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Doc# 1719434031 Fee \$74.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 07/13/2017 10:24 AM PG: 1 OF 19

Return to:
Village Attorney
Village of Oak Park
123 Madison Street
Oak Park, Illinois 60302

This Space for Recorder's Use Only

**SALES TAX REBATE SHARING AGREEMENT BY AND BETWEEN
THE VILLAGE OF OAK PARK, COOK COUNTY, ILLINOIS
AND GUGLY, INC.**

DATED AS OF MAY 2, 2016

CCRD REVIEWER

19 pgs / legal attached
K. L. L.

**SALES TAX REBATE SHARING AGREEMENT BY AND BETWEEN
THE VILLAGE OF OAK PARK, COOK COUNTY, ILLINOIS AND
PIONEER PROPERTY ADVISORS**

THIS SALES TAX REBATE SHARING AGREEMENT ("*Agreement*") is made and entered into as of this 2nd day of May, 2016 ("*Effective Date*"), by and between the Village of Oak Park, Cook County, Illinois, an Illinois home rule municipal corporation ("*Village*"), and Gugly, Inc., an Illinois corporation d/b/a Pioneer Property Advisors, ("*Developer*"), its successors and assigns, having a 99-year lease on the Property and only as authorized pursuant to the conditions set forth in Section 14 of this Agreement

IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Developer and the Village hereby agree as follows:

SECTION 1. RECITALS.

A. The Developer has obtained full right and privilege to develop, lease and manage property in the Village, located at 1 Lake Street (formerly 412 North Austin Boulevard), and legally described in Exhibit A to this Agreement ("*Property*").

B. The Developer desires and proposes the development of 1 Lake Street as a single use commercial development to be leased to a single tenant restaurant operator, a tenant able to perform for the term hereof as a single tenant restaurant ("*Facility*"), in accordance with the provisions herein.

C. The date on which all acquisition, construction and related leasing requirements are complete, and the Facility is open for business on the Property, is anticipated to be June 30, 2017.

D. As of the Effective Date of this Agreement, the Village receives sales taxes on the sales of food, liquor and related items.

E. The Village has further determined that the redevelopment of the Property for full-service restaurant uses will be consistent with the Village's economic development goals by helping to create a sustainable revenue base for the Village without impairing the Village's ability to deliver high-quality, cost-effective services, and is likely to result in enhancements to the surrounding retail areas.

F. The Village has determined that the operation of the Facility on the Property will generate significant sales and property tax revenue for the Village, as well as the school, library, and park districts that serve Village residents, and that the redevelopment of the Property with restaurant uses fits with the Village's Comprehensive Land Use Plan.

G. The Developer's investment in the proposed development will enhance economic development opportunities for the Village and its residents. Because the upfront costs of the proposed development require extraordinary investment by the Developer, the parties acknowledge that various economic incentives, including, without limitation, those provided

pursuant to this Agreement, are necessary and desirable to realize the significant economic development benefits of the proposed development.

H. The President and Board of Trustees of the Village have determined that entering into this Agreement is necessary to ensure the implementation of the proposed development of the Property and provide for the related economic development benefits to the Village, particularly in the Lake Street – Austin Boulevard Area.

I. The Village and the Developer desire to enter into this Agreement, to enable the development, use, and occupancy of the Property in a manner consistent with the Village's Comprehensive Land Use Plan, and in a manner that will enhance the economic vitality of the Village and ensure the unified and proper use and development of the Property in accordance with this Agreement and the Approving Ordinance.

J. The Village has the power and authority to enter into this Agreement pursuant to, but without limitation, the home rule powers of the Village under Section 6, Article VII of the 1970 Constitution of the State of Illinois and 65 ILCS 5/8-11-20. Developer has the corporate power and authority to enter into this Agreement.

SECTION 2. DEFINITIONS. Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

A. "Commencement Date" means the date established pursuant to Section 3 of this Agreement.

B. "Corporate Authorities" means the President and Board of Trustees of the Village of Oak Park, Cook County, Illinois.

C. "Force Majeure" means a strike, lockout, act of God, or other factor beyond a party's reasonable control and reasonable ability to remedy; provided, however, that Force Majeure shall not include delays caused by weather conditions, unless those conditions are unusually severe or abnormal considering the time of year and the particular location of the Property.

D. "Gross Receipts" shall have the meaning ascribed to it in the Retailers' Occupation Tax Act.

E. "Home Rule Sales Tax" means the sales tax imposed in the Village pursuant to Village's Home Rule Sales Tax Ordinance under the Home Rule Municipal Retailers' Occupation Tax Act, 65 ILCS 5/8-11-1.

F. "Liquor Tax" means the sales tax imposed upon the privilege of purchasing alcohol liquor at retail within the Village pursuant to the ordinance of the Village number 1987-0-9.

G. "Municipal Sales Tax" means that portion or component of the Sales Taxes collected from sales generated at the Facility that the Village actually receives from the State of Illinois.

H. "Property" means the property legally described in *Exhibit A* attached hereto and, by this reference, incorporated herein.

I. "Requirements of Law" shall have the meaning set forth in Section 5H of this Agreement.

J. "Retailers' Occupation Tax Act" means the Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, as the same has been, and may, from time to time hereafter be, amended.

K. "Sales Taxes" means any and all taxes imposed and collected by the State of Illinois pursuant to the Home Rule Sales Tax, the Retailer's Occupation Tax Act, the Service Use Tax Act, 35 ILCS 110/1 *et seq.*, the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, and the Use Tax Act, 35 ILCS 105/1 *et seq.*; subject to Section 5D of this Agreement, and any other "sales tax" or successor tax that may be enacted by the State of Illinois that the Village is able to verify as being generated from the Facility.

L. "Sales Tax and Liquor Tax Rebate" means the rebate payment to the Developer of a portion of the Municipal Sales Tax and Liquor Tax that the Village receives that it is required to make pursuant to this Agreement.

M. "Sales Tax Year" means the period of time commencing on the Commencement Date and ending on the date that is one year after the Commencement Date, and each of the succeeding years thereafter under this Agreement.

SECTION 3. COMMENCEMENT OF GRANT, SALES TAX AND LIQUOR TAX REBATE.

The "Commencement Date" under this Agreement is hereby declared to be the actual date the Developer has completed all the following:

- Provided to the Village with proof of funds sufficient to complete construction, or a letter of assurance from the Developer's lender evidencing the necessary construction financing for the Facility and proof of ownership of the Property; and
- Developed a single-use commercial development at the property legally described in Exhibit A and commonly known as 1 Lake Street, meeting all necessary Village zoning, licensure and structural requirements; and
- Completed the entitlement and permitting process (no later than December 31, 2016) and completed construction and occupancy of the Facility (no later than June 30, 2017), provided, however, that in the event of any unreasonable delays on the part of the Village in any of its processes shall extend the June 30, 2017 due date by an equal number of days as the unreasonable delay; and
- Provided proof of a lease by the Developer with a single tenant restaurant operator evidencing terms of a lease agreement lasting at least four (4) years.

SECTION 4.

GRANT TO DEVELOPER.

Beginning on the Commencement Date, the Village shall reimburse the Developer for up to \$50,000 in costs and expenses for build-out incurred in construction of the Facility. The Developer shall provide validation of such costs and expenses in the form of invoices from vendors for work performed in the construction of the Facility and proof of payment from the Developer up to an amount equal to \$50,000.

SECTION 5.

SALES TAX AND LIQUOR TAX REBATE.

A. **Maximum Total Rebate.** In no event shall the Village rebate to the Developer sales tax or liquor tax proceeds for (i) a period greater than the time period set forth in Section 8 hereof or (ii) if there are no operations of a restaurant at the Property in accordance with the terms and conditions hereof. The Sales Tax and Liquor Tax Rebate includes only those Sales Taxes and Liquor Tax generated by the Developer's Facility. Also, all payments of any Sales Tax or Liquor Tax to Developer hereunder from the Village shall be on a subordinated basis to any pledge of Sales Tax or Liquor Tax existing or to be created in the future with respect to Village revenue obligations or bonds issued payable from such taxes for its general corporate purposes.

B. **Calculation of Sales Tax and Liquor Tax Rebate.**

1. **Sales Tax and Liquor Tax Rebate Percentage.** Beginning on the Commencement Date, the Village shall rebate to the Developer a portion of the Municipal Sales Tax and Liquor Tax generated by the operations on the Facility as set forth below:

- (a) Upon receipt of the initial Sales Tax by the Village from the State of Illinois and Liquor Tax from the Village, each derived only from the Facility (i) provided that the Facility remains open and operating at the Property and (ii) only for the first four (4) years of operation beginning on the Commencement Date: 100% of Municipal Sales Tax and Liquor Tax (but in no event shall the combined payment be greater than \$50,000 annually).
- (b) Beginning in year five (5) of commercial operations of the Facility through the end of year seven (7) only so long as the Facility remains open and operating at the Property: 50% of Municipal Sales Tax and Liquor Tax, each derived only from the Facility (but in no event shall the combined payment be greater than \$50,000 annually).

2. During the term hereof, the Developer shall provide reasonable approval of future tenants to the Village in the event that a proposed tenant is not able to perform during the term hereof. In the event the Facility terminates operations prior to the completion of seven (7) years of operations, annual rebate shall be prorated to reflect the actual duration of operations in such year (expressed as a percentage and calculated by the number of days in operation in the final year of operations divided by 365/366) in the final year of operations. If the Facility

terminates operations prior to the beginning of year seven (7), there shall be no rebates in subsequent years under this Section 5B.

C. **Village Payment.** Within 120 days after the end of the twelfth month of each Sales Tax Year, the Village shall pay the applicable Sales Tax and Liquor Tax Rebate for that particular Sales Tax Year to the Developer, based on the records of the Illinois Department of Revenue and the Village. If, for any reason, the State of Illinois fails to distribute the Municipal Sales Tax in sufficient time for the Village to make the annual payments, the Village shall provide notice of that fact to the Developer. In that event, the Village shall make the required Sales Tax and Liquor Tax Rebate payment within 30 days after the date on which the Village actually receives the Municipal Sales Tax revenue due the Village for the applicable, annual payment period. If at the end of any Sales Tax Year, there is a need to adjust and reconcile the amount of any annual Sales Tax and Liquor Tax Rebate payment to account for any provision of this Agreement or to account for the amount of Municipal Sales Tax actually paid by the State of Illinois, the Village and the Developer shall cooperate with each other to accomplish the reconciliation. The Developer shall require any tenant(s) (i) to sign releases authorizing the State of Illinois to issue the reports to the Village and (ii) to cooperate with the Village as to the determination of applicable Liquor Tax receipts and payments. Any information received by the Village from Developer or its tenant(s) under this Agreement shall be kept confidential to the extent allowed by the Requirements of Law.

D. **Change in the Law.**

1. The Village and the Developer acknowledge and agree that the Village's obligation to pay the Sales Tax and Liquor Tax Rebate to the Developer is predicated on existing State law governing the distribution of Sales Taxes to the Village, including, without limitation, the Retailers' Occupation Tax Act. The Village and the Developer further acknowledge that the General Assembly of the State has, from time to time, considered proposals to modify or eliminate the distribution of Sales Taxes to Illinois municipalities or may consider proposals to curtail or impair the ability of the Village to levy and collect the Liquor Tax. The Village and the Developer make express provision for the effect of any change in law upon the operation of this Agreement in Section D2.

2. In the event that the State of Illinois amends or repeals the Retailers' Occupation Tax Act or makes any other promulgation, enactment, or change that eliminates the distribution of Sales Taxes to the Village, or otherwise alters the distribution formula in a manner that prevents the Village and the Developer from determining with a reasonable degree of certainty the amount of the Municipal Sales Tax or Liquor Tax ("***Change in Law***"), the provisions of this Agreement with regard to Municipal Sales Tax or Liquor Tax generated from the Facility on or after the effective date of the Change in Law shall automatically be terminated for such period of time in which it is not possible with a reasonable degree of certainty to determine the amount of Municipal Sales Tax or Liquor Tax, and during such time, the Village shall have no obligation whatsoever to pay to the Developer any of the Municipal Sales Tax or Liquor Tax generated on or after the effective date of the Change in Law, subject to the following. If, within the Term of this Agreement (as defined below) after the effective date of the Change in Law, the State of Illinois effects another Change in Law that either results in the distribution of Municipal Sales Tax to the Village or allows the Village and Developer to

determine with a reasonable degree of certainty the amount of the Municipal Sales Tax or Liquor Tax, the provisions of this Agreement with regard to Municipal Sales Tax or Liquor Tax generated from the Facility shall automatically be reinstated and will continue for the period necessary for Developer to receive Sales Tax and Liquor Tax Rebates for the maximum total rebate set forth in Section 5A.

However, if a Change in Law results in replacement taxes for the Sales Taxes or Liquor Tax directly resulting from Gross Receipts at the Facility as contemplated hereunder, then, for purposes of this Agreement, the replacement taxes shall be defined as Sales Taxes or Liquor Tax, subject in all respects to the Village's actual receipt of its portion of the replacement taxes as well as the Village's authority under state law to provide for rebate of the replacement taxes, as contemplated herein.

If there is a Change in Law, the parties will cooperate with each other to accomplish the intent of this Agreement as set forth in Section 1 of this Agreement.

E. **No Guarantee.** The parties acknowledge and agree that none of the terms, conditions, or provisions of this Agreement shall be construed, deemed, or interpreted as (1) a guarantee that the Village will receive any Sales Taxes or Liquor Tax as a result of the operation of the Facility on the Property, or (2) a requirement or obligation by the Developer or any of its tenants to generate Gross Receipts or Liquor Tax from the Property.

F. **Limited Liability.** Notwithstanding any other provision of this Agreement to the contrary, the Village's obligation to pay the Sales Tax and Liquor Tax Rebate payments shall not be a general debt of the Village or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Municipal Sales Tax or Liquor Tax received by the Village, as specifically defined in Section 2 of this Agreement. The Developer shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the Sales Tax and Liquor Tax Rebate payments, and no execution of any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or other property of the Village (unless the Village refuses to make the payment to the Developer in violation of this Agreement). No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future director, member, elected or appointed officer, official, agent, representative, employee, or attorney of the Village in his or her individual capacity.

G. **Closure.**

1. Unless mutually agreed otherwise by the Parties pursuant to an amendment to this Agreement, in the event that, at any time during the term of this Agreement, the Developer permanently abandons, closes, or terminates the use of more than 80% of the square footage of the Facility ("*Closure*"), then the provisions of this Agreement with regard to Sales Tax and Liquor Tax generated from the Facility shall, as of the date of the Closure, automatically terminate and become null and void and be of no further force or effect, and the Village shall have no obligation whatsoever to perform any of the Sales Tax and Liquor Tax Rebate obligations in Section 5 of this Agreement with regard to any Sales Tax collected by the Developer in the Sales Tax Year of the Closure.

2. The Developer shall provide the Village with no less than 60 days' written notice prior to any Closure, except to the extent any Requirement of Law prohibits Developer from providing 60 days' notice, in which event Developer will provide notice in the minimum time allowed by the Requirements of Law.

3. This Subsection shall not apply to Temporary Closures as defined in Section 8 of this Agreement.

H. Limitations on Payment of Sales Tax and Liquor Tax Rebate. The Developer acknowledges and agrees that the construction of the Facility and the development of the Property must be in strict compliance with this Agreement, the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 *et seq.*, Section 8-11-21 of the Illinois Municipal Code, 65 ILCS 5/8-11-21, and such construction, development and the use of the Property shall also comply with all applicable Village codes, ordinances, and regulations (collectively, the "***Requirements of Law***"), and that if the Developer fails to comply in all material respects with the Requirements of Law the Village will suspend payment of the Sales Tax and Liquor Tax Rebate for the entire period that the Developer is not in material compliance with the Requirements of Law, and the Village will have no further obligation to provide any Sales Tax and Liquor Tax Rebate to the Developer until the Village determines in its reasonable discretion that the Developer is, during the Term, in material compliance with the Requirements of Law, at which time all suspended payments will be remitted to Developer. A legal nonconformity created as a result of the Village's amendment to the Requirements of Law subsequent to the Commencement Date will not constitute a failure of the Developer to comply with the Requirements of Law.

SECTION 6. FORCE MAJEURE.

Whenever a period of time is provided for in this Agreement for either the Developer or the Village to perform any act or obligation, and the Developer or the Village, as the case may be, is unable to perform or complete the act or obligation because of a Force Majeure, then upon the occurrence of the Force Majeure, the time period for the performance and completion of the acts or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

SECTION 7. LITIGATION AND DEFENSE OF AGREEMENT.

A. Litigation. If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against either party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of either party to perform its obligations under, or otherwise to comply with, this Agreement ("***Litigation***"), the party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.

B. Defense. The Village and the Developer do hereby agree to use their respective commercially reasonable efforts to defend the validity of this Agreement, and all ordinances and resolutions adopted and agreements executed by such party pursuant to this Agreement, including every portion thereof and every approval given, and every action taken, pursuant

thereto. Each party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Village and the Developer do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

C. **Indemnity.** The Developer agrees to, and does hereby, hold harmless and indemnify the Village, the Corporate Authorities, and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of such parties in connection with any claim brought by a third party against any of the parties identified in this Section 7C arising out of or relating to Developer's actions regarding this Agreement; provided, however, that the Developer's indemnification obligation shall be reduced to the extent the indemnified claims are caused, if at all, by the willful misconduct or gross negligence on the part of the Village or to the extent the indemnified claims are caused, if at all, by the Village's failure to comply with any material requirement of the Requirements of Law (except if such failure to comply with such Requirements of Law is caused, if at all, by the acts or omissions of Developer, its agents, representatives, or engineers).

D. **Defense Expense.** The Developer shall, and does hereby agree to, pay all reasonable expenses, including legal fees and administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims referenced in Section 7C of this Agreement.

SECTION 8. TERM.

A. **General.** This Agreement shall be in full force and effect commencing on the Commencement Date and until the earlier of the following: (i)(a) the Developer receives up to \$50,000 in Sales Tax and Liquor Tax Rebate payments from the Village pursuant to the terms of this Agreement for each of the seven (7) years of commercial operation, (ii) the later of (A) 84 months after the Commencement Date, or (B) the expiration or termination of the lease (but including any extensions thereof or any change of tenant in accordance with Section 5.B.2) with a single tenant restaurant operator ("*Term*"). This Agreement shall, during its Term, run with and bind the Property and shall inure to the benefit of and be enforceable by the Developer and the Village, and any of their respective permitted legal representatives, heirs, grantees, successors, and assigns.

B. **Temporary Closure.** If the Facility temporarily closes ("*Temporary Closure*") due to renovation of the Facility or damage or Force Majeure, then, in each case, the Term of this Agreement shall be automatically extended for a period equal to the period commencing on the date of the Temporary Closure through the date on which the Facility reopens ("*Temporary Closure Period*"), the Village will continue to make any and all payments during a Temporary Closure Period as required by Section 5C of this Agreement.

SECTION 9. RELEASE OF INFORMATION.

The Developer agrees to execute and provide and cause its tenant(s) to execute and provide all documentation necessary to cause the Illinois Department of Revenue to release to the Village the Sales Tax generated by the Developer or its lessee(s) from the Property, including

copies of State of Illinois Sales Tax Reports, during each of the Sales Tax Years pursuant to applicable State law or information relevant to the determination of the amount of Liquor Tax derived from operation of the Facility. Any information received by the Village from Developer under this Agreement shall be kept confidential to the extent allowed by the Requirements of Law.

SECTION 10. PAYMENT OF VILLAGE FEES AND COSTS.

Nothing herein shall affect the Developer's obligation to pay to the Village, as and when due, all application, inspection, and permit fees, and all other fees, charges, and contributions required by applicable Village codes, ordinances, resolutions, rules, or regulations in connection with the initial development of the Property. The preceding sentence does not relieve the Developer from complying with any Requirements of Law applicable to the initial development of the Property.

SECTION 11. LIABILITY AND INDEMNITY OF VILLAGE.

A. **No Liability for Village Review.** The Developer acknowledges and agrees (1) that the Village is not, and shall not be, in any way liable for any violations of restrictive covenants applicable to the Property that may occur, or for any damages or injuries that may be sustained, as the result of the Village's review and approval of any plans for the Property, or as a result of the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Property; and (2) that the Village's review and approval of any of the plans and the issuance of any of the approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, or licensees, or any third party, against restrictive covenant violations or damage or injury of any kind at any time.

B. **Village Procedures.** To the best of Developer's knowledge all notices, meetings, and hearings heretofore have been properly given and held by the Village with respect to the approval of this Agreement. Developer agrees not to challenge any of those actions on the grounds of any procedural infirmity or of any denial of any procedural right.

C. **Indemnity.** The Developer agrees to, and does hereby, hold harmless and indemnify the Village, the Corporate Authorities, all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of those parties in connection with respect to the requirements of Section 8-11-21 of the Illinois Municipal Code; provided, however, that Developer's indemnity under this Agreement shall be reduced to the extent the indemnified claims are caused, if at all, by the willful misconduct or gross negligence on the part of the Village or to the extent the indemnified claims are caused, if at all, by the Village's failure to comply with any material requirement of the Requirements of Law (except if such failure to comply with such Requirements of Law is caused, if at all, by the acts or omissions of Developer, its agents, representatives, or engineers).

D. **Defense Expenses.** The Developer shall, and does hereby agree to, pay all reasonable expenses incurred by the Village in defending itself with regard to any and all of the

indemnified claims identified in Section 11C of this Section. These expenses shall include all out-of-pocket expenses, including reasonable attorneys' and reasonable experts' fees.

SECTION 12. ENFORCEMENT.

A. **Enforcement.** The parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement, including without limitation an action by Developer for payment of Sales Tax and Liquor Tax Rebate pursuant to the limitations provided in Section 5 of this Agreement; provided, however, that the Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the Village (other than the tax funds of the Village pledged hereunder) or any past, present, or future director, member, elected or appointed officer, official, agent, representative, employee, or attorney, of the Village on account of the negotiation, execution, or breach of this Agreement. In the event of a judicial proceeding brought by one party to this Agreement against the other party to this Agreement pursuant to this Section, the prevailing party shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the judicial proceeding.

B. **Notice and Cure.** Neither party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Section 12A without first providing written notice to the other party of the breach or alleged breach and allowing 30 days to cure the breach or alleged breach. If the breach cannot be cured within the 30-day period ("*Time for Cure*"), then the Time for Cure shall be extended accordingly, provided that the notified party has promptly commenced to cure the breach and continued to prosecute the cure of the breach with diligence.

SECTION 13. NATURE, SURVIVAL, AND TRANSFER OF OBLIGATIONS.

A. **Obligations.** The parties hereto agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including reasonable attorneys' fees, shall constitute both the obligation of the party liable for its payment, and the successors of that party.

B. **Binding Effect.** The Developer acknowledges and agrees that this Agreement shall be binding upon the Developer and any and all of the Developer's heirs, successors, permitted assigns, and the successor owners of record of all or any portion of the Property.

C. **Transferee Assumption.** To assure that any potential heir, successor, or permitted assign or successor owner has notice of this Agreement and the benefits and obligations created by it, the Developer agrees:

1. that this Agreement shall be recorded with the Cook County Recorder of Deeds as provided in Section 15S of this Agreement;

2. at any time prior to the Commencement Date, to require, prior to the transfer of a legal or beneficial interest in all or any portion of the Facility or all or any portion of the Property on which the Facility is located the transferee to execute an enforceable transferee

assumption agreement in a form reasonably acceptable to the Village Attorney ("*Transferee Assumption Agreement*"). The Village agrees that, upon a successor becoming bound to the obligations created in this Agreement in the manner provided, the liability of the Developer or other predecessor obligor shall be released to the extent of the transferee's assumption of liability and that the transferee will have all the benefits of the Developer hereunder, subject to Section 13F with regard to the transferability of the right to receive rebates of Municipal Sales Tax under this Agreement. The Developer agrees to notify the Village in writing at least 30 days prior to the date on which the Developer proposes to transfer a legal or beneficial interest in all or any portion of the Facility or all or any portion of the Property on which the Facility is located to a transferee. The Developer shall, at the same time, provide the Village with a fully executed copy of the Transferee Assumption Agreement.

D. Transfer Defined. For purposes of this Agreement, the term "transfer" shall be deemed to include any assignment, transfer, sale, transfer to a receiver or to a trustee in bankruptcy, transfer in trust, or other disposition of the Facility or Property, or any beneficial interest in the Facility or Property, in whole or in part, by voluntary or involuntary sale, foreclosure, restructuring, merger, sale and leaseback, consolidation, or otherwise.

E. Mortgagees of Property. This Agreement shall be binding on all mortgagees of the Property or other secured parties automatically upon such mortgagee assuming title to the Property, in whole or in part, by a foreclosure or a deed in lieu of foreclosure without the necessity of executing such assumption agreement. Until such time, however, a mortgagee or other secured party shall have no personal liability hereunder.

F. Assignments of Right to Municipal Sales Tax and Liquor Tax Rebates. It is the express intent of the parties that, except as expressly provided or allowed in this Subsection, this Agreement, and all of the rights and privileges granted pursuant to this Agreement with regard to rebates of Sales Tax and Liquor Tax ("*Rebate Rights*"), are personal, do not run with the Property, and are for the sole and exclusive benefit of the Developer or its designee, as set forth hereafter. In the event that the Developer does, or attempts to, voluntarily or involuntarily transfer its interest in the Facility or any portion of the Property on which the Facility is located, in whole or in part, except as expressly provided herein, the Rebate Rights will remain with the Developer, unless requested otherwise by the Developer and approved by the Village, which approval shall not be denied unreasonably and such denial must be received by Developer in writing from the Village within 30 days' of such request or the Village's right to object shall be deemed waived. The Village agrees that its consent is not required under this Agreement with regard to a transfer to an affiliate of the Developer, provided that the Developer provides the Village with 30 days' advance notice of the transfer. Additionally, nothing herein shall affect Developer's right to pledge its Rebate Rights to a lending institution, and no approval shall be required by the Village in connection with any lender's enforcement of any collateral assignment of such rights or the transfer of same to the lender of Developer so secured.

SECTION 14. REPRESENTATIONS AND WARRANTIES.

A. By the Village. The Village represents, warrants and agrees as the basis for the undertakings on its part contained in this Agreement that:

1. The Village is a municipal corporation duly organized and validly existing under the laws of the State of Illinois and has all requisite corporate power and authority to enter into this Agreement;

2. 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 municipal 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; and

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

B. By the Developer. In order to induce the Village to enter into this agreement and to adopt the ordinances and grant the rights herein provided for, the Developer hereby warrants and represents to the Village as follows:

1. The Developer is a duly organized, validly existing corporation or limited liability company in good standing under the laws of the state of its incorporation and is qualified to do business in the State of Illinois.

2. The Developer has the corporate authority and the legal right to make, deliver, execute, and perform this Agreement and has taken all necessary corporate actions necessary to authorize the execution, delivery, and performance of this Agreement.

3. All necessary consents of any Board of Directors, shareholders, creditors, investors, partners, judicial, or administrative bodies, governmental authorities, or other parties including specifically, but without limitation regarding the execution and delivery of this Agreement have been obtained.

4. The consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village, and the State of Illinois with respect to distribution of Municipal Sales Tax) is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement.

5. The individuals executing this Agreement on behalf of the Developer have the power and authority to execute and deliver this Agreement on behalf of the Developer.

6. The execution, delivery, and performance of this Agreement (i) is not prohibited by any Requirement of Law or under any contractual obligation of the Developer; (ii) will not result in a breach or default under any agreement to which the Developer is a party or to which the Developer, in whole or in part, is bound; and (iii) will not violate any restriction,

court order, or agreement to which the Developer or/and the Property, in whole or in part, is or are subject.

SECTION 15. GENERAL PROVISIONS.

A. **Entire Agreement and Release of Claims.** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations and understandings between the parties, whether written or oral, relating to the subject matter of this Agreement. The Developer does hereby release and waive any and all claims and causes of action that it had or may have had against the Village related to or resulting from any past written or oral agreements, negotiations, understandings, or prior policies of the Village, or any actions that the Village may have taken or failed to take, relating to the subject matter of this Agreement.

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

C. **Notices.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

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

Village Manager
Village of Oak Park
123 Madison Street
Oak Park, IL 60302

With a copy to:

Village Attorney
Village of Oak Park
123 Madison Street
Oak Park, IL 60302

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

Pioneer Property Advisors
Gregory E. Sorg
408 North Austin Boulevard
Oak Park, IL 60302

With a copy to: Daniel Seltzer, Esq.
943 South Kenilworth Avenue
Oak Park, IL 60304

D. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflict of laws rules, of the State of Illinois.

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

F. Change in Laws. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include the laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

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

I. No Third Party Beneficiaries. Except as expressly provided in this Agreement, no claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or valid against the Village.

J. Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

K. Calendar Days and Time. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days, except where expressly provided. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

L. **Exhibit.** Exhibit A is attached to this Agreement, and by this reference incorporated in and made a part of, this Agreement. In the event of a conflict between an Exhibit and the text of this Agreement, the text of this Agreement shall control.

M. **Counterparts.** This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

N. **Waiver.** Neither the Village nor the Developer shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village or the Developer to exercise at any time any of those rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the Village's or the Developer's right to enforce those rights or any other rights.

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

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

Q. **Grammatical Usage and Construction.** In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

R. **Authority to Execute.** The Village hereby warrants and represents to the Developer that the persons executing this Agreement on its behalf have been properly authorized to do so by the Corporate Authorities. The Developer hereby warrants and represents to the Village that (1) it has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement; and (2) it has taken all legal actions needed to authorize the execution, delivery, and performance of this Agreement.

S. **Recording.** After the execution of this Agreement, the Village shall promptly cause this Agreement to be recorded in the office of the Recorder of Cook County, Illinois.

T. **Filing.** After the execution of this Agreement, the Village shall within 30 days complete and submit a report by electronic filing to the Illinois Department of Revenue.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST:

Teresa Powell
Village Clerk

VILLAGE OF OAK PARK
Cook County, Illinois

Ann Paul
Village Manager

ATTEST:

By: Gregory Sarg
Its: VP

GUGLY, INC., d/b/a
PIONEER PROPERTY ADVISORS

By: [Signature]
Its: President

REVIEWED AND APPROVED
AS TO FORM

Pat L. Lynch 11/02/2016
LAW DEPARTMENT

ACKNOWLEDGEMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 2016 by CARA PAVLICEK, the VILLAGE MANAGER of the VILLAGE OF OAK PARK, an Illinois municipal corporation, and by TERESA POWELL, the VILLAGE CLERK of said municipal corporation.

Given under my hand and notarial seal this 24 day of May, 2016.

Linda R. Barajas
Notary Public

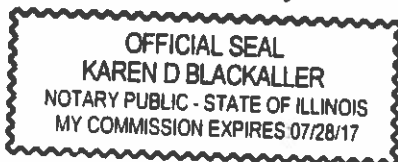
My Commission Expires: October 19, 2017
(SEAL)



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Karen D. Blackaller, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Greg Sorg, personally known to me to be the President of Gugly, Inc., and Greg Sorg, personally known to me to be the President of said corporation, appeared before me this day in person and acknowledged that as such he ~~and~~ they signed and delivered said instrument as their free and voluntary act and as the free and voluntary act of his for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of June, 2016.



Karen D. Blackaller
Notary Public

My Commission Expires:

(SEAL)

This Document Prepared by: Darryl R. Davidson, Esq., Miller, Canfield, Paddock and Stone, P.L.C.
225 West Washington Street, Suite 2600, Chicago, IL 60606 (312) 460-4210

EXHIBIT A
Legal Description of the Property

1 Lake Street, Oak Park, Illinois:

Property's Cook County Property Index Number(s):

16-08-127-005-0000

Property's Legal Description:

THE EAST 91 FEET (EXCEPT THE SOUTH 77 FEET AND 2 INCHES) OF BLOCK 37 IN RIDGELAND, BEING A SUBDIVISION OF THE EAST ½ OF THE EAST ½ OF SECTION 7, ALSO THE NORTHWEST ¼ AND THE WEST ¼ OF THE SOUTHWEST ¼ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**COOK COUNTY
RECORDER OF DEEDS**