

ORDINANCE 2024 -13

AN ORDINANCE APPROVING A THIRD AMENDMENT TO THE REDEVELOPMENT AGREEMENT, AS AMENDED, BY AND BETWEEN THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS AND 120 MAIN DUNDEE LLC

WHEREAS, the Village of West Dundee, Kane County, Illinois (the "*Village*") is a duly organized and validly existing home-rule municipality created in accordance with the Constitution of 1970 and as such may utilize any power to further its governmental affairs; and,

WHEREAS, 120 Main Dundee LLC, an Illinois limited liability company (the "*Developer*") submitted a proposal to the Village (the "*Project*") to rehabilitate property at 120 West Main Street in the Village of West Dundee to provide new commercial space for an upscale restaurant on the ground floor and boutique short-term rental lodging on the upper floor and requested financial assistance from the Village in order to make the Project financially feasible; and,

WHEREAS, on March 20, 2023, the Village and the Developer entered into a Development Agreement (the "*Original Agreement*"); and,

WHEREAS, on May 15, 2023 the Village and the Developer agreed to amend to the Original Agreement (the "*First Amendment*") by reducing the approved incentive of \$400,000 to \$150,000, commensurate with savings expected to result from removal of a planned addition to the building that would have contained an elevator; and,

WHEREAS, on February 19, 2024, the Village and Developer agreed to amend the First Amendment to the Original Agreement (the "*Second Amendment*") for the purpose of restoring the original incentive amount of \$400,000 due to higher construction costs for the project than originally envisioned; and

WHEREAS, the Developer has advised the Village that due to additional coordination required by the Village's public infrastructure project, additional delays in private construction occurred and the Developer has requested an extension of the date to complete construction and receive occupancy for the Project; and,

WHEREAS, the President and Board of Trustees of the Village have reviewed the Developer's request and are prepared to grant an extension as there is no dispute as to the cause of the delays to complete construction.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of West Dundee, Kane County, Illinois, as follows:

Section 1. That the recitals in the preambles to this Ordinance are incorporated into this Section 1 as if fully set forth herein.

Section 2. Any capitalized term used but not otherwise defined herein shall have the same meaning as given in the Original Agreement and the First and Second Amendments.

Section 3. Section 3.1(b) of the Original Agreement, requiring that the Developer obtain a certificate of occupancy for both floors of the Subject Property on or before May, 2024, be hereby amended to a date of September 1, 2024.

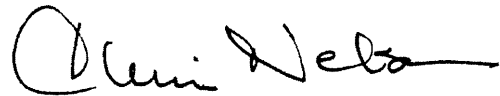
Section 4. That the Third Amendment to the Redevelopment Agreement, by and between the Village of West Dundee and 120 Main Dundee LLC, attached hereto and made a part hereof, is hereby approved and the President, Village Clerk, and Village Manager are hereby authorized to execute and deliver said Third Amendment and undertake any and all actions as may be required to implement its terms on behalf of the Village.

Section 5. This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this 17th day of June, 2024.

| | |
|----------|--|
| AYES: | Trustees Price, Yuscka, Johnson, Alopogianis, Anderley and Wilbrandt |
| NAYS: | None |
| ABSENT: | None |
| ABSTAIN: | None |

APPROVED:



Christopher Nelson, Village President

Attest:



Mary Jo Pape
Village Clerk

Published in pamphlet form:

**A THIRD AMENDMENT TO THE REDEVELOPMENT AGREEMENT, AS AMENDED, BY AND
BETWEEN THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS
AND 120 MAIN DUNDEE LLC**

(120 West Main Street – El Pato Loco & Sinclair Suites)

THIS THIRD AMENDMENT TO THE REDEVELOPMENT AGREEMENT (“*Agreement*”) is entered into as of the 17th day of June, 2024 (“*Effective Date*”), by and between the Village of West Dundee, Kane County, Illinois, an Illinois municipal corporation (“*Village*”), and 120 Main Dundee LLC, a limited liability company of the State of Illinois (the “*Developer*”).

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

ARTICLE 1: RECITALS

1.1 The Village is a duly organized and validly existing home-rule municipality of the State of Illinois created in accordance with Section 6(a) of Article VII of the Constitution of the State of Illinois of 1970 and thus may utilize any power and function to further its governmental affairs.

1.2 The Village is engaged in the revitalization and development of its commercial, residential and vacant properties along Illinois Route 31 and Illinois Route 72 (Main Street) including the property commonly known as 120 West Main Street, identified as Parcel No. 03-22-479-025 and legally described as follows:

The West 27 feet 7 inches of the East 35 feet 6 inches of Lot 4 in Block 14 of Plat of Dundee (excepting therefrom the North 51 feet), on the West side of Fox River (the “*Subject Property*”).

1.3 The Village has the authority pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of its inhabitants, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase job opportunities, and to enter into contractual agreements with third parties for the purpose of achieving these goals.

1.4 Pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the “*TIF Act*”), the President and Board of Trustees of the Village (collectively, the “*Corporate Authorities*”) are empowered to undertake the development or the redevelopment of a designated area within its municipal boundaries in which existing conditions permit such area to be classified as a “blighted area” or a “conservation area” as such terms are defined in the TIF Act.

1.5 To stimulate and induce development and redevelopment pursuant to the TIF Act, the Village, after giving all required notices, conducting a public hearing and making all findings required by law, on the 7th day of May, 2017, pursuant to Ordinance Nos. 2018-07, 2018-08 and 2018-09, approved a Redevelopment Plan and Program (the “*Redevelopment Plan*”) for an area designated as the Main Street/Illinois Route 31 Tax Increment Financing District (the “*Project Area*”) which Project Area includes the Subject Property, and adopted tax increment financing for the payment and financing of “Redevelopment Project Costs”, as defined in Section 4.1 hereof, incurred within the Project Area as authorized by the TIF Act.

1.6 The Developer has submitted a proposal to the Village to renovate and repurpose the Subject Property and construct 2,200 square feet of commercial space for an upscale restaurant on the first floor and 2,200 square feet of short-term rental apartments on the second floor (the “*Project*”).

1.7 The Developer has advised the Village that its proposal shall require an investment of approximately \$1,800,000 and, therefore, is contingent upon financial assistance to construct the Project and has requested the Village provide reimbursement of "Redevelopment Project Costs" as defined in Section 4.1 hereof, available to it as a result of the Village's adoption of the TIF Act from "Incremental Taxes" generated by the Subject Property and other taxes as generated from the operations of a restaurant as hereinafter set forth. For purposes of this Agreement, "Incremental Taxes" shall mean the amount of ad valorem taxes attributable to the increase of the equalized assessed value of the Project Area over the initial equalized assessed value of the Project Area as of the date of the adoption of the TIF Act by the Village.

1.8 The Village believes the Project is in furtherance of the Redevelopment Plan and shall increase the tax base for the Village and taxing districts authorized to levy taxes upon the Subject Property and provide job opportunities for its residents; and, therefore, is prepared to assist the Developer with certain costs associated with the Project, subject to the terms of this Agreement, the TIF Act and all other applicable provisions of law.

ARTICLE 2: CONDITIONS PRECEDENT TO VILLAGE OBLIGATIONS

The Developer agrees to satisfy the following conditions to be eligible to receive any financial assistance from the Village for the Project:

- (a) on or before September 30, 2023, the Developer shall have submitted final plans and specifications for the Project for its approval;
- (b) within sixty (60) days of approval of the final plans and specifications for the Project, the Developer shall have delivered to the Village proof of the equity contribution and such financing from a recognized lending institution as required to construct and complete the Project;
- (c) within sixty (60) days of approval of the final plans and specifications for the Project, the Developer shall have submitted applications for all permits required to construct the Project.

ARTICLE 3: OBLIGATIONS OF THE DEVELOPER TO COMPLETE CONSTRUCTION OF THE PROJECT

3.1 On or before October 31, 2023, the Developer shall have acquired all necessary permits to construct the Project and shall proceed as follows:

- (a) Commence construction of the Project in accordance with all approved plans, permits and all applicable Village codes;
- (b) Continue construction without interruption until the Project is completed (subject only to Force Majeure as set forth in Section 7.3 hereof); and obtain a certificate of occupancy for both floors of the Subject Property on or before September 1, 2024; and,
- (c) Upon completion of the Project and commencement of the operation of an upscale Mexican restaurant (the "Business"); and,
- (d) Create no less than thirty-eight (38) jobs during construction and eighteen (18) restaurant jobs upon commencement of Business at the Subject Property.

3.2 Upon completion of the Project, the Developer shall submit to the Village all paid invoices, receipts and any other documentation as deemed necessary to evidence an investment of approximately \$1,800,000 to acquire the Subject Property and construct and complete the Project (the "Total Project Cost").

ARTICLE 4: REIMBURSEMENT TO THE DEVELOPER

4.1 Upon completion of the Project and so long as no notice of default has been issued pursuant to Article 6 hereof and remains outstanding, the Village agrees to reimburse the Developer for Redevelopment Project Costs incurred in connection with the Project in an amount not to exceed \$400,000 in the manner and from the sources hereinafter enumerated. For purposes of this Agreement, "Redevelopment Project Costs" shall mean and include all costs defined as "redevelopment project costs" in Section 11-74.4-3(q) of the TIF Act which are eligible for reimbursement.

- (a) In connection with the establishment and ongoing administration of the Redevelopment Project Area, the Village has established a special tax allocation fund pursuant to the requirements of the TIF Act (the "STAF"), into which the Village deposits all "Incremental Taxes" (as hereinafter defined) generated by the Project Area. The Village agrees to reimburse the Developer for Redevelopment Project Costs in the amount of \$400,000 from the STAF upon receipt of paid invoices, amount of bills or other documentation deemed necessary to evidence the expenditure of Redevelopment Project Costs in connection with the Project as required by Section 3.2, as amended.
- (b) The Developer has already received reimbursement of \$50,000 for redevelopment project costs as the result of submitting paid invoices for costs incurred in connection with the Project.
- (c) The Village hereby agrees to reimburse the Developer \$350,000 as follows:
 - (i) \$100,000 within ten (10) days of the issuance of a Certificate of Occupancy for the restaurant and short term rental apartments to be constructed at the Subject Property;
 - (ii) \$50,000 on the anniversary date of the issuance of the certificate of occupancy and annually thereafter for an additional four (4) years.
- (c) On the date which is ten (10) days following the date upon which the Village receives Incremental Taxes from the payment of the final installment of real estate taxes (the "STAF Allocation Date"), seventy-five percent (75%) of the Incremental Taxes generated by the Subject Property during the period from the immediately respective STAF Allocation Date to, but not including, the current STAF Allocation Date shall be deposited into the 120 Main Dundee Subaccount of the STAF (which Subaccount shall be automatically created by the ordinance approving this Agreement); and used to pay the Developer during the term of this Agreement the balance due of the total reimbursement of an amount not to exceed \$400,000 less the \$100,000 received including the following tax revenues generated by the Business as listed in (d) below.
- (d) The Village further agrees to deposit into the 120 Main Dundee Subaccount of the STAF, fifty percent (50%) of the following sales taxes (collectively, "Sales Taxes") generated by the Business until such time as a total of \$400,000 reimbursement is achieved:
 - (i) All sales taxes (2.5% total) generated from the Business (retailers' occupation tax and a service occupation tax both home-rule and non-home rule);

- (ii) One percent (1%) tax imposed pursuant to Business District Development and Redevelopment Law (65 ILCS 5/11-74.3-1 *et seq.*) on all retail sales from the Business; and,
- (iii) Food and beverage tax of one percent (1%) imposed by the Village on the Business.

4.2 THE VILLAGE'S OBLIGATION TO REIMBURSE THE DEVELOPER UNDER ARTICLE 4 OF THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM INCREMENTAL TAXES AND SALES TAXES DEPOSITED IN THE 120 MAIN DUNDEE SUBACCOUNT OF THE STAF FROM TIME TO TIME AND SHALL NOT BE SECURED BY THE FULL FAITH AND CREDIT OF THE VILLAGE.

ARTICLE 5. REPRESENTATIONS, WARRANTIES, AND COVENANTS

5.1 Developer's Representations Warranties and Covenants. To induce the Village to enter into this Agreement, Developer represents, covenants, warrants, and agrees that:

- (a) Recitals. All representations and agreements made by Developer in Article 1 are true, complete, and accurate in all respects.
- (b) Organization and Authorization. The Developer is a duly formed and existing limited liability company of the State of Illinois and the Developer has the power to enter into, and by proper action has been duly authorized to execute, deliver, and perform, this Agreement. The 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 a limited liability company authorized to do business in the State of Illinois for so long as the Developer is developing, constructing and operating the Project.
- (c) Non-Conflict or Breach. The execution, delivery, and performance of this Agreement by the Developer, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement shall not conflict with or result in a violation or breach of any of the terms, conditions, or provisions of any offering or disclosure statement made, or to be made, on behalf of the Developer, or any restriction, organizational document, agreement, or instrument to which the Developer, or any of its partners or venturers, is now a party or by which the Developer, or any of its partners or venturers, is bound, or constitute a default under any of the foregoing.
- (d) The Developer has the financial ability to construct and complete the Project.
- (e) The Developer agrees to pay, when due, all taxes, fines, utility bills, including real estate tax assessed upon the Subject Property and any other amounts due and owing to the Village and the State of Illinois.
- (f) Pending Lawsuits. There are no actions at law or similar proceedings either pending or, to the best of the Developer's knowledge, threatened against the Developer that would materially or adversely affect:
 - (i) The ability of the Developer to proceed with the construction and development of the Subject Property;
 - (ii) The Developer's financial condition;

- (iii) The level or condition of the Developer's assets as of the date of this Agreement; or
- (i) The Developer's reputation.

5.2 Village Representations, Warranties and Covenants. To induce the Developer to enter into this Agreement and to undertake the performance of its obligations under this Agreement, the Village represents, covenants, warrants and agrees as follows:

- (a) Recitals. All representations and agreements made by the Village in Article 1 are true, complete, and accurate in all respects.
- (b) Authorizations. The Village has the power to enter into and perform its obligations under this Agreement and by proper action has duly authorized the Village President and the Village Clerk to execute and deliver this Agreement.
- (c) Non-Conflict or Breach. The execution, delivery, and performance of this Agreement by the Village, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Agreement shall not conflict with or result in a violation or breach of the terms of any order, agreement, or other instrument to which the Village is a party or by which the Village is now bound.
- (d) Pending Lawsuits. There are no actions at law or similar proceedings either pending or to the best of the Village's knowledge being threatened against the Village that would materially or adversely affect:
 - (i) The ability of the Developer to proceed with the construction of the Development.
 - (ii) The ability of the Village to perform its obligations under this Agreement.

ARTICLE 6: ENFORCEMENT AND REMEDIES

6.1 Enforcement: Remedies. The Village may enforce or compel the Developer's performance of its obligations under this Agreement, in law or in equity, by suit, action, mandamus, or any other proceeding, including specific performance, and in an action to enforce or compel the Developer's performance of its obligations under this Agreement, the Village shall also have the right to recover its reasonable attorneys' fees and other cost of litigation.

6.2 Notice: Cure. The Village shall give notice to the Developer that it shall have thirty (30) days to cure any default by the Developer.

6.3 Events of Default by the Developer. Subject to Section 6.2, any of the following events or circumstances shall be an event of default by the Developer with respect to this Agreement:

- (a) If any material representation made by the Developer in this Agreement, or in any certificate; notice, demand to the Village; or request made by the Village in connection with any documents, permit applications or license applications shall prove to be untrue or incorrect in any material respect as of the date made.
- (b) Default by the Developer in the performance or breach of any agreement, material covenant, or warranty contained in this Agreement concerning the existence, structure, or financial condition of the Developer.

- (c) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer 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 the 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 un-stayed and in effect for a period of 60 consecutive days. There shall be no cure period for this event of default.
 - (d) The commencement by the 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 the Developer to the appointment of or taking possession, by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or similar official of the Developer or of any substantial part of the Developer's property, or the making by any such entity of any assignment for the benefit of creditors or the failure of the 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. There shall be no cure period for this event of default.
- 6.4 Subject to the provisions of this Agreement, in the case of an event of default by the Developer after notice as required by Section 6.2 has been sent, the Village shall have the right to terminate this Agreement and institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach or to compel specific performance by the Developer of its obligations under this Agreement. In the event of the Developer's failure to cure an event of default, the Developer shall repay the Village all sums paid to it pursuant to this Agreement for Redevelopment Project Costs.
- 6.5 The Developer agrees to indemnify the Village, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, consultants, and attorneys, against any and all claims that may be asserted at any time against any of such parties in connection with or as a result of (i) Developer's development, construction, maintenance, or use of the Subject Property; or, (ii) the Developer's default under the provisions of this Agreement. Such indemnification obligation, however, shall not extend to claims asserted against the Village or any of the aforesaid parties in connection with or as a result of any act, omission, negligence or misconduct of the Village or any of the aforesaid parties. If Developer shall commit an event of default and the Village should employ an attorney or attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Developer herein contained, Developer, on the Village's demand, shall pay to the Village the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Village.

ARTICLE 7: GENERAL PROVISIONS

7.1 Maintain Improvements in Good and Clean Condition:

- (a) The Developer shall maintain the Subject Property in reasonably good and clean condition at all times during the construction of the Project by the Developer at the Subject Property, which shall include promptly removing all mud, dirt, and debris that is deposited on any street, sidewalk, or other public property in or adjacent to the Subject Property by the Developer or any agent of or contractor hired by, or on behalf

of the Developer and repair any damage to any public property that may be caused by the activities of the Developer or any agent of or contractor hired by, or on behalf of, the Developer.

- (b) The Developer covenants and agrees to maintain the Subject Property in accordance with all applicable ordinances of the Village and to operate the Business in accordance with the ordinances of the Village and the laws of the State of Illinois and the United States.

7.2 Liability and Indemnity of Village.

- (a) No liability for Village Review. The Developer acknowledges and agrees that (i) the Village is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans or improvements or as a result of the issuance of any approvals, permits, certificates, or acceptances for the development or use of any portion of the Subject Property or the improvements and (ii) the Village's review and approval of any plans and the issuance of any approvals, permits, certificates, or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, or licensees, or any third party, against violations or damage or injury of any kind at any time.

- (b) Hold Harmless and Indemnification. The Developer shall hold harmless the Village, and all of its elected and appointed officials, employees, agents, representatives, engineers, consultants, and attorneys from any and all claims that may asserted at any time against any of such parties in connection with (i) the Village's review and approval of any plans or improvements or (ii) the Village's issuance of any approval, permit or certificate. The foregoing provision, however, shall not apply to claims made against the Village as a result of a Village event of default under this Agreement, claims that are made against the Village that relate to one or more of the Village's representations, warranties, or covenants under Article 3 and claims that the Village, either pursuant to the terms of this Agreement or otherwise explicitly has agreed to assume.

- (c) Defense Expenses. The Developer shall pay all expenses, including legal fees and administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims identified in the first sentence of Subsection (b) above.

7.3 Force Majeure. Time is of the essence of this Agreement, provided, however, a party shall not be deemed in material breach of this Agreement with respect to any of its obligations under this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, weather conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of Gods, restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("Force Majeure"). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

7.4 The Developer covenants and agrees to pay, when due, all taxes, fees and fines including real estate taxes as assessed upon the Subject Property.

ARTICLE 8. TERM

Term. Unless terminated pursuant to Article 6 of the Original Agreement, this Agreement shall be in full force on the Effective Date and terminate upon the first to occur: (i) receipt by the Developer of \$400,000 for redevelopment costs; or, (ii) December 31, 2030.

ARTICLE 9. NOTICES

Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (a) when delivered in person on a business day at the address set forth below, or (b) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below, or (c) by facsimile or email transmission, when transmitted to either the facsimile telephone number or email address set forth below, when actually received.

Notices and communications to Developer shall be addressed to, and delivered at, the following addresses:

120 Main Dundee, LLC
128 West Main Street
West Dundee, Illinois 60118
Attn: Andrew Burns

with a copy to:

Notices and communications to the Village shall be addressed to and delivered at these addresses:

Village of West Dundee
102 South 2nd Street
West Dundee, Illinois 60118

with a copy to:

Kathleen Field Orr
2024 Hickory Road, Suite 205
Homewood, Illinois 60430

By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee, or both, for all future notices and communications to such party, but no notice of a change of address or addressee shall be effective until actually received.

ARTICLE 10. IN GENERAL

10.1 Amendments and Waiver. No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until the change is reduced to writing and executed and delivered by the Village and the Developer. No term or condition of this Agreement shall be deemed waived by any party unless the term or condition to be waived, the circumstances giving rise to the waiver and, where applicable, the conditions and limitations on the waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

10.2 Assignment. This Agreement may not be assigned, in whole or in part, by the Developer without the prior written consent of the Village, which consent shall not be unreasonably

withheld or delayed. In the event of the approval of an assignment of this Agreement, in whole or in part by the Village, all obligations and liabilities of the Developer hereunder so assigned shall become obligations and liabilities of the assignee (with the Developer being released therefrom) but only upon receipt by the Village of the written acknowledgement and acceptance thereof by the assignee. Notwithstanding the provisions of this Section 10.2 and Section 10.3, the Developer shall have the right to transfer all of its obligations and liabilities under this Agreement and the Subject Property without the prior written consent of the Village to a new Illinois limited liability company, authorized to do business in Illinois in which the Developer (or an entity majority owned or controlled by the Developer) (x) holds a majority interest, or (y) is the manager or managing member, and provided that the Developer promptly provides the Village with copies of the certificate of formation thereof filed in Illinois and the operating company agreement thereof evidencing compliance with the foregoing.

10.3 Conveyance. The Subject Property may not be conveyed, sold, gifted or transferred to any person, company, corporation, organization, whether or not it is a not-for-profit or any other entity, in whole or in part, without the prior written consent of the Village, which consent shall not be unreasonably withheld or delayed. The foregoing transfer restrictions shall not apply to dedications of portions of the Subject Property to the Village or the granting of easements in connection with the development of the Project or the use or operation of the Project or the leasing of the Project. In the interest of clarity, a consent by the Village under this Section 10.3 shall also constitute a consent by the Village to the resulting assignment pursuant to Section 10.2 and vice versa.

10.4. Entire Agreement. This Agreement shall constitute the entire agreement of the Parties; all prior agreements between the Parties, whether written or oral, are merged into this Agreement and shall be of no force and effect.

10.5 Counterparts. This Agreement is to be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Village of West Dundee, an Illinois municipal corporation

By:



Christopher Nelson
Village President

Attest:


Village Clerk

120 Main Dundee, LLC, a limited liability company of the State of Illinois

By:



Managing Partner