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# **THE VILLAGE OF TINLEY PARK**

**Cook County, Illinois**

**Will County, Illinois**

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## **ORDINANCE**

**2023-O-042**

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**AN ORDINANCE AUTHORIZING AND ADOPTING THE FIRST AMENDMENT AND  
RESTATEMENT OF THE HARMONY SQUARE DEVELOPMENT AGREEMENT  
IN THE VILLAGE OF TINLEY PARK, COOK AND WILL COUNTIES,  
ILLINOIS**

**(North Street at Oak Park Avenue)**

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**MICHAEL W. GLOTZ, PRESIDENT  
NANCY M. O'CONNOR, VILLAGE CLERK**

**WILLIAM P. BRADY  
WILLIAM A. BRENNAN  
DENNIS P. MAHONEY  
MICHAEL G. MUELLER  
KENNETH E. SHAW  
COLLEEN M. SULLIVAN  
Board of Trustees**

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Published in pamphlet form by authority of the President and Board of Trustees of the Village of Tinley Park  
Peterson, Johnson, & Murray Chicago, LLC, Village Attorneys  
200 W. Adams, Suite 2125 Chicago, IL 60606

**VILLAGE OF TINLEY PARK**

Cook County,  
Illinois Will  
County, Illinois

**ORDINANCE NO. 2023-O-042**

**AN ORDINANCE AUTHORIZING AND ADOPTING THE FIRST  
AMENDMENT AND RESTATEMENT OF THE HARMONY SQUARE  
DEVELOPMENT AGREEMENT IN THE VILLAGE OF TINLEY PARK,  
COOK AND WILL COUNTIES, ILLINOIS  
(North Street at Oak Park Avenue)**

**WHEREAS**, Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois provides that any municipality which has a population of more than 25,000 is a home rule unit, and the Village of Tinley Park, Cook and Will Counties, Illinois, with a population in excess of 25,000 is, therefore, a home rule unit and, pursuant to the provisions of said Section 6(a) of Article VII, may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to enter into development agreements with developers of Village properties and within Village boundaries; and

**WHEREAS**, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village; and

**WHEREAS**, the Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act; and

**WHEREAS**, the Village previously entered into a Development Agreement entitled HARMONY SQUARE DEVELOPMENT AGREEMENT ("Original Agreement"), and both Parties to said Original Agreement desire to Amend and Restate said Original Agreement; and

**WHEREAS**, the First Amendment and Restatement of the Harmony Square Development Agreement (the "Amended Agreement"), attached hereto as Exhibit A, authorizes the Developer to undertake the development of approximately 89 acres (the "Project"); and

**WHEREAS**, the Developer intends to develop the following permitted building functionality: mixed use five (5) story building, with street level commercial and residential uses above the first floor for the multi-family building, and town home units consisting of three stories with residential uses on all floors. The Project also contains a public parking lot. The total estimated cost of the Project is approximately Fifty-Four Million dollars (\$54,000,000); and

**WHEREAS,** It is necessary for the successful completion of the Project that the Village enter into this Amended Agreement with Developer to provide for the redevelopment of the Property, thereby implementing the Redevelopment Plan.

**WHEREAS,** Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Property but for certain tax increment financing (“TIF”) incentives to be provided by the Village and other municipal incentives in accordance with the Act and the home rule powers of the Village, which the Village is willing to provide under the terms and conditions contained herein. The parties acknowledge and agree that but for the TIF incentives and other municipal incentives, to be provided by the Village, Developer cannot successfully and economically develop the Property in a manner satisfactory to the Village.

**WHEREAS,** the Village has determined that it is desirable and in the best interest of the Village and residents thereof, to assist the Developer in the manner set forth herein and to enter into the Amended Agreement as may be supplemented and amended.

**NOW, THEREFORE, BE IT ORDAINED** BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF TINLEY PARK, COOK AND WILL COUNTIES, ILLINOIS, STATE AS FOLLOWS:

**SECTION 1:** The foregoing recitals shall be and are hereby incorporated as finding of fact as if said recitals were fully set forth herein.

**SECTION 2:** The Village President or his designees are hereby authorized to execute the Amended Agreement attached hereto as Exhibit A, and to do all things and take all actions to enter into said Amended Agreement with the Developer, and to fulfill the intentions of said Amended Agreement and this Ordinance, including but not limited to property transfers, TIF incentive payments, and property purchases as defined therein.

**SECTION 3:** Any policy, resolution, or ordinance of the Village that conflicts with the provisions of this Ordinance shall be and is hereby repealed to the extent of such conflict.

**SECTION 4:** This Ordinance shall be in full force and effect from and after its adoption and approval. If any portion of this Ordinance is held to be invalid by a court of competent jurisdiction, that portion shall be stricken from this Ordinance and the remainder of this Ordinance shall be in full force and effect to the extent possible.

**SECTION 5:** The Village Clerk is hereby ordered and directed to publish this Ordinance in pamphlet form, and this Ordinance shall be in full force and effect from and after its passage, approval, and publication as required by law.

PASSED THIS 2<sup>ND</sup> day of August, 2023.

AYES: Brady, Brennan, Mahoney, Shaw, Sullivan

NAYS: None

ABSENT: Mueller

APPROVED THIS 2<sup>ND</sup> day of August, 2023.

  
VILLAGE PRESIDENT

ATTEST:

  
VILLAGE CLERK

**EXHIBIT A**

**FIRST AMENDMENT AND RESTATEMENT OF THE HARMONY SQUARE  
DEVELOPMENT AGREEMENT**

*Above space for recorder's use only*

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**FIRST AMENDMENT AND RESTATEMENT OF THE  
HARMONY SQUARE DEVELOPMENT AGREEMENT**

The Parties hereto entered into a Development Agreement dated the 16<sup>th</sup> day of May, 2023 and recorded on the 8<sup>th</sup> day of June, 2023 and titled HARMONY SQUARE DEVELOPMENT AGREEMENT (“Original Agreement”). This First Amended and Restated Agreement is entered into by and between the parties on this \_\_\_\_ day of August, 2023 (the “Agreement”) by and between the Village of Tinley Park, Illinois, an Illinois municipal home rule corporation (the “Village”); Tinley Park Main Street LLC, and West Point Harmony Square, LLC, Illinois limited liability companies, (the “Developer”), with their principal office at 120 E. Ogden Avenue, Hinsdale, IL 60521. (The Village and the Developer are sometimes referred to individually as a “Party” and collectively as the “Parties.”).

**RECITALS**

This document is intended as a full Amendment and Restatement of Original Agreement between the Parties, withdrawing the Original Agreement, and substituting this document in its place and stead. The following Recitals are incorporated herein and made are part hereof.

**WHEREAS**, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village; and

**WHEREAS**, the Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the “Act”), to finance redevelopment in accordance with the conditions and requirements set forth in the Act; and

**WHEREAS**, this Agreement relates to a portion of the redevelopment of approximately 89 acres, consisting of the several parcels of which are depicted on and legally described on hereto and made a part hereof (the “Property”); and

**WHEREAS**, the Village authorized the preparation of a report, entitled “Village of Tinley Park, Illinois New Bremen Redevelopment Project Area Redevelopment Plan and Project” (the “Redevelopment Plan”) prepared by Ehlers and Associates, Inc. and dated March 2018, concerning the redevelopment of the New Bremen Redevelopment Project Area, including but not limited to the Property (“New Bremen TIF District”); and

**WHEREAS**, in accordance with the TIF Act, the Village conducted a public hearing with respect to the Redevelopment Plan and the redevelopment of the TIF District at a meeting of the President and Board of Trustees (the “Corporate Authorities”) held on April 3, 2018; and

**WHEREAS**, as part of the study of the redevelopment of the TIF District, the Village found that the improvements in the Property suffer from the following factors: obsolescence, deterioration, inadequate utilities, lack of community planning, and lagging equalized assessed value and determined that the area was a Conservation Area pursuant to the TIF Act; and

**WHEREAS**, to stimulate and induce redevelopment of the TIF District pursuant to the Act, the Village has adopted the following ordinances, after giving all notices required and after conducting the public hearings required by law (the “Enabling Ordinances”):

1. Ordinance Number 2018-O-004, passed on the 6<sup>th</sup> day of February 2018, fixing the time and place for a public hearing and joint review board meeting to consider the designation of a redevelopment project area and the approval of a redevelopment plan and project.
2. Ordinance Number 2018-O-015, passed on the 15<sup>th</sup> day of May 2018, designating the New Bremen Redevelopment Project Area, a redevelopment project area pursuant to the provisions of the Tax Increment Allocation Redevelopment Act.
3. Ordinance Number 2018-O-016, passed on the 15<sup>th</sup> day of May 2018, allocating tax increment financing for the New Bremen Redevelopment Project Area (“New Bremen TIF District”).
4. Ordinance Number 2018-O-017, passed on the 15<sup>th</sup> day of May 2018, adopting the New Bremen Tax Increment Financing; and

**WHEREAS**, Developer intends to develop the Property which is located in the Downtown Core Zoning District as set forth and created by adoption of the 2011 Legacy Code. The Project is intended to contain the following permitted building functionality mixed use five (5) story building with Street level commercial and residential uses above the first-floor parking, and town home units consisting of three stories with residential uses on all floors. The Project also contains a public parking lot. The Total Estimated Cost of the Project is approximately Fifty Four Million Dollars (\$54,000,000.00); and

**WHEREAS**, it is necessary for the successful completion of the Project (as defined in Article Two below) that the Village enter into this Agreement with Developer to provide for the redevelopment of the Property, thereby implementing the Redevelopment Plan; and

**WHEREAS**, Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Property but for certain tax increment financing (“TIF”) incentives to be provided by the Village and other municipal incentives in accordance with the Act and the home rule powers of the Village, which the Village is willing to provide under the terms and conditions contained herein. The parties acknowledge and agree that but for the TIF incentives and other municipal incentives, to be provided by the Village, Developer cannot successfully and economically develop the Property in a manner satisfactory to the Village. The Village has determined that it is desirable and, in the Village’s, best interests to assist the Developer in the manner set forth herein and as this Agreement may be supplemented and amended; and

**WHEREAS**, the Village, in order to stimulate and induce development of the Property, has agreed to finance certain Redevelopment Project Costs (as defined in Article Two below) through Incremental Property Taxes (as defined in Article Two below), all in accordance with the terms and provisions of the Act and this Agreement; and

**WHEREAS**, this Agreement has been submitted to the Corporate Authorities of the Village for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof, and any and all actions of the Corporate Authorities of the Village precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

**WHEREAS**, this Agreement has been submitted to the Members of the Developer for consideration and review, the Members have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Developer's Members precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

## **ARTICLE ONE** **INCORPORATION OF RECITALS**

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations, and agreements of the Village and of the Developer according to the tenor and import of the statements in such Recitals.

## **ARTICLE TWO** **DEFINITIONS**



For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, including above in the recitals hereto and as follows:

**“Act”** means the Tax Increment Allocation Redevelopment Act found at 65 ILCS 5-11-74.4-1, et seq., as supplemented by the Local Government Debt Reform Act, as amended, and the home rule powers of the Village.

**“Agreement”** means this “Harmony Square Development Agreement”.

**“Change in Law”** means the occurrence, after the Agreement Date, of an event described in Section (a) below, provided (i) such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and (ii) such event is not caused by the Party relying thereon:

(a) Change in Law means any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the Village or with respect to those made by the Village, only if they violate the terms of this Agreement); (ii) the order or judgment of any federal or state court, administrative agency or other governmental body (other than the Village); or (iii) the adoption promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village, or, with respect to those made by the Village, only if they violate the terms of this Agreement). Change in Law, for purposes of this Agreement, shall also include the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the services to be performed under this Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the Village).

**“Code”** means the United States Internal Revenue Code of 1986, as amended.

**“Collector”** means the officer or officers of the County of Cook, Illinois, who is or are at the time obligated under applicable law to collect and pay over to the Village the Incremental Property Taxes pursuant to and in accordance with the Act.

**“Corporate Authorities”** means the President and Board of Trustees of the Village of Tinley Park, Illinois.

**“Developer”** means Tinley Park Main Street LLC, an Illinois limited Liability Company, and West Point Harmony Square, LLC (jointly), or any successors in interest thereof.

**“Final Plans”** means the detailed plans for the Project (in its entirety including all improvements and not merely the building(s) themselves) as approved by the Village prior to the issuance of any building or other permits for the development, or as amended by the Developer and approved by the Village thereafter.

**“Harmony Square Plaza”** means the public entertainment park to be developed by the Village of Tinley Park.

**“Incremental Property Taxes”** means that portion of the ad valorem taxes, if any, attributable to the taxes levied upon the Property, which taxes are actually collected and which are attributable to the increases in the then current equalized assessed valuation (“EAV”) of the taxable lot, block, tract or parcel of all portions of the Property in the TIF District over and above the total Initial EAV of the Property, all as determined by the County Clerk of the County of Cook, Illinois, pursuant to and in accordance with the Act, the TIF Ordinances and this Agreement, which is attributable to the Property and includes any replacement, substitute or amended taxes.

**“Initial EAV”** means the calendar year 2021 equalized assessed value of the Property certified by the County Clerk of Cook County.

**“Net Incremental Property Taxes”** means that portion of the Incremental Property Taxes remaining after those payments required to be made to the applicable public school districts based upon State law and/or any agreements entered into between the Village and said school district or school districts, payments to any other taxing jurisdictions which are required under applicable State law, payments on any applicable debt obligations (i.e., payable from the New Bremen TIF District Project area revenues), and after deduction of administrative expenses of the Village.

**“Note”** means the Tax Increment Financing Reimbursement Note, attached hereto as **Exhibit VIII**.

**“Party”** means the Village and/or Developer and its successors and/or assigns as permitted herein, as the context requires.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

**“Pledged Moneys”** means the annual incremental taxes generated from the “West Point At Harmony Square” project locations using tax year 2021 Equalized Assessed Value as the base year. Final determination of “Pledged Monies cannot be calculated until it has been verified that the taxes have been paid in full for all the tax parcels associated with the “West Point At Harmony Square” Redevelopment” project.

**“Preliminary Engineering Plans”** mean the engineering plans dated and prepared by WMA Engineering.

**“Property”** means those parcel(s) legally described on **Exhibit I** upon which the Project will be implemented and constructed.

**“Redevelopment Plan”** means the “Redevelopment Plan” (as identified in Paragraph D of the Recitals) for the TIF District as approved by Village.

**“Redevelopment Project Costs”** means those qualified redevelopment project costs authorized by the Act and this Agreement.

**“Site Plan”** means the plan entitled “HARMONY SQUARE MASTER PLAN” as of May 3, 2023.

**“State”** means the State of Illinois.

**“TIF District”** means the New Bremen Tax Increment Redevelopment Project Area of the Village.

**“TIF Eligible Expenses”** means costs of the Project to be paid or reimbursed by the Village as provided in this Agreement.

**“TIF Fund”** means all revenue from the special allocation fund known as the New Bremen Tax Increment Redevelopment Project Area of the Village.

**“TIF Ordinances”** means all Ordinances adopted by the Village relating to the establishment or amendment of the New Bremen TIF District as further delineated in the Recital to this Agreement.

**“Uncontrollable Circumstance”** means any event which:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon; and
- (b) is one or more of the following events:
  - (i) a Change in Law;
  - (ii) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war, or naval blockade;
  - (iii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or another similar act of God;
  - (iv) governmental condemnation or taking other than by the Village;
  - (v) strikes or labor disputes, or work stoppages not initiated by the Developer;
  - (vi) shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement; or
  - (vii) unknown or unforeseeable geo-technical or environmental conditions;
  - (viii) major environmental disturbances;
  - (ix) vandalism; or
  - (x) terrorist acts.

Uncontrollable Circumstance shall not include economic hardship; unavailability of materials (except as described in b (vi) above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

**“Village”** means the Village of Tinley Park, Illinois, an Illinois home rule municipal corporation.

**“West Point At Harmony Square”** shall consist of a mixed use five (5) story building with Street level commercial and residential uses above the first floor, parking and townhomes all totaling, 125 units, consisting of 62 multi-family and 63 townhome units, , and outdoor surface parking for parking as required by the final engineering plan as approved by the Village.

### **ARTICLE THREE** **CONSTRUCTION**

This Agreement, except where the context by clear implication shall otherwise require, shall be construed, and applied as follows:

- (a) Definitions include both singular and plural.
- (b) Pronouns include both singular and plural and cover all genders.
- (c) Headings of Articles and Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction, or effect hereof.
- (d) All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use that were mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the Agreement shall control.
- (e) Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices, and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- (f) The Corporate Authorities, including appropriate Village Boards and Commissions as authorized under to Village Code, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices, and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. Developer and Village are entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the

Developer and Village as having been properly and legally given by the Developer or Village as the case may be.

- (g) In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates Patrick Curran a Manager of the Developer, as its authorized representative who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Developer and with the effect of binding Developer in that connection (such individual being an “Authorized Developer Representative”). Developer shall have the right to change its authorized Developer Representative by providing the Village with written notice of such change which notice shall be sent in accordance with Section 18.3.

#### **ARTICLE FOUR** **DEVELOPMENT PLAN**

The Developer has proposed, and the Village has agreed that the development proceed in two (2) phases:

Phase 1: West Point at Harmony Square Townhome Development

Phase 2: Mixed Use five (5) story building with Street level commercial and residential uses above the first-floor parking

The Village shall be solely responsible for all direct, and indirect development costs related to the Harmony Square Plaza Development.

#### **ARTICLE FIVE** **DESIGNATION OF DEVELOPER**

Except as otherwise specifically provided in, the Village hereby designates Developer as the exclusive developer for the Project on the New Bremen Redevelopment Project Area, subject to the terms of this Agreement and only so long as Developer is not in default in relation to this Agreement after the expiration of all applicable cure periods. The Village hereby represents to Developer that the Village has, to the best of its knowledge, taken in good faith, all necessary actions and has complied with all requirements imposed by law including, but not limited to, the requirements of Section 5/11-74.4-4 (c) of the Act, required to be taken and met prior to the designation of Developer as the exclusive developer for the Project on the Property.

#### **ARTICLE SIX** **DEVELOPMENT OF THE PROPERTY**

**6.1 Acquisition of Property.** The Developer contracted to purchase four parcels of land on North Street, listed on Exhibit IV to this Agreement from the current owners for a purchase price

of One Million Nine Hundred Thousand dollars (\$1,900,000.00). The Developer assigned its purchase rights to the Village prior to closing at the request of the Village and the Village acquired such property.

**6.2 Prior Village Acquisitions.** The Village has previously acquired several adjoining parcels located on North Street as listed on Exhibit VI.

**6.3 Harmony Square Assemblage.** Together the parcels listed in Section 6.1, 6.2 and 6.3 of this Agreement compromise the West Point at Harmony Square, which is the subject of this Agreement.

**6.4 Zoning.** The Developer has previously submitted plans to the Village Staff which the staff has found in substantial compliance and suitable for recommendation to the Plan Commission and Village Board for approval and necessary rezoning of vacated parcels. The Developer shall take all necessary steps and participate in all required hearings before Village Boards and Commissions. The parties acknowledge that the property located on North Street is zoned under the DC zoning classification which permits development of the Developer's multistory rental building as planned. The parties also acknowledge that the School Property is zoned under the DG zoning classification, which allows the Developer's planned townhome development, as planned. Following all required public hearings and meetings and concurrently with the Approval of this agreement the Village Board shall consider such other zoning approvals and requirements. Following the approval of this Agreement and any zoning requirements, the Developer shall promptly proceed to complete all final engineering and other plans (the "Final Plans") for approval by the Village of the Project, with said Final Plans to be in substantial conformity with the **Exhibits VII, IX, X and XI.**

**6.5 Village Incentives.** Following Village Board approval and Village execution of this Agreement, the Village will thereafter incentivize the Project for the acquisition of Project property and development costs as follows:

The Village will transfer property it owns to the Developer, as defined in Section 7.6 herein. The Village has valued the property to be deeded to the Developer at One Million Seven Hundred Fifty Thousand dollars (\$1,750,000).

The Village will reimburse Developer in TIF reimbursable costs of up to Five Million Five Hundred Thousand dollars (\$5,500,000).

The total amount of Village incentives to the Developer are therefore Seven Million Two Hundred Fifty Thousand dollars (\$7,250,000).

All of the above Village Incentives are also subject to the Village's Fiscal Policies Manual of 2011.

Developer's infrastructure reimbursement costs are to be determined (TBD) at the time such costs are incurred by Developer.

**6.6 Vacation of Parcels and Alleviation of Encroachments.** The Village shall vacate portions of the Village owned property along with street rights-of-way (ROWS) as defined in Exhibit III attached hereto, and use its best efforts to remedy such encroachments as identified, if required to implement the final approved plan. The vacated ROWs shall become part of the transferred properties for purposes of tracking the TIF increment.

**6.7 Development Schedule.** The project as proposed is a mixed-use development, to be developed and constructed in two (2) phases. Within three (3) months after satisfaction of the condition precedent as set forth in Section 7.3, the Developer agrees to apply for all necessary permits and approvals, including land use and construction approvals, from all governmental agencies having applicable jurisdiction as may be required to actually commence construction of Phase I of the Project, which shall be the West Point at Harmony Square Townhome Phase. The entire project shall be completed within 36 months of the commencement of construction of Phase I of the project. Upon receipt of all required approvals, including approval of the Final Plans and permits for the Project from the Village and any other federal, state, regional or county agencies having applicable jurisdiction, the Developer shall commence construction of the Project within three (3) months, weather permitting. If the Project has not been commenced within twelve (12) months after the last approval or permit is received, all such permits, approvals, variances and waivers for the Property and Project shall be immediately revoked and of no further force and effect (subject to the notice and curia provisions in this Agreement). Developer shall have the right to apply for a three (3) month extension of the time in which Developer shall have to commence construction pursuant to this Agreement or any permits issued by the Village if market conditions render commencement of such construction economically infeasible. The Village shall not unreasonably withhold approval of such an extension. Notwithstanding the foregoing, in the event any delays in permitting, plan review or change orders are caused or initiated by the Village, its staff, or professionals, the schedule, and completion dates shall be adjusted accordingly.

**6.8 Site Plan.** The Property shall be developed by Developer in substantial conformity with the Site Plan (as defined and identified in Article Two above) attached hereto and hereby made a part hereof as **Exhibit VII** and in substantial conformity with the approved (by the Village) Final Plans. In addition, the exterior of the building, including exterior building materials, shall be constructed by the Developer in substantial conformity with all Exhibits attached to this Agreement and such variations granted by the Village Board.

**6.9 Model and Rental Center.** Developer shall maintain model units and a rental office on the Property.

**6.10 Improvements.** Plans for all general site improvements, including but not limited to streets, parking, street and parking lot lighting, architecture, sign requirements, streetscape and street furniture, storm water facilities, alleys and driveways, parking facilities, landscaping in accordance with approved landscape plans, together with all general engineering plans for the entire Project, must be submitted to and shall be subject to the approval of the Village. The multi-story building shall be protected from fire by an automatic sprinkler system, which sprinkler system, including number of sprinkler heads, location of sprinkler heads and type of sprinkler system, must be approved by the Village. The townhome units shall likewise be protected from fire by an automatic sprinkler system, which sprinkler system, including number of sprinkler

heads, location of sprinkler heads and type of sprinkler system, shall be designed as agreed by the professionals of the parties, to take into account both the safety of occupants and the reasonable costs of installation. All site and building improvements must be in accordance with the applicable codes and ordinances of the Village as they exist from time to time during the construction of the Project except as to zoning and building code provisions that the Village has granted variations from.

**6.11 Permitted Uses.** Permitted uses shall be all of the functionalities and permitted building types as set forth in Section 2 Table 2.A. 1 of the Downtown Core Zoning District all as set forth in the Final Plans and the Site Plan.

The Developer and the Village agree that it, and any successor operator of the commercial component of the Project shall always maintain a mix of uses so that the entire Project complies with the parking standards set forth in Section 2 Table 2A, 1 of the Downtown Core Zoning District. The Developer further agrees that all times during the Project development and operation to have residential parking units equal to the number of residential units constructed (“One to One Parking”).

**6.12 Prohibited Uses.** The Developer agrees to not lease to or otherwise sell or allow to operate on the Property or in the Project any use specifically prohibited, (or any similar or comparable use to any specific prohibited use), by the Legacy Code of 2011 as incorporated in the Tinley Park Zoning Ordinance, and specifically as provided for in Section 3.A and Table 3.A.2 of the Legacy Code. Further, said prohibition of said uses shall be a covenant running with the land and binding on all future owners, tenants, and assignees of any kind.

**6.13 Residential Units.** The Developer may construct a maximum of 125 units, consisting of 62 rental units in the mid-rise building and 63 in the townhome units on the School Property and Teehan Redevelopment sites.

**6.14 Residential Units - Standards.** If the residential units are initially marketed as apartments for rent and not condominiums, the following provisions shall apply:

- (a) Each residential unit (apartments) shall be of condominium quality construction, shall fully comply with all Village building codes and regulations, and at-a minimum shall include the following minimum finishes and improvements, and no additional rent shall be charged for their inclusion and no prospective tenant/owner shall be allowed an option to have his/her rent reduced by elimination of one or more of the following:
  - (i) All new kitchen appliances (including, at a minimum, an oven, stove, refrigerator, microwave oven, dishwasher, and garbage disposal) Granite or Quartz countertops for all bathroom and kitchen countertops.
  - (ii) Upscale cabinets (to be chosen by Developer).
  - (iii) Double hung windows or other windows.
  - (iv) Hard floor surfaces and flooring materials in all rooms.



- (v) Each unit shall have its own separate laundry room and be equipped with a new washer and dryer.

## **ARTICLE SEVEN**

### **DEVELOPER'S COVENANTS AND AGREEMENTS**

**7.1 Developer's Redevelopment Obligations.** Subject to the conditions and terms set forth in this Agreement, the Developer is hereby required to construct all the public improvements designated on **Exhibit XIII** (the "Public Improvements") and **Exhibit XIII** (the Harmony Square ROW Infrastructure Improvements).

Subject to Village Board approval, the Village will fund up to the actual and final construction costs of the Harmony Square Public Improvements as set forth on **Exhibit XIII** when and as billed to the Village, based upon competitive bidding and Village approvals to be conducted by the Village in accordance with its ordinances and procedures. Any Village funding will be provided only upon Village acceptance of such Public Improvement after inspection and/or completion and upon satisfactory (to the Village) documentation being submitted to the Village in accordance with Section 7.9(e) below by Developer, and billed monthly to the Village and payable within fifteen (15) days of billing

To the extent public improvements undertaken by the Developer, the Developer shall construct the Public Improvements with procedures required by the Prevailing Wage Act (the "Act") of the State of Illinois, as amended, all at the Village's expense. If Developer fails to comply with the Act the Village need not reimburse the Developer for any portion of the Incentive Amount equal to the cost of the work which was not in compliance with the Act. Developer shall provide the Village, at the Village's request or otherwise in compliance with the Act, with all documents necessary to show compliance with the Act.

Multiple Bids/Proposals. The Village can require that the Developer solicit up to three bids for any of the Public Improvements and may require at least three proposals should the costs exceed Six Million Four Hundred Thousand Dollars (\$6,400,000.00).

Developer Decision with Consent. The Developer reviews competitive bids and submits and recommends to the Village for approval. The contract can be executed with the consent of the Village.

Developer Contracts and Supervises. The developer coordinates all aspects of the construction and oftentimes blends work in with private property improvements in a way that is more effective and cost effective.

**7.2 Village Cooperation.** The Village agrees to cooperate with Developer in Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity including the Village's requirements and processes and upon request of Developer, will promptly

execute any applications or other documents (upon their approval by the Village) which Developer intends to file with such other governmental or quasi-governmental entities in respect of the Project. The Village shall further promptly respond to, and/or process, and consider reasonable requests of Developer for all required permits, including but not limited to: applicable excavation; shell permits; other building permits; driveway permits; curb cuts or other permits necessary for the construction of the Project. Approval of any building permit applications and/or engineering plans shall be contingent on the Developer providing all required and requested documentation for each such permit, including but not limited to engineering reports; calculations and plans required to substantiate that said improvements fully conform with all applicable state statutes and also all Village ordinances and codes, as well as receipt of all required approvals from any federal, state, regional or county agencies having applicable jurisdiction. The Village shall not unreasonably withhold such approvals.

**7.3 Project Pre-Condition.** Prior to the Developer being required to construct the Project hereunder, the Village agrees that it may authorize the construction and funding of the Public Improvements by the Ordinance approving this agreement or by separate action. The Developer will use its best efforts to assist or undertake such construction if requested by the Village. Reimbursement for such improvements shall be paid to the Developer as invoiced, and not subject to the TIF reimbursement provisions of this Agreement. The Village may, but is under no obligation to, pre-authorize required permits to undertake foundation and other preparatory work.

**7.4 TIF Incentives.** Subject to the terms, conditions, and restrictions of this Agreement and the TIF Act, the Village shall pay to or on behalf of the Developer, its successors, assigns, transferees, or designees TIF Eligible Expenses Incurred by the Developer in the development of the West Point at Harmony Square, excluding the cost of land incurred by the Developer as set for the above in Sections 6.1 and 6.5, for the life of the TIF District as defined below. The Developer shall notify the Village from time to time of all new property index numbers (PINs) as they are issued by the County Clerk, it being understood that without such information the Village will be unable to calculate and determine the amount of Incremental Property Taxes, and failure of Developer to do so will release the Village from obligation to disburse any Incremental Property Taxes that may have been generated by the parcels that have the missing PINs until they are reported by the Developer to the Village. Such Incentive Amount shall be paid under the terms and conditions set forth in Sections 9.

The Developer shall only be entitled to collect the TIF Incentive Amount for the remaining life of the TIF project, from the first day of the next calendar year after the first occupancy permit is issued for Phase I of the Project during the life of the TIF until all sums due the Developer are collected. The sums reimbursed are limited to certified TIF Eligible Project expenses as provided by Illinois law but may include relocation costs and financing costs.

The amount of additional TIF funds provided by the Village, not including those land acquisition costs in Section 6.5 and costs in this Section 7.4, shall not exceed Five Million Five Hundred Thousand (\$5,500,000.00) Dollars, exclusive of the value of the land deeded to the Developer by the Village, plus interest as provided in the TIF Note based upon the entire certified project expenditures. No payment of TIF funds shall be made to Developer after May 15, 2041.

The categories of permissible TIF redevelopment costs are those included in 65 ILCS 5/11-74.4-3 (q) and 65 ILCS 5/11-74.6-10 (o), specifically including interest and relocation expenses.

**7.5 TIF Amendments, Extensions and Replacements.** The Village may, during the term of this Agreement, elect to amend, extend, supplement, or replace the existing TIF. Provided, however, no such amendment, extension, supplement, or replacement shall impair the rights of the Developer to complete the undertaking of the Developer or seek the reimbursements and benefits as herein provided by this Agreement.

**7.6 Conveyance of Land.** The parties acknowledge that the development of the Project will require a transfer of parcels between the Village and the Developer as follows:

7.6.A An initial transfer of Parcel 1 as described in Exhibit III attached hereto, subject to a side letter of agreement between the Parties.

7.6.B A second transfer of Parcels 2, 3, and 4 described in Exhibit III, as further agreed between the Parties.

The Village reserves the right to easements and public rights-of-way in any transfer of property, or relocation as needed and required to facilitate the Developer's approval.

**7.7 Village Permit Fees.** The issue of Village Permit Fees is reserved, subject to further negotiations between the Parties.

**7.8 Detention Requirements.** The Village shall supply detention capacity as required by the Metropolitan Water Reclamation District of Greater Chicago and Village Ordinance, in the Freedom Pond detention, pond with no connection fee to the Developer. If the Developer exceeds Pond capacity, the Village agrees to provide remediation or additional work to provide sufficient capacity for detention.

**7.9 Reimbursement Procedures for Developer Expenses Reimbursable Under TIF.**

- (a) The Village shall authorize the distribution to the Developer, or directly, to the Developer's subcontractors of, or reimbursement to the Village of, Net Incremental Property Taxes or revenue from other sources including from the existing fund balance in the TIF District Fund as determined by the Village in its sole discretion under this Section 7.9 in accordance with the terms of this Agreement, upon satisfaction of the following conditions:
  - (i) The Village shall supply all required forms to the Developer at the commencement of construction.
  - (ii) The developer has submitted to the Village Manager a disbursement request on a form reasonably acceptable to the Village with respect to such portions.

- (iii) Developer is not in default in any material provision or undertaking under this Agreement after expiration of all applicable cure periods, which has not been fully remedied.
  - (iv) The Village has previously inspected and approved the TIF Eligible Expenses.
- (b) As a prerequisite to the making of payments to the Developer, the Developer must certify to the Village the following:
  - (i) The Developer (or its successor or assign, if applicable) is duly organized and validly existing.
  - (ii) The Developer has the right, power, and authority to submit the request for payment and to perform its obligations under the Agreement.
  - (iii) The requested disbursement is for Redevelopment Project Costs which are qualified for payment under applicable law.
  - (iv) None of the items for which payment is requested has been the basis for a previous payment.
  - (v) The Developer has obtained all government permits, certificates, and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and as applicable to reconstruct, complete and operate the Improvements.
  - (vii) That no uncontested lien other than a mortgage or mortgages exists against the Property.
  - (viii) That the Developer has certified the work for which payment is sought has been completed.
- (c) As a prerequisite to any payments by the Village and to assist in the Village's consideration, the Developer must provide to the Village:
  - (i) Good and sufficient (partial or full) waivers of liens with respect to the payment requested.
  - (ii) Proof in a form reasonably acceptable to the Village, such as a contractor's sworn statement and engineer's certification, that the Developer is or was obligated to make the payments for which reimbursement is sought.
  - (iii) Such information is reasonably necessary for the Village to determine that reimbursement is being sought for a Redevelopment Project Cost and is otherwise due and payable hereunder.

- (iv) A request for disbursement (“Request for Disbursement”) on a form acceptable to the Village.
- (v) All certificates required above.
- (d) The Developer shall have the right to submit expenses semi-annually and shall be reimbursed within 30 days of submission. Any payment not paid within such 30-day period shall be paid with interest at the judgment rate as provided by Illinois law.
- (e) The Village shall provide the Developer with the forms for Developer to document required to evidence the cost of the TIF Eligible Expenses. In addition, the Developer will provide records including, but not be limited to, all contracts with general contractors and all subcontractors, contractors sworn affidavits, lien waivers, copies of checks and any other documentation specified by the Village and/or in the possession of the Developer.
- (f) It is understood that the Incentive Amount is the maximum amount the Village will be required to reimburse the Developer. It is further understood that the Village may reimburse itself out of the Incentive Amount for any monies owed by the Developer and that the Incentive Amount will be reduced by the amount of any such reduction. If the cost of the TIF Eligible Expenses (taken as a whole) is less than the Incentive Amount, the lesser amount is the maximum amount the Developer will be entitled to be reimbursed hereunder. If the cost of the TIF Eligible Expenses exceeds the Incentive Amount, the Developer still shall be entitled to receive an amount not to exceed Five Million Five Hundred Thousand Dollars (\$5,500,000.00) exclusive of land value and interest as provided in the attached TIF Note, on the property development increment to the extent such budgeted costs are TIF eligible expenses and subject to the provisions of Section 7.4 above.
- (g) At the request of the Village the Developer may perform offsite utility and site work to accommodate the Village’s installation of the Harmony Square Plaza development by the Village. The cost of such work shall be promptly reimbursed by the Village to the Developer upon billing and the presentation of waivers by the Developer to the Village.

## **ARTICLE EIGHT**

### **DEVELOPER'S COVENANTS AND AGREEMENTS**

**8.1 Developer's Development Obligations.** Developer shall have the obligations set forth in this Article Eight for the development, construction, financing, completion and furtherance of the Project, all subject to the Village's financial commitments set forth in this Agreement and those conditions set forth in Section 7.3 and elsewhere in this Agreement.

**8.2 Developer's Commitments.**

- (a) The Developer will construct the Project in substantial conformance with the Site Plan and the Exhibits hereto and all final development and engineering plans (the approved "Final Plans") approved by the Village.
- (b) The Developer shall make such dedications and conveyances of rights of way, of property as are specified in the final approved engineering plans.
- (c) Deleted.
- (d) Developer shall warrant all public improvements constructed by it or installed at its direction, to be free from defects in workmanship and materials and damage to such improvements by reason of settling of the ground, base, or foundation thereof for a period of twelve (12) months following the date such improvements are conveyed to the Village. During the twelve (12) month warranty period, Developer shall only be responsible for the repair and restoration of any improvements that fail as a result of defects in workmanship or materials.
- (e) Developer shall park and stage all construction equipment, materials and vehicles at such site(s) as may be designated by the Village from time to time.
- (f) Developer shall include in its covenants and all leases that outdoor storage is prohibited.
- (g) The Village and the Developer shall grant such easements as are necessary to implement access to all areas and structures to facilitate the Plan and use of the parking areas and street to be dedicated.

**8.3 Compliance with Applicable Laws.** Developer shall at all times acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances, and regulations. Except as to code provisions that the Village has granted variations from, all work with respect to the Project shall conform to all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter), life safety codes property maintenance codes and any other applicable codes and ordinances of the Village; or any of its rules or regulations or amendments thereto which are in effect from time to time at the time of issuance of each building permit.

**8.4 Progress Meetings.** Developer shall meet with the Village staff (as determined by the Village) as requested by the Village not more than monthly, and prior to each quarterly presentation. Developer shall make presentations to the Corporate Authorities and Village staff at least quarterly in order to keep the Village apprised of the progress of the construction of the Project.

**8.5 Developer's Cooperation and Coordination.** During the construction of all public and private improvements for the Project, the Developer shall provide such notices and attend such community and neighborhood meetings as may be necessary or desirable, as reasonably determined by either the Village or the Developer, to keep all the residents and local businesses in the immediate vicinity fully informed of progress on the Project and any measures that residents should take to minimize any inconvenience. The Developer also agrees to coordinate all construction with any special events planned by the Village, particularly including, but not limited to, events occurring at the Zabrocki Plaza, the Metra train station and the Metra commuter parking lots and any other celebrations located in the vicinity of the Project in general and specifically along Oak Park Avenue and North Street. In the event of any such special event, such coordination with the Village shall include a specific traffic plan approved by the Village for both vehicles and pedestrians during the special event.

**8.6 Site Maintenance.** Developer shall keep the Property clean and free from debris at all times during the construction of the Project. Developer shall post with the Village a performance bond or cash in the amount of \$10,000 and in a form satisfactory to the Village to guarantee such site maintenance and allowing the Village to draw any necessary amount thereon to perform any such work (or to reimburse itself for the cost of doing any such work) when the Village determines in its sole discretion that it is necessary to do so.

## **ARTICLE NINE** **ADDITIONAL COVENANTS OF DEVELOPER**

**9.1 Developer Existence.** 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, so long as Developer maintains an interest in the Property or has any other remaining obligation pursuant to the terms of this Agreement.

**9.2 Construction of Project.** Developer shall diligently pursue obtaining all required permits and Developer shall cause construction of the Project on the Property to be developed and completed pursuant to the terms hereof with due diligence, in good faith and without delay, subject to Uncontrollable Circumstances and the other provisions of this Agreement.

**9.3 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 the Developer's sound legal discretion.

**9.4 Disclosure.** Concurrently with execution of this Agreement, Developer shall disclose to the Village the names, addresses and ownership interests of all Persons that comprise Developer, together with such supporting documentation that may be requested by the Village. Developer further agrees to notify the Village throughout the term of this Agreement of the names, addresses and ownership interests of any new Member.

**ARTICLE TEN**  
**DELETED**

**ARTICLE ELEVEN**  
**REAL ESTATE CONVEYANCES**

**11.1 Necessary Conveyances/Easements-Time to Provide.** At or before the time any permit is issued by the Village for construction of the Project, Developer will convey cross parking and cross-access easements at such locations as approved by the Village.

**11.2 Real Estate Procedures.** All real estate transactions provided for herein shall be subject to a separate Purchase and Sale Agreement (PSA), executed contemporaneously with this Agreement. The Party required to make a conveyance shall be considered the "Seller" thereunder and the Party receiving the conveyance shall be considered the "Purchaser" thereunder regardless of whether any monetary payment is due.

**ARTICLE TWELVE**  
**REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

Developer represents, warrants, and agrees as the basis for the undertakings on its part herein contained that as of the date hereof and until completion of the Project:

**12.1 Organization and Authorization.** Developer is an Illinois Limited Liability Company duly organized and existing under the laws of the State of Illinois and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver, and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or 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 or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.

**12.2 Non-Conflict or Breach.** Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its partners or venturers is now a party or by which Developer or any of its partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its venturers under the terms of any



instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party or any of its venturers is bound.

**12.3 Financial Resources.** Developer has sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement. Developer has clear title to the Property (except that portion owned by the Village) and has or will obtain a firm commitment from a financial institution providing all monies needed through third party financing or alternatively will provide proof of access to sufficient funds pursuant to the terms of Section 8.4 hereof.

**12.4 Notice of Violations.** The Developer represents and warrants that it has not received any notice from any local, state, or federal official that the activities of the Developer with respect to the Property and Project may or will be in violation of any environmental law or regulation. The 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 the 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.

### **ARTICLE THIRTEEN** **REPRESENTATIONS AND WARRANTIES OF THE VILLAGE**

The Village represents, warrants, and agrees as the basis for the undertakings on its part herein contained that:

**13.1 Organization and Authority.** The Village is a municipal corporation duly organized and validly existing under the law of the State of Illinois, is a home rule unit of government, and has all requisite corporate power and authority to enter into this Agreement.

**13.2 Authorization.** The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement (i) have been duly authorized by all necessary corporate action on the part of the Village, (ii) require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement, and (iii) shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the Village is subject.

**13.3 Litigation.** To the best of the Village's knowledge, there are no proceedings pending or threatened against or affecting the Village or the TIF District in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement.

## **ARTICLE FOURTEEN**

### **INSURANCE**

**14.1** The Developer, and any successor in interest to the Developer, shall until twelve (12) months following completion of the Project, obtain or cause to be obtained and continuously maintain insurance on the Project and, from time to time at the request of the Village, furnish proof to the Village that the premiums for such insurance have been paid and the insurance is in effect. The Village shall be named as an additional insured on all of the policies/coverage described herein. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and continuously maintain, provided that the Developer shall obtain the insurance described in clause (i) below prior to the commencement of construction of the Project (excluding excavation and footings):

- (a) Builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis", in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
- (b) As to all work other than the construction of the Public Improvements, comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the Village as an additional insured, with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis, and not less than \$5,000,000 aggregate. As to the construction and installation of Village Improvements, the per occurrence limit shall be \$5,000,000.
- (c) Workers compensation insurance, with statutory coverage.
- (d) Professional liability coverage, including errors and omissions.

**14.2** All insurance required in this Article shall be obtained and continuously maintained in responsible insurance companies selected by the Developer or its successors and approved by the Village that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Article, each policy must contain a provision that the insurer will not cancel nor materially modify the policy without giving written notice to the insured and the Village at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Article. In lieu of separate policies, the Developer or its successor or assign, may maintain a single policy, blanket or umbrella policy, or a combination thereof, having the coverage required herein.

## **ARTICLE FIFTEEN**

### **INDEMNIFICATION**

**15.1** The 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 (hereinafter, for purposes of this Article, collectively the “Indemnified Parties”) 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 Property or resulting from any action by the Developer and its officers, employees, agents and/or contractors, to the extent not attributable to the gross negligence or willful misconduct of the Indemnified Parties.

**15.2** Except for gross negligence or willful misconduct of the Indemnified Parties, the Developer agrees to indemnify the Indemnified Parties, now and forever, and further agree 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 the Developer (or if other persons 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.

**15.3** The Village makes no warranties or representations regarding, nor does it indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Property or anywhere within the TIF District of any toxic or 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. §§ 961-9657, 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 Property or within the TIF District, as well as any activity claimed to have been undertaken on or in the vicinity of the Property that would cause or contribute to causing (1) the Agreement to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Development Agreement within the ambit of, the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. §691 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 Property within the meaning of, or otherwise bring any Property 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 the Developer with respect to, the existence or nonexistence on or in the vicinity of the Project or anywhere within the TIF District of any substances or conditions in or on the Property 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 Property, or whether any above or underground tanks have been located under, in or about the Property and have subsequently been removed or filled. As far as any properties to be conveyed by the Village to the Developer pursuant to the Purchase and Sale Agreement, the Developer agrees to accept any such conveyance on an “as-is” basis and waives and releases any or all claims Developer may have against the Village for any violation of any federal, state, or local environmental law or regulation.

**15.4** The Developer waives any claims against the Village, 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.

## **ARTICLE SIXTEEN**

### **EVENTS OF DEFAULT AND REMEDIES**

**16.1 Developer Events of Default.** The following shall be Events of Default with respect to this Agreement:

- (a) If any material representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by a party hereto, in writing and delivered to the Village pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within sixty (60) days after written notice from the Village.
- (b) Default by Developer for a period of sixty (60) days after written notice thereof in the performance or breach of any material covenant contained in this Agreement, or any other agreement, financing or otherwise, concerning the existence, structure or financial condition of Developer and/or the Project and Property; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said sixty (60) days and Developer, within said sixty (60) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice.
- (c) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.
- (d) The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state

bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within sixty (60) consecutive days.

- (e) Failure to have funds to meet Developer's obligations; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within sixty (60) days after written notice from the Village.
- (f) Developer abandons the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than sixty (60) days for any reason other than: (i) Uncontrollable Circumstances or (ii) if Developer is ahead of its planned construction schedule.
- (g) Developer materially fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the buildings contemplated by this Agreement; provided, however, that such default shall constitute an Event of Default only if the Developer does not, within sixty (60) days after written notice from the Village, remedy the default.
- (h) Provided the Developer is working diligently to cure any default, the Village shall not unreasonably withhold consent to an extension of such default.

**16.2 Village Events of Default.** The following shall be Events of Default with respect to this Agreement:

- (a) if any representation made by the Village in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the Village does not remedy the default within sixty (60) days after written notice from Developer.
- (b) default by the Village in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the Village; provided, however, that such default or breach shall constitute an Event of Default only if the Village does not, within sixty (60) days after written notice from Developer, initiate and diligently pursue appropriate measures to remedy the default, or if the Village fails to cure such default within sixty (60) days of written notice of such default.

- (c) default by the Village in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the Village, commences cure within sixty (60) days after written notice from Developer and in any event cures such default within sixty (60) days after such notice, subject to Uncontrollable Circumstances.

**16.3 Remedies for Default.** In the case of an Event of Default hereunder:

- (a) The defaulting party shall, upon written notice (in accordance with the provisions of Section 17.3 of this Agreement) from the non-defaulting party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured within thirty (30) days, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than sixty (60) additional days after receipt of such notice, unless extended by mutual agreement, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting party's obligations under this Agreement.
- (b) In case the Village shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, Developer and the Village shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the Village shall continue as though no such proceedings had been taken.
- (c) In the case of an Event of Default by Developer, and its failure to cure such default after due notice and within the time frames provided for in this Agreement, in addition to any other remedies at law or in equity, the Village shall be relieved of its obligations under this Agreement, including but not limited to its obligations to accord Developer, "exclusive" developer status as set forth in Article Five, its obligation to pay any incentive amounts to the Developer and its obligations to convey any land to Developer.
- (d) In the case of an Event of Default by the Village and its failure to cure such default after due notice and within the time period provided for in this Agreement, in addition to any other remedies at law or in equity, the Developer shall be relieved of its obligations under this Agreement if it so elects, and the Developer shall have the right, if it so elects, to terminate this Agreement.
- (e) In the case of an Event of Default by the Developer occurring prior to the commencement of construction (only), the Village agrees that it shall have no remedy of specific performance to force the Developer to commence construction.

- (f) Nothing herein shall limit the Village's right to any remedies available under the required insurance policies, bonds, and other such sureties obtained by the Developer.

**16.4 Legal and Other Fees and Expenses From and After Effective Date of Agreement.**

- (a) In the event that any third party or parties institutes any legal proceedings against the Developer and/or the Village, which relate to the terms of this Agreement, then, in that event, the Developer shall indemnify and hold harmless the Village from any and all such proceedings. Further, the Developer, upon receiving notice from the Village of such legal proceedings, shall assume, fully and vigorously, the entire defense of such lawsuit or proceedings and any and all costs and expenses of whatever nature relating thereto; provided, however, that the Developer may not at any time settle or compromise such proceedings without the Village's consent and even then only so long as such settlement or compromise does not involve an admission of wrongdoing on the part of the Village, nor any liability on the part of the Village, monetary or otherwise.
- (b) If the Village, in its sole discretion, determines that there is, or may probably be, a conflict of interest between the Village and the Developer on an issue of material importance to the Village, or which may reasonably have a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event that the Village exercises such option, then the Developer shall reimburse the Village from time to time on written demand from the Village President and notice of the amount due for any and all reasonable out-of-pocket costs and expenses, including but not limited to court costs, reasonable attorneys' fees, witnesses' fees and/or other litigation expenses incurred by the Village in connection therewith.
- (c) In the event that the Village institutes legal proceedings against the Developer for a breach of this Agreement, or any term or condition hereof, and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in any judgment against the Developer all costs and expenses of such legal proceedings incurred by the Village, including but not limited to court costs, reasonable attorneys' fees and Witnesses' fees, incurred in connection therewith. Either party may, in its sole discretion, appeal any judgment rendered in relation thereto.
- (d) Costs and expenses incurred by the Village in such legal proceedings shall be evidenced to the court, upon its request, by a sworn statement of the Village, or other such documentation as the court may require.

**16.5 No Waiver by Delay or Otherwise.** Any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act 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 neither Party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as

a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

**16.6 Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

**16.7 Delays by Uncontrollable Circumstances.** For each day that the Village or Developer is delayed by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day for each day of the resulting delay.

## **ARTICLE SIXTEEN (A)** **PERFORMANCE BONDS**

Developer agrees to obtain two (2) bonds acceptable to the Village from a creditable surety company, covering each of the two (2) Phases of the Project. These bonds shall not be subject to lien or encumbered in any manner. The Village shall be added as an additional protected party on all performance bonds required of the Developer and its contractor(s).

## **ARTICLE SEVENTEEN** **EQUAL EMPLOYMENT OPPORTUNITY**

**17.1 No Discrimination.** The Developer will comply with all federal, state, and local laws relating to equal employment opportunity.

**17.2 Advertisements.** Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

**17.3 Contractors.** Any contracts made by Developer with any general contractor, agent, employee, independent contractor, or any other Person in connection with the Project shall contain language similar to that recited in Sections 17.1 and 17.2 above and be insubstantial compliance with all Village codes and ordinances and any applicable federal, state, and local laws and ordinances.

## **ARTICLE EIGHTEEN** **MISCELLANEOUS PROVISIONS**

**18.1 TIF Provisions.** A delineation of the TIF qualified costs for the Project is set forth on **Exhibit XII** attached hereto and hereby made a part hereof. Attached hereto and hereby made a part hereof as **Exhibit XIV** is the Developer's Pro Forma estimate of costs to acquire and construct the Property and the estimated revenue to be generated therefrom.



**18.2 Cancellation.** In the event Developer or the Village shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the Redevelopment Plan, including Developer's duty to build the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the Village in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Redevelopment Plan or the covenants and agreements or rights and privileges of Developer or the Village, then and in any such event, the Party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other within sixty (60) days after such final decision or amendment. If the Village terminates this Agreement pursuant to this Section 19.2, to the extent it is then appropriate, the Village, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided. Further, the cancellation or termination of this Agreement shall have no effect on the authorizations granted to Developer for buildings permitted and under construction to the extent permitted by said Court order; and the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded, properly executed document.

**18.3 Notices.** Except for notices required under Section 8.10, all notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b) electronic communications, whether by telex, telegram or telecopy, (c) overnight courier, (d) registered or certified first class mail, postage prepaid, return receipt requested, or (e) priority mail with delivery confirmation.

If to Village:	Village President Village of Tinley Park 16250 S. Oak Park Avenue Tinley Park, Illinois 60477
With a copy to:	Village Manager Village of Tinley Park 16250 S. Oak Park Avenue Tinley Park, Illinois 60477
And:	Peterson, Johnson & Murray—Chicago LLC 200 West Adams Street, Suite 2125 Chicago, Illinois 60606 Attention: Paul O'Grady
If to Developer:	Tinley Park Main Street LLC 120 E. Ogden Avenue, Suite 23 Hinsdale, IL 60521 Attn: Patrick Curran

And: Sosin, Arnold & Schoenbeck, Ltd.  
9501 W. 144<sup>th</sup> Place, Suite 205  
Orland Park, Illinois 60462  
Attn: David Sosin

And: Barbara Canning  
1000 Skokie Boulevard  
Suite 355  
Wilmette, IL. 60091

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents, or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

**18.4 Time of the Essence.** Time is of the essence of this Agreement.

**18.5 Integration.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations, and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

**18.6 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

**18.7 Recordation of Agreement.** The Parties agree to record a memorandum of this Agreement, executed by owners of the Property in the appropriate land or governmental records. The Developer shall pay the recording charges.

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

**18.9 Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

**18.10 Entire Contract and Amendments.** This Agreement (together with the exhibits attached hereto) is the entire contract between the Village and Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings, and agreements, written or oral, between the Village and Developer and may not be modified or amended except by a written instrument executed by the Parties hereto.

**18.11 Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the Village and Developer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or Developer. This Agreement is not intended to and does not create any third-party beneficiary rights whatsoever.

**18.12 Waiver.** Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

**18.13 Cooperation and Further Assurances.** The Village and Developer each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village or Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

**18.14 Successors in Interest.** At any time, the Developer may assign its rights or obligations under this Agreement for the purpose of obtaining financing for the Project or any portion thereof, or to any entity in which the Developer owns a controlling interest. Developer may not otherwise assign its rights or obligations under this Agreement to any other person or entity without prior written consent of the Village.

**18.15 No Joint Venture, Agency or Partnership Created.** Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such Parties.

**18.16 No Personal Liability of Officials of Village or Developer.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Corporate Authorities, Village Manager, any elected official, officer, partner, member, director, agent, employee or attorney of the Village or Developer, in his or her individual capacity, and no elected official, officer, partner, member, director, agent, employee or attorney of the Village or Developer shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

**18.17 Conflicts.** To the extent that any ordinance, resolution, rule, order, or provision of the Village's code of ordinances, or any part thereof, conflicts with the provisions of this Agreement, such conflict shall be the subject of further negotiation between the Parties.

**18.18 Term.** This Agreement shall remain in full force and effect until the TIF District expires; provided, however, that the Developer's construction obligations hereunder shall terminate pursuant to certificates of completion issued by the Village.

**18.19 Estoppel Certificates.** Each of the Parties hereto agrees to provide the other, upon not less than ten (10) business days prior request, a certificate ("Estoppel Certificate") certifying that this Agreement is in full force and effect (unless such is not the case, in which such Parties shall specify the basis for such claim), that the requesting Party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party. If either Party fails to comply with this provision within the time limit specified, it shall be deemed to have appointed the other as its attorney-in-fact for execution of same on its behalf as to that specific request only.

**18.20 Assignment.** This Agreement and the rights and obligations hereunder in whole or part, may not be assigned by Developer prior to completion of the Project except to single purpose LLCs owned in whole or part by members of the Developer, This agreement shall be fully assignable thereafter.

**18.21 Collateral Assignment.** It is understood and acknowledged that Developer intends to obtain construction financing (the "Construction Loan") for the Project and that the construction lender ("Lender") typically requires a collateral assignment of any relevant development agreement. If such financing is obtained and if the Lender requires such a collateral assignment, the Village hereby consents to the assignment of this Agreement to the Lender as collateral security for the Construction Loan and also if required by the Lender further consents to the assignment of the TIF Note (see Exhibit VIII) to the Lender as further collateral security.

In the event that any Lender is to succeed to Developer's interest in the Property, or any portion thereof, pursuant to the collateral assignment and in conjunction with such succession accepts an assignment of Developer's interest in this Agreement, the Village shall recognize such party as the successor in interest to Developer with respect to the Property or the portion acquired by such Lender. However, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if the Lender accepts an assignment of Developer's interest under this Agreement, it automatically accepts not only the Developer's rights hereunder but also all of Developer's obligations hereunder. However, if such Lender does not expressly accept an assignment of Developer's interest hereunder, such Lender shall be entitled to no rights and benefits under this Agreement. The foregoing (Lender's lack of expressly accepting an assignment) shall apply whether the succession is by foreclosure or deed in lieu of foreclosure or any other remedy. Under all such circumstances, the Property may only be developed in accordance with this Agreement.

With respect to a mortgage to which the Village has not consented in writing, if that mortgagee or any other party shall succeed to Developer's interest in the Property or any portion of it and in conjunction with such succession accepts an assignment of Developer's interest in the Property, the Village shall not be obligated to recognize such party as the successor in interest to Developer under this Agreement. Unless and until the Village accepts, in writing, such Party as the successor

in interest such party shall be entitled to no rights or benefits under this Agreement. The foregoing shall apply whether the succession is by foreclosure or deed in lieu of foreclosure or any other remedy. The exercise of any such remedy and the transfer of title to the Property or any portion of it to a mortgage or any other party in connection with such exercise shall not be subject to the consent of the Village.

Neither Developer's making of a collateral assignment of its interest under this Agreement to a Lender, nor the exercise by a Lender of any of its remedies, shall constitute an acceptance by such Lender or any other party of such assignment. Such Lender or other party shall not be deemed to have accepted such assignment until such time as such Lender or other party has executed and delivered to the Village a written acceptance of such assignment. In the absence of such acceptance, such Lender or other party shall have no rights or benefits under this Agreement.

If a default by Developer under this Agreement occurs and Developer does not cure it within the cure period that applies to Developer under this Agreement, then the Village shall promptly give the Lender, a notice of expiration of such cure period (the "Cure Period Expiration Notice"). The Lender shall have the right, but not the duty, to fulfil any obligation of the Developer under this Agreement and to cure any default. Such Lender shall have thirty days after receipt of the Cure Period Expiration Notice to cure such default. However, with respect to any default by Developer, the cure of which requires the Lender to possess and control the Property, if such Lender undertakes, by written notice to the Village within thirty days after receipt of the Cure Period Expiration Notice, to exercise reasonable efforts to cure such default, such Lender's cure period shall continue for such additional time as may reasonably be required to obtain possession and control of the Property and thereafter cure the default within one hundred and twenty days. Such Lender may abandon exercise of its cure rights without liability to the Village or any other party provided it gives the Village express written notice that it is so abandoning exercise of its cure rights. The Village shall accept cure by such Lender in fulfillment of Developer's obligations, for the account of Developer and with the same force and effect as if performed by Developer.

It is understood and acknowledged that, irrespective of any Lender remedies, the Property may not be developed, redeveloped, completed, or maintained except in accordance with this Agreement. This restriction shall attach to and run with the land whether or not a Lender or any other entity holding an interest in the Property accepts the assignment of this Agreement. Notwithstanding anything in this Agreement or any other document to the contrary and irrespective of the underlying zoning of the Property, it is the intent of the Parties that any successor in interest to Developer shall have only the development rights accorded by this Agreement and any approvals or permits issued pursuant to it. Further, each and every covenant, dependent or independent, and each and every obligation of this Agreement shall encumber such development.

Moreover, if any such Lender, mortgagee or other party thereafter seeks to sell, transfer, assign, or otherwise dispose of the Property and/or the Project, any such sale, transfer, assignment, or disposition shall be governed by the provisions of this agreement.

**ARTICLE NINETEEN**  
**EFFECTIVENESS**

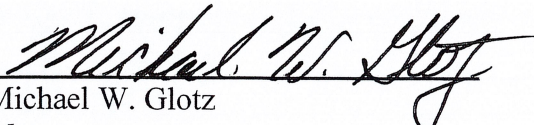
The Effective Date for this Agreement shall be the day on which this Agreement is fully executed pursuant to a duly enacted Village Ordinance authorizing the execution of and adoption of this Agreement.

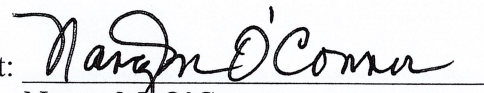
*[Signature page follows]*

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

**VILLAGE:**

**Village of Tinley Park,**  
an Illinois municipal corporation

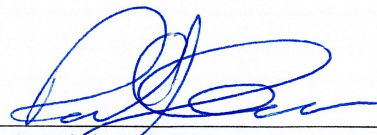
By:   
Michael W. Glotz  
Its: Mayor

Attest:   
Nancy M. O'Connor  
Its: Village Clerk

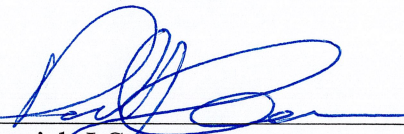
**DEVELOPER:**

**Tinley Park Main Street LLC,**  
an Illinois limited liability company.

By: West Point Builders Inc., Its Manager

By:   
Patrick J. Curran  
Its: President

**West Point Harmony Square, LLC,**  
an Illinois limited liability company

By:   
Patrick J Curran,  
Its: Manager

STATE OF ILLINOIS       )  
COUNTY OF COOK        )  
COUNTY OF WILL        )       SS

CERTIFICATE

I, NANCY O' CONNOR, Village Clerk of the Village of Tinley Park, Counties of Cook and Will and State of Illinois, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2023-O-042, "AN ORDINANCE AUTHORIZING AND ADOPTING THE FIRST AMENDMENT AND RESTATEMENT OF THE HARMONY SQUARE DEVELOPMENT AGREEMENT IN THE VILLAGE OF TINLEY PARK, COOK AND WILL COUNTIES, ILLINOIS (North Street at Oak Park Avenue)," which was adopted by the President and Board of Trustees of the Village of Tinley Park on the 2<sup>ND</sup> day of August, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Tinley Park this 2<sup>ND</sup> day of August, 2023.

  
\_\_\_\_\_  
NANCY O' CONNOR  
VILLAGE CLERK