

UNOFFICIAL COPY

Prepared by and return to:
Klein Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, IL 60606
Attention: Gregory T. Smith
(# 1248/31 - GTS)



1903245047

Doc# 1903245047 Fee \$158.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 02/01/2019 02:18 PM PG: 1 OF 61

[Above space for Recorder's Office]

RECORDING COVER SHEET

FOR

VILLAGE OF RIVER FOREST
COOK COUNTY, ILLINOIS

RESOLUTION NO. 17-16

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDED
AND RESTATED REDEVELOPMENT AGREEMENT FOR LAKE STREET
AND LATHROP AVENUE IN THE VILLAGE OF RIVER FOREST,
COOK COUNTY, ILLINOIS

ADDRESSES:

423 ASHLAND AVENUE AND
7601- 7621 WEST LAKE STREET,
RIVER FOREST, ILLINOIS 60305

PINS:

15-12-117-002-0000
15-12-117-003-0000
15-12-117-017-0000
15-12-117-018-0000
15-12-117-019-0000

RECORDING FEE 158
DATE 2-1-19 COPIES 6
OK BY Bm

UNOFFICIAL COPY

RESOLUTION NO. 17-16

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED REDEVELOPMENT AGREEMENT FOR LAKE STREET AND LATHROP AVENUE IN THE VILLAGE OF RIVER FOREST, COOK COUNTY, ILLINOIS

WHEREAS, the Village of River Forest ("Village") is an Illinois municipal corporation organized under the Illinois Constitution and the laws of the State of Illinois; and

WHEREAS, on March 23, 2016, the Village President and Board of Trustees approved an agreement entitled "Redevelopment Agreement For Lake Street And Lathrop Avenue In The Village Of River Forest, Cook County, Illinois" (the "Redevelopment Agreement") with Lake Lathrop Partners, LLC (the "Developer"); and

WHEREAS, the Redevelopment Agreement called for the redevelopment of certain property in the Village generally located at the southwest corner of Lake Street and Lathrop Avenue by the Developer; and

WHEREAS, the Redevelopment Agreement required the Developer to file a planned development application with the Village by June 14, 2016; and

WHEREAS, the Developer failed to submit a planned development application to the Village by the agreed upon deadline; and

WHEREAS, on June 29, 2016, the Village sent a first default notice to the Developer pursuant to the Redevelopment Agreement, stating the reasons for the default of the Developer's obligations under the Redevelopment Agreement; and

WHEREAS, the Developer asked for an extension of time to submit a planned development application to the Village; and

WHEREAS, the Village agreed to amend the Redevelopment Agreement, and to extend the time for the Developer's submission of a planned development application to the Village from June 14,

UNOFFICIAL COPY

2016 to October 14, 2016, and on July 12, 2016, the Village approved the amendment to the Redevelopment Agreement in Resolution 16-10 and the "First Amendment To The Redevelopment Agreement For Lake Street And Lathrop Avenue In The Village Of River Forest, Cook County, Illinois" attached thereto, which was executed by the Developer (the "First Amendment"); and

WHEREAS, the Developer failed to meet the deadlines in the Redevelopment Agreement, as amended by the First Amendment, with respect to the planned development permit application submittal and with respect to property acquisition and due diligence; and

WHEREAS, the Developer asked for another extension of time to submit its planned development permit application, to acquire the properties in question and to complete due diligence on those properties; and

WHEREAS, the Village agreed to amend the Redevelopment Agreement, as amended by the First Amendment, and to extend the time for the Developer's submission of a planned development application to the Village from October 14, 2016 to November 15, 2016, and to extend the time for the Developer to complete its due diligence on the properties to be acquired, from June 14, 2016 to November 15, 2016, and on October 10, 2016, the Village approved the amendment to the Redevelopment Agreement, as amended by the First Amendment, in Resolution 16-11 and the "Second Amendment To The Redevelopment Agreement For Lake Street And Lathrop Avenue In The Village Of River Forest, Cook County, Illinois" attached thereto, which was executed by the Developer (the "Second Amendment"); and

WHEREAS, the Redevelopment Agreement, as amended by the First Amendment and Second Amendment, required the Developer to acquire the "Parcels," as defined in the Redevelopment Agreement, on or before September 30, 2016, or within sixty (60) days thereafter, and required the Developer to have completed its due diligence on the Parcels by November 15, 2016; and

UNOFFICIAL COPY

WHEREAS, the Developer again failed to meet the deadlines regarding property acquisition and due diligence; and

WHEREAS, on December 2, 2016, the Village sent a second default notice to the Developer pursuant to the Redevelopment Agreement, stating the reasons for the default of the Developer's obligations under the Redevelopment Agreement, as amended by the First Amendment and the Second Amendment; and

WHEREAS, the Developer asked for another extension to complete its due diligence on the Parcels, to submit a planned development application to the Village, and to acquire the Parcels; and

WHEREAS, the Village agreed to amend the Redevelopment Agreement, as amended by the First Amendment and the Second Amendment, and to extend the time for the Developer's submission of a planned development application to the Village from November 15, 2016 to March 10, 2017, to extend the time for the Developer to complete its due diligence on the properties to be acquired, from November 15, 2016 to January 30, 2017, to extend the time for the Developer to acquire the Parcels from September 30, 2017 to January 30, 2017, to submit a written require or application for a "No Further Remediation" determination from the Illinois Environmental Agency for the Parcels on or before August 1, 2017, and to complete remediation of the Parcels by November 30, 2017, and, on January 9, 2017, the Village approved the amendment to the Redevelopment Agreement, as amended by the First Amendment and the Second Amendment, in Resolution 17-03, and the "Third Amendment To The Redevelopment Agreement For Lake Street And Lathrop Avenue In The Village Of River Forest, Cook County, Illinois" attached thereto, which was executed by the Developer (the "Third Amendment"); and

UNOFFICIAL COPY

WHEREAS, the Developer again failed to meet certain deadlines in the Redevelopment Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment regarding planned development application submittal, property acquisition and due diligence; and

WHEREAS, on July 10, 2017, the Village President and Board of Trustees approved Resolution 17-14, entitled "A Resolution Authorizing The Execution Of An Amended And Restated Redevelopment Agreement For Lake Street And Lathrop Avenue In The Village Of River Forest, Cook County, Illinois," regarding the Redevelopment Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment; and

WHEREAS, the Developer and the Village did not execute the Amended and Restated Redevelopment Agreement approved by Resolution 17-14; and

WHEREAS, the Village agrees to repeal Resolution 17-14 and agrees to again amend the Redevelopment Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment, on the terms set forth in the "Amended and Restated Redevelopment Agreement For Lake Street And Lathrop Avenue In The Village Of River Forest, Cook County, Illinois" (the "Amended and Restated Redevelopment Agreement"), a copy of which is attached hereto as **EXHIBIT A** and made a part hereof; and

WHEREAS, it is in the best interest of the health, safety and welfare of the Village and its residents to approve the Amended and Restated Redevelopment Agreement;

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of River Forest, Cook County, Illinois:

SECTION 1: The Preambles hereto are hereby made a part of, and operative provisions of, this Resolution as fully as if completely repeated at length herein.

SECTION 2: Resolution 17-14 is hereby repealed and of no further force or effect.

UNOFFICIAL COPY

SECTION 3: That the President and Village Board of the Village of River Forest hereby find that it is in the best interests of the Village of River Forest and its residents that the Amended and Restated Redevelopment Agreement be entered into by the Village of River Forest, with the Amended and Restated Redevelopment Agreement to be substantially in the form attached hereto and made a part hereof as **EXHIBIT A**, with such changes thereto as approved by the President, Village Administrator and Village Attorney.

SECTION 4: That the President, Village Clerk and Village Administrator of the Village of River Forest are hereby directed and authorized to execute for and on behalf of said Village of River Forest the aforesaid Amended and Restated Redevelopment Agreement, and all other documents related thereto necessary to consummate the Village's obligations therein.

SECTION 5: All actions of the President and Board of Trustees of the Village of River Forest, and the agents and employees of the Village of River Forest, that relate to the Redevelopment Agreement, the First Amendment, the Second Amendment and the Third Amendment, whether taken before or after the adoption of this Resolution, are ratified, confirmed and approved.

SECTION 6: That this Resolution shall take effect from and after its adoption and approval as required by law.

[THIS SPACE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY


ADOPTED on a roll call vote of the Corporate Authorities on the 18th day of September, 2017.

AYES: Trustees Gibbs, Conti, Corsini, Cargie, and Henek

NAYS: None

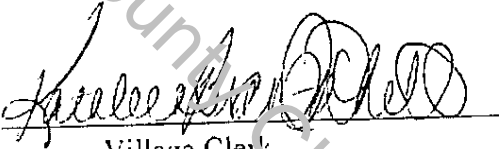
ABSENT: Trustee Vazquez

APPROVED by me this 18th day of September, 2017.


Village President

APPROVED and FILED in my office this 18th day of September, 2017 and published in pamphlet form in the Village of River Forest, Cook County, Illinois.

ATTEST:


Village Clerk

UNOFFICIAL COPY

EXHIBIT A

**AMENDED AND RESTATED REDEVELOPMENT AGREEMENT
FOR LAKE STREET AND LATHROP AVENUE IN THE VILLAGE OF
RIVER FOREST, COOK COUNTY, ILLINOIS**

(attached)

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

UNOFFICIAL COPY

AMENDED AND RESTATED REDEVELOPMENT AGREEMENT FOR LAKE STREET AND LATHROP AVENUE IN THE VILLAGE OF RIVER FOREST, COOK COUNTY, ILLINOIS

This AMENDED AND RESTATED REDEVELOPMENT AGREEMENT FOR LAKE STREET AND LATHROP AVENUE IN THE VILLAGE OF RIVER FOREST, COOK COUNTY, ILLINOIS ("Agreement") is made between the VILLAGE OF RIVER FOREST, an Illinois municipal corporation ("Village") and LAKE LATHROP PARTNERS LLC, an Illinois limited liability company ("Developer"), as nominee of KEYSTONE VENTURES, LLC, an Illinois limited liability company ("Keystone") and is dated this 18th day of September, 2017 ("Effective Date").

WITNESSETH

WHEREAS, pursuant to Village ordinances 2298, 2299, 2230, 2370, 2595, 2648 and 2868, and the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended from time to time ("TIF Act"), the Village created and amended a tax increment development plan and project ("TIF Plan"), designated a tax increment development project area known as the "Central Business District Tax Increment Financing District," ("TIF District") and adopted tax increment financing relative to the TIF District (collectively, the "TIF"); and

WHEREAS, on March 8, 2010, the Village issued a request for proposal for the redevelopment of property within the TIF District, located along the south side of Lake Street between Lathrop and Ashland Avenues, River Forest, Cook County, Illinois, and depicted, legally described, and listed in Group Exhibit A hereto, respectively ("Project Area"), each parcel within the Project Area shall be referred to herein as labeled and legally described in Exhibit A-3 or shall be generically referred to as a "Parcel"; and

WHEREAS, on June 1, 2010, Keystone submitted a proposal for the redevelopment of the Project Area, which proposal was discussed at public meetings of the Village held on June 14, 2010, October 25, 2010 and November 29, 2010, which project was later supplemented (together the "Project") and discussed at other public meetings of the Village; and

WHEREAS, the Project included, among other requests and requirements, that the Village pay certain "redevelopment project costs," as such term is defined in the TIF Act, from amounts on deposit in the TIF fund established for the TIF District ("TIF Account") necessary to complete certain real estate acquisition, environmental remediation and tenant lease termination and/or relocation within the Project Area ("TIF Request"); and

WHEREAS, on December 13, 2010, the Village and Keystone entered into a certain "Agreement Regarding Commitment of TIF Funds for Redevelopment Project Costs at Lake and Lathrop," which was subsequently amended on November 11, 2013 by a certain "First Amendment to the Agreement Regarding Commitment of TIF Funds for the Redevelopment Project Costs at Lake and Lathrop," and amended a second time on December 29, 2014 by a certain "First Amendment to the Agreement Regarding Commitment of TIF Funds for

UNOFFICIAL COPY

Redevelopment Project Costs at Lake and Lathrop,” and amended a third time on December 14, 2015 by a certain “Third Amendment to the Agreement Regarding Commitment of TIF Fund for Redevelopment Project Costs at Lake and Lathrop” (together the “Preliminary Agreement”); and

WHEREAS, on December 31, 2010, the TIF District was terminated, however, prior to such termination, the Village committed and set aside under the Preliminary Agreement an amount equal to One Million Nine Hundred Thousand and No/100 Dollars (\$1,900,000.00) from the TIF Account (“Committed Funds”) as a source of funding of the TIF Request for the Project, and since that time the Village has agreed to pay environmental remediation costs of the Project over One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00), if any, as the “Additional Village Funding,” as defined in Section 2.03(C) below; and

WHEREAS, on August 24, 2015, pursuant to Village resolution 15-06, the Village approved “A Resolution Expressing Official Intent Regarding Expenditures Related to the Lake and Lathrop Redevelopment Project to be Reimbursed by Funds Held by the Village of River Forest” (“Inducement Resolution”), which recommitted the Committed Funds and confirmed the availability of the Committed Funds for the Project on the terms set forth in the Preliminary Agreement; and

WHEREAS, prior to the Effective Date, the Village expended approximately Fifty Two Thousand and No/100 Dollars (\$52,000.00) from sources other than the Committed Funds (and which will not be credited against any Additional Village Funding, if any) to obtain a phase II environmental site assessment of the “Ditchfield Property,” and the “Al Saffar Property” as legally described in Exhibit A-3, and, prior to the Effective Date, the Village gave the report of the phase II environmental site assessment of the Ditchfield Property to Keystone and the Developer; and

WHEREAS, the Village has agreed to pay Forty Thousand and No/100 Dollars (\$40,000.00) from sources other than the Committed Funds (and which will not be credited against any Additional Village Funding, if any) for a portion of a policy of insurance related to the acquisition of the “Al Saffar Property” as set forth in Section 2.03(E) below; and

WHEREAS, the Village and Developer, which Developer is the nominee of Keystone as set forth in the nomination in Exhibit B attached hereto and made a part hereof, desire to enter into this Agreement, which Agreement incorporates the terms of the Preliminary Agreement and contains such other terms and conditions necessary for the completion of the Project by the Village and Developer and the expenditure of the Committed Funds and the Additional Funding in connection therewith in accordance with the terms and provisions of this Agreement and the TIF Act, without which, it would be economically infeasible for Developer to complete the Project and there could be no redevelopment of the Project Area; and

WHEREAS, on August 24, 2015, pursuant to Village Ordinance 3566 and the Illinois Business District Development and Redevelopment Law, 65 ILCS 5/11-74.3-1, et seq., as amended from time to time (“Business District Law”), the Village approved a business district plan (“Business District Plan”), designated the “East Lake Street Business District No. 1” as a

UNOFFICIAL COPY

business district, which covers the Project Area ("Business District") and made a finding that the Business District is blighted and in need of redevelopment; and

WHEREAS, pursuant to the Business District Law and the Business District Plan, the Village has the authority to undertake the development, redevelopment, improvement, maintenance, and revitalization of the Business District, and to take actions, and expend funds, to eliminate blight in the Business District, including through the expenditure of the Committed Funds on the Project; and

WHEREAS, in order to eliminate blight in the Project Area, Developer shall acquire the Project Area, and redevelop and operate the Project, as described and depicted on the site plan attached hereto and made a part hereof as Group Exhibit C, respectively; and Developer shall submit an application for a planned development permit with the Village ("Proposed PD"), and prior to the Effective Date Developer has provided the Village with satisfactory proof of financing for the Project and satisfactory revenue projections for the Project; and

WHEREAS, the Project generally consists of a single mixed use building of five (5) floors above grade, with commercial space at the street level ("Commercial Units"), with residential space above street level ("Residential Units"), and on-site parking at grade and below grade, and the budget for the Project as approved by Village and Developer, in preliminary form as of the Effective Date and as the budget may be amended and approved from time to time by the Developer and Village, as applicable ("Project Budget"); and

WHEREAS, in order to complete the Project, Developer shall use the Committed Funds to acquire the Parcels and remediate any environmental contamination on the Parcels, and any remaining Committed Funds shall be used as tenant incentives for the Project; and

WHEREAS, the Village may use its eminent domain authority granted by virtue of the Illinois Constitution, the Business District Law, and the Illinois Eminent Domain Act, 735 ILCS 30/1-1-1, *et seq.*, to acquire Parcels within the Project Area that Developer is unable to acquire voluntarily means; and

WHEREAS, this Agreement is an "express written agreement in which a private person or entity agrees to undertake a development project within [a] blighted area that specifically details the reasons for which the property or rights in that property are necessary for the development project" as set forth in Section 5-5-5(d)(iv)(A) of the Illinois Eminent Domain Act, 735 ILCS 30/5-5-5(d)(iv)(A), as Developer agrees by the terms of this Agreement to undertake the development of the blighted Project Area because each of the Parcels are necessary for the development of the Project due to the boundaries of the Project Area, the uses, character, and nature of the Project, the market demand for redevelopment of the Project Area, and the willingness of Developer to undertake the Project only if the Project Area includes the Parcels; and

WHEREAS, the Village is desirous of having the Project Area, rehabilitated, developed and redeveloped as contemplated under the TIF Plan, the Business District Plan, and the Inducement Resolution, and in accordance with the authority granted by the TIF Act and the

UNOFFICIAL COPY

Business District Law, in order to serve the needs of the Village, carry out the purposes of the TIF Plan and the Business District Plan, arrest physical decay and decline in the Project Area, eliminate the blight in the Project Area, increase employment opportunities, stimulate commercial growth and stabilize the tax base of the Village and, in furtherance thereof, the Village is willing to undertake the incentives, under the terms and conditions hereinafter set forth, to assist such redevelopment, without which incentives the redevelopment and rehabilitation of the Project Area could not occur; and

WHEREAS, on March 23, 2016, the Village President and Board of Trustees approved an agreement entitled "Redevelopment Agreement For Lake Street And Lathrop Avenue In The Village Of River Forest, Cook County, Illinois" ("Original Redevelopment Agreement") with Developer; and

WHEREAS, the Original Redevelopment Agreement called for the redevelopment of certain property in the Village generally located at the southwest corner of Lake Street and Lathrop Avenue by the Developer; and

WHEREAS, the Redevelopment Agreement required the Developer to file an application for the Proposed PD with the Village by June 14, 2016, which the Developer failed to do; and

WHEREAS, on June 29, 2016, the Village sent a first default notice to the Developer pursuant to the Original Redevelopment Agreement, stating the reasons for the default of the Developer's obligations under the Original Redevelopment Agreement, and the Developer asked for an extension of time to submit an application for the Proposed PD to the Village; and

WHEREAS, the Village agreed to amend the Original Redevelopment Agreement, and to extend the time for the Developer's submission of a planned development application to the Village from June 14, 2016 to October 14, 2016, and on July 12, 2016, the Village approved the amendment to the Original Redevelopment Agreement in Resolution 16-10 and the "First Amendment To The Redevelopment Agreement For Lake Street And Lathrop Avenue In The Village Of River Forest, Cook County, Illinois" attached thereto, which was executed by the Developer ("First Amendment"); and

WHEREAS, the Developer failed to meet the deadlines in the Original Redevelopment Agreement, as amended by the First Amendment, with respect to submitting an application for the Proposed PD and with respect to property acquisition and due diligence, and the Developer asked for another extension of time to submit an application for the Proposed PD and to acquire the Parcels; and

WHEREAS, the Village agreed to amend the Original Redevelopment Agreement, as amended by the First Amendment, and to extend the time for the Developer's submission of an application for the Proposed PD from October 14, 2016 to November 15, 2016, and to extend the time for the Developer to complete its due diligence on the Parcels, from June 14, 2016 to November 15, 2016, and on October 10, 2016, the Village approved the amendment to the Original Redevelopment Agreement, as amended by the First Amendment, in Resolution 16-11

UNOFFICIAL COPY

and the "Second Amendment To The Redevelopment Agreement For Lake Street And Lathrop Avenue In The Village Of River Forest, Cook County, Illinois" attached thereto, which was executed by the Developer (the "Second Amendment"); and

WHEREAS, the Original Redevelopment Agreement, as amended by the First Amendment and Second Amendment, required the Developer to acquire the Parcels on or before September 30, 2016, or within sixty (60) calendar days thereafter, and required the Developer to have undertaken its due diligence on the Parcels by November 15, 2016; and

WHEREAS, the Developer again failed to meet the deadlines regarding property acquisition and due diligence, and on December 2, 2016, the Village sent a second default notice to the Developer pursuant to the Original Redevelopment Agreement, stating the reasons for the default of the Developer's obligations under the Original Redevelopment Agreement, as amended by the First Amendment and the Second Amendment; and

WHEREAS, the Developer asked for another extension to complete its due diligence on the Parcels, to submit a planned development application to the Village, and to acquire the Parcels, and the Village agreed to amend the Original Redevelopment Agreement, as amended by the First Amendment and the Second Amendment, and to extend the time for the Developer's submission of an application for the Proposed PD from November 15, 2016 to March 10, 2017, to extend the time for the Developer to complete its due diligence on the Parcels, from November 15, 2016 to January 30, 2017, to extend the time for the Developer to acquire the Parcels from September 30, 2016 to January 30, 2017, to submit a written require or application for a "No Further Remediation" determination from the Illinois Environmental Agency for the Parcels on or before August 1, 2017, and to complete remediation of the Parcels by November 30, 2017, and on January 9, 2017, the Village approved the amendment to the Original Redevelopment Agreement, as amended by the First Amendment and the Second Amendment, in Resolution 17-03, and the "Third Amendment To The Redevelopment Agreement For Lake Street And Lathrop Avenue In The Village Of River Forest, Cook County, Illinois" attached thereto, which was executed by the Developer (the "Third Amendment"); and

WHEREAS, the Developer again failed to meet the deadlines in the Original Redevelopment Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment regarding planned development application submittal, property acquisition and due diligence (the Original Redevelopment Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment is the "Amended Original Redevelopment Agreement"); and

WHEREAS, prior to the Effective Date, the Developer has made progress on some of its obligations under the Amended Original Redevelopment Agreement, as set forth in Section 1.03 below, but the Developer requires additional time to complete its remaining obligations, and the parties desire to amend certain of their other obligations in the Amended Original Redevelopment Agreement; and

WHEREAS, prior to the Effective Date, some of the Committed Funds have been spent pursuant to the terms of the Amended Original Redevelopment Agreement, for the acquisition of

UNOFFICIAL COPY

the 423 Ashland Property and the Ditchfield Property, as further described in Section 1.03 below; and

WHEREAS, the Village and the Developer agree to amend and restate the Amended Original Redevelopment Agreement on the terms set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. RECITALS; EFFECT OF AGREEMENT; PROJECT PROGRESS:

1.01 Recitals. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though such recitals were fully set forth in this Section 1. This Agreement shall be construed in accordance with such recitals.

1.02 Effect of Agreement. This Agreement shall not waive any defaults or breaches of the Amended Original Redevelopment Agreement by the Village or by the Developer existing as of the Effective Date of this Agreement, to the extent that this Amended Original Redevelopment Agreement does not result in the cure of a default or breach of the Amended Original Redevelopment Agreement existing as of the Effective Date of this Agreement. Subject to the foregoing limitations in this Section 1.02, this Agreement amends and restates, in its entirety, the Amended Original Redevelopment Agreement, and the Amended Original Redevelopment Agreement is of no further force or effect, except that the Village and the Developer may address any uncured default or breach by the other occurring under the terms of the Amended Original Redevelopment Agreement in accordance with the terms of Sections 7 and 9 of this Agreement, and all references to the "Agreement" in Sections 7 and 9 shall include, for purposes of uncured default or breaches by the Village or the Developer under the Amended Original Redevelopment Agreement prior to the Effective Date of this Agreement, "or of the Amended Original Redevelopment Agreement."

1.03 Project Progress. Prior to the Effective Date, the Developer has taken the following substantial actions in furtherance of the Project:

A. Acquisition of the 423 Ashland Property with the Committed Funds, on September 22, 2016.

B. Acquisition of the Ditchfield Property with the Committed Funds, on or around March 6, 2017.

C. Execution of a purchase agreement for the Al Saffar Property

1.04 Marketing, Pre-Sales and Pre-Construction Activity. The Developer shall begin the off market advertising of the Project, no later than November 1, 2017. Marketing shall include the Developer's best efforts to secure pre-sale contract commitments in order to

UNOFFICIAL COPY

expeditiously secure and obtain the necessary construction financing for the Project. The Developer shall provide a monthly report by the 15th of the following month to the Village by electronic mail of the summary of the Developer's efforts, or the Developer's agents' efforts, in marketing the Project, which report shall include, but not be limited to, presales activities and presales made for the Project. The monthly reports shall be provided by the Developer on the basis that the information and data in the monthly reports are trade secrets and commercial or financial information obtained by the Village from the Developer where the trade secrets or commercial or financial information are furnished under a claim that the monthly reports are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the Developer, as set forth under Section 7(1)(g) of the Illinois Freedom of Information Act, 5 ILCS 140/7(1)(g). The Developer shall make its best efforts to begin public marketing of the Project including on-site signage and an on-site sales office no later than March 1, 2018, however, the Developer shall not be in default of its on-site marketing obligations in this Agreement if the March 1, 2018 deadline is not met.

2. PROJECT:

2.01 Consent to Nomination and Restatement of the Preliminary Agreement. The Village consents to the nomination of Developer by Keystone, in Exhibit B, as successor of Keystone's rights and interest in the Preliminary Agreement. This Agreement amends, restates and supersedes, in its entirety, the Preliminary Agreement, and the Preliminary Agreement is of no further force or effect.

2.02 Conformity With Plans. The Project shall be built and operated in conformity with the site plan and Project description in Group Exhibit C, as modified by the Approved PD (as defined in Section 4.04(A) below, and subject to the Developer's right to terminate this Agreement set forth in Section 4.04(A) below if the Approved PD does not materially confirm with the Project Description in Group Exhibit C.

2.03. Project Funding. The Project shall be funded as follows:

A. The Committed Funds shall be used to pay for a portion of the costs to (i) acquire the Parcels, including customary costs of closing and the cost of insurance premiums paid as part of the consideration for the acquisition of any Parcel, (ii) remediate environmental contamination and unsuitable or unstable soils on the Parcels, (iii) demolish structures and subsurface improvements on the Parcels, (iv) provide tenant incentives for the commercial tenants of the Project, (v) design the Project incurred by an architect, and (vi) cover Developer's portion of the insurance policy contemplated in Section 2.03(E) below. The Committed Funds shall only be used for "redevelopment project costs" as defined in Section 11-74.4-3(q) of the TIF Act, 65 ILCS 5/11-74.4-3(q). The Village's financial contribution to the Project shall be the Committed Funds, which Committed Funds shall not exceed the amount of One Million Nine Hundred Thousand Dollars and No/100 Dollars (\$1,900,000.00), plus the Additional Village Funding, as further defined in Section 2.03(C) below. The Village shall pay the Committed Funds as set forth in Section 6.01(A) below.

UNOFFICIAL COPY

B. The purchase prices, just compensation, the Village's attorney's fees, the Village's expert witness fees, any other amounts ordered to be paid by the Village, and court costs in any eminent domain proceedings initiated under this Agreement, and all reasonable and customary closing costs, fees and expenses to acquire the Parcels, shall be the "Acquisition Costs." The costs to remediate environmental contamination on the Parcels shall be the "Remediation Costs." Remediation Costs shall only include the costs of remediating environmental contaminants relative to the Project, and specifically in the instance of removing subsurface material (soil, etc.) from the project site, shall be the net difference between the cost of sending the material to a special landfill versus a regular landfill. Remediation Costs shall not include any amount unrelated to remediating environmental contaminants. The costs to demolish surface and subsurface structures and to correct unstable or unsuitable soils shall be the "Demolition Costs." The costs of tenant incentives, including tenant improvements, relocation and lease termination, to the extent permitted under the TIF Act, for commercial tenants of the Project shall be the "Tenant Incentives Costs." The costs to develop, design and prepare the planned development and architectural drawings and secure a permit for the Project incurred from the Project architect shall be the "Architecture Costs." Together the Acquisition Costs, the Remediation Costs, the Demolition Costs, the Architecture Costs, and the Tenant Incentives Costs shall be the "Reimbursable Costs." Reimbursable Costs shall not include the Developer's attorney's fees, engineer's fees, market research and analysis fees.

C. Developer shall be responsible for payment, whether paid by the Developer directly or whether through purchase price deductions or payments from third parties made under negotiated purchase contracts for any Parcel, of the first One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00) of the Remediation Costs ("Remediation Cap"), which amounts may be paid in whole or part from the Committed Funds. The Village shall be responsible for paying the Remediation Costs above the Remediation Cap ("Additional Village Funding"). The Village shall pay the Additional Village Funding as set forth in Section 6.01(A) below.

D. Developer shall provide the additional funding to construct and complete the Project in an amount equal to the funds necessary to complete and operate the Project, including the Reimbursable Costs, less the Committed Funds and less the Additional Village Funding, if any, which additional funding to be provided by the Developer is sometimes hereinafter referred to as the "Additional Developer Project Funding."

E. The Village shall pay into the closing escrow for the Al Saffar Property Forty Thousand and No/100 Dollars (\$40,000.00) from sources other than the Committed Funds (and which will not be credited against any Additional Village Funding, if any) to pay for a portion of the cost of a policy of insurance regarding environmental liabilities on the Al Saffar Property.

3. DEVELOPER REPRESENTATIONS AND WARRANTIES: Developer hereby represents and warrants, to and for the benefit of Village, the following:

UNOFFICIAL COPY

3.01 Existence/Authority. Developer is a limited liability company, is duly organized and validly existing under the laws of the State of Illinois, is fully qualified to do business in the State of Illinois, and has the power and authority to enter into this Agreement. Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as an Illinois limited liability company authorized to do business in Illinois, so long as Developer maintains an interest in the Project Area or has any other remaining obligation pursuant to the terms of this Agreement.

3.02 Authority/Conflict/Litigation/Financials. (i) Developer has the right and power and is authorized to enter into, execute, deliver and perform this Agreement; (ii) the execution, delivery and performance by Developer of this Agreement shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or breach of any provision contained in Developer's organizational documents, or any agreement, instrument or document to which Developer is now a party or by which it is bound; (iii) Developer is now solvent and able to pay its debts as they mature; (iv) there are no actions at law or similar proceedings which are pending or, to Developer's knowledge, threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement; (v) Developer has obtained or shall obtain all government permits, certificates, consents and franchises necessary to continue to conduct its business and to own or sell, lease and operate its properties as now owned, sold or leased by it; (vi) Developer has, or will have, sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement; (vii) Developer is not aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State or federal environmental law, regulation or review procedure, and Developer is not aware of any violation of any local, State or federal law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute; (viii) Developer represents and warrants to the Village that Developer, and its respective principals, are experienced in the development and operation of upscale commercial/retail and residential mixed use projects similar or comparable to the Project, and are able to provide the Project with the necessary skill, knowledge and expertise as well as input from other experts and consultants in the construction and operation of such a Project; (ix) Developer and successor owners agree to pay or cause to be paid all general and special real estate taxes levied during their respective period of ownership against their respective interest in the Project on or prior to the date same is due and said taxes shall not become delinquent; and (x) Developer represents and warrants to the Village that, in connection with this transaction, no third-party broker or finder has been engaged or consulted by it, or its subsidiaries or agents or employees, or, through such Developer's actions (or claiming through such party), which is entitled to compensation as a consequence of this transaction, except as set forth in Section 9.13 below.

3.03 No Gifts. Developer covenants that no manager, member, employee or agent of Developer, or any other person or entity connected with Developer, has made, offered or given, either directly or indirectly, to any member of the Village's corporate authorities, or any officer, employee or agent of the Village, or any other person or entity connected with the Village, any money or anything of value as a gift, or as a means of influencing his or her action in his or her capacity with the Village, other than as provided for under 5 ILCS 430/10-10 through 10-40.

UNOFFICIAL COPY

3.04. Disclosure. Prior to the Village President and Board of Trustees' approval of the Third Amendment, the Developer disclosed to the Village in writing, all the names, addresses and ownership interests of all persons and entities that have an ownership interest in Developer. Developer shall notify the Village in writing throughout the term of this Agreement, within five (5) calendar days after change or execution, as the case may be, of the names, addresses and ownership interests of any new owners of Developer, and to send the Village copies of the instrument(s) creating, amending, terminating, or otherwise affecting the ownership interests of any new owner(s) of Developer, concurrent with the execution of such instrument(s). Developer shall at all times maintain adequately detailed written records of the persons and entities with ownership interests in Developer.

4. DEVELOPER OBLIGATIONS, COVENANTS AND AGREEMENTS:

4.01 Planned Development. Developer shall attend a pre-filing conference of the Village's Development Review Board regarding the Proposed PD on or before November 16, 2017. Developer shall submit a complete application to the Village for the Proposed PD on or before November 30, 2017 ("Proposed PD Application Deadline"). Developer shall pursue the Proposed PD without delay once a complete application has been filed. If Developer fails to meet its deadlines in this Section 4.01, the Village may terminate this Agreement as set forth in Section 7.06(A)(2) below. If the Developer meets the pre-filing conference deadline and Proposed PD Application Deadline in this Section 4.01, the Village shall return the "Performance Deposit," as defined in Section 4.02(D) below, to the Developer.

4.02 Property Acquisition. Developer shall acquire each Parcel on or before September 29, 2017 ("Parcel Voluntary Acquisition Deadline"). The legal descriptions of the Project Area, in Exhibit A-2, and of the Parcels, in Exhibit A-3, shall be updated, if necessary, upon receipt of a legal description from a surveyor relative to Developer's acquisition of the Parcels that differs from the legal descriptions set forth in Exhibits A-2 and A-3, respectively.

A. Developer acquired the 423 Ashland Property prior to the Effective Date, and was reimbursed for the Acquisition Costs thereof from the Committed Funds.

B. As set forth in Section 6.01(A) below, Developer may seek reimbursement for the Acquisition Costs of the Parcels concurrently with the closing of each Parcel, and without the necessity of Developer disbursing the Acquisition Costs from Developer's own funds, unless the Acquisition Costs necessary to acquire a Parcel would exceed the amount of the remaining Committed Funds, in which case Developer shall be responsible for paying an amount of Additional Developer Project Funding for those Acquisition Costs.

C. As of the Effective Date and through September 29, 2017 ("Initial Feasibility Period"), Developer shall (i) conduct and/or commission studies and investigation of the contamination and suitability of the soils on all of the Parcels, (ii) make good faith efforts to acquire the ownership and leasehold interests in the Parcels, (iii) conduct and/or commission studies and focus groups and investigate the market

UNOFFICIAL COPY

feasibility of the Project, and (iv) undertake initial preparation of plans and specifications and other data necessary to file an application for a planned development permit issued by the Village for the Project on or prior to the Proposed PD Application Deadline. Developer shall provide the Village, at Developer's cost, with copies of all studies, investigations, reports, plans, specifications and data generated under this Section 4.02(C) (collectively the "Due Diligence Materials") on a timely basis, and in any event no less than every thirty (30) calendar days, as the Due Diligence Materials are obtained by Developer or its affiliates, and all Due Diligence Materials in the possession of the Developer and its affiliates prior to the Effective Date shall be delivered to the Village, at the Developer's cost, within fourteen (14) calendar days of the Effective Date.

D. Developer shall, within five (5) business days of the Effective Date, deposit with the Village the amount of Thirty-Five Thousand and No/100 Dollars (\$35,000.00) by certified check ("Performance Deposit"), which shall be held by the Village and distributed by the Village in accordance with the terms of this Agreement.

E. After using its best efforts, if Developer is unable to timely extinguish any lease on a Parcel that must be extinguished to allow the Project proceed, Developer may request that the Village use its eminent domain authority to extinguish the lease(s). The Village may use its eminent domain authority to extinguish a lease in its sole discretion, and if the Village does so, the Developer shall cooperate and execute such documents, provide such information, and participate in the eminent domain litigation as reasonably requested by the Village in the furtherance of the acquisition of such Parcel using the Village's eminent domain authority. The Acquisition Costs incurred pursuant to this Section 4.02(E) shall be paid from the Committed Funds first, and thereafter from the Additional Developer Project Funding. The Developer shall pay the Additional Developer Project Funding for the Acquisition Costs incurred pursuant to this Section 4.02(E) within fourteen (14) calendar days of a written request by the Village for such payment.

F. Developer may terminate this Agreement as set forth in Section 7.06(A)(1) on or before the "Construction Commencement Date" as defined in Section 4.04(C) below, if:

1. If the Project is not feasible due to extraordinary market conditions not attributable to any act or omission of Developer; or
2. If financing for the Project is unavailable after Developer used its reasonable best efforts to obtain such financing.

G. [Intentionally omitted]

H. The date the final Parcel is acquired shall be the "Project Area Acquisition Date." If the Project Area has not been acquired on or prior to September 29, 2017 ("Project Area Outside Acquisition Date"), the Village and/or Developer shall have the right to elect to terminate this Agreement as set forth in Section 7.06(A)(2). The

UNOFFICIAL COPY

Developer or Village may extend the Project Area Outside Acquisition Date by requesting in writing to the other, prior to the expiration of the Project Area Outside Acquisition Date, one (1) extension of thirty (30) calendar days of the Project Area Outside Acquisition Date.

4.03 Remediation and Demolition.

A. On June 1, 2018 (the "Pre-Sale Date"), if presales for the residential units in the Project are below Twenty Percent (20%) of the total number of residential units, then Developer may either terminate this Agreement pursuant to Section 7.06(A)(1), or extend the Pre-Sale Date to August 1, 2018. If the Developer has extended the Pre-Sale Date to August 1, 2018, on August 1, 2018, if presales for the residential units in the Project are below Twenty Percent (20%) of the total number of residential units, then Developer may either terminate this Agreement pursuant to Section 7.06(A)(1), or elect to proceed with the Project. If the Developer has set the Pre-Sale Date at August 1, 2018, on August 1, 2018, if presales for the residential units in the Project are above Twenty Percent (20%) of the total number of residential units, then Developer shall, within sixty (60) calendar days ("Parcel Remediation Commencement Deadline") have obtained all necessary permits to commence the Remediation Work as set forth in Section 4.03(B) and shall have commenced the Remediation Work with contractors performing the demolition and remediation activities on each Parcel. Notwithstanding anything in this Section 4.03(A) to the contrary, Developer may commence the Remediation Work at any time prior to the Parcel Remediation Commencement Deadline, in its discretion.

B. From and after the Parcel Remediation Commencement Deadline, Developer shall diligently and without delay undertake to remediate environmental contamination from each acquired Parcel ("Remediation Work"). Developer shall engage a consultant who will develop a plan and procedure for the remediation, supervise the remediation and make reasonable and customary application for a "No Further Remediation" determination for each acquired Parcel from the Illinois Environmental Protection Agency ("NFR"). No NFR obtained shall contain any limitations or conditions which are either unacceptable to Developer, in its sole discretion, or which would preclude or restrict the Project from being built, used, and operated as set forth in the Approved PD. Remediation is defined as the physical demolition of buildings and treatment of the soil to eliminate contaminated materials. Developer shall demolish all surface and subsurface improvements and the remediation of unstable or unsuitable soil conditions necessary for the construction, use and operation of the Project.

4.04 Covenant to Redevelop, Commencement and Completion.

A. Developer shall construct and operate the Project in conformity with this Agreement and the planned development approved by the Village ("Approved PD"). In the event of a conflict between the terms of this Agreement and the Approved PD, the terms of the Approved PD shall control. The date the Approved PD is made shall be the "Approved PD Date," and Developer shall have the right to terminate this Agreement

UNOFFICIAL COPY

within ten (10) business days of the Approved PD Date under the terms of Section 7.06(A)(1) in the event that the Approved PD is not granted in reasonable material conformity with the Proposed PD, unless such deviation between the terms of this Agreement and the Approved PD is consented to by Developer.

B. Developer shall apply for all permits necessary for construction of the Project within sixty (60) calendar days of the later of the (i) Pre-Sale Date, as may be extended per Section 4.03(A), or (ii) the Approved PD Date ("Permit Application Deadline") or within an extension of the Permit Application Deadline permitted in this Section 4.04(B). Developer shall notify the Village in writing within two (2) business days of Developer's first application of a permit for the Project. The Developer may extend the Permit Application Deadline by requesting in writing to the Village, prior to the expiration of the Permit Application Deadline, one (1) extension of thirty (30) calendar days of the Permit Application Deadline. If the Developer fails to apply for all permits necessary for the construction of the Project by the Permit Application Deadline, the Village and/or Developer shall have the right to elect to terminate this Agreement as set forth in Section 7.06(A)(1). The date Developer receives the last of the permits necessary for construction of the Project shall be the "Permit Receipt Date."

C. Developer shall commence construction of the Project within sixty (60) calendar days after the Permit Receipt Date ("Construction Commencement Deadline"). The Developer may extend the Construction Commencement Deadline by requesting in writing to the Village, prior to the expiration of the Construction Commencement Deadline, one (1) extension of thirty (30) calendar days of the Construction Commencement Deadline. If Developer fails to commence construction of the Project by the Construction Commencement Deadline, the Village and/or Developer shall have the right to elect to terminate this Agreement as set forth in Section 7.06(A)(1). The date construction commences on the Project shall be the "Construction Commencement Date."

D. Developer shall substantially complete construction of the Project, and obtain a "Certificate of Completion," as defined in Section 6.04 below, within eighteen (18) months of the Construction Commencement Deadline ("Project Completion Deadline"). The Developer may extend the Project Completion Deadline by requesting in writing to the Village, prior to the expiration of the Project Completion Deadline, one (1) extension of thirty (30) calendar days of the Project Completion Deadline. The date the Project is completed shall be the "Project Completion Date."

4.05 Tenant Control. The Commercial Units shall not be leased, sold, or used for any use set forth in the "Prohibited Commercial Tenant List" in Exhibit D attached hereto and made a part hereof. No lease or agreement for the use of any part of the Project Area shall be valid if the use is set forth in Exhibit D, or unless approved by the Village in writing, in the Village's sole and absolute discretion. In the event of a violation of this Section 4.05, Developer shall be liable to the Village for damages equal to One Thousand and No/100 Dollars (\$1,000.00) for each calendar day the violation exists and, in addition to all other remedies set forth in this Agreement, the Village may, without delay, petition a court for, among any other relief available,

UNOFFICIAL COPY

equitable relief to cure the violation. All costs, including attorneys' fees, incurred by the Village in enforcing this Section 4.05 shall be the responsibility of Developer.

4.06 Compliance With Laws. Developer shall perform its obligations under this Agreement in accordance with the requirements of this Agreement and shall be in conformity with all applicable federal, State, and Village laws, ordinances and regulations. Developer shall be governed by, and shall adhere to and obey any and all applicable federal, State, and Village laws, statutes, ordinances, rules, regulations and executive orders applicable to the Project as may be in effect from time to time; provided, however, that amendments to the Village's Building Code and Zoning Ordinance applicable the Project shall not apply to the Project for a period of three (3) years from the Project Completion Date without the Developer's consent.

4.07 Developer Meetings and Cooperation.

A. Developer shall meet with and make presentations to the Village as reasonably requested by the Village, and as shall be reasonably necessary and desirable to present and explain all or any portion of the Project, at times mutually agreeable to the parties.

B. Developer hereby agrees to designate representatives of Developer with full power and authority to meet with the designated representatives of the Village for the purpose of carrying out the provisions of this Agreement, so long as any such meetings are conducted in accordance with all applicable laws of the State of Illinois and the ordinances of the Village.

4.08 Restrictions/Additional Covenants. Developer agrees that with respect to the construction and operation of the Project, it shall observe, and cause its agents and employees to observe, the following restrictions:

A. Develop the Project Area for which Developer is responsible to redevelop in accordance with the improvements and uses set forth herein;

B. Develop the Project Area for the uses specified herein and in the Approved PD; and

C. Not discriminate based upon race, color, religion, sex, national origin or ancestry, age, disability or sexual orientation in the sale, lease or rental, or in the use or occupancy of the Project Area or any improvements located or to be erected thereon, or any part thereof.

4.09 Indemnity and Release.

A. Except for gross negligence or willful misconduct of the Village, its governing body members, officers, agents, including independent contractors,

UNOFFICIAL COPY

consultants, legal counsel, servants and employees thereof ("Indemnified Parties"), Developer agrees to indemnify the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Developer (or if other persons or entities acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the Village in this Agreement.

B. Developer releases from and covenants and agrees that the Village, its governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the Project Area or arising under this Agreement or actions in furtherance thereof to the extent not attributable to the gross negligence or willful misconduct of the Indemnified Parties.

C. Developer waives any claims against the Indemnified Parties, and its members and boards, for indemnification, contribution, reimbursement or other payments arising under federal, State and common law or relating to the environmental condition of the land comprising the Property.

D. No liability, right or claim at law or inequity shall attach to or shall be incurred by the Village's elected officials, officers, attorneys, agents and/or employees, and any such rights or claims of Developer against the Village's elected officials, officers, attorneys, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the Village.

E. In addition to the other indemnification obligations of Developer in this Agreement, Developer and Keystone shall be jointly and severally responsible for indemnifying the Indemnified Parties, now and forever, and holding the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity claiming an ownership interest in Developer, this Agreement, or the Project other than by Keystone.

F. Keystone executed a "Limited Joinder" on January 6, 2017, a true and accurate copy of which is attached hereto as Exhibit F and made a part hereof, agreeing and acknowledging that Keystone is bound by the terms of Section 4.09(E) above.

5. VILLAGE REPRESENTATIONS AND WARRANTIES: The Village hereby represents to and for the benefit of Developer and its permitted successors and/or assigns, as follows:

UNOFFICIAL COPY

5.01 Existence/Authority. The Village is a municipal corporation under the laws of the State of Illinois with power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

5.02 Conflict. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any breach of, or constitute a default under, any agreement, contract, lease, mortgage, indenture, deed of trust or other instrument to which the Village is a party.

5.03 Litigation/Proceedings. There are no actions, suits or proceedings pending, or to the knowledge of the Village threatened, against or affecting the Village, at law or in equity, or before any governmental authority, with the exception of potential eminent domain proceedings with regard to portions of the Project Area which, if adversely determined, would impair the Village's ability to perform its obligations under this Agreement.

5.04 Board Action. All actions of the President and Board of Trustees of the Village required to be taken to authorize execution of this Agreement have been validly and duly taken in accordance with the law and the officers of the Village signing this Agreement have been duly authorized to execute this Agreement on behalf of the Village.

6. VILLAGE OBLIGATIONS, COVENANTS AND AGREEMENTS:

6.01 Village's General Project Obligations.

A. For purposes of this Section 6.01(A), unless the context clearly requires otherwise, the phrase "Village Incentive" shall include the "Committed Funds" and the "Additional Village Funding." The Village shall provide the Village Incentive for the Project as follows:

1. At least five (5) business days prior to incurring a Reimbursable Cost for which Developer seeks payment and/or reimbursement from the Village Incentive, Developer shall submit a sworn request for payment to the Village ("Reimbursement Request") on the form attached hereto as Exhibit E.

2. The Village shall distribute a portion of the Village Incentive to pay for those portions of the Reimbursable Costs for which Developer has submitted a Reimbursement Request, if the following conditions precedent are met:

- (i) Developer is not in default of any provision of this Agreement, and Developer is in compliance with all federal, State, and Village laws, ordinances, and regulations.

- (ii) Developer has submitted to the Village a Reimbursement Request, along with supporting documentation and information as necessary to substantiate the qualification of the expenses and the amount

UNOFFICIAL COPY

requested.

(iii) Developer shall, within two (2) business days of a request from the Village, provide the Village with all documentation and/or information required to evidence the amount of the Reimbursable Costs subject of the Reimbursement Request, such records to include, but not be limited to, all closing statements, invoices, contracts, contractors' affidavits, lien waivers, copies of checks and any other documentation or information specified by the Village and/or in the possession of Developer.

(iv) The Village shall consider the Reimbursement Request, and, unless subsection (v) below is applicable, within the later of five (5) business day following the submission of the Reimbursement Request, or two (2) business days after the receipt of the documentation and/or information requested by the Village from Developer pursuant to Section 6.01(A)(2)(ii), grant the Reimbursement Request and distribute requested portion of the Village Incentive.

(v) If, in the Village's opinion, premised upon a good faith analysis of the Reimbursement Request and related documentation and information, any portion of the Reimbursement Request requested for payment are not payable under this Agreement, the Village shall within two (2) business days after submission of the Reimbursement Request, notify Developer in writing of the reasons why the Village believes that the Reimbursement Request is not payable and why the Village is not approving a portion or all of the requested disbursement together with reasonably detailed explanations thereof. Developer may request reconsideration of any denied Reimbursement Request(s) without prejudice.

3. The parties acknowledge that the Committed Funds are the only funds the Village will be required to pay under this Agreement, other than the Additional Village Funding as set forth in Section 2.03(C) above, and other than the Village's contribution towards payment on the policy of insurance as set forth in Section 2.03(E) above. If the amount of the Reimbursable Costs exceeds the Village Incentive, the Village shall only be responsible to pay a maximum not to exceed amount of One Million Nine Hundred Thousand and No/100 Dollars (\$1,900,000.00) from the TIF Account, except for the Additional Village Funding as set forth in Section 2.03(C) above, and except for the Village's contribution towards payment on the policy of insurance as set forth in Section 2.03(E) above.

B. [Intentionally omitted].

6.02 [Intentionally omitted]

UNOFFICIAL COPY

6.03 Village Assistance. The Village hereby agrees to designate representatives to meet with the designated representatives of Developer for the purpose of implementing this Agreement. The Village shall act as co-applicant with regard to any necessary governmental or quasi-governmental applications and approvals required for the Project, other than the Proposed PD and permits issued by the Village, including those prosecuted with the Illinois Department of Transportation and the Cook County Highway Department; provided, however, that any action authorizing the implementation, execution or delivery of any additional agreements shall be by the Village Board in accordance with all applicable laws and procedures, it being understood that the Village Board shall have the sole authority to approve additional agreements. The Village will assist Developer, in securing and obtaining, in an expeditious manner, all necessary governmental approvals, consents, permits, licenses, authorizations and easements reasonably necessary or required for the development and construction of the Project, other than the Planned PD.

6.04 Certificate of Completion. After substantial completion of the construction of the Project in accordance with the Approved PD and the Village of River Forest Municipal Code, the Village shall promptly, in accordance with the Village of River Forest Municipal Code, furnish Developer with an appropriate instrument so certifying such completion ("Certificate of Completion"). It is the intent of the parties that the Certificate of Completion may be furnished by the Village prior to a certificate of occupancy for any portion of the Project. The Certificate of Completion shall be a conclusive determination of satisfaction and termination of the covenants in this Agreement with respect to Developer's obligations in Sections 4.02, 4.03, and 4.04, and of its successors and assigns, to acquire, remediate, and construct, or cause to be constructed, the Project. The Certificate of Completion shall be in such form as will enable it to be recorded with the Cook County Recorder of Deed's Office. The Village shall respond to written request for a Certificate of Completion within thirty (30) calendar days after the Village's receipt thereof, either with the issuance of a Certificate of Completion or with a written statement indicating in adequate detail how Developer has failed to complete the construction in conformity with this Agreement, and what measures or acts will be necessary, in the opinion of the Village, to take or perform in order to obtain the Certificate of Completion. If the Village requires such additional measures or acts to assure compliance, a written request for a Certificate of Completion shall be resubmitted to the Village upon compliance with the Village's response, which written request shall be considered as provided in this Section 6.04.

6.05 Permits and Permit Fees. The Village hereby agrees to grant its permission for the Project to connect to all water lines, sanitary and storm sewer lines constructed or to be constructed for the Project, provided that Developer complies with all requirements of general applicability promulgated by the Village for such connections, and provided that the Village may only grant permission for the water, sanitary and storm sewer lines which the Village has sole and exclusive jurisdiction over. Developer agrees that it shall pay, in connection with the development of the Project, reasonable and customary building, permit and inspection fees with respect to all portions of the Project.

6.06 No Warranty. The Village makes no warranties or representations regarding, nor does it indemnify Developer with respect to, the existence or nonexistence on or in the vicinity of the Project Area, or anywhere within the Business District or TIF District of any toxic or

UNOFFICIAL COPY

hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "Hazardous Substances"). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Project Area, or within the TIF District and Business District, as well as any activity claimed to have been undertaken on or in the vicinity of the Project Area, that would cause or contribute to causing (1) the Project Area to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Project Area within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901, et seq., or any similar State law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Project Area, within the meaning of, or otherwise bring the Project Area within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq., or any similar State law or local ordinance. Further, the Village makes no warranties or representations regarding, nor does the Village indemnify Developer with respect to, the existence or nonexistence on or in the vicinity of the Project, or anywhere within the Project Area or the TIF District or Business District, of any substances or conditions in or on the Project Area, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The Village makes no representations or warranties regarding the existence of any above ground or underground tanks in or about the Project Area, or whether any above or underground tanks have been located under, in or about the Project Area have subsequently been removed or filled.

6.06 [Intentionally omitted]

7. PERFORMANCE, DEFAULT, TERMINATION, AND OTHER CONDITIONS:

7.01. Time of the Essence. Time is of the essence of this Agreement.

7.02 Delay. For the purposes of any of the provisions of this Agreement, neither the Village or Developer, as the case may be, nor any successor in interest, shall be considered in default in its obligations under this Agreement in the event of any "Permitted Delay," as defined in this Section 7.02. Provided, however, that the party seeking the benefit of a Permitted Delay shall have, within thirty (30) calendar days after the beginning of any such Permitted Delay, notified the other party in writing of such delay and of the cause or causes thereof, and requested an extension for the period of the Permitted Delay. Permitted Delays are any event which:

A. is beyond the reasonable control of and without the fault of the party relying thereon; and

UNOFFICIAL COPY

B. is one or more of the following events:

1. a Change in Law;
2. insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;
3. epidemic, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
4. governmental condemnation or taking other than by the Village;
5. strikes or labor disputes, or work stoppages not initiated by Developer;
6. unreasonable delay in the issuance of building or other permits or approvals by the Village or other governmental authorities having jurisdiction other than the Village;
7. shortage or unavailability of essential materials, which materially change the ability of the party relying thereon to carry out its obligations under this Agreement;
8. unknown or unforeseeable geo-technical or environmental conditions;
9. major environmental disturbances;
10. vandalism; or
11. terrorist acts.

Permitted Delays shall not include: economic hardship; unavailability of materials (except as described in Section 7.02(B)(7) above); or a failure of performance by a contractor (except as caused by events which are Permitted Delays as to the contractor).

7.03 No Waiver by Delay. Any delay by the Village in instituting or prosecuting any actions or proceedings or in otherwise exercising its rights shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the Village and Developer should still hope to otherwise resolve the problems created by any Default involved). No waiver in fact made by the Village with respect to any specific Event of Default by Developer should be considered or treated as a waiver of the rights of the Village with respect to any other Events of Default by Developer or with respect to the particular Event of Default except to the extent specifically waived in writing. No waiver in fact made by Developer with respect to any specific Event of Default by Village should be considered or

UNOFFICIAL COPY

treated as a waiver of the rights of Developer with respect to any other Events of Default by Village or with respect to the particular Event of Default except to the extent specifically waived in writing.

7.04 Defaults by Developer. The occurrence of any one of the following shall constitute an "Event of Default" by Developer under this Agreement:

A. A default by Developer of any obligation, term, condition or provision, contained in any agreement or document relating to the Project (including this Agreement) or Developer's operating agreement, which would materially and adversely impair the ability of Developer to perform its obligations hereunder, and the failure to cure such default within thirty (30) calendar days after Village's written notice of such default or in the time and manner as may otherwise be provided herein or therein as applicable; provided, however, that if such default is not capable of being cured within such thirty (30) calendar day period, and Developer has commenced cure and the additional time for curing such default will not create additional material adverse consequences, then the period within which to cure such default shall be extended for a reasonable period necessary to effect such cure; or

B. A material representation or warranty of Developer contained herein is not true and correct in material respects for a period of thirty (30) calendar days after written notice to Developer by the Village and has a material and adverse effect on the Project; or

C. If the Developer: (1) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its or their property; or (2) is finally adjudicated a bankrupt; or (3) files a petition in bankruptcy or to effect a plan or other arrangement with creditors; or (4) files an answer to a creditor's petition (admitting the material allegations thereof) for an adjudication of bankruptcy or to effect a plan or other arrangement with creditors; or (5) applies to a court for the appointment of a receiver for all or a substantial portion of its assets; or (6) has a receiver or similar official appointed for any of its assets, or, if such receiver or similar official is appointed without the consent of Developer and such appointment shall not be discharged within ninety (90) calendar days after his appointment or Developer has not bonded against such receivership or appointment; or (7) if a petition described in (3) is filed against Developer and remains undismissed for a period of ninety (90) consecutive calendar days.

Except as otherwise provided for in this Agreement by a specific reference to a termination provision in Section 7.06, upon an occurrence of an uncured Event of Default of Developer, the Village shall, at its election, be relieved of any and all of its obligations to Developer arising pursuant to this Agreement, and such obligations on the part of the Village to Developer shall be immediately cancelled and without any force or effect, and the Village may proceed to enforce the remedies set forth in Section 7.06(A)(1) below.

7.05 Defaults by Village. The occurrence of any one of the following shall constitute an "Event of Default" by the Village under this Agreement:

UNOFFICIAL COPY

A. A default by the Village of any obligation, term, condition or provision, contained in any agreement or document relating to the Project (including this Agreement), which would materially and adversely impair the ability of the Village to perform its obligations hereunder, and the failure to cure such default within thirty (30) calendar days after Developer's written notice of such default or in the time and manner as may otherwise be provided herein or therein as applicable; provided, however, that if such default is not capable of being cured within such thirty (30) calendar day period, and the Village has commenced cure and the additional time for curing such default will not create additional material adverse consequences, then the period within which to cure such default shall be extended for a reasonable period necessary to effect such cure; or

B. A material representation or warranty of the Village contained herein is not true and correct in material respects for a period of thirty (30) calendar days after written notice to the Village by Developer and has a material and adverse effect on the Project.

Except as otherwise provided for in this Agreement by a specific reference to a termination provision in Section 7.06, upon an occurrence of an uncured Event of Default of Village, Developer may proceed to enforce the remedies set forth in Section 7.06(A)(1) below.

7.06 Termination/Remedies.

A. Termination Upon an Event of Default.

1. If this Agreement is terminated pursuant to a specific reference to this Section 7.06(A)(1), (i) the Developer shall convey any Parcel acquired by Developer to the Village within fifteen (15) business days of a written demand from the Village, or within such other time as directed by the Village in the written demand, for such conveyance, with such conveyances to be by the same quality of deed and title as Developer acquired the Parcel(s); and (ii) the Developer shall forfeit any amounts of equity then contributed by Developer and its lenders to the Project, including without limitation, the Additional Developer Project Funding spent to date. If this Agreement is terminated pursuant to this Section 7.06(A)(1), the remedies set forth in this Section 7.06(A)(1) shall be the Village's sole remedies hereunder.

2. If this Agreement is terminated as a result of the existence of any Event of Default by Developer, which Event of Default does not have a specific reference to another remedy in this Agreement, or pursuant to a specific reference to this Section 7.06(A)(2), (i) the Developer shall convey any Parcel acquired by Developer to the Village within fifteen (15) business days of a written demand from the Village, or within such other time as directed by the Village in the written demand, for such conveyance, with such conveyances to be by the same quality of deed and title as Developer acquired the Parcel(s); (ii) the Developer shall forfeit all right and interest in the Performance Deposit and the Village shall

UNOFFICIAL COPY

be entitled to draw on, keep and use the Performance Deposit for any purpose the Village determines in its sole discretion; and (iii) the Developer shall forfeit any amounts of equity then contributed by Developer and its lenders to the Project, including without limitation, the Additional Developer Project Funding spent to date. If this Agreement is terminated pursuant to this Section 7.06(A)(2), the remedies set forth in this Section 7.06(A)(2) shall be the Village's sole remedies hereunder.

3. [Intentionally omitted]

4. [Intentionally omitted]

B. [Intentionally omitted]

C. [Intentionally omitted]

D. [Intentionally omitted]

E. Consent to Use of Committed Funds and Additional Village Funding. If this Agreement is terminated for any reason, Developer shall have no further interest in the Project, the Committed Funds, or the Additional Village Funding, and Developer shall execute such documents, and provide such information, within the time required by the Village, and as directed by the Village, to allow the Developer's rights and obligations under this Agreement, in the Project, to the Committed Funds, and to the Additional Village Funding, to either be assigned to a new developer chosen by the Village, or distributed in some other manner by the Village, as determined by the Village in the Village's sole discretion. If Developer fails to execute any document required in this Section 7.06(E), Developer shall be deemed to have appointed the Village as Developer's attorney in fact for execution of the document in question on Developer's behalf.

7.07 Further Assistance and Corrective Instruments. The Village and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the Village's and Developer's sound legal discretion.

7.08 Open Book Project. The Project shall be an "open book" project, meaning that Developer and the general contractor (or contractors, if more than one) will assure continuing access to the Village's agents for the purpose of reviewing and auditing their respective books and records relating to any item necessary to determine the progress on and costs of the Project; provided, however, that all such access shall be limited to normal business hours upon reasonable prior notice and shall not occur more frequently than once per calendar quarter. The foregoing Village review rights shall terminate one (1) year after the issuance of the Certificate of Completion with respect to costs for the Project, unless Developer has failed to make available

UNOFFICIAL COPY

any such books and/or records requested in writing by the Village. Developer shall provide to the Village copies of any partnership agreements, limited liability company operating agreements or joint venture agreements pertaining to the Property to which Developer is a party; provided that Developer may, if Developer has previously provided the Village not less than thirty (30) calendar days to review such confidential financial materials, remove from the copies of such agreements any confidential financial information previously disclosed to the Village and not since changed in form or substance and the Village shall keep such agreements confidential, to the maximum extent permitted by law. Failure to provide the documents or allow review of the books within twenty (20) calendar days after request by the Village shall be an Event of Default. Developer shall exercise prudence and good faith in attempting to contract with persons or entities that are reputable and experienced in their respective areas for the provision of services or material for the design and construction of Project at costs not in excess of market rates. The general contractor (or general contractors), if any, designated by Developer shall be experienced and reputable.

8. INSURANCE

8.01 Construction Developer agrees that after the first Parcel is acquired for the Project, Developer will cause the Project to be insured, at no expense to the Village, against loss or damage by fire, windstorm, hail, explosion, riot and civil commotion, damage from aircraft and vehicles and smoke damage, and such other risks as are from time to time included in "extended coverage" endorsements (including during construction thereof builder's risk insurance) in an amount and form so that the proceeds are sufficient to provide for actual replacement of the Project improvements to be built. Said insurance policies of Developer shall provide, respectively, for waivers of subrogation in favor of the Village. The parties agree to waive all rights of recovery as against the other party hereto arising from loss or damage caused by the perils enumerated above and agrees that any policies obtained under these provisions shall be endorsed accordingly.

8.02 Liability. In addition, Developer also will, at its own expense, maintain or cause to be maintained primary and non-contributory general public liability insurance against claims for personal injury or death and property damage occurring upon, in or about the Project Area, such insurance in each case to afford protection to the limit of not less than \$2,000,000 in respect of injury or death to one or more persons arising out of any one occurrence, and such insurance against property damage to afford protection to the limit of not less than \$1,000,000 in respect of any instances of property damage and umbrella coverage of not less than \$3,000,000. Developer shall have the "Village of River Forest, its elected officials, employees, agents, and contractors" named as an additional insured on its general public liability insurance policy and shall deliver or cause to be delivered to the Village a current certificate of insurance in the required amounts, identifying the Village as an additional insured on the face of said certificate. Developer shall provide the Village with notice and a new certificate of insurance immediately if any change in insurance or insurance coverage occurs during the term of this Agreement.

9. MISCELLANEOUS

UNOFFICIAL COPY

9.01 Term of Agreement/Recording/Covenants Running With Land. The term of this Agreement shall commence as of the Effective Date, and shall terminate once all the obligations of the parties hereto have been fully performed, or upon an Event of Default of any material provision hereof by either party hereto, which is not cured in accordance herewith. The parties agree to execute and deliver the original of this Agreement in proper form for recording and/or indexing in the appropriate land or governmental records, and the parties hereto acknowledge that this Agreement shall be recorded with the Cook County Recorder, at Developer's cost, to evidence the obligations and covenants contained herein, each of which shall, upon such recording, run with title to the Project Area and bind subsequent owners, assignees, and title holders of any portion of the Project Area until such time as this Agreement has been terminated as provided above, or by written instrument executed by all parties hereto. This Agreement shall be recorded with the Cook County Recorder by the Developer at the Developer's cost within ten (10) business days of the Project Area Acquisition Date.

9.02 Amendment. This Agreement and any Exhibits attached hereto may be amended only by the mutual consent of the parties and by the adoption of an ordinance or resolution of the Village approving said amendment, as provided by law and by the execution of said amendment by the parties or their successors in interest.

9.03 No Other Agreements. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof, and, together with the exhibits attached hereto, represents the full integration of the agreement of the parties.

9.04 Consent. Except as otherwise provided in this Agreement, whenever consent or approval of either party is required herein, such consent or approval shall not be unreasonably withheld.

9.05 Conflict of Interest/Limitation of Liability. No elected official or employee of the Village has or shall have any personal interest, direct or indirect, in this Agreement; nor shall any such elected officials or employees participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. No elected officials or employees of the Village shall be personally liable to Developer or any successor in interest in the event of any default or breach by the Village or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

9.06 Limited Applicability of Village's Approval. Any approvals made by the Village with regard the Project are for the purposes of this Agreement only and do not affect or constitute approvals required for building permits or approvals required pursuant to any other ordinance of the Village, nor does any approval by the Village pursuant to the Agreement constitute approval of the quality, structural soundness or the safety of the Project.

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

UNOFFICIAL COPY

9.08 Disclaimer. Nothing contained in this Agreement, or any act of the Village or the Developer, shall be deemed or construed by any of the parties, or by third persons, to create any relationship of third party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the Village.

9.09 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be in writing and shall be sufficiently given on (A) the third "business day" (defined as Monday through Friday, excluding Saturday, Sunday and all nationally recognized holidays) following the day on which the same shall have been mailed by registered or certified mail, postage and fees prepaid, return receipt requested, or (B) the next succeeding business day if sent by nationally recognized overnight courier, or (C) when received if received on a business day, otherwise on the first business day after receipt, if sent by direct messenger, facsimile (with confirmation) or electronic mail, and in all cases, addressed as follows:

If to Village: VILLAGE OF RIVER FOREST
 400 Park Avenue
 River Forest, IL 60305-1798
 Attention: Eric J. Palm, Village Administrator
 Fax: 708.366.3702
 Email: epalm@vrf.us

With copy to: KLEIN, THORPE & JENKINS, LTD.
 20 N. Wacker Drive, Suite 1660
 Chicago, IL 60606-2903
 Attention: Lance C. Malina / Gregory T. Smith
 Fax: 312.984.6444
 Email: lmalina@ktjlaw.com / gtsmith@ktjlaw.com

If to Developer: LAKE LATHROP PARTNERS LLC
 C/O KEYSTONE VENTURES, LLC
 418 Clinton Place
 River Forest, Illinois 60305-2203
 Attention: Timothy B. Hague
 Fax: 708.771.7622
 Email: thague@keystoneventuresllc.com

With copy to: SEDGWICK PROPERTIES DEVELOPMENT CORP.
 1525 W. Homer, Suite 401
 Chicago, Illinois 60642
 Attention: Martin Paris
 Fax: 773.278.4247
 Email: mparis@scdgwickproperties.com

With copy to: SEDGWICK PROPERTIES DEVELOPMENT CORP.

UNOFFICIAL COPY

1525 W. Homer, Suite 401
Chicago, Illinois 60642
Attention: Rob Molloy, General Counsel
Fax: 773.278.4247
Email: rmolloy@sedgwickproperties.com

The parties, by notice given hereunder, may designate any further or different address to which subsequent notices, certificates, approvals, consents or other communications shall be sent.

9.10 Governing Law and Venue. The provisions of this Agreement shall be governed by the laws of the State of Illinois. Any court proceedings related to this Agreement brought by and between the parties shall be in the Circuit Court of Cook County.

9.11 Paragraph Headings. The paragraph headings and references are for the convenience of the parties and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

9.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which, when taken together, shall constitute a single agreement.

9.13 Broker's Fees. Developer and the Village each represent to the other that, except for the services of Tim Hague and Keystone Ventures LLC, of which Timothy B. Hague is a principal, obtained by Developer, it has not engaged the services of any finder or broker, and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the acquisitions of any portion of the Project Area, and Developer agrees to hold the Village harmless from such commissions or fees as are alleged to be due from the party making such representations. Developer shall be solely responsible for, and pay all, commissions and fees which may be due Timothy B. Hague and/or Keystone Ventures LLC related to the acquisition and/or development of any portion of the Project Area.

9.14 Successors and Assignees. The terms, conditions, covenants and restrictions of this Agreement shall extend and apply to and bind the successors and assignees of the Village and the successors and assigns of Developer, subject to express provisions hereof to the contrary. Developer shall not assign this Agreement prior to receipt of a Certificate of Completion without the Village's consent, which consent may be withheld in the Village's sole and absolute discretion. After the issuance of the aforesaid Certificate of Completion by the Village, Developer shall have the right to assign its interests in this Agreement, and its rights and obligations hereunder, subject to the consent in writing of the Village, such consent not to be unreasonably withheld.

9.15 Severability. If any provision of the Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the remainder of the Agreement shall be construed as if such invalid part were never included herein,

UNOFFICIAL COPY

and the Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

9.16 Provisions Not Merged with Deed. None of the provisions of this Agreement are intended to, nor shall they be merged, by reason of any deed transferring title to any portion of the Project Area from Developer to the Village or any successor in interest, and said deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

9.17 Survival. The obligations and rights in Sections 3.02, 3.03, 4.09, 6.06, 8.01 and 8.02 of this Agreement, shall survive the life of this Agreement, and shall remain in full force and effect, even if this Agreement is no longer in effect.

9.18 Municipal Limitations. All Village commitments hereunder are limited to the extent required by law.

9.19 Effective Date. The Effective Date shall be the date on which this Agreement is executed on behalf of the Village, with said date being inserted in the opening paragraph of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

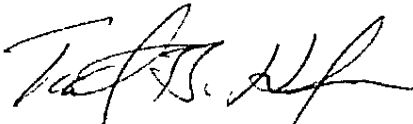
DEVELOPER:

LAKE LATHROP PARTNERS LLC, an Illinois limited liability company

By: 

MARTIN PAELS

Manager


TIMOTHY B. ARF

VILLAGE:

VILLAGE OF RIVER FOREST, an Illinois municipal corporation

By: 

Village President

ATTEST:

By: 

Village Clerk

UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Catherine Adduci and Kathleen Brand-White, personally known to me to be the Village President and Village Clerk of the Village of River Forest, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Village President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the President and Board of Trustees of said Illinois municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Illinois municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 18th day of September, 2017.

Georgette Carlini

 Notary Public



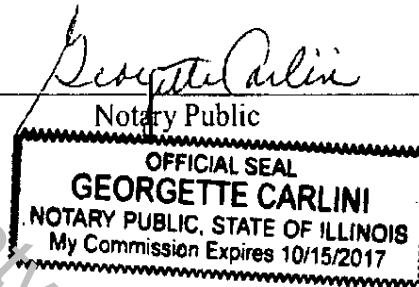
UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that MARTIN PACIS, personally known to me to be the manager of Lake Lathrop Partners LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such manager, he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 18th day of September, 2017.



UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that TIMOTHY HAGUE, personally known to me to be the manager of Lake Lathrop Partners LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such manager, he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 21 day of September, 2017.

Georgette Carlini
 Notary Public



UNOFFICIAL COPY

GROUP EXHIBIT A

EXHIBIT A-1 – MAP OF PROJECT AREA

EXHIBIT A-2 – LEGAL DESCRIPTION OF PROJECT AREA

EXHIBIT A-3 – PARCEL LIST AND LEGAL DESCRIPTIONS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

EXHIBIT A-1

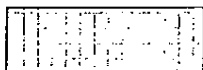
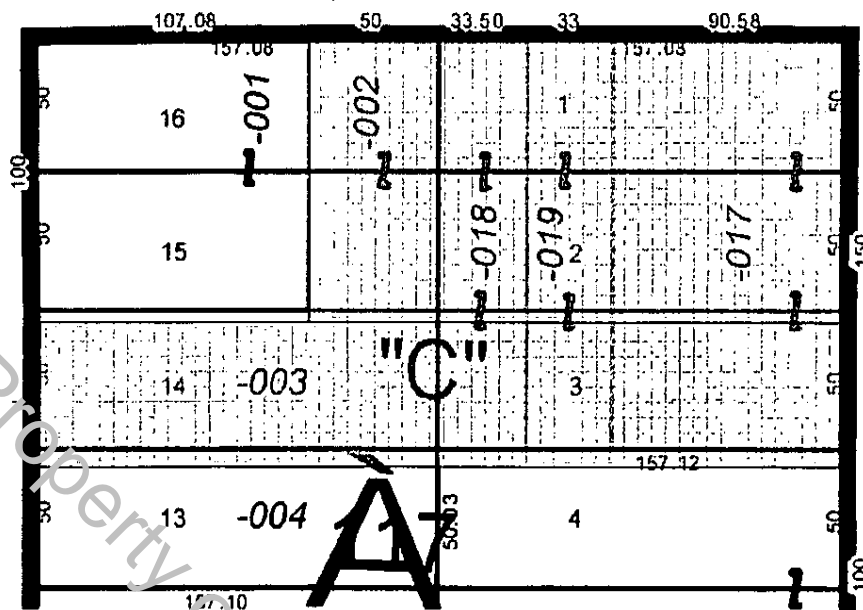
MAP OF PROJECT AREA

(attached)

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

Property of Cook County Clerk's Office



denotes Project Area

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

EXHIBIT A-2

LEGAL DESCRIPTION OF PROJECT AREA

Legal description:

LOT 14 IN BLOCK 3 IN PART OF RIVER FOREST, BEING A SUBDIVISION OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS

And

LEGAL DESCRIPTION: Lots 1, 2 and 3, taken as a tract, (except the West 66.50 feet thereof) in Block 33, in Suburban Home Mutual Land Association subdivision in River Forest, being a subdivision in the East half of the Northwest quarter of section 12, Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

And

The West 66.50 feet of Lots 1, 2, and 3 taken as a tract, in Block 3, in Suburban Home Mutual Land Association Subdivision in River Forest being a Subdivision in the East half of the Northwest Quarter of Section 12, Township 39 North, Range 12, East of the Third Principal Meridian in Cook County, Illinois

And

The East Fifty (50) feet of LOT FIFTEEN ----- (15)
The East Fifty (50) feet of LOT SIXTEEN ----- (16)

In Block Three (3) in part of River Forest, being a Subdivision of part of Section 12, Township 39 North, Range 12, East of the Third Principal Meridian, as surveyed for The Suburban Home Mutual Land Association, according to the Plat of said Subdivision, recorded June 23, 1890, in Book 43 of Plats, Page 20, as Document Number 1291334.

PINs: 15-12-117-002, 15-12-117-003, 15-12-117-017, 15-12-117-018, and 15-12-117-019.

Common Addresses: 423 Ashland Avenue, River Forest, Illinois 60305 and 7601-7621 West Lake Street, River Forest, Illinois 60305

UNOFFICIAL COPY

EXHIBIT A-3

PARCEL LIST AND LEGAL DESCRIPTIONS

The following parcels ("Parcels") comprise the Project Area as of the Effective Date:

1. The "423 Ashland Property," legally described as:

LOT 14 IN BLOCK 3 IN PART OF RIVER FOREST, BEING A SUBDIVISION OF SECTION 12,
TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK
COUNTY ILLINOIS

PIN: 15-12-117-003.

Common Address: 423 Ashland Avenue, River Forest, Illinois 60305.

2. The "Ditchfield Property," legally described as:

LEGAL DESCRIPTION: Lots 1, 2 and 3 taken as a tract, (except the West 66.50 feet
thereof) in Block 33, in Suburban Home Mutual Land Association subdivision in River
Forest, being a subdivision in the East half of the Northwest quarter of section 12,
Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County,
Illinois.

And

The West 66.50 feet of Lots 1, 2, and 3 taken as a tract, in Block 3,
in Suburban Home Mutual Land Association Subdivision in River Forest
being a Subdivision in the East half of the Northwest Quarter of
Section 12, Township 39 North, Range 12, East of the Third Principal Meridian
in Cook County, Illinois

PINs: 15-12-117-017, 15-12-117-018, and 15-12-117-019;

Common Address: 7601-7613 West Lake Street, River Forest, Illinois.

3. The "Al Saffar Property," legally described as:

The East Fifty (50) feet of LOT FIFTEEN ----- (15)
The East Fifty (50) feet of LOT SIXTEEN ----- (10)

In Block Three (3) in part of River Forest, being a Subdivision of part of Section 12,
Township 39 North, Range 12, East of the Third Principal Meridian, as surveyed for The
Suburban Home Mutual Land Association, according to the Plat of said Subdivision,
recorded June 23, 1890, in Book 43 of Plats, Page 20, as Document Number 1291334.

PIN: 15-12-117-002.

Common Address: 7617-7621 West Lake Street, River Forest, Illinois 60305.

UNOFFICIAL COPY

EXHIBIT B

NOMINATION OF DEVELOPER BY KEYSTONE

(attached)

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

Property of Cook County Clerk's Office

UNOFFICIAL COPY

NOMINATION AND ASSIGNMENT OF AGREEMENT REGARDING COMMITMENT OF TIF FUNDS FOR REDEVELOPMENT PROJECT COSTS AT LAKE AND LATHROP

THIS NOMINATION AND ASSIGNMENT OF AGREEMENT REGARDING COMMITMENT OF TIF FUNDS FOR REDEVELOPMENT PROJECT COSTS AT LAKE AND LATHROP (this "Agreement") is made and entered into as of the 23rd day of March, 2016 by and between KEYSTONE VENTURES, LLC, an Illinois limited liability company ("Assignor"), LAKE LATHROP PARTNERS, LLC, an Illinois limited liability company ("Assignee") and the Village of River Forest, an Illinois municipal corporation ("Village").

RECITALS:

A. Assignor entered into that certain Assignment of Agreement Regarding Commitment of TIF Funds for Redevelopment Project Costs at Lake and Lathrop with the Village which was subsequently amended on November 11, 2013 by a certain "First Amendment to the Agreement Regarding Commitment of TIF Funds for the Redevelopment Project Costs at Lake and Lathrop," and amended a second time on December 29, 2014 by a certain "First Amendment to the Agreement Regarding Commitment of TIF Funds for Redevelopment Project Costs at Lake and Lathrop," and amended a third time on December 14, 2015 by a certain "Third Amendment to the Agreement Regarding Commitment of TIF Fund for Redevelopment Project Costs at Lake and Lathrop" (together the "Preliminary Agreement"), as set forth in that certain Redevelopment Agreement by and between the Village and Assignee, as nominee of Assignor.

B. Assignor desires to nominate and assign the Preliminary Agreement to Assignee and Assignee desires to assume all of the rights and obligations under the Preliminary Agreement, subject to the terms and conditions of this Agreement, and the Village is willing to consent to such assignment.

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, Assignee and Village agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are incorporated in this Agreement as if set out fully as numbered paragraphs herein.
2. **Assignment of the Preliminary Agreement.** Subject to the terms and conditions of this Agreement, Assignor hereby nominates and assigns, transfers, grants, delivers and conveys all of Assignor's right, title and interest in and to the Preliminary Agreement as set forth under the Redevelopment Agreement to Assignee.
3. **Assumption of Liability.** Assignee accepts such nomination and assignment of the Preliminary Agreement as set forth in the Redevelopment Agreement and hereby assumes each and every obligation of Assignor of the Preliminary Agreement from and after the date hereof. Assignee agrees to hereafter perform each and every obligation of Assignor under the Preliminary Agreement. Assignor is hereby released from any and all liability or obligation

UNOFFICIAL COPY

under the Preliminary Agreement and Village hereby accepts and recognizes Assignee as the sole party in interest under and pursuant to the Preliminary Agreement.

4. **Governing Law.** This Agreement and the respective rights and obligations of the parties under this Agreement shall be governed by and shall be determined under, the internal laws of the State of Illinois applicable to contracts between residents of the State of Illinois to be performed solely in the State of Illinois, i.e., without regard to choice of law principles. Any action involving this Agreement shall be brought and maintained solely in a court of the State of Illinois or a Federal court sitting in the State of Illinois.

5. **Reaffirmation/Conflicts.** Except as modified by this Agreement, Assignee hereby reaffirms all terms, covenants and conditions contained in the Preliminary Agreement as set forth in the Redevelopment Agreement. To the extent of a conflict between the terms of this Agreement and the Preliminary Agreement, this Agreement shall control.

6. **Headings.** The paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

7. **Counterparts.** This Agreement may be executed in any number of identical counterparts, any or all of which may contain the signatures of fewer than all of the parties but all of which shall be taken together as a single instrument.

8. **Facsimile.** Counterparts to this Agreement may be executed and delivered by facsimile, .pdf or .tif transmission, and for purposes of this Agreement signatures transmitted by facsimile or electronic signature shall be deemed to be original signatures.


- SIGNATURE PAGE TO FOLLOW -

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

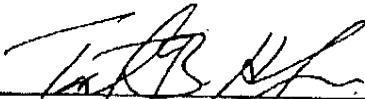
ASSIGNOR:

KEYSTONE VENTURES LLC
an Illinois limited liability company

By: 
Timothy B. Hague, Manager

ASSIGNEE:


LAKE LATHROP PARTNERS LLC
an Illinois limited liability company

By: 
Timothy B. Hague, Manager

Consent to Assignment and Acknowledgement

The Village of River Forest hereby consents to the foregoing assignment, by Assignor, and assumption by Assignee, of the Preliminary Agreement as set forth in the Redevelopment Agreement.

VILLAGE OF RIVER FOREST

By: 
Print Name: ERIC PALM
Title: VILLAGE ADMINISTRATOR

UNOFFICIAL COPY

GROUP EXHIBIT C

EXHIBIT C-1 – PROJECT DESCRIPTION

EXHIBIT C-2 – SITE PLAN

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Project Description

Lake and Lathrop Redevelopment

March 2016

I. Site Considerations

The project area is in a strategic location to take advantage of supporting amenities in the heart of the Village of River Forest. The Comprehensive Plan subarea recommendations are for the Village Center Commercial development. Our project redevelopment will be aligned with the Village's comprehensive plan and pedestrian oriented goals. The project will meet several of the goals in the Comprehensive Plan including:

- Promote retail activity
- Maintain and enhance the traditional "small business" character of the area
- Include residential above the first floor retail uses
- Buildings will be oriented to the front lot line along Lake Street and parking will be in the rear accessible from the cross streets and not Lake Street.

The intent is to sell the residential units as owner-occupied condominiums; however, the Developer requires the ability to offer the residential units for rent to cover potential market fluctuations.

Above the ground floor of the redevelopment project, the Developer seeks modifications from the Village's building codes to allow for "sticks and bricks" building materials as opposed to a full masonry build. The entire project will be fully fire sprinklered. It is intended that building materials will be consistent with the character of River Forest, while allowing for Type 3 (wood-framed construction) and related fire protection systems.

II. Re-development Proposal

The project will be a +/- 90,000 square foot mixed use retail and residential building located at the southwest corner of Lake Street and Lathrop Avenue. We will demolish the existing building, clean the site and construct approximately 48 new residential units located on the second through fifth floors of the new building over approximately 10,000 -12,000 SF of new retail space.

UNOFFICIAL COPY

Retail

Consistent with the Village's Comprehensive Plan, our proposal includes approximately 10,000-12,000 SF of new retail space, which will feature restaurants and small shops which maintain and enhance the "small business" character of the area. The commercial storefronts will be able to accommodate up to a dozen separate businesses. The main corner of Lake Street and Lathrop Avenue will feature an open air plaza, framed by two pronounced architectural building features with the storefronts continuing west along Lake Street and south along Lathrop Avenue re-establishing the desired street-edge. The Lake Street space adjacent to the corner plaza element will present an opportunity for an outdoor sidewalk cafe seating area. Developing additional retail/restaurant/commercial space within the *Village Center* district complies with and responds to the stated goals and purpose, as referred to in the Village's Corridor Study and the Village's Comprehensive Plan.

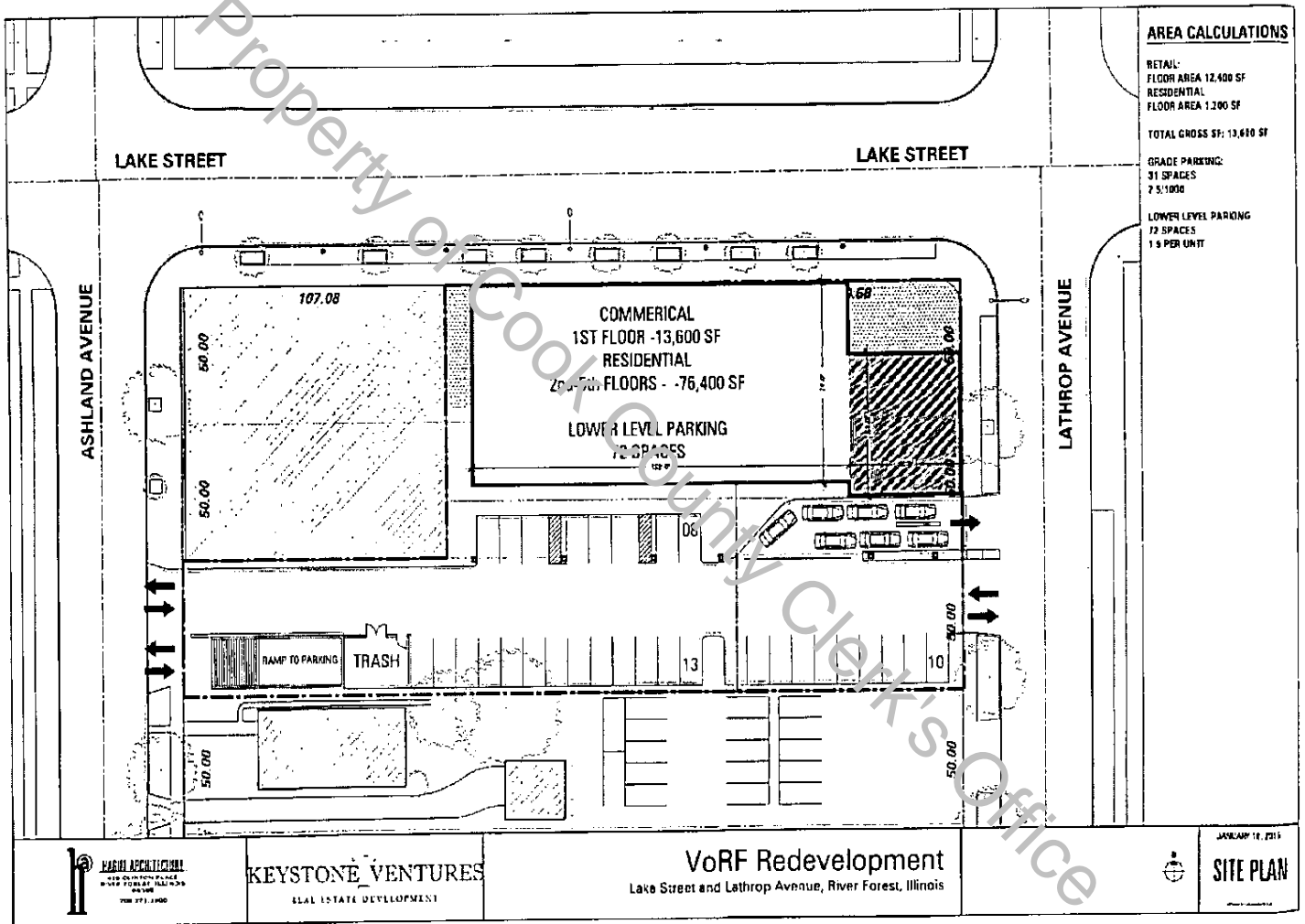
Residential

The project's residences will be designed to reflect the upscale quality of the community and particularly the Village Center subarea. The residences will feature high ceiling heights, larger window presentations, open floor plans, and exterior terraces and balconies. Our residents will be surrounded by the elegance and refinement normally found only in custom homes yet with the carefree lifestyle of an exclusive residential community. The residences will be appointed with high quality finishes and attention to detail. From the finely crafted architecture to the superb interior amenities, no details will be overlooked.

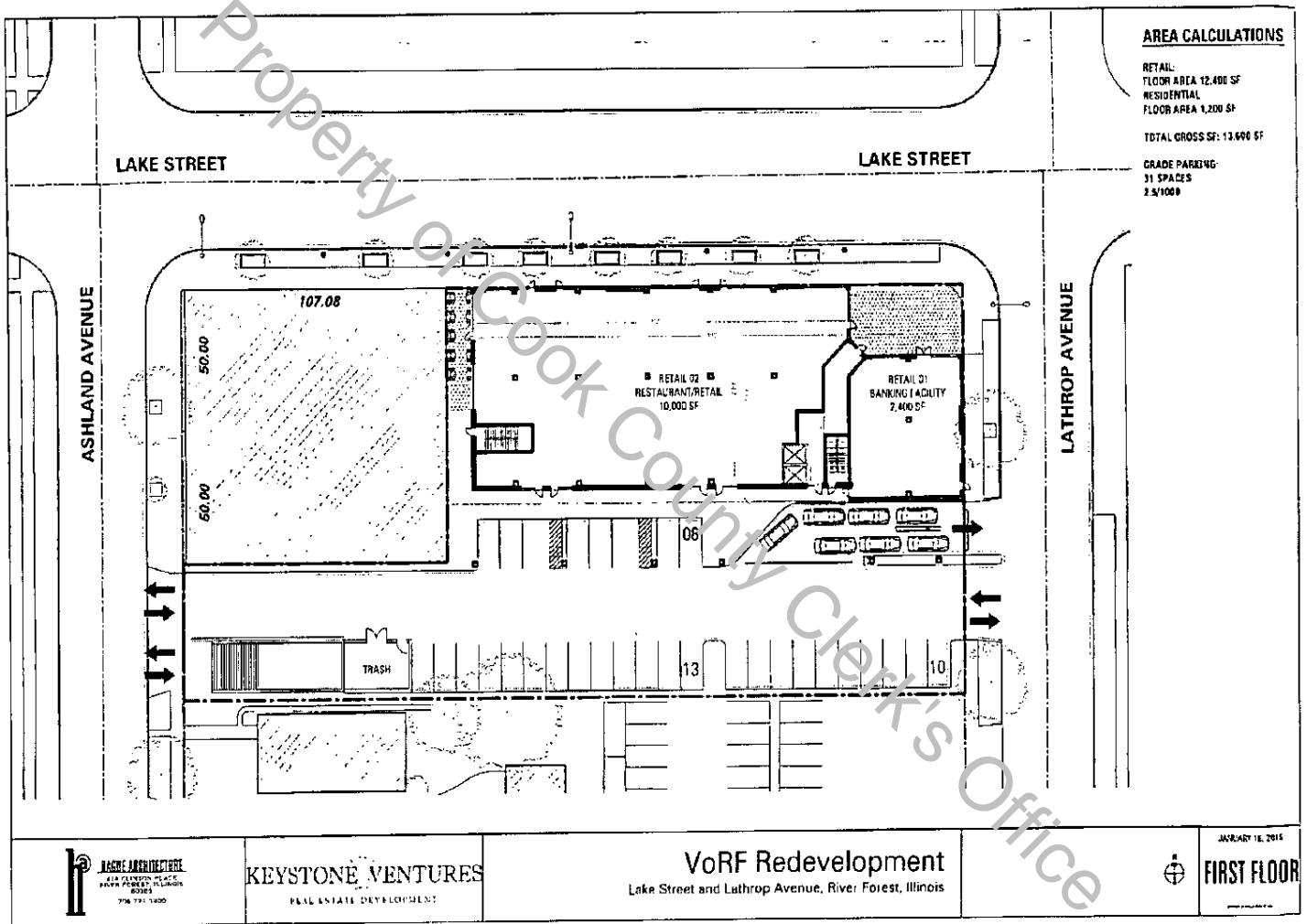
Project Specifics

- First Floor Commercial – 12,400 Square Feet
- Seventy-Two (72) Lower Level Parking Spaces
- Thirty-One (31) Grade Level Parking Spaces
- Forty-Eight (48) Residential Units – Four Floors

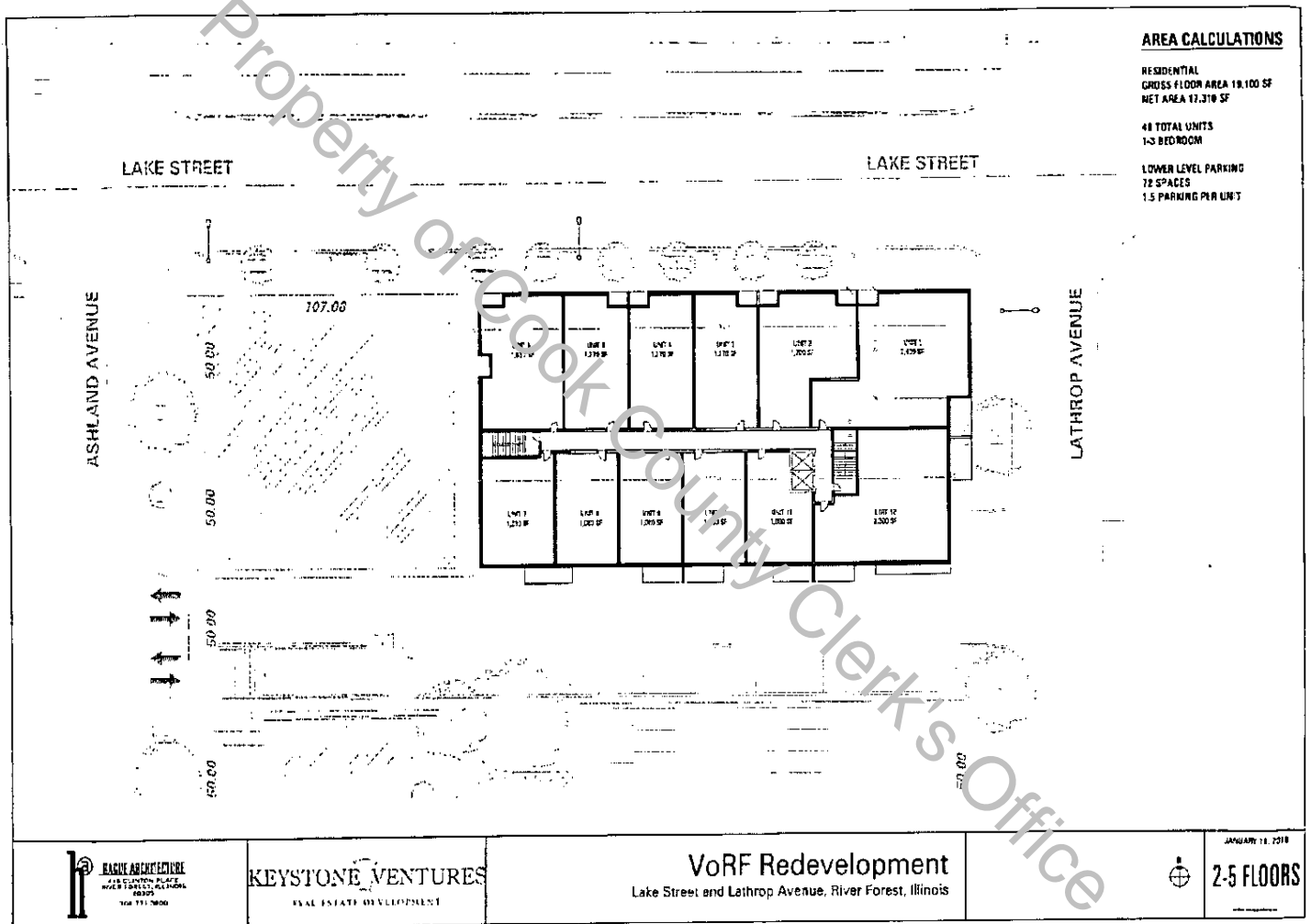
UNOFFICIAL COPY



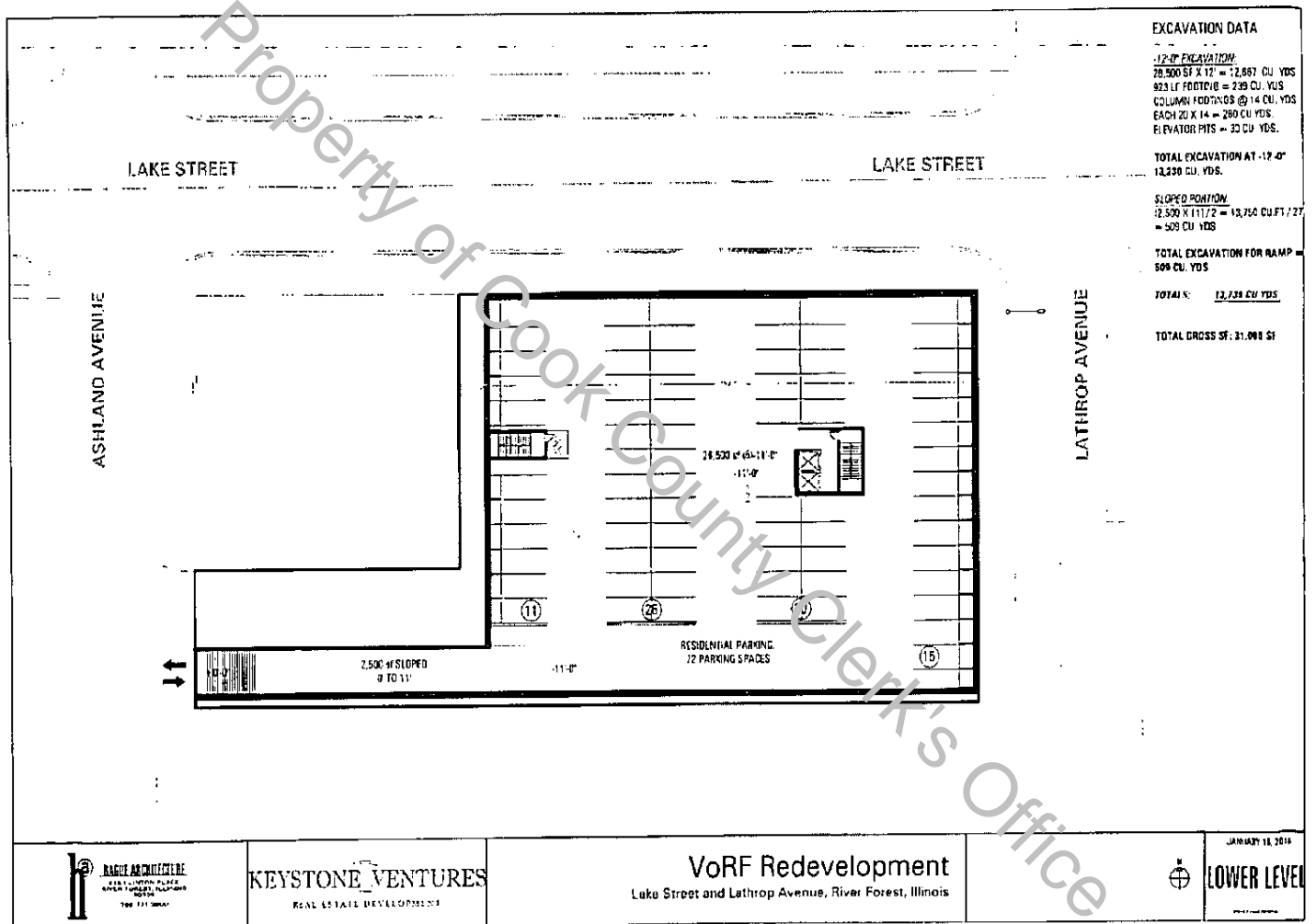
UNOFFICIAL COPY



UNOFFICIAL COPY



UNOFFICIAL COPY



UNOFFICIAL COPY

EXHIBIT D

PROHIBITED COMMERCIAL USE LIST

1. Any use prohibited by the Village of River Forest Municipal Code and/or the Village of River Forest Zoning Ordinance
2. Pawn shop
3. Cash for gold
4. Tobacco sales
5. Marijuana sales
6. Tattoo parlor
7. Firearms sales or service
8. Ammunition sales
9. Mattress sales
10. Massage service, where such service is the primary use

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

EXHIBIT E

REIMBURSEMENT REQUEST

(attached)

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

SWORN REQUEST FOR DISBURSEMENT UNDER THE REDEVELOPMENT AGREEMENT FOR LAKE STREET AND LATHROP AVENUE IN THE VILLAGE OF RIVER FOREST, COOK COUNTY, ILLINOIS

I, _____, on behalf of LAKE LATHROP PARTNERS LLC ("Developer"), hereby submit the following request for disbursement of "Committed Funds" or "Additional Village Funding" as defined in, and pursuant to the "Redevelopment Agreement for Lake Street and Lathrop Avenue in the Village of River Forest, Cook County, Illinois" ("Agreement"), under oath and penalty of perjury:

1. Amount Requested: _____ Dollars (\$ _____)

2. To Be Paid To: _____

3. To Be Paid For: _____

4. **Invoices / Documents Attached:** Attached is a true and accurate copy of invoice(s) and/or document(s) substantiating this request for disbursement. Developer shall provide such additional documents and information requested by the Village, including but not limited to, closing statements, invoices, contracts, contractors' affidavits, lien waivers, copies of checks and any other documentation specified by the Village and/or in the possession of Developer relating to this request.

5. **Covenants and Warranties:** Developer covenants and warrants as material inducement for the Village of River Forest to consider, process, and disburse the Committed Funds and/or Additional Village Funding that as of the date of this request, through the date of disbursement:

- a. Developer is not in default of any provision of the Agreement, and Developer is in compliance with all federal, State, and Village laws, ordinances, and regulations.
- b. The amounts disbursed pursuant to this request shall only be spent, or reimbursed, for "redevelopment project costs" as defined in Section 11-74.4-3(q) of the Illinois Tax Incrementing Allocation Financing Act, 65 ILCS 5/11-74.4-1, et seq.
- c. No amounts disbursed pursuant to this request shall be spent on any matter,

UNOFFICIAL COPY

except for the direct costs of permitted property acquisition, remediation of environmental contamination, and tenant incentives for the "Project," as defined and set forth in the Agreement.

Signature

Name

Date

Subscribed and sworn to before me
this ____ day of _____, 201__.

Notary Public

**COOK COUNTY
RECORDER OF DEEDS**

UNOFFICIAL COPY

EXHIBIT F

LIMITED JOINDER

(attached)

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

LIMITED JOINDER

The undersigned is executing this Limited Joinder, and hereby joins in the foregoing Redevelopment Agreement, as amended by the Third Amendment, for the sole purpose of evidencing Keystone Ventures, LLC's acknowledgement and agreement to be bound by the terms of the Redevelopment Agreement, as amended by the Third Amendment, with respect to Section 4.09(E) thereof, and being a party to that provision of the Redevelopment Agreement, as amended by the Third Amendment. The undersigned has the right, company power and authority to enter into, execute, and deliver this Limited Joinder.

KEYSTONE VENTURES LLC,
an Illinois limited liability company.

By: [Signature]
MANAGER

Date: 4 JANUARY 2017

STATE OF ILLINOIS)

COUNTY OF COOK)

SS.

I, DREW B. KRISCO, a Notary Public in and for the County and State aforesaid DO HEREBY CERTIFY that ANTHONY HAYNE, the MANAGER of Keystone Ventures LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such ANTHONY HAYNE, appeared before me this day in person and acknowledged to me that he signed and delivered said instrument as the free and voluntary act of the company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 6th day of JANUARY, 2017.



[Signature]

Notary Public