.
Holland & Knight LLP
131 South Dearborn St., 30th Floor
Chicago, IL 60603

P.I.N. Nos: 16-04-201-007
16-04-201-008
16-04-201-009
16-04-201-014

**EASEMENT AGREEMENT
BETWEEN OPUS DEVELOPMENT COMPANY, L.L.C.,
UPTOWN LA GRANGE RETAIL, L.L.C.,
AND THE VILLAGE OF LA GRANGE
FOR MAINTENANCE AND REPAIR
OF THE OGDEN AVENUE / LA GRANGE ROAD SIDEWALK**

THIS EASEMENT AGREEMENT (this "Easement Agreement") is dated as of September 22, 2015 (the "Effective Date") and is by and among the Village of La Grange, an Illinois municipal corporation (the "Village"), Opus Development Company, L.L.C., a Delaware limited liability company ("ODC") and Uptown La Grange Retail, L.L.C., a Delaware limited liability company ("Retail"; ODC and Retail are collectively referred to herein as the "Grantor");

WITNESSETH:

WHEREAS, the Grantor owns property on which a sidewalk will be built and maintained commonly known as the Ogden / La Grange Sidewalk and defined in Section 2 of the development agreement defined in this Easement Agreement (the "Sidewalk"), which property is legally defined and depicted on the plat of easements attached to and by this reference incorporated into this Easement Agreement in Exhibit A (the "Easement Premises"); and

WHEREAS, the Sidewalk serves the general public as well as providing access to the abutting private property north of Ogden Avenue and extending east of La Grange Road for a distance of approximately 582.80 feet; and

WHEREAS, terms related to the construction and maintenance of the Sidewalk are included in a development agreement between the ODC and the Village dated as of November, 2014, and recorded with the Office of the Cook County Recorder, Cook County, Illinois, as Document No. 1527119052 (the "Development Agreement") a copy of which (without exhibits) is attached to and by this reference incorporated into this Easement Agreement as Exhibit B; and

CCRB REVIEWED 54

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WHEREAS, because the Sidewalk is intended to serve the general public in perpetuity it is essential that the Sidewalk be properly maintained and repaired over time; and

WHEREAS, the Development Agreement provides for the rights of the Village to perform maintenance and repair of the Sidewalk when necessary if the Grantor or its successors or assigns have not properly performed that maintenance or repair; and

WHEREAS, the Village desires to have the easement rights and related rights granted and set forth in this Easement Agreement to provide for general public access to the Sidewalk and to perform Maintenance as that term is defined in this Easement Agreement, and the Grantor desires to grant and the Village desires to accept the grant of permanent easements over the Easement Premises;

NOW, THEREFORE, in consideration of the recitals and other provisions of this Easement Agreement, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Grantor and the Village, the Grantor and the Village agree as follows:

Section 1. Recitals. The foregoing recitals are incorporated into this Easement Agreement by this reference.

Section 2. Defined Terms. Except for words and phrases specifically defined in this Easement Agreement, the capitalized words and phrases used in this Easement Agreement have the meanings ascribed to them in the Development Agreement.

Section 3. Grant of Permanent Easement. The Grantor hereby grants to the Village (A) a permanent, non-exclusive easement in, upon, over, and across the entirety of the Easement Premises to the Village for full use by the Village and the general public of the Easement Premises as a public sidewalk and (B) a permanent, non-exclusive easement in, upon, over, under, and across the Easement Premises (a) to reconstruct, use, maintain, inspect, repair, and replace the Sidewalk (these activities are referred to collectively as "Maintenance"), (b) to install, maintain, remove, and replace seasonal decorations and lighting, banners on light standards, and similar items promoting the Village and Village events, and (c) for reasonable rights of ingress and egress necessary for the exercise of the rights granted herein on, over, and across property immediately abutting the Easement Premises owned by the Grantor as of the Effective Date.

Section 4. Scope of Grantor's Responsibility to Maintain. The Grantor must maintain the Sidewalk in good condition at all times, including among other things all walking surfaces, landscaping, street furniture, pedestrian lighting, and trash receptacles. The Grantor's maintenance responsibility does not include street lighting or any Village-installed seasonal or promotional items described in Subsection 3, clause (b) of this Easement Agreement, which are the responsibility of the Village.

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Section 5. Village Right to Perform Maintenance. If the Grantor fails to maintain the Sidewalk in good condition, and fails, after notice from the Village, to cure the maintenance failure, as provided in Subsection 5G of the Development Agreement, then the Village, under this Section 4 and the provisions of Subsection 5G of the Development Agreement, will have the right to perform Maintenance and to be reimbursed all costs the Village incurs in performing Maintenance, all as provided in Subsection 5G of the Development Agreement.

Section 5. Standard of Performance for Maintenance. The Village must perform all Maintenance in a good and workmanlike manner, using qualified workers and high quality materials. The Village will be solely responsible for all elements of Maintenance, including without limitation the prompt repair or restoration of any portion of the Easement Premises or Property that is disturbed during the Maintenance to a condition as good as existed prior to the Maintenance.

Section 6. Indemnification and Defense. The Village must and agrees to indemnify and defend the Grantor from and against all claims, demands, causes of action, suits, losses, or damages (collectively "Claims") that arise out of any act of the Village or its authorized agents, servants, employees, or contractors related to the exercise of the easement rights granted in this Easement Agreement, except to the extent arising out of the negligence of the Grantor.

Section 7. Reservation of Rights. The Grantor retains all rights it has in and to the Easement Premises to the use of the Sidewalk for its intended purposes as a public sidewalk.

Section 8. Liens. The Village must keep the Easement Premises free and clear of all liens, claims, and demands, including without limitation mechanic's liens, in connection with any Maintenance, and in the event a lien claim is filed against the Easement Premises in connection with any Maintenance the Village must promptly discharge that claim.

Section 9. Covenants Running with the Land. The easements and other rights granted in this Easement Agreement, the restrictions imposed by this Easement Agreement, and the agreements and covenants contained in this Easement Agreement are rights, restrictions, agreements, and covenants running with the land, will be recorded against the Easement Premises, and bind and inure to the benefit of the Village and the Grantor and its successors and assigns.

Section 10. Validity. If any of the rights, restrictions, agreements, or covenants created by this Easement Agreement would otherwise be unlawful or void for violation of (A) the rule against perpetuities or some analogous statutory provision, (B) the rule restricting restraints on alienation, or (C) any other statutory or common law rules imposing time limits, then those rights, restrictions, agreements, or covenants will continue only until 21 years after the death of the last survivor of the now living lawful descendants of Barack Hussein Obama II, the current President of the United States.

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Section 11. General Provisions.

A. Notices. All notices required or permitted to be given under this Agreement may be given by the parties by (i) personal delivery, (ii) deposit in the United States Registered Mail, return receipt requested, enclosed in a sealed envelope with first class postage thereon, or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Subsection 10.A. The address of any party may be changed by written notice to the other parties. Any mailed notice will be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier will be deemed to have been given and received within 24 hours after deposit. Notices and communications to the parties must be addressed to, and delivered at, the following addresses:

If to the Village:

Village Manager
Village of La Grange
53 South La Grange Road
La Grange, Illinois 60525

If to the Grantor:

Opus Development Company, L.L.C.
9700 Higgins Road, Suite 900
Rosemont, Illinois 60018
Attn: Sean Spellman

with a copy to:

Daspin & Aument, LLP
227 West Monroe Street, Suite 3500
Chicago, Illinois 60606
Attn: D. Albert Daspin

B. Amendments. No amendment or modification to this Easement Agreement will be effective until it is reduced to writing, and approved and executed by the Grantor, and approved by the Village's Board of Trustees and executed by the Village's President and Clerk in accordance with all applicable statutory procedures, and recorded with the Office of the Cook County Recorder, Cook County, Illinois.

C. Non-Waiver. The Village is under no obligation to exercise any of the rights granted to it in this Easement Agreement. The failure of the Village to exercise at any time any right granted to it will not be deemed or construed to be a waiver of that right, nor will the failure void or affect the Village's right to enforce that right or any other right.

D. Severability. If any provision of this Easement Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, then the remaining part of that provision and the remaining provisions of this Easement Agreement will not be affected, impaired, or invalidated thereby, but instead will remain in full force and effect. The unenforceability of any provision of this Easement Agreement will not affect the enforceability of that provision in any other situation.

E. Entire Agreement. This Easement Agreement and all of its attachments constitutes the entire agreement between the Grantor and the Village relating to easements regarding the Sidewalk.

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F. Interpretation. This Easement Agreement should be construed without regard to who drafted the various provisions of this Easement Agreement. Moreover, each and every provision of this Easement Agreement should be construed as though the Village and the Grantor participated equally in the drafting of this Easement Agreement. Any rule or construction that a document is to be construed against the drafting party thus is not applicable to this Easement Agreement.

G. No Third-Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any person may be made, or be valid, against the Village or the Grantor.

H. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

I. Several Nature of Obligations. Anything herein to the contrary notwithstanding, it is agreed and acknowledged by the parties hereto that all of covenants, agreements, undertakings, obligations and liabilities of Grantor hereunder are several with respect to each of ODC and Retail and not joint, all in accordance with each of ODC's and Retail's respective ownership interest in the Easement Premises.

[Signature page follows.]

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IN WITNESS WHEREOF the Grantor and the Village have caused this Agreement to be executed by their properly authorized representatives as of the Effective Date.

Village of La Grange

By: _____

Robert Pilipiszyn
Robert Pilipiszyn
Village Manager

Opus Development Company, L.L.C.

By: _____

Name: _____

Its: _____

Attest:

By: _____

Ellie Elder
Ellie Elder
Deputy Village Clerk

Attest:

By: _____

Name: _____

Its: _____

Uptown La Grange Retail, L.L.C.

By: Opus Development Company,
L.L.C., Its Sole Member

By: _____

Name: _____

Its: _____

Attest:

By: _____

Name: _____

Its: _____

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IN WITNESS WHEREOF the Grantor and the Village have caused this Agreement to be executed by their properly authorized representatives as of the Effective Date.

Village of La Grange

By: _____
Robert Pilipiszyn
Village Manager

Attest:

By: _____
Ellie Elder
Deputy Village Clerk

Opus Development Company, L.L.C.

By: SEMT Spellman
Name: Sean T. Spellman
Its: VP + General Manager

Attest:

By: _____
Name: _____
Its: _____

Uptown La Grange Retail, L.L.C.

By: Opus Development Company,
L.L.C., Its Sole Member

By: SEMT Spellman
Name: Sean T. Spellman
Its: VP + General Manager

Attest:

By: _____
Name: _____
Its: _____

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IN WITNESS WHEREOF the Grantor and the Village have caused this Agreement to be executed by their properly authorized representatives as of the Effective Date.

Village of La Grange

By: _____
Robert Pilipiszyn
Village Manager

Attest:

By: _____
Ellie Elder
Deputy Village Clerk

Opus Development Company, L.L.C.

By: _____
Name: _____
Its: _____

Attest:

By: _____
Name: David Everson
Its: Vice President, Sales and Finance

Uptown La Grange Retail, L.L.C.

By: Opus Development Company,
L.L.C., Its Sole Member

By: _____
Name: _____
Its: _____

Attest:

By: _____
Name: **David Everson**
Its: **Vice President, Sales and Finance**

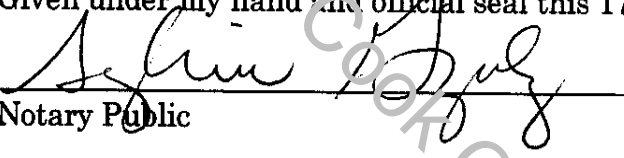
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ACKNOWLEDGEMENTS

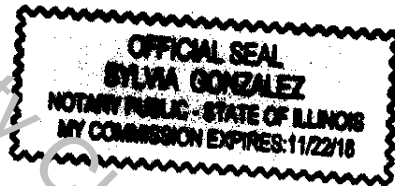
STATE OF ILLINOIS)
) ss.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for Cook County, Illinois, do hereby certify that Robert Pilipiszyn, personally known to me to be the Village Manager of the Village of La Grange, an Illinois municipal corporation, and Ellie Elder, personally known to me to be the Deputy Village Clerk of the Village, and personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, each appeared before me this day in person and acknowledged that, as the Village Manager and Deputy Village Clerk, they signed and delivered the Agreement, pursuant to the authority given by the Village, as their free and voluntary act and as the free and voluntary act and deed of the Village, for the uses and purposes set forth in the Agreement.

Given under my hand and official seal this 17th day of September 2015.



 Notary Public



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STATE OF ILLINOIS)
) ss.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Sean T. Spellman, personally known to me to be the VP + General Mgr. of Opus Development Company, L.L.C., a Delaware limited liability company, and David Everson, personally known to me to be the VP, Sales + Finance of Opus Development Company, L.L.C., and personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, each appeared before me this day in person and acknowledged that, as the VP + General Mgr. and VP Sales + Finance, they signed and delivered the Agreement, pursuant to the authority given by Opus Development Company, L.L.C., as their free and voluntary act and as the free and voluntary act and deed of Opus Development Company, L.L.C., for the uses and purposes set forth in the Agreement.

Given under my hand and official seal this 17th day of September, 2015.

Cathy Mayer
 Notary Public



STATE OF ILLINOIS)
) ss.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Sean T. Spellman, personally known to me to be the VP + General Mgr. of Opus Development Company, L.L.C., a Delaware limited liability company, the sole member of Uptown In Grange Retail, L.L.C., a Delaware limited liability company, and David Everson, personally known to me to be the VP, Sales + Finance of Opus Development Company, L.L.C., and personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, each appeared before me this day in person and acknowledged that, as the VP + General Mgr. and VP, Sales + Finance they signed and delivered the Agreement, pursuant to the authority given by Opus Development Company, L.L.C., as their free and voluntary act and as the free and voluntary act and deed of Opus Development Company, L.L.C., for the uses and purposes set forth in the Agreement.

Given under my hand and official seal this 17th day of September, 2015.

Cathy Mayer
 Notary Public



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EXHIBIT A
TO EASEMENT AGREEMENT BETWEEN
OPUS DEVELOPMENT COMPANY, L.L.C.,
UPTOWN LA GRANGE RETAIL, L.L.C.,
AND THE VILLAGE OF LA GRANGE
FOR MAINTENANCE AND REPAIR
OF THE OGDEN AVENUE / LA GRANGE ROAD SIDEWALK

PLAT OF EASEMENTS
INCLUDING LEGAL DESCRIPTION OF EASEMENT PREMISES

(see attached)

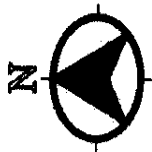
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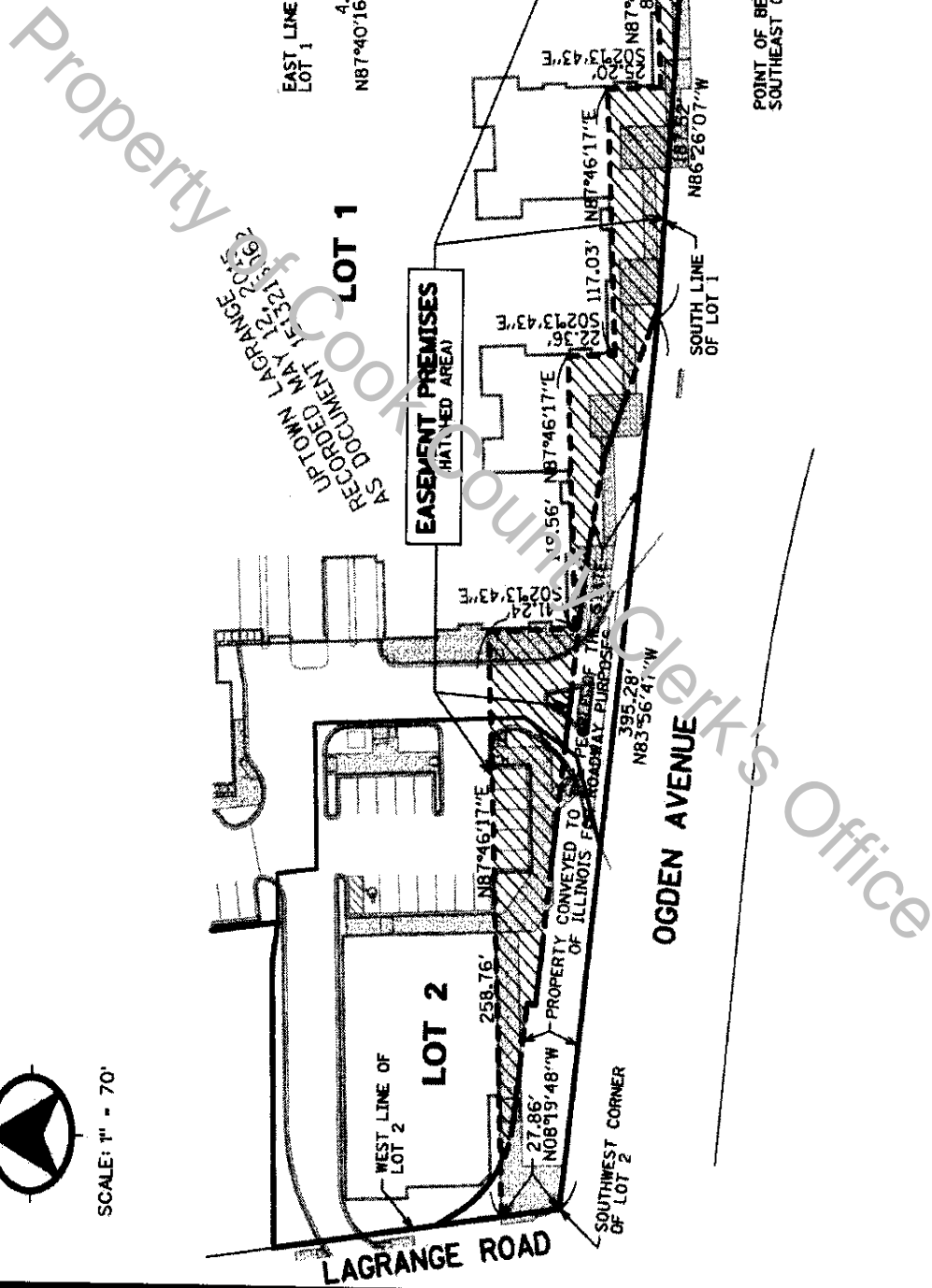
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9575 W. Higgins Road, Suite 700, Rosemont, Illinois 60018 Phone: (847) 696-4060 Fax: (847) 696-4065
SPS&CO INC.
SURVEYOR

EXHIBIT A



SCALE: 1" = 70'



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LEGAL DESCRIPTION OF EASEMENT PREMISES:

THAT PART OF LOTS 1 & 2 IN UPTOWN LAGRANGE, BEING A RESUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 12, 2015 AS DOCUMENT NUMBER 1513216062, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1, THENCE NORTH 86 DEGREES 23 MINUTES 07 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1 A DISTANCE OF 187.52 FEET; THENCE NORTH 83 DEGREES 56 MINUTES 47 SECONDS WEST ALONG SAID SOUTH LINE 395.28 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE NORTH 08 DEGREES 19 MINUTES 48 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 2 A DISTANCE OF 27.86 FEET; THENCE NORTH 87 DEGREES 46 MINUTES 17 SECONDS EAST 258.76 FEET; THENCE SOUTH 02 DEGREES 13 MINUTES 43 SECONDS EAST 41.24 FEET; THENCE NORTH 87 DEGREES 46 MINUTES 17 SECONDS EAST 119.56 FEET; THENCE SOUTH 02 DEGREES 13 MINUTES 43 SECONDS EAST 22.36 FEET; THENCE NORTH 87 DEGREES 46 MINUTES 17 SECONDS EAST 117.03 FEET; THENCE SOUTH 02 DEGREES 13 MINUTES 43 SECONDS EAST 25.20 FEET; THENCE NORTH 87 DEGREES 46 MINUTES 17 SECONDS EAST 81.19 FEET TO A POINT ON A LINE LYING 4.12 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 1; THENCE NORTH 02 DEGREES 19 MINUTES 44 SECONDS WEST ALONG SAID PARALLEL LINE 139.42 FEET; THENCE NORTH 87 DEGREES 40 MINUTES 16 SECONDS EAST PERPENDICULAR TO SAID EAST LINE 4.12 FEET; THENCE SOUTH 02 DEGREES 19 MINUTES 44 SECONDS EAST ALONG SAID EAST LINE 154.20 FEET TO THE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PART CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS FOR ROADWAY PURPOSES.

CONTAINING 0.464 ACRES OR 20,194 SQUARE FEET, MORE OR LESS.

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EXHIBIT B
TO EASEMENT AGREEMENT BETWEEN
OPUS DEVELOPMENT COMPANY, L.L.C.,
UPTOWN LA GRANGE RETAIL, L.L.C.,
AND THE VILLAGE OF LA GRANGE
FOR MAINTENANCE AND REPAIR
OF THE OGDEN AVENUE / LA GRANGE ROAD SIDEWALK

DEVELOPMENT AGREEMENT
(without exhibits)

(see attached)

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VILLAGE OF LA GRANGE

AN AGREEMENT

**BETWEEN THE VILLAGE OF LA GRANGE
AND OPUS DEVELOPMENT COMPANY, L.L.C.
REGARDING DEVELOPMENT OF THE PROPERTY
AT THE NORTHEAST CORNER
OF OGDEN AVENUE AND LA GRANGE ROAD**

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**AN AGREEMENT
 BETWEEN THE VILLAGE OF LA GRANGE
 AND OPUS DEVELOPMENT COMPANY, L.L.C.
 REGARDING DEVELOPMENT OF THE PROPERTY
 AT THE NORTHEAST CORNER
 OF OGDEN AVENUE AND LA GRANGE ROAD**

THIS DEVELOPMENT AGREEMENT (the "*Agreement*") is dated as of November ____, 2014, (the "*Effective Date*") and is by and between the VILLAGE OF LA GRANGE, an Illinois municipal corporation (the "*Village*"), and OPUS DEVELOPMENT COMPANY, L.L.C., a Delaware limited liability company (the "*Developer*").

In consideration of the recitals and the covenants and agreements set forth in this Agreement, the Village and the Developer agree as follows:

Section 1. Recitals.

A. The Developer is the contract purchaser of the Property, as defined in Section 2 of this Agreement.

B. The Developer proposes to develop the Property with an apartment building that includes up to 254 rental apartments and an interior five-story parking structure, a retail building that includes up to 9,200 square feet of rental space, dedicated open space, and other improvements including roadways, parking, sidewalks, landscaping, utilities, and street and pedestrian lighting among others.

C. The Developer has provided the Village with evidence of its financial capacity to undertake and complete the Project as approved.

D. The Board of Trustees has reviewed and considered the proposed development of the Property and the zoning approvals requested to authorize the development and has found them, subject to certain conditions, to be consistent with the character of, and existing development patterns in, the Village and to satisfy the standards of the La Grange Zoning Code applicable to them.

E. Pursuant to La Grange Ordinance No. O-14-40 attached to this Agreement as Exhibit A (the "*Approval Ordinance*"), the Board of Trustees granted the following approvals and relief related to the proposed Property: (i) an amendment to the Village's Zoning Map to rezone all of the Property current classified as OS Open Space into the C-3 General Service Commercial District, (ii) a special use permit authorizing a planned development for the Property, (iii) planned development concept and final plan approval including specific zoning modifications, (iv) site plan approval, and (v) a design review permit. These approvals were made subject to conditions stated in the Approval Ordinance, including execution of, and compliance with, this Agreement.

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F. The Village and the Developer desire that the Property be developed and used in compliance with the Approval Ordinance and this Agreement.

Section 2. Definitions.

Whenever used in this Agreement, the following terms have the following meanings unless a different meaning is required by the context:

"Apartment Building": The proposed building on the Apartment Building Parcel that includes up to 254 rental apartments and an interior five-story parking structure.

"Apartment Building Parcel": The land area within the Property depicted and legally described as Lot 1 on the Preliminary Plat of Subdivision attached to this Agreement as Exhibit E on which the Apartment Building and related Improvements will be constructed.

"Approval Ordinance": La Grange Ordinance No. O-14-40. See Exhibit A.

"Approved Apartment Building Exterior Appearance Plans": See Subsection 3A of this Agreement.

"Approved Final Engineering Plans": See Subsection 3A of this Agreement.

"Approved Final Landscaping Plans": See Subsection 3A of this Agreement.

"Approved Final Site Plans": See Subsection 3A of this Agreement. The Approved Final Site Plans include among other things the Basic Locust Area Sidewalk & Landscaping Plan and the Enhanced Locust Area Sidewalk & Landscaping Plan.

"Approved PD Final Plans": The preliminary site plans, engineering plans, landscaping plans, and exterior appearance plans attached to this Agreement as part of Exhibit C attached to this Agreement.

"Approved Public Infrastructure Cost Estimate": See Subsection 5P of this Agreement.

"Basic Locust Area Sidewalk & Landscaping Plan": The basic sidewalk and landscaping improvements for the portion of the Ogden / La Grange Sidewalk within and adjacent to the Locust Avenue intersection with Ogden Avenue, to be installed if the Locust Avenue Intersection Improvements have not been constructed as provided in this Agreement. See Subsection 5K of this Agreement.

"Board of Trustees": The President and Trustees of the Village of La Grange.

"Change in Law": The occurrence, after the Effective Date, of an event described in (i) below unless the event is excluded under (ii) below:

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- (i) (a) the enactment, adoption, promulgation, or modification of a Requirement of Law, (b) the order or judgment of any federal or State of Illinois court, administrative agency, or other governmental body, or (c) the imposition by a governmental authority of any conditions on, or delays in, the issuance or renewal of any governmental license, approval, or permit (or suspension, termination, interruption, revocation, modification, denial, or failure of issuance or renewal thereof, by a governmental authority) necessary for the undertaking of the services to be performed under this Agreement.
- (ii) An event described in (i) above is not a Change in Law if (a) the event does not materially change the costs or ability of the party relying thereon to carry out its obligations under this Agreement, (b) the event is caused by the fault of the party relying thereon, or (c) the event is authorized by this Agreement.

"Consulting Engineer": The Village's consulting engineering firm, which is Baxter & Woodman unless otherwise identified in writing by the Village.

"Developer Affiliate": Any person directly or indirectly controlling, controlled by, or under common control with the Developer. For purposes of this definition, the term "control" (including the correlative meaning of the terms "controlling," "controlled by," and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person whether through the ownership of voting securities or by contract or otherwise, except that, but without limiting the foregoing, no pledge of voting securities of any person without the current right to exercise voting right with respect thereto will by itself be deemed to constitute control over such person. Without limiting the generality of the foregoing, a Developer Affiliate may include any entity that directly or indirectly through one or more intermediaries is controlled by, controls, or is under common control with some or all of (i) Opus Holding, L.L.C., its members, and all of its direct and indirect subsidiaries and (ii) any limited liability company, corporation, partnership, or other entity that is owned in whole or in part by any of the entities described in subparagraph (i) above.

"Development Phasing Plan": A plan establishing the phases of construction for the Project, including the Apartment Building phase, a Retail Building phase, and any other appropriate phases determined by the Developer and including a construction timeline and construction staging plans for each phase, all of which must be included as part of Exhibit C.

"Director": The Village's Director of Community Development.

"Effective Date": The date written in the first paragraph of this Agreement.

"Enhanced Locust Area Sidewalk & Landscaping Plan": The enhanced sidewalk, landscaping, and related improvements for the portion of the Ogden / La Grange Sidewalk within and adjacent to the Locust Avenue intersection with Ogden

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Avenue, to be installed if the Locust Avenue Intersection Improvements are constructed, as provided in this Agreement. See Subsection 5K of this Agreement.

"IDOT": The Illinois Department of Transportation.

"IEPA": The Illinois Environmental Protection Agency.

"Improvements": The Apartment Building, the Retail Building, and the Infrastructure Improvements.

"Infrastructure Improvements": All utilities, streets, drive aisles, curbs, gutters, street lights, parking spaces, parking structures, sidewalks, pedestrian lighting, signs, landscaping, and related improvements for the Project, whether within the Property, within adjacent property, or within adjacent rights-of-way, as shown in and reasonably inferable from the documents included in Exhibit C. The Infrastructure Improvements consist of the Public Infrastructure Improvements and the Private Infrastructure Improvements.

"Locust Avenue Intersection Improvements": The realignment of the Locust Avenue intersection with Ogden Avenue as shown in the Locust Avenue Intersection Improvements Plans.

"Locust Avenue Intersection Improvements Plans": The plans attached to this Agreement as part of Exhibit C providing for improvements approved by IDOT to the existing Locust Avenue intersection with Ogden Avenue.

"MWRD": The Metropolitan Water Reclamation District of Greater Chicago.

"Ogden / La Grange Sidewalk": All of the sidewalk and related landscaping, street lighting, pedestrian lighting, furniture, way-finding signs, and other amenities shown on the Approved Final Site Plans and Approved Final Landscaping Plans. The Ogden / La Grange Sidewalk includes the north-south sidewalk along the west side of the Locust Avenue right-of-way, all of the Ogden Avenue frontage of the Property, and all of the La Grange Road frontage of the Property, regardless of whether on private property or public right-of-way. The Ogden Avenue portion of the Ogden / La Grange Sidewalk includes all land between the north Ogden Avenue curb and the meandering north line of the paved areas of the Ogden / La Grange Sidewalk, as shown on the permanent easement related to the Ogden / La Grange Sidewalk described in Subsection 4B of this Agreement. See also Subsection 5G of this Agreement.

"Pedestrian Walkway": The pedestrian walkway, clearly marked by signs, through the ground level floor of the parking structure within the Apartment Building, from the west entrance into the parking structure to the Locust Avenue right-of-way, as depicted in the Approved Final Site Plans.

"Preliminary Plat of Subdivision": See Exhibit E and Subsection 3A(vi) of this Agreement.

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"Private Infrastructure Improvements": All of the Infrastructure Improvements that are not Public Infrastructure Improvements as shown on the Approved Final Engineering Plans.

"Project": The entirety of the Improvements and the work necessary to construct the Improvements.

"Project Declaration": The declaration of reciprocal easements, covenants, conditions, and restrictions for the Project attached to this Agreement as Exhibit D to this Agreement. See Section 7 of this Agreement.

"Property": The real property of approximately 4.3 acres in area generally located at the northeast corner of the intersection of La Grange Road and Ogden Avenue within the Village and legally described in Exhibit B attached to this Agreement.

"Public Infrastructure Construction Schedule": The general timeline for construction of the Public Infrastructure Improvements related to the Project, which timeline must be included in the Approved Final Engineering Plans.

"Public Infrastructure Improvements": The following: (i) all of the Infrastructure Improvements that are being dedicated to the Village, to other governmental agencies, or otherwise for public use, (ii) all bicycle parking, (iii) the Pedestrian Walkway, and (iv) the Ogden / La Grange sidewalk.

"Requirements of Law": All applicable federal and State of Illinois laws and statutes, the Zoning Code, the Village's Code of Ordinances, and the Village's building, stormwater management, and other codes and regulations. The standards of the 2012 International Building Code will apply to architectural and structural plans and specifications for all buildings within the Project unless preempted by State of Illinois or federal law. Otherwise, Village-adopted model codes will apply and State of Illinois building codes will apply in the absence of an applicable Village-adopted model code. Federal regulations will apply to any accessibility standards not included in the Illinois Accessibility Code.

"Retail Building": The proposed building that includes up to 9,200 square feet of rental space on the Retail Building Parcel.

"Retail Building Parcel": The land area located generally in the southwest corner of the Property included in the Retail Building phase, as depicted and legally described as Lot 2 on the Preliminary Plat of Subdivision attached to this Agreement as Exhibit E.

"Retail Building Parcel Interim Landscaping Plan": The detailed landscaping plan included with the Approved Final Landscaping Plans depicting the landscaping that will be installed on the Retail Building Parcel after the Apartment Building is built and maintained until the Retail Building is constructed. See Subsection 5H of this Agreement.

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"Retail Space": Any space within the Retail Building for lease to a retail tenant.

"Site Work": Grading land, excavating soil and debris, and environmental remediation, and forming and pouring footings and foundations for the Apartment Building.

"Uncontrollable Circumstance": An event that is beyond the reasonable control of and occurs without the fault of the party relying thereon and includes, but is not limited to, the following events:

- an insurrection, riot, civil disturbance, sabotage act of a public enemy, explosion nuclear incident, war, or naval blockade;
- an epidemic, hurricane, tornado, landslide, earthquake, lightning, fire winds storm, or other casualty or act of God, or persistent bad weather that impedes progress;
- materials or supplies shortages outside the Developer's control;
- concealed conditions within the Property that create circumstances impeding reasonable progress;
- a government condemnation or taking;
- a strike, lockout, or other labor dispute other than those caused by the unlawful acts of the Developer;
- a Change in Law.

Neither party may claim that any of the following events or conditions is an Uncontrollable Circumstance: Economic hardship, impracticability of performance, commercial, economic, or market conditions, or a failure of performance by a contractor (except as caused by an event that is an Uncontrollable Circumstance as to that contractor). See Subsection 15L regarding Force Majeure.

"Village Code": The La Grange Code of Ordinances.

"Village Manager": The La Grange Village Manager or his or her designee.

"Zoning Code": The La Grange Zoning Code.

Section 3. Final Plans; Cost Estimate.

A. **Final Plans**. Prior to the issuance by the Village of any permit for work within the Property other than Site Work, the Developer must provide to the Village the following detailed final plans for the Project except the Retail Building Parcel:

- (i) Engineering plans that conform with the preliminary engineering plans attached to this Agreement as part of Exhibit C, which have been approved by the Village, including the following elements: Utilities serving the Project; the Locust Avenue Intersection Improvements

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Plan; cable and other telecommunications infrastructure, if any; the Public Infrastructure Improvements; the configuration of Shawmut Avenue; the intersections affected by the Project, including sidewalks, parkways, curbs and gutters, crosswalks, lighting, bollards, and related improvements at the northeast corner of Ogden Avenue and La Grange Road, and way-finding signs; repair and, resurfacing of the Locust Avenue parking lot; water, sewer, and stormwater mains and service lines; stormwater control facilities; burial of overhead utility wires in coordination, as appropriate, with IDOT and the Village as to timing and location; and the Development Phasing Plan. The Development Phasing Plan may be revised by the Developer from time to time during the Project. The Developer must provide the Village a copy of each revised Development Phasing Plan. If any change in construction staging materially and adversely affects public right-of-way, then the Village must approve the construction staging plans prior to the Developer implementing those changes.

If the final engineering plans substantially conform with the preliminary engineering plans, then they will be approved by the Village (the "*Approved Final Engineering Plans*").

- (ii) Final site plans for the Project that conform with the preliminary site plans attached as part of Exhibit C, which have been approved by the Village. The final site plans must include among other things the Basic Locust Area Sidewalk & Landscaping Plan and the Enhanced Locust Area Sidewalk & Landscaping Plan (see Subsection 5K of this Agreement regarding construction of Locust Avenue Intersection Improvements) and locations of bicycle parking. If the final site plans substantially conform with the preliminary site plans, then they will be approved by the Village (the "*Approved Final Site Plans*"). The Project must be constructed in compliance with the Approved Final Site Plans.
- (iii) Final landscaping plans for the Project that conform with the preliminary landscaping plans attached as part of Exhibit C, which have been approved by the Village. The final landscaping plans must include the Retail Building Parcel Interim Landscaping Plan (see Subsection 5H of this Agreement regarding interim landscaping of the Retail Building Parcel). The final landscaping plans must be substantially consistent with the open space and streetscape design standards of the Village of La Grange BNSF Railroad Corridor Subarea Plan Urban Design Guidelines. If the final landscaping plans substantially conform with the preliminary site plans and the provisions of this Subsection (iii), then they will be approved by the Village (the "*Approved Final Landscaping Plans*"). The Project must be constructed in compliance with the Approved Final Landscaping Plans.
- (iv) Final exterior appearance plans for the Apartment Building consistent with the preliminary appearance plans for the Apartment Building

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attached as part of Exhibit C. Once those plans have been finalized, the Director will approve and sign a set of the final plans (the "*Approved Apartment Building Exterior Appearance Plans*").

The Developer must construct, prior to commencement of any work on the Apartment Building other than Site Work, a representative "stack" wall on the Apartment Building Parcel with the masonry, wood, and all other construction materials shown on the Approved Apartment Building Exterior Appearance Plans. The stack wall must accurately depict the materials and techniques to be used for the walls of the Apartment Building. The stack wall must be reviewed by the Director and will be approved by the Director if it conforms to the Approved Apartment Building Exterior Appearance Plans.

- (v) Exterior appearance plans for the Retail Building. Those exterior appearance plans must accurately depict all building features in detail, including without limitation brickwork, stonework, rooflines, eaves, doorways, windows, jambs, finials, dentils, moldings, banding, arches, and similar features. Notwithstanding the first sentence of this Subsection A, the exterior appearance plans for the Retail Building may be submitted at any time. The Developer must submit, along with those exterior appearance plans, a properly completed application for a design review permit for the Retail Building, which application must be accompanied by a sample of each material that is proposed for the exterior of the Retail Building, including masonry, wood, and all other construction materials. The materials samples must be the materials and colors to be used for the Retail Building. The exterior appearance plans for the Retail Building must be approved through the Village's design review permit review process. Once a design review permit for the Retail Building has been approved by the Village, then the Director will sign a set of the final exterior appearance plans (the "*Approved Retail Building Exterior Appearance Plans*").

After a design review permit is approved by the Village but before any permit is issued by the Village for construction of the Retail Building, the Developer must construct on the Retail Building Parcel a representative "stack" wall with the masonry, wood, and all other construction materials that comprise the approved exterior appearance plans for the Retail Building. The stack wall must accurately depict the materials and techniques to be used for the walls of the Retail Building. The stack wall must be reviewed by the Director and will be approved by the Director if it conforms to the approved exterior appearance plans.

- (vi) A final plat of subdivision that conforms to the standards for final plats of subdivision in the Village's Code of Ordinance and to the preliminary plat of subdivision attached to this Agreement as Exhibit E.

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B. Public Infrastructure Cost Estimate. The Developer must prepare and submit, for approval by the Consulting Engineer, an estimate of the cost of construction of the Public Infrastructure Improvements, based on the Approved Final Engineering Plans. After that estimate is reviewed, revised as necessary, and approved by the Consulting Engineer, then it will be attached to this Agreement as Exhibit F (the "*Approved Public Infrastructure Cost Estimate*").

Section 4. Development and Use of the Property.

A. General Provisions. The following general standards apply to development of the Property.

- (i) The Developer may elect not proceed with the Project or a particular phase of the Project, in the Developer's sole discretion. If the Developer does not proceed with the Project, then the Developer has no obligation to construct the Infrastructure Improvements.
- (ii) If the Developer has not acquired fee simple title to the Apartment Building Parcel by October 31, 2015, or if the Developer has not acquired fee simple title to the Retail Building Parcel by April 30, 2016, or if the Developer has not secured a building permit from the Village and commenced construction of the Site Work by April 30, 2016, (the "*Project Commencement Deadline*") then, subject to the provisions of Paragraph (iii) immediately below, this Agreement will automatically terminate, be null and void, and confer no value, benefit, opportunity, entitlement, or right of any kind or nature to the Developer or any Developer successor, assign, or transferee.
- (iii) The Board of Trustees may extend the Project Commencement Deadline to a date certain by ordinance properly passed and approved by the Board of Trustees prior to the Project Commencement Deadline. The obligations of the Developer under Section 8 of this Agreement will survive the termination of this Agreement under Paragraph (ii) immediately above and be binding on the Developer.
- (iv) Except for minor alterations that the Developer may submit due to final engineering and site work, which alterations are approved by the Village's Director of Public Works, development of the Property must conform to the following: (i) the Approval Ordinance, (ii) this Agreement, (iii) all of the final plans provided in Section 3 of this Agreement, and (iv) the Requirements of Law. Unless otherwise provided in this Agreement, in the event of a conflict between or among any of the listed plans and documents, the plan or document that provides the greatest consistency with this Agreement and the Project as a whole, as reasonably determined by the Village Manager in consultation with the Developer, will control. All of the plans and documents must be interpreted to the fullest extent possible so that the

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duties and requirements imposed by any one of them are cumulative among all of them.

B. Easements. Prior to the issuance by the Village of any permit for work other than Site Work, the Developer must grant the following easements to the Village and, as appropriate, other governmental bodies and utility services providers. The easements must be permanent and must be granted using language approved by the Village Manager. The following easements will be granted in the Project Declaration:

- (i) Utility easements for all public utilities, and all telecommunications and cable providers if any, within the Property, including over common areas if necessary for the purposes of installing, servicing, and repairing utilities and providing public and emergency services.
- (ii) An easement providing for public access to not fewer than 41 parking spaces located on the exit level of the parking structure in the Apartment Building (the "Reserved Spaces") and restricting use of the Reserved Spaces to the public (including guests of tenants but not tenants). The easement must authorize the posting of way-finding and informational signs by the Village and Village authority, in consultation with the Developer, to (a) establish rules such as time limits and the like for the Reserved Spaces consistent with their intended use by shoppers, park visitors, and guests and (b) perform maintenance and repairs to the Reserved Spaces at the Developer's expense if the Developer fails to properly perform maintenance and repairs. The Project Declaration must identify the location of the Reserved Spaces.
- (iii) An easement for the Pedestrian Passageway. The easement must allow permanent pedestrian passage for the general public and must authorize posting of way-finding and informational signs and authorize the Village to perform maintenance and repairs to the Pedestrian Walkway at the Developer's expense if the Developer fails to properly perform maintenance and repairs. The Project Declaration must depict the area subject to the easement.
- (iv) An easement for general public pedestrian access onto and across drive aisles, parking areas, and sidewalks within the Property from Shawmut Avenue, La Grange Road, Ogden Avenue, and the Locust Avenue right-of-way for access to the Pedestrian Walkway, the Locust Avenue parking lot, and Gordon Park.
- (v) A easement for inspection and maintenance of the stormwater management system within the Project, including without limitation the stormwater detention facility and the restrictor.

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The following easement must be granted at the earlier to occur of (a) Developer acquisition of the Retail Building Parcel or immediately prior to issuance by the Village of the first certificate or temporary certificate of occupancy for the Apartment Building. The easement must be granted by separate easement agreement and plat of easement: A permanent easement for the Ogden / La Grange Sidewalk in the form attached to this Agreement as Exhibit G. The dimensions and configuration of the easement premises may be adjusted as necessary to conform to IDOT requirements for the IDOT improvements to Ogden Avenue and La Grange Road depicted in their current configuration in the Approved Final Engineering Plans. This easement must provide for permanent pedestrian use of the Ogden / La Grange Sidewalk by the general public as a sidewalk and rights in the Village to maintain, repair, and replace the Ogden / La Grange Sidewalk or any parts of it if the Developer or others with responsibility fail to properly maintain, repair, or replace it, all at the expense of the Developer or other responsible parties, subject to reasonable notice and cure provisions.

C. Ogden Avenue Turn Lane Property Transfer. Prior to the issuance by the Village of any permit for work other than Site Work, the Developer must grant or transfer an easement or other property rights in the Property depicted in the Approved Final Engineering Plans, with any minor changes that may be required by IDOT, for the proposed right turn lane from westbound Ogden Avenue onto northbound La Grange Road.

D. Property within Shawmut Avenue Right-Of-Way. Prior to the issuance by the Village of any permit for work other than Site Work, the Developer must dedicate to the Village as public right of way all portions of the Property located within the former Shawmut Avenue right-of-way as depicted on the Approval Final Site Plans, so that the Shawmut Avenue right-of-way is restored to its full width everywhere that it abuts the Property.

E. Project Declaration. The Project will be subject to the Project Declaration. *See* Section 7 of this Agreement.

F. Construction in Phases. The project will be constructed in phases as provided in the Development Phasing Plan.

G. Maintenance of Damage to Public Property. During construction of the Project, the Developer must (i) maintain all streets, sidewalks, and other public property in and adjacent to the Property in a good and clean condition and free of hazards at all times, (ii) promptly clean all mud, dirt, or debris deposited on any street, sidewalk, or other public property in or adjacent to the Property by the Developer or any agent of or contractor hired by, or on behalf of, the Developer, and (iii) repair all damage that may be caused by the activities of, or on behalf of, the Developer or any agent of or contractor hired by, or on behalf of, the Developer. If, within four hours after the Village gives the Developer notice to clean mud, dirt, or debris or to repair damage in compliance with this subsection, the Developer neglects or fails to clean or repair or to undertake with due diligence to clean or repair the affected public property, then the Village may clean or repair the affected

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property, either with its own forces or with contract forces, and recover from the Developer the greater of \$300 or the sum equal to the total cost incurred by the Village including without limitation administrative costs.

H. Retail Uses. As provided in the Approval Ordinance, each Retail Space may be leased or sold only for a retail-sales-tax-generating use as provided in Exhibit H (an "Approved Retail Uses") unless otherwise specifically approved by the Village Manager as provided in this Subsection or in Exhibit H. The Village Manager, at the request of the Developer in writing, may approve a use for Retail Space that is not an Approved Retail Use only if all of the following standards are satisfied:

- (i) Not less than 50 percent of the total rentable square footage of the Retail Building is leased for an Approved Retail Use; and
- (ii) The proposed use will be compatible with the retail-sales-tax-generating character of the Retail Building by generating customer visits that will benefit retail tenants or providing a useful service to the residents of the Apartment Building; and
- (iii) The proposed use is not a temporary use, office use, or service use; and
- (iv) The proposed use is authorized in the C-3 General Services Commercial District by either the permitted use list in Section 5-102 of the Zoning Code or the special use list in Section 5-105 of the Zoning Code; and
- (v) The proposed use will not have an adverse impact on any Approved Retail Use in the Retail Building.

The Village has the right to require the cessation of any use not in compliance with the Approval Ordinance or this Agreement.

I. Environmental Conditions. The Village is not responsible for any adverse environmental conditions within the Property. In the development of the Project, the Developer must remain in compliance with all applicable federal and State of Illinois environmental laws and regulations.

Section 5. Infrastructure Improvements.

A. Developer's Duty to Construct Improvements. The Developer, at its sole cost, must construct and install all of the Infrastructure Improvements except as provided under Subsection 4A(i) of this Agreement.

B. Standards Applicable to Infrastructure Improvements. The following standards apply to the construction of the Infrastructure Improvements.

- (i) General Standards. All Infrastructure Improvements must be constructed pursuant to the standards in this Agreement and all Requirements of Law. All work performed in the construction of the Infrastructure Improvements must be conducted in a good and

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workmanlike manner. All materials used for construction of the Infrastructure Improvements must be new and of first-rate quality.

- (ii) Special Standards. Construction of the Infrastructure Improvements must conform to the applicable standards of the MWRD, IDOT, and the IEPA.
- (iii) Prosecution of the Work. Once Site Work has commenced, the Developer and all of its contractors must prosecute work on the Infrastructure Improvements diligently until the work is properly completed.
- (iv) Inspection, Engineering, Testing Services. The Developer must provide, at its sole cost, all inspection, engineering, and testing for construction of the Infrastructure Improvements, including without limitation (a) full on-site construction supervision services (including daily reports), (b) periodic inspections by a professional engineer of construction of the Public Infrastructure Improvements, and (c) third-party materials sampling and testing services. The Developer must promptly provide the Village with the names of the project manager and project engineer and telephone numbers at which the project manager and project engineer can be reached at all times.
- (v) Village Inspections and Approvals. Village representatives have the full right, the permission of the Developer, and the authority to inspect all work on the Infrastructure Improvements at all times and to confirm compliance with all requirements of this Agreement and all Requirements of Law.
- (vi) Other Approvals. When the construction of an Infrastructure Improvement requires the permission or approval of a regulatory agency, including without limitation the MWRD, IDOT, or the IEPA, then the Developer must take all steps required to obtain the required permission or approval. The Developer may not commence work requiring the permission or approval of any such agency in advance of receiving that permission or approval.

C. Schedule for Completion of Public Infrastructure Improvements. All Public Infrastructure Improvements must be completed and made ready for inspection, approval, and any required acceptance by the Village in a manner consistent with the Public Infrastructure Construction Schedule as it may be modified from time to time. The Developer will be allowed extensions of time beyond the completion dates set forth in the Public Infrastructure Construction Schedule due to force majeure or if approved by the Village Manager in writing for good cause shown. To make a claim for an extension of time for delay due to force majeure, the Developer must, within five days after the Uncontrollable Circumstance commences and again within five days after the delay terminates, give notice to the Village including the cause for the delay, the period or anticipated period of the delay, and

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the steps taken by the Developer to mitigate the effects of the delay. Any failure of the Developer to give the required notice will be deemed a waiver of any right to an extension of time for any delay due to force majeure.

D. Approvals of Public Infrastructure Improvements. When the Developer determines that a Public Infrastructure Improvement has been properly completed, the Developer must request final inspection and approval of that Public Infrastructure Improvement by the Village. The notice and request must be given sufficiently in advance to allow the Village time to inspect that Public Infrastructure Improvement and to prepare a punch list of items requiring repair or correction and to allow the Developer time to make all required repairs and corrections prior to the scheduled completion date. The Developer must promptly make all necessary repairs and corrections as specified on the punch list. The Village will not be required to approve any Public Infrastructure Improvement until it has been fully and properly completed in accordance with the Approved Final Engineering Plans, including without limitation all punch list work for that Public Infrastructure Improvement.

E. Dedication and Acceptance of Public Infrastructure Improvements. The Developer will dedicate to the Village the approved Public Infrastructure Improvements, except (i) bicycle parking, (ii) the Pedestrian Walkway, (iii) the Ogden / La Grange Sidewalk, and (iv) any other Public Infrastructure Improvement that is specified in the Approved Final Engineering Plans as being retained by the Developer. The Village must accept a Public Infrastructure Improvement when it has been fully and properly completed, but nothing will constitute an acceptance by the Village of any Public Infrastructure Improvement except only express written acceptance by the Village. Prior to acceptance of a Public Infrastructure Improvement by the Village, the Developer must execute, or cause to be executed, all documents that the Village reasonably requests to transfer ownership of that Public Infrastructure Improvement to the Village, free and clear of all liens, claims, and encumbrances or restrictions that would prevent the Village from operating, maintaining, repairing, or replacing that Public Infrastructure Improvement. The documents transferring ownership of a Public Infrastructure Improvement to the Village must be reasonably acceptable in form and substance to the Village Manager. The Developer, simultaneously, must grant or cause to be granted to the Village any easement or other property right necessary for the Village to operate, maintain, service, repair, and replace a Public Infrastructure Improvement if such a property right has not previously been granted to the Village, which grant must be in form and substance reasonably acceptable to the Village and the Developer.

F. Guaranty and Maintenance of Public Infrastructure Improvements. The Developer hereby guarantees the prompt and satisfactory correction of all defects and deficiencies in any Public Infrastructure Improvement that occur or become evident within two years after approval and any required acceptance of that Public Infrastructure Improvement by the Village pursuant to this Agreement. If any defect or deficiency occurs or becomes evident during the two-year period, then the Village will give notice to the Developer stating the defect or

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deficiency and the Developer must correct the defect or deficiency within 10 days after receipt of the notice or, if the defect or deficiency cannot reasonably be corrected within that 10-day period, then such longer period of time as is reasonably necessary to correct the defect or deficiency so long as the Developer had promptly commenced and is diligently pursuing the correction. If the defect or deficiency is not corrected within the required time period, then the Village may undertake the correction and then the Village will have the right to draw from the performance securities deposited pursuant to Section 10 of this Agreement to reimburse itself for all costs and expenses incurred in making the correction. If any Public Infrastructure Improvement is repaired or replaced by the Developer pursuant to the demand of the Village, then the guaranty provided by this Subsection 5F will be extended, as to the repair or replacement, for two full years after the date of completion of the repair or replacement.

If the Consulting Engineer determines at any time that the Developer is not adequately maintaining or has not adequately maintained any Public Infrastructure Improvement for which the Developer has maintenance responsibility, then the Village may give written notice to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information of the inadequate maintenance. If the Developer has not cured the inadequate maintenance within 10 days after receipt of the notice or, if the inadequate maintenance cannot reasonably be cured within that 10-day period, then such longer period of time as is reasonably necessary to cure the inadequate maintenance so long as the Developer had promptly commenced and is diligently pursuing the cure, then the Village may enter on any or all of the Property for the purpose of performing maintenance work on any affected Public Infrastructure Improvement. Thereafter the Village will give the Developer, and any Mortgagee (as defined in Subsection 15H of this Agreement) for which the Developer has previously given the Village full and current contact information, 30-days notice and invoice for reimbursement of all costs actually incurred by the Village. If the Village's invoice has not been paid within that 30-day period, then the Village will give a final five-day written notice for reimbursement to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information and if the Developer fails to make full reimbursement within that five-day period, then the Village will have the right to draw from the performance securities deposited pursuant to Section 10 of this Agreement.

G. Maintenance of Ogden / La Grange Sidewalk. The Developer must maintain the Ogden / La Grange Sidewalk in good condition at all times. If the Developer fails to maintain that sidewalk in good condition, and fails to cure the maintenance failure within 30 days for capital maintenance matters (or such longer period of time as is reasonably necessary to cure the inadequate maintenance so long as the Developer had promptly commenced and is diligently pursuing the cure), or within 24 hours for routine maintenance matters such as snow removal; litter, rubbish, and garbage removal; landscaping maintenance; removal or repair of safety hazards; and similar matters, after written notice from the Village to the Developer stating the maintenance issue, then the Village, under this Subsection G and the

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permanent easement over the Ogden / La Grange Sidewalk granted to the Village, may perform the necessary maintenance using its own forces or a third party and then either reimburse itself for all costs it incurs to perform the maintenance, using special service area tax funds collected or to be levied or, subject to the following notices, demand reimbursement of those costs from the Developer if special service area tax funds are not immediately available. The Village must give a second, 30-day written notice of a demand for reimbursement from the Developer, which notice must be given to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information. If the Developer fails to make full reimbursement within the second 30-day period, then the Village will give a final five-day written notice for reimbursement to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information and if the Developer fails to make full reimbursement within that five-day period, then the reimbursement amount, together with interest and costs of collection, will become a lien against the Property and the Village will have the right to collect that reimbursement amount, with interest and costs, and to enforce the lien in the same manner as mortgage foreclosure proceedings. The Village lien will be subordinate to the lien of any mortgagee or similar financing then in place on the Property.

H. Landscaping and Maintenance of Retail Building Parcel. Except as provided in the next sentence of this Paragraph H, the Developer must install landscaping on the Retail Building Parcel in accordance with the Retail Building Parcel Interim Landscaping Plan within 90 days after the first temporary certificate of occupancy is issued for the Apartment Building and before a final certificate of occupancy is issued for the Apartment Building. The requirement to install the landscaping will not apply if the Developer has filed with the Village a completed application for a building permit to construct the Retail Building. The Developer must maintain the landscaping on the Retail Building Parcel in good condition at all times until a building permit has been issued for, and construction has commenced on, the Retail Building. The duty of the Developer to maintain the landscaping has no expiration, and if the Retail Building is never constructed, then the Developer must maintain the landscaping in perpetuity. If the Developer fails to maintain the landscaping in good condition, and fails to cure the maintenance failure within 30 days after written notice from the Village to the Developer stating the maintenance issue, then the Village, under this Subsection H, may perform the necessary maintenance using its own forces or a third party and then either reimburse itself for all costs it incurs to perform the maintenance, using special service area tax funds collected or to be levied or, subject to the following notices, demand reimbursement of those costs from the Developer if special service area tax funds are not available. The Village must give a second 30-day written notice for reimbursement from the Developer, which notice must be given to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information. If the Developer fails to make full reimbursement within the second 30-day period, then the Village will give a final five-day written notice for reimbursement to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information and if the Developer fails to make full

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reimbursement within that five-day period then that reimbursement amount, together with interest and costs of collection, will become a lien against the Property and the Village will have the right to collect that reimbursement amount, with interest and costs, and to enforce the lien in the same manner as mortgage foreclosure proceedings. The Village lien will be subordinate to the lien of any mortgagee or similar financing then in place on the Property.

I. Abandonment of Construction. If the Developer abandons the Project, then the Developer, within 60 days after notice from the Village, must remove any partially constructed or partially completed portion of the Apartment Building from the Property. For purposes of this Paragraph I, "abandons" means cessation of construction for a continuous period of 90 days for any reason other than force majeure. If the Developer fails or refuses to remove the partially constructed or partially completed portions of the Apartment Building within the 60-day period or such longer period of time as is reasonably necessary to complete the removal so long as the Developer had promptly commenced and is diligently pursuing the cure, then the Village will have, and is hereby granted in addition to all other rights afforded to the Village in this Agreement and by law, the right, at its option, to demolish and remove any partially constructed or partially completed portions of the Apartment Building. Thereafter, the Village may charge the Developer, by 30-days notice to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information, an amount equal to the Village's actual cost of that work, including without limitation legal and administrative costs. If the amount so charged is not paid by the Developer within the 30-day period, then the Village must give a final five-day written notice for reimbursement to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information and if the Developer fails to pay the amount so charged within that five-day period, then the reimbursement amount, together with interest and costs of collection, will become a lien against the Property and the Village will have the right to collect that reimbursement amount, with interest and costs, and to enforce the lien in the same manner as mortgage foreclosure proceedings. The Village lien will be subordinate to the lien of any mortgage or similar financing then in place on the Property.

J. As-Built Plans. Within 30 days after completion of construction of any Public Infrastructure Improvement, the Developer must submit to the Village Manager final, "as-built" plans for that improvement.

K. Locust Avenue Intersection Improvements; Locust Avenue Area Sidewalk and Landscaping. The Village is seeking IDOT approval for the Locust Avenue Intersection Improvements Plans and full funding for the cost of the Locust Avenue Intersection Improvements (the "*Locust Avenue Funding*"). After IDOT has approved the Locust Avenue Intersection Improvements, and after the Locust Avenue Funding is secured, the Village will cause the Locust Avenue Intersection Improvements to be constructed.

The Developer must pay \$300,000 cash to the Village for installation of traffic signals as part of the Locust Avenue Intersection Improvements. That payment

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must be made before the earlier to occur of (a) the award by the Village or IDOT of any contract for construction work on an element of the Locust Avenue Intersection Improvements or (b) the issuance by the Village of the first certificate of occupancy for the Apartment Building. That payment will fulfill the Developer's obligations related to the Locust Avenue Intersection Improvements, except only for installation of the improvements in the Basic Locust Area Sidewalk & Landscaping Plan or the Enhanced Locust Area Sidewalk & Landscaping Plan as provided in this Subsection K.

The Village may use third-party forces to undertake construction of the Locust Avenue Intersection Improvements, or the Village in its discretion may, if the Developer's contractor is still working on the Project, determine to enter into a contract with the Developer's contractor to construct the Locust Avenue Intersection Improvements at a negotiated price.

If construction of the Locust Avenue Intersection Improvements commences prior to the issuance of a final certificate of occupancy for the Apartment Building, then the Developer must install the improvements shown on the Enhanced Locust Area Sidewalk & Landscaping Plan, which installation may be made after or simultaneously with construction of the Locust Avenue Intersection Improvements, whichever is most efficient and feasible in the determination of the Developer.

If, however, the Village and the Developer determine that construction of the Locust Avenue Intersection Improvements will not commence until after completion of construction of the Ogden / La Grange Sidewalk and issuance of a final certificate of occupancy for the Apartment Building, then the Developer will install the Basic Locust Area Sidewalk & Landscaping Plan. Thereafter, the Developer may choose, in its discretion, one of the following options:

- (i) The Developer may deposit with the Village cash in the amount of the Approved Cost Estimate for installation of the improvements in the Enhanced Locust Area Sidewalk & Landscaping Plan to reimburse the costs of future installation by the Village. That deposit of cash will fulfill all of the Developer's obligations related to the installation of the improvements in the Enhanced Locust Area Sidewalk & Landscaping, or
- (ii) The Developer may retain the responsibility to install the improvements in the Enhanced Locust Area Sidewalk & Landscaping Plan in the future promptly after the Locust Avenue Intersection Improvements are completed. In this case, the Developer must provide the Village a performance letter of credit in the amount of the Approved Cost Estimate for installation of the improvements in the Enhanced Locust Area Sidewalk & Landscaping Plan, in a form similar to the Performance and Payment Letter of Credit defined in Subsection 10A of this Agreement. If at any time the Developer determines that it no longer desires to retain responsibility to install the improvements in the Enhanced Locust Area Sidewalk & Landscaping Plan, then the

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Developer may deposit with the Village cash in the amount of the Approved Cost Estimate in the manner stated in (i) above and the Village will return the performance letter of credit to the Developer. That deposit of cash will fulfill all of the Developer's obligations related to the installation of the improvements in the Enhanced Locust Area Sidewalk & Landscaping.

The Locust Avenue Intersection Improvements will be constructed in accordance with the Locust Avenue Intersection Improvements Plans, as they may be revised if required by IDOT.

L. Apartment Building Parking Garage Access. The Village will grant for the benefit of the Property non-exclusive rights of ingress and egress for the Apartment Building parking garage over the Locust Avenue right of way. The easement will be granted at the time of the Developer's acquisition of the Apartment Building Parcel in the form attached to this Agreement as Exhibit I.

M. Sign Easements. The Developer may submit plans for a sign related to the Project in the area of the intersection of La Grange Road and Shawmut Avenue and for a sign in the area of the intersection of Ogden Avenue and Locust Avenue. The Village will grant to the Developer, for the benefit of the Property, easement rights or other appropriate rights to install, maintain, and repair one or both of the signs if the sign is approved by the Village under the Village's generally applicable sign regulations in effect as of the Effective Date and if the sign is located on Village property or other property over which the Village has jurisdiction to grant such rights. The foregoing grant of easements will be in form substantially the same as the form attached to this Agreement as Exhibit I.

N. Temporary Construction Easements. The Village will grant the Developer temporary construction easements as depicted in the Approved Final Engineering Plans over (i) the Locust Avenue parking lot abutting the east property line of the Property and (ii) the Shawmut Avenue right of way abutting the northwest corner of the Property near La Grange Road, which easements will be for the purposes of, and sufficient for, the Developer undertaking work on the Project both within the easement premises and within the Property adjacent to the easement premises.

Section 6. Construction Staging, Traffic, Parking; Streets.

A. Construction Staging. When the Developer commences a phase of the Project, then the staging of work must be in conformance with approved construction staging plans, as they may be revised from time to time. The staging plans must include, among other things, plans for maintaining public vehicular access through the intersection of La Grange Road and Shawmut Avenue to the existing multiple family residential building called La Grange Tower and through the intersection of Ogden Avenue and Locust Avenue to Gordon Park.

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B. Designated Traffic Routes. The Village, in consultation with the Developer, may designate routes of access to the Property for construction traffic to protect pedestrians and to minimize disruption of traffic and damage to particular streets. The designated routes will not unduly hinder or obstruct efficient access to the Property for construction traffic.

C. Parking. All construction-related vehicles, including passenger vehicles and construction equipment, must be parked within the Property or in areas designated in advance in writing by the Village.

D. Streets, Sidewalks, and Other Rights-Of-Way. Work on streets, sidewalks, and other rights-of-way related to the Project must meet the following standards:

- (i) Compliance with Plans. All work within rights-of-way must comply with the Approved Final Engineering Plans and other applicable terms of this Agreement.
- (ii) Protection of Final Surface Course; Restoration. Except with the prior express consent of the Village, no construction traffic may use any improved public right-of-way after installation of the final surface course of that right-of-way. If the Developer uses an improved public right-of-way for construction traffic, then the Developer must keep that right-of-way free and clear of mud, dirt, debris, obstructions, and hazards and must, after the use is no longer necessary, restore and repair that right-of-way to Village standards.
- (iii) Dedication and Acceptance. No street, sidewalk, or other right-of-way will be accepted by the Village, and the Village will have no obligation or liability in respect of the street, sidewalk, or other right-of-way, until the street or other right-of-way has been completed, approved, and accepted by the Village in accordance with this Agreement. The Developer acknowledges and agrees that (a) the Village will not be obligated to accept any street or other right-of-way until all construction traffic on the street has ceased and the street or other right-of-way has been completed and, if necessary, restored and repaired as required by this Agreement and (b) the Village will not be obligated to keep any street, sidewalk, or other right-of-way cleared, plowed, or otherwise maintained until the street, sidewalk, or other right-of-way has been completed, approved, and accepted by the Village in accordance with this Agreement, or until other arrangements are made satisfactory to the Village Manager in the reasonable exercise of his or her discretion.

E. Leasing Office. At a reasonable time determined by the Developer prior to completion of the Apartment Building, the Developer may install a temporary leasing office structure within the Property in a location determined by

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the Developer and the Village based on ease of public access and protection of public safety.

Section 7. Project Declaration.

The approved Project Declaration is attached to this Agreement as Exhibit D. Prior to the issuance by the Village of any permit for work within the Property other than Site Work, the Project Declaration must be recorded against the Property. The Project Declaration may not be amended without the prior express written consent of the Village in any manner that (A) materially affects the easement rights granted therein to the Village or the Village's free exercise of those rights or (B) alters any right or remedy granted or reserved to the Village, including without limitation the right of the Village to perform necessary maintenance and repairs, to be reimbursed for all of its costs related to maintenance and repairs, and to have a lien against the appropriate Property for unpaid costs.

Section 8. Fees.

A. Negotiation and Review Fees; Utilities Costs. In addition to all other costs, payments, fees, charges, contributions, or dedications required by this Agreement or by the Requirements of Law, the Developer must pay to the Village, promptly after receipt of a written demand or demands for payment, all legal, engineering, and other consulting or administrative fees, costs, and expenses incurred or accrued in connection with the review and processing of plans for the development of the Property and in connection with the negotiation, preparation, consideration, and review of this Agreement, at the standard rates charged to the Village. Payment of all fees, costs, and expenses for which demand has been made, but payment has not been received, by the Village prior to execution of this Agreement must be made by a certified or cashier's check contemporaneous with the execution of this Agreement by the Village. Further, the Developer agrees that it will continue to be liable for and to pay, promptly after receipt of a written demand or demands for payment, the fees, costs, and expenses incurred in connection with any applications, documents, or proposals, whether formal or informal, of whatever kind submitted by the Developer to the Village during the term of this Agreement in connection with the use and development of the Property. Further, the Developer agrees that it will be liable for and will pay promptly after demand all fees, costs, and expenses incurred by the Village for publications and recordings required in connection with the above matters.

B. Other Village Fees. In addition to all other costs, payments, fees, charges, contributions, or dedications required by this Agreement, the Developer must pay to the Village all standard application, inspection, and permit fees, all standard water and sewer fees, tap-on fees, and charges, and all other standard fees, charges, and contributions pursuant to the Requirements of Law.

C. Reimbursement for Village Work on Utilities. If, during the construction of the Project the Developer discovers a Village water main, sewer main, or other utility that must be relocated to avoid conflict with the Project, then

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the Developer and the Village will determine how, where, and by whom the utility will be relocated and will determine the proportionate allocation of the cost of that relocation.

Section 9. Special Service Areas.

To provide for the maintenance of certain areas of the Property including among other things landscaping, sidewalks, street furniture, and lighting (the "*Special Services*"), the Village will create the following two special service areas over the Property.

A. Retail Parcel SSA. The Village will establish a Retail Building Parcel special service area (the "*Retail Parcel SSA*"), the boundaries of which will coincide with the lot lines of the Retail Building Parcel (except not including any portion of the Ogden / La Grange Sidewalk included in the Ogden / La Grange Sidewalk SSA). The purpose of the Retail Parcel SSA will be to provide the special services of maintaining the Retail Building Interim Landscaping if the Developer fails to properly maintain the Retail Building Interim Landscaping. The Retail Parcel SSA will authorize the levy of a special service area tax from time to time at the Village's discretion on the property within the Retail Parcel SSA's boundaries to establish, maintain, and replenish a Retail Parcel SSA Tax Fund sufficient to pay for the special services. The Village may levy the tax necessary from time to time to establish, maintain, and replenish the Retail Parcel SSA Tax Fund in an amount determined by the Village as appropriate up to \$5,000. The Developer hereby agrees not to object to the creation of the Retail Building SSA or any tax levy consistent with this Subsection A and agrees not to solicit objections from others.

B. Ogden / La Grange Sidewalk SSA. The Village will establish an Ogden / La Grange Sidewalk special service area (the "*Ogden / La Grange Sidewalk SSA*"), the boundaries of which will include all of the Ogden / La Grange Sidewalk. The purpose of the Ogden / La Grange Sidewalk SSA will be to provide the special services of maintaining the Ogden / La Grange Sidewalk if the Developer fails to properly maintain the Ogden / La Grange Sidewalk. The Ogden / La Grange Sidewalk SSA will authorize the levy of a special service area tax from time to time on the Property to establish, replenish, and maintain an Ogden / La Grange Sidewalk SSA Tax Fund sufficient to pay for the special services. The Village may levy the tax necessary from time to time to establish, maintain, and replenish the Ogden / La Grange Sidewalk SSA Tax Fund in an amount determined by the Village as appropriate up to \$10,000. The Developer hereby agrees not to object to the creation of the Ogden / La Grange Sidewalk SSA or any tax levy consistent with this Subsection B and agrees not to solicit objections from others.

Section 10. Performance Security.

A. Cash Escrow; Letter of Credit. As security to the Village for the performance by the Developer of the Developer's obligations to construct and complete the Public Infrastructure Improvements pursuant to and in accordance

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with this Agreement, the Developer must deposit with the Village Manager the following:

- (i) Inspection and Legal Work Escrow. The sum of \$20,000 cash (the "*Inspection and Legal Work Escrow*") to be held by the Village and drawn on to reimburse the Village for costs incurred by the Village for engineering services, legal services, special inspections, or analyses provided for the Project by outside vendors. Any interest earned on the Inspection and Legal Work Escrow will be added to the escrow, but the Village is not required to cause interest to be earned. If draws on the Inspection and Legal Work Escrow reduce the balance in the escrow to \$3,000 or below at any time, then the Developer must restore the Inspection and Legal Work Escrow to a level determined by the Village (but not exceeding \$10,000). Any money remaining in the Inspection and Legal Work Escrow will be distributed to the Developer within 60 days after notice from the Developer to the Village requesting that reimbursement, after (a) issuance of the final certificate of occupancy for the Apartment Building and (b) either completion of the Retail Building Parcel Interim Landscaping or issuance of a certificate of occupancy for the Retail Building, whichever occurs first.
- (ii) Letter of Credit. A performance and payment letter of credit in an amount equal to 105 percent of the Approved Cost Estimate (the "*Performance and Payment Letter of Credit*") in the form required in Subsection 10E of this Agreement.
- (iii) Condition Precedent. The deposit of the Performance and Payment Letter of Credit and the Inspection and Legal Work Escrow is a condition precedent to issuance of any permit by the Village for work on the Project.

B. Maintenance of Security. The Performance and Payment Letter of Credit and the Inspection and Legal Work Escrow must be maintained and renewed by the Developer, and will be held in escrow by the Village, until approval and acceptance, where appropriate, dedication of all the Public Infrastructure Improvements by the Village pursuant to Subsections 5D and 5E of this Agreement and until the posting of the Guaranty Letter of Credit required by Subsection 10C of this Agreement. After the acceptance and posting of the Guaranty Letter of Credit, the Village will release the Performance and Payment Letter of Credit and return it to the Developer and any amounts remaining in the Inspection and Legal Work Escrow.

C. Guaranty Letter of Credit. As a condition of the Village's approval and acceptance, where appropriate, of any or all of the Public Infrastructure Improvements pursuant to Subsections 5D and 5E of this Agreement, the Developer must post a letter of credit, in the form required by Subsection 10E of this Agreement, in the amount of 10 percent of the actual total cost of the Public Infrastructure Improvements as security for the performance of the Developer's

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obligations under this Agreement (the "*Guaranty Letter of Credit*"). The Guaranty Letter of Credit will be held by the Village in escrow until the end of the two-year guaranty period set forth in Subsection 5F of this Agreement or until two years after the proper correction of any defect or deficiency in the Improvements pursuant to Subsection 5F and payment therefor, whichever occurs later. If the Village is required to draw on the Guaranty Letter of Credit by reason of the Developer's failure to fulfill its obligations under this Agreement, then the Developer, within 20 days thereafter, will cause the Guaranty Letter of Credit to be increased to its full original amount.

D. Costs. The Developer bears the full cost of securing and manufacturing the Performance and Payment Letter of Credit and the Guaranty Letter of Credit.

E. Forms of Letters of Credit. The Performance and Payment Letter of Credit and the Guaranty Letter of Credit each must be in substantially the forms attached to this Agreement as Exhibit J, with minor revisions as may be requested by the issuer and approved by the Village Manager and Village Attorney. Each letter of credit also must be from a bank having capital resources of at least \$25,000,000, with an office in the Chicago Metropolitan Area or other location acceptable to the Village and insured by the Federal Deposit Insurance Corporation. Each letter of credit must, at a minimum, provide that (i) it will expire no earlier than the later of two years after the date of its issuance or 30 days after delivery to the Village, in the manner provided in Section 15 of this Agreement, of written notice that the letter of credit will expire, (ii) it may be drawn on based on the Village Manager's certification that the Developer has failed to fulfill any of the obligations for which the letter of credit is security, as stated in Subsections 10A, 10B, and 10C above as well as for the reasons stated in Subsections 10F, 10G, and 10H below, (iii) it does not require the consent of the Developer prior to any draw on it by the Village, (iv) it cannot be canceled without the prior written consent of the Village, and (v) if at any time it will expire within 30 or any lesser number of days, and if it has not been renewed, and if any obligation of the Developer for which it is security remains uncompleted or unsatisfactory, then the Village, after a final five-day written notice to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information, and thereafter without being required to take any further action of any nature whatsoever, may call and draw down the letter of credit and thereafter either hold all proceeds as security for the satisfactory completion of all obligations or employ the proceeds to complete all obligations and to reimburse the Village for any and all costs and expenses, including legal fees and administrative costs, incurred by the Village in connection therewith, as the Village may determine.

After completion of the Developer's obligations to construct and complete the Public Infrastructure Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the Village for all costs and expenses incurred by the Village, including without limitation legal fees and administrative costs, then the Village will release to the Developer any proceeds remaining on deposit with the

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Village drawn from the letter of credit and return the letter of credit to the Developer.

The Performance and Payment Letter of Credit will provide that the aggregate amount of the letter of credit may be reduced two times as follows, each upon joint written direction by the Developer and the Village, to reimburse the Developer for payment of Public Infrastructure Improvement work satisfactorily completed: (i) once to the amount of 55 percent of the Approved Public Infrastructure Cost Estimate when Public Infrastructure Improvements totaling 50 percent of Approved Public Infrastructure Cost Estimate have been completed and accepted by the Village and (ii) a second time to the amount of 30 percent of the Approved Public Infrastructure Cost Estimate when 75 percent of Approved Public Infrastructure Cost Estimate have been accepted by the Village. No reduction to reimburse the Developer for payment of Public Infrastructure Improvement work satisfactorily completed will be allowed except upon presentation by the Developer of proper contractors' sworn statements, partial or final waivers of lien as may be appropriate, and all additional documentation as the Village may reasonably request to demonstrate satisfactory completion of the Public Infrastructure Improvement in question and full payment of all contractors, subcontractors, and material suppliers.

The Guaranty Letter of Credit may not be reduced by reason of any cost incurred by the Developer to satisfy its obligations under Section 5 or Section 8 of this Agreement.

F. Replenishment of Security. If at any time the Village reasonably determines that the funds remaining in the Inspection and Legal Work Escrow and the Performance and Payment Letter of Credit are not sufficient to pay in full the remaining unpaid cost of all Public Infrastructure Improvements and all unpaid or reasonably anticipated Village fees, costs, and expenses, or that the funds remaining in the Guaranty Letter of Credit are not, or may not be, sufficient to pay all unpaid costs of correcting any and all defects and deficiencies in the Public Infrastructure Improvements and all unpaid or reasonably anticipated Village fees, costs, and expenses, then, within 20 days after a demand by the Village, the Developer must increase the amount of the Inspection and Legal Work Escrow or the appropriate letter of credit to an amount determined by the Village to be sufficient to pay unpaid fees, costs, and expenses. Failure to so increase the amount of the security will be grounds for the Village to retain any remaining balance of the Inspection and Legal Work Escrow and to receive the proceeds of, or to draw down, as the case may be, the entire remaining balance of the appropriate letter of credit. Upon completion of the Developer's obligations to construct and complete the Public Infrastructure Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the Village for all fees and all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village will release to the Developer any remaining funds in the Inspection and Legal Work Escrow and any proceeds remaining on deposit with the Village from any letter of credit and will return the letter of credit to the Developer.

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G. Replacement Letters of Credit. If at any time the Developer and the Village determine that the bank issuing either the Performance and Payment Letter of Credit or the Guaranty Letter of Credit is without capital resources of at least \$25,000,000, then the Village will have the right to demand that the Developer provide a replacement letter of credit from a bank with capital resources of at least \$25,000,000 and otherwise meeting the requirement set forth in Subsection E above.

The replacement letter of credit must be deposited with the Village not later than 15 days after a demand. Upon deposit, the Village will surrender the original letter of credit to the Developer. Failure to provide a replacement letter of credit will be grounds for the Village to retain any remaining balance of the Inspection and Legal Work Escrow and to draw down the entire remaining balance of the appropriate letter of credit.

H. Use of Funds in the Event of Breach of Agreement. If the Developer, after all required notices and cure periods under this Agreement have been provided, fails or refuses to complete the Public Infrastructure Improvements in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the Public Infrastructure Improvements as required by Section 5 of this Agreement or this Section 10, or fails or refuses to clean or repair property in accordance with a demand made pursuant to Subsection 4G or Subsection 6D(ii) of this Agreement, or fails or refuses to pay immediately any amount demanded by the Village pursuant to Section 8 of this Agreement, or in any other manner fails or refuses to meet fully any of its obligations under this Agreement secured by a letter of credit, then the Village, in its discretion and after five days' final notice to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information and the Developer's failure to cure its failure or refusal within that final five-day period, may retain all or any part of the Inspection and Legal Work Escrow and/or draw on and retain all or any of the funds remaining in the appropriate letter of credit. The Village thereafter will have the right to exercise its rights under Subsections 4G of this Agreement and under this Subsection 10H to take any other action it deems reasonable and appropriate to mitigate the effects of any failure or refusal, and to reimburse itself from the proceeds of the Inspection and Legal Work Escrow and/or the appropriate letter of credit for all of its costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of the Developer's failure or refusal to fully meet its obligations under this Agreement. If the funds remaining in the Inspection and Legal Work Escrow and/or the appropriate letter of credit are insufficient to repay fully the Village for all costs and expenses, and to maintain a cash reserve equal to the required Guaranty Letter of Credit during the entire time such Guaranty Letter of Credit should have been maintained by the Developer, then the Developer, upon demand of the Village therefor, must immediately deposit with the Village any additional funds as the Village reasonably determines are necessary to fully repay such costs and expenses and to establish such cash reserve. After (i) completion of the Developer's obligations to construct and complete the Public Infrastructure Improvements pursuant to and in accordance with this Agreement, (ii) correction of all defects and deficiencies in the Public Infrastructure Improvements as required by Subsection 5F of this Agreement,

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(iii) repair of property in accordance with a demand made pursuant to Subsection 4G of this Agreement, (iv) payment of all amounts demanded by the Village pursuant to Section 8 of this Agreement, (v) compliance with all other terms of this Agreement secured by a letter of credit, and (vi) reimbursement of the Village for all fees and all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village will release to the Developer any remaining Inspection and Legal Work Escrow and any proceeds remaining on deposit with the Village from any letter of credit and return the letter of credit to the Developer.

U. Village Lien Rights. If any money, property, or other consideration due from the Developer to the Village pursuant to this Agreement is not either recovered from the performance security deposits required in this Section 10 or paid or conveyed to the Village by the Developer within 30 days after a demand for payment or conveyance, then the Village must send a 30-day notice to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information, stating that the Developer has failed to make the required payment or conveyance. If the payment or conveyance is not made to the Village within that 30-day period then, after a final, five-day notice to the Developer and any Mortgagee for which the Developer has previously given the Village full and current contact information, the money, or an amount equal to the Village's reasonable estimate of the value of the property or other consideration, together with interest and costs of collection, including legal fees and administrative expenses, will become a lien upon all portions of the Property in which the Developer retains any legal, equitable, or contractual interest, and the Village will have the right to collect the amount or value, with interest and costs, including legal fees and administrative expenses, and the right to enforce the lien in the same manner as in statutory mortgage foreclosure proceedings. The lien will be subordinate to any mortgage then in place on the Property. Any sale or transfer will not relieve the Property from liability for any charges thereafter becoming due, nor from the lien of any subsequent charge.

Section 11. Liability and Indemnity of Village.

A. Village Approvals. The Village represents that, to the best of its knowledge, (i) the approvals made in the Approval Ordinance are proper and valid, (ii) there are no other zoning approvals or consents required as a condition precedent to commencement of the Project except those that are specifically stated in this Agreement, (iii) there are no other approvals or permits required with respect to development of the Property, but only building permit application, fees, and issuances and other similar matters that are standard throughout the Village, and (iv) there are no obligations, bonds, fees, assessments, contributions, or costs to be fulfilled or paid with respect to the development of the Property except those that are specifically stated in this Agreement or that are standard throughout the Village.

B. Village Reviews. The Developer acknowledges and agrees that the Village is not, and will not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans for the Property or the Improvements, or the issuance of any approvals, permits,

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certificates, or acceptances for the development or use of the Property or the Improvements, and that the Village's review and approval of those plans and the Improvements and issuance of those approvals, permits, certificates, or acceptances does not, and will not, in any way, be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, and licensees, or any other person, against damage or injury of any kind at any time.

C. Village Procedures. The Developer agrees not to challenge the Village's approval of this Agreement or the Approval Ordinance.

D. Indemnification. The Developer acknowledges that the accuracy and sufficiency of the Developer's plans and specifications for the Project are entirely the responsibility of the Developer and are not the responsibility of the Village, regardless of whether the Village reviews or approves the Developer's plans and specifications for apparent consistency with the Village's codes. The Developer agrees to, and does hereby, indemnify the Village and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys (collectively the "Indemnitees") from any and all third party claims that may be asserted at any time against any of the Indemnitees in connection with (i) any design defect in the Developer's plans or specifications for the Project or any Public Infrastructure Improvement, regardless of the Village's review and approval of any Developer plan or specification for the Project or the Public Infrastructure Improvements or the Village's issuance of any approval, permit, certificate, or acceptance for the Project based on the apparent consistency of any Developer plan or specification for the Project or any Public Infrastructure Improvement or (ii) the design, development, construction, maintenance, or use of any portion of the Property or the Infrastructure Improvements (each a "Claim" and collectively "Claims"). The foregoing indemnity does not apply or extend to any matter concerning maintenance by the Village of any Public Infrastructure Improvement after that Public Infrastructure Improvement has been accepted by the Village in accordance with this Agreement.

The Village must promptly notify the Developer of any Claim in sufficient time to avoid prejudice to the Developer arising from a lapse of time, and the Village must tender defense of a Claim to the Developer, which must assume and control the defense of the claim with counsel of its own selection and reasonably acceptable to the Village.

E. Defense Expenses. The Developer will, and does hereby agree to, pay all expenses, including without limitation legal fees and administrative expenses, incurred by the Village in examining and tendering the defense of any Claim to the Developer in accordance with Subsection D above.

Section 12. Nature, Survival, and Transfer of Obligations.

A. Binding Nature of Agreement; Assignment of Agreement. The obligations assumed by the Developer under this Agreement are binding on the Developer, on all of the Developer's successors and assigns, and on all successor legal

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or beneficial owners of record of all or any portion of the Property. In the event of a sale, transfer, or other conveyance of the Property (a "Transfer"), the Developer may assign this Agreement as provided in this Section 12.

B. Assignment of Agreement to Developer Affiliate. The Developer may assign this Agreement and Transfer the Property to a Developer Affiliate without the consent of the Village, and the Developer may assign this Agreement in connection with financing of the purchase of the Property or financing of the Project without the consent of the Village. An assignment under this Subsection B will be subject to all of the terms and conditions of this Agreement (except if the assignment is for collateral purposes only), and Opus Development Company, L.L.C. will be and remain obligated to undertake and complete construction of, and warranty work in connection with, the Public Infrastructure Improvements, all in accordance with the terms of this Agreement, and that obligation will be the personal obligation of Opus Development Company, L.L.C. Any such assignment and assumption, except if the assignment is for collateral purposes only, must be memorialized by a written agreement delivered to the Village.

C. Assignment of Agreement to Third-Party Entity. The Developer may assign this Agreement as part of a Transfer to a third-party entity, if the Developer retains the right, authority, and obligation to develop and construct the Apartment Building in accordance with the Approval Ordinance and this Agreement and if all of the following conditions are met:

- (i) The Developer has paid in full all costs and fees due to the Village under the Approval Ordinance and this Agreement.
- (ii) The Property has been subdivided as provided in Subsection 3A(vi) of this Agreement and the plat of subdivision has been executed by the Developer, the Village, and all other required signatories and recorded against the Property.
- (iii) The Project Declaration has been properly completed, executed, and recorded against the Property.
- (iv) All easements required to be granted to the Village and the easement agreements and plats of easement have been executed by the Developer and the Village and recorded, except only any final easements related to Public Infrastructure Improvements that are not capable at the time of assignment to be granted due to lack of necessary field data.
- (v) All dedications, grants, and other property transfers required by the Developer under this Agreement have been properly completed, except only property dedications, grants, or other transfers that are not capable of being completed at the time of assignment.
- (vi) The Developer has executed a written affirmation to the Village that Opus Development Company, L.L.C. will remain fully bound by and

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responsible under this Agreement (a) to develop and construct the Apartment Building and (b) to construct the Public Infrastructure Improvements and repair them during the two-year guaranty period stated in this Agreement as a personal obligation of Opus Development Company, L.L.C., all in accordance with the Approval Ordinance and this Agreement.

- (vii) The performance security required under Section 10 of this Agreement remains in full force and effect or is replaced with new performance security of the same type and form.

Any such assignment must be memorialized by a written agreement delivered to the Village that includes, in addition to assignment and assumption terms, a statement from Opus Development Company, L.L.C. affirming the "Opus Commitment" defined in the next paragraph of this Subsection C.

After such an assignment (i) Opus Development Company, L.L.C. will retain the right, authority, and obligation to develop and construct the Apartment Building and all of the Public Infrastructure Improvements and to perform all guaranty work related to the Public Infrastructure Improvements, all in accordance with this Agreement (collectively the "*Opus Commitment*") and (ii) other than as to the Opus Commitment, the Village agrees to seek recovery on any judgment solely against the interest of Developer in the Property and the security provided under this Agreement, and the Village will not seek to recover any judgment against the Developer or its respective partners, directors, officers, members, managers, or shareholders, which shall not be personally liable for such judgment.

D. Termination of Agreement if No Assumption. If the Developer assigns this Agreement to any third-party entity without retaining the right, authority, and obligation to develop and construct the Apartment Building in accordance with this Agreement, then this Agreement will automatically terminate and be null and void and will confer no value, benefit, opportunity, entitlement, or right of any kind or nature to the assignee or transferee.

Section 13. Term.

This Agreement will run with and bind the Property in perpetuity and shall inure to the benefit of and be enforceable by the Developer and the Village. If any of the privileges or rights created by this Agreement would be otherwise unlawful or void for violation of (A) the rule against perpetuities or some analogous statutory provision, (B) the rule restricting restraints on alienation, or (C) any other statutory or common law rules imposing time limits, then such provision will continue only until 21 years after the death of the last survivor of the now living lawful descendants of Barack Hussein Obama II, President of the United States, or for such shorter period as may be required to sustain the validity of such provision.

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Section 14. Enforcement.

The parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement, except that (i) the Developer agrees that it will not seek, and does not have the right under any circumstances to seek, to recover a judgment against any Village elected or appointed official, officer, employee, agent, representative, engineer, or attorney on account of the negotiation, execution, or breach of this Agreement and (ii) the Village agrees that it will not seek and does not have the right under any circumstances to seek, to recover a judgment against any individual Developer director, officer, member, manager, or shareholder.

In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the Village will be entitled to withhold the issuance of a building permit or a certificate of occupancy for work or occupancy within the Property at any time when the Developer has failed or refused to comply with a material obligation under this Agreement and has not, after the required notices stated herein, cured that failure or refusal within the cure periods, if any, allowed for that failure or refusal.

In the event of a judicial proceeding brought by one party to this Agreement against the other party to this Agreement pursuant to this Section 14, the prevailing party will be entitled to reimbursement from the unsuccessful party of all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the judicial proceeding.

Section 15. General Provisions.

A. Notice. Any notice or communication required or permitted to be given under this Agreement must be in writing and must be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by facsimile with confirmation of delivery.

Unless otherwise provided in this Agreement, notices will be deemed received after the first to occur of (a) the date of actual receipt, or (b) the date that is one business day after deposit with an overnight courier as evidenced by a receipt of deposit, or (c) the date that is three business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Subsection 15A, each party to this Agreement has the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address will be effective until actually received.

Notices and communications to the Village must be addressed to, and delivered at, the following address:

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Village of La Grange
53 South La Grange Road
La Grange, Illinois 60525
Attn: Village Manager
Telephone: (708) 579-2316

with a copy to:
Holland & Knight LLP
131 South Dearborn Street, 30th Floor
Chicago, Illinois 60603
Attn: Mark Burkland
Telephone: (708) 578-6557

Notices and communications to the Developer must be addressed to, and delivered at, the following address:

Opus Development Company, L.L.C.
9700 Higgins Road, Suite 900
Rosemont, Illinois 60018
Attn: Sean Spellman

with a copy to:
Opus Holding, L.L.C.
10350 Bren Road West
Minnetonka, Minnesota 55343
Attn: Thomas J. Hoben

and a copy to:
D. Albert Daspin
Daspin & Aument, LLP
227 West Monroe Street, Suite 3500
Chicago, Illinois 60606

B. Time of the Essence. Time is of the essence in the performance of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement are cumulative and are not exclusive of any other rights, remedies, and benefits allowed by law.

D. Non-Waiver. The Village is under no obligation to exercise any of the rights granted to it in this Agreement. The failure of the Village to exercise at any time any right granted to the Village will not be deemed or construed to be a waiver of that right, nor will the failure void or affect the Village's right to enforce that right or any other right.

E. Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent will be in writing.

F. Facilitation of Agreement. The Village and the Developer will act in good faith and in a reasonable and cooperative manner with respect to consents, approvals, and other matters contemplated under this Agreement. No consent or approval may be unreasonably delayed, conditioned, or withheld. The Village and the Developer will execute, acknowledge, and deliver reasonable documents and other instruments necessary to fully carry out the terms of this Agreement.

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G. Estoppel Certificates. The Village, from time to time on request by the Developer, execute and deliver to the Developer and to any parties designated by the Developer, within 10 days after a demand therefor, an estoppel certificate in a form acceptable to the Village, certifying (i) that this Agreement is unmodified and in full force and effect or, if there had been modifications, that this Agreement is in full force and effect as modified, (ii) that the Developer is not in default of this Agreement or specifying any defaults, and (iii) other facts reasonably requested by the Developer.

H. Mortgagees. The obligations of the Developer and its successors under this Agreement are not binding on any mortgagee, ground lessor, sale-leaseback lessor, or trust deed holders (each a "Mortgagee") that acquire title to all or any portion of the Property by trustee's sale, foreclosure, or deed-in-lieu of foreclosure or otherwise. No Mortgagee will have any right or entitlement, however, to proceed with development of any kind on the Property or any portion of the Property except only if the Mortgagee has delivered to the Village a written and binding consent and assumption agreement in form and substance acceptable to the Village Manager and Village Attorney, executed by the Mortgagee, accepting and agreeing to be bound by and to comply with all of the terms, covenants, and conditions of this Agreement.

If the Developer, after all required notices from the Village, defaults under this Agreement, then the Village will give any Mortgagee a final 15-day notice of default and right to cure if the Village has previously been given full and current contact information for that Mortgagee. The Village will accept a cure completed by a Mortgagee within the final 15-day period, in fulfillment of the Developer's obligations hereunder, for the account of the Developer, and with the same force and effect as if performed by the Developer. No cure or attempted cure by or on behalf of a Mortgagee will be deemed to be an acceptance by that Mortgagee of an assignment of this Agreement.

I. Governing Law. This Agreement will be governed by and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

J. Severability. It is hereby expressed to be the intent of the parties to this Agreement that should any provision, covenant, agreement, or portion of this Agreement or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any Person or property will not be impaired thereby, but the remaining provisions will be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

K. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

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L. Interpretation. This Agreement will be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement will be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party is not applicable to this Agreement.

M. Force Majeure. If either party is unable to timely perform an obligation under this Agreement by reason of an Uncontrollable Circumstance, then that party will not be in default of that obligation and will be granted the additional time required to perform that obligation so long as the party reasonably undertakes efforts toward performance of that obligation.

N. Exhibits. Exhibits A through J attached to this Agreement are, by this reference, incorporated into and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement will control.

O. Amendments and Modifications. No amendment or modification to this Agreement will be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

P. Changes in Laws. Unless otherwise provided in this Agreement, any reference to the Requirements of Law will be deemed to include any modifications of, or amendments to, the Requirements of Law that may occur in the future.

Q. Code Amendments. If the Zoning Code, La Grange Code of Ordinances, or other code or ordinance is amended in a manner that would restrict or otherwise adversely affect the Project as approved by this Agreement, then the amendment will not apply to the Project as approved by this Agreement unless (i) the amendment is mandated by federal or State of Illinois law or (ii) the amendment affects a matter of public health or safety and is of Village-wide application.

R. Authority to Execute. The Village represents to the Developer that the Village has the authority, and has legally and properly implemented its authority, to enter into this Agreement, that the Approval Ordinance does not violate any law or code applicable to the Village, and that the persons executing this Agreement on its behalf have been properly authorized to do so by the Board of Trustees. The Developer hereby warrants and represents to the Village (i) that it is the contract purchaser of fee simple title to the Property, (ii) that it has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and to bind the Property as set forth in this Agreement, (iii) that all legal actions needed by the Developer to authorize the execution, delivery, and performance of this Agreement have been taken, and (iv) that neither the execution of this Agreement nor the performance of the obligations assumed by the Developer will (a) result in a breach or default under any agreement to which the Developer is a party or to which it or the Property is

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bound or (b) violate any statute, law, restriction, court order, or agreement to which the Developer or the Property is subject.

S. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person may be made, or will be valid, against the Village or the Developer.

T. Recording. After the Developer has paid to the Village the amounts due pursuant to Section 8 of this Agreement and the Developer has paid to the Village an amount sufficient to cover the cost of recording this Agreement, the Village will cause this Agreement to be recorded against the Property in the office of the Recorder of Cook County on or after the date of acquisition by the Developer of legal title in the Apartment Building Parcel.

IN WITNESS WHEREOF, the Village and the Developer have caused this Agreement to be approved and executed by their properly authorized representatives as of the Effective Date.

Village of La Grange

By:

[Signature]
Village President

Attest:

By:

[Signature]
Village Clerk

Opus Development Company, L.L.C.

Signature:

[Signature]

Printed name:

Sean T. Spellman
Vice President and General Manager

Title:

Attest:

Signature:

[Signature]

Printed name:

David Evanson
Vice President, Sales and Finance

Title:

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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for Cook County, Illinois, do hereby certify that Thomas Livingston, personally known to me to be the Village President of the Village of La Grange, an Illinois municipal corporation, and John Burns, personally known to me to be the Village Clerk of the Village, and personally known to me to be the same persons whose names are subscribed to the foregoing Development Agreement, each appeared before me this day in person and acknowledged that, as the Village President and Village Clerk, they signed and delivered the Development Agreement, pursuant to the authority given by the Village, as their free and voluntary act and as the free and voluntary act and deed of the Village, for the uses and purposes set forth in the Agreement.

Given under my hand and official seal this 22 day of DECEMBER 2014.

Eleanor Elder
Notary Public



STATE OF Illinois)
) ss.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Sean T. Spellman, personally known to me to be the V.P. & General Mgr of the Opus Development Company, L.L.C., a Delaware limited liability company, and David Everson, personally known to me to be the V.P. Sales & Finance of Opus Development Company, L.L.C., and personally known to me to be the same persons whose names are subscribed to the foregoing Development Agreement, each appeared before me this day in person and acknowledged that, as the V.P. General Mgr and V.P. Sales & Finance they signed and delivered the Development Agreement, pursuant to the authority given by Opus Development Company, L.L.C., as their free and voluntary act and as the free and voluntary act and deed of Opus Development Company, L.L.C., for the uses and purposes set forth in the Agreement.

Given under my hand and official seal this 26 day of November 2014

Eva J. Johns
Notary Public

