

**THIS DOCUMENT
PREPARED BY AND AFTER
RECORDING RETURN TO:**

Peter Friedman
Holland & Knight LLP
131 S. Dearborn Street
Chicago, IL 60603

Above Space For Recorder's Use Only

DEVELOPMENT AGREEMENT

BETWEEN

**THE VILLAGE OF OAK PARK AND
CLARK STREET DEVELOPMENT LLC
(1118 WESTGATE STREET)**

DATED AS OF AUGUST 3, 2015

**VILLAGE OF OAK PARK, ILLINOIS
REDEVELOPMENT PLAN AND PROJECT
GREATER MALL TAX INCREMENT AREA
LAKE STREET / WESTGATE / NORTH BOULEVARD SITE**

**DEVELOPMENT AGREEMENT
BETWEEN
THE VILLAGE OF OAK PARK AND
CLARK STREET DEVELOPMENT LLC
(1118 WESTGATE STREET)**

This Development Agreement (“**Agreement**”) is made and entered into as of the 3rd day of August, 20N15 (“**Effective Date**”) by and between the Village of Oak Park, Cook County, Illinois, an Illinois municipal home rule corporation (“**Village**”), and Clark Street Development LLC, a Delaware limited liability company, with its principal office located at 980 North Michigan Avenue, Suite 1280, Chicago, Illinois 60611 (“**Developer**”). (The Village and the Developer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS

The following Recitals are incorporated herein and made a part hereof.

A. WHEREAS, the Parties entered into a Redevelopment Agreement (“**RDA**”), effective as of June 1, 2014; and

B. WHEREAS, the Parties amended the RDA pursuant to a “First Amendment to Redevelopment Agreement” effective as of November 3, 2014 (“**First Amendment**”); a “Second Amendment to Redevelopment Agreement” effective as of June 1, 2015 (“**Second Amendment**”); and a “Third Amendment to Redevelopment Agreement” effective as of August 3, 2015 (“**Third Amendment**”); (the RDA, as amended by the First, Second, and Third Amendments is referred to collectively as the “**RDA**”); and

C. WHEREAS, under the RDA the property and building at 1118 Westgate Street in Oak Park, Illinois, and legally described in **Exhibit A** attached to this Agreement (“**1118 Property**”) are included as part of the larger overall development “Property” (as defined in the RDA) and, accordingly, subject to all of the terms and conditions of the RDA applicable to the development of the Property; and

D. WHEREAS, as of the Effective Date of this Agreement, the Village is the record title holder of the 1118 Property; and

E. WHEREAS, in the course of further investigating the 1118 Property, the Village discovered that the additional right-of-way required for the alley to the east of the 1118 Property will necessitate the demolition of substantial portions of the existing building on the 1118 Property (“**Existing 1118 Building**”); and

F. WHEREAS, the Second Amendment set forth the Parties’ mutual understandings with regard to the demolition of the Existing 1118 Building, the restoration of the façade of the Existing 1118 Building, and the construction of a new building on the 1118 Property (“**New 1118 Building**”); and

G. WHEREAS, the Second Amendment specifically provided that Developer would, at its expense, demolish a substantial portion of the Existing 1118 Building and then incorporate the existing façade of the Existing 1118 building as part of Developer’s construction of the New 1118 Building on the 1118 Property (collectively, “**1118 Project**”); and

H. WHEREAS, the Second Amendment further provided that the Village would undertake asbestos abatement and other environmental remediation related to the 1118 Project consistent with Section 7.7 of RDA, and that the Village would construct and re-pave the alley east of the 1118 Property, including that part of the 1118 Property that Developer will convey and dedicate to the Village as provided in Section 7.6 of RDA; and

I. WHEREAS, the Parties agree that it is necessary for that portion of the 1118 Project related to the Village's asbestos abatement and Developer's demolition, retention and stabilization of the front approximately 15 feet of the façade, and preparation of the area to be conveyed and dedicated for ComEd facilities and other alley work ("**Initial 1118 Work**") to be completed prior to the "**Real Estate Closing**" (as defined in the RDA) for the Property as provided in the RDA Project Schedule; and

J. WHEREAS, in order to ensure that the Initial 1118 Work is accomplished prior to the Real Estate Closing and that the rights and obligations of the Village and Developer are clearly set forth, the Parties agreed to (i) approve the Third Amendment to remove the 1118 Property from the RDA and (ii) concurrently approve this Agreement to govern and set forth the Parties' agreement with regard to the redevelopment of the 1118 Property and the completion of the 1118 Project ("**1118 Development Agreement**"); and

K. WHEREAS, neither the Third Amendment nor this Agreement will change the Project Schedule for the Project as set forth in Section 6.1 of the RDA; and

L. 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 Third Amendment 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

M. WHEREAS, this Agreement has been submitted to the Developer for consideration and review, and the Developer has 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 actions precedent to the execution of this Agreement by the Developer 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:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION.

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

"Building Code": Chapter 7 of the Village Code.

"Village Code": "The Oak Park Village Code, 1981", as amended.

"Corporate Authorities": The President and Board of Trustees of the Village.

“Effective Date”: The date of execution of this Agreement by all of the Parties, which date is deemed to be the date set forth in the first paragraph of page one of this Agreement.

“Force Majeure”: An event which is beyond the reasonable control of and without the fault of the Party relying thereon; and is (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 other similar act of God; (iv) governmental condemnation or taking; (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; (vii) unknown or unforeseeable geo-technical or environmental conditions; (viii) major environmental disturbances; (ix) vandalism; or (x) terrorist acts. Force Majeure shall not include: economic hardship; unavailability of materials (except as described in (vi) above); or a failure of performance by a contractor (except as caused by events which are Force Majeure as to the contractor). 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.

“Parties”: The Village and Developer, collectively.

“Person”: Any natural individual, corporation, partnership, individual, joint venture, trust, estate, association, business, enterprise, proprietorship, or other legal entity of any kind, either public or private, and any legal successor, agent, representative, or authorized assign of the above, or other entity capable of holding title to, or any lesser interest in, real property.

“RDA”: The Redevelopment Agreement entered into by the Parties as of June 1, 2014, as amended.

“Real Estate Closing”: The closing of the acquisition of the Property by the RDA Developer pursuant to Sections 6.1 and 7.6 of the RDA.

“Requirements of Law”: All applicable federal, state and Village laws, statutes, codes, ordinances, resolutions, rules, and regulations.

“Zoning Code”: The “Oak Park Zoning Ordinance”, as amended.

“1118 Property”: That certain tract of land, commonly known as 1118 Westgate Street, in Oak Park, Illinois and legally described in **Exhibit A** attached to this Agreement.

B. Rules of Construction.

1. **Grammatical Usage and Construction.** In construing this Agreement, feminine or neutral pronouns are substituted for those masculine in form and vice versa, and plural terms are substituted for singular and singular for plural, in any place in which the context so requires.

2. **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.

3. Calendar Days. Unless otherwise provided in this Agreement, any reference in this Agreement to “day” or “days” means calendar days and not business days. 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.

4. Authority; Approvals. The Village Manager, or the Manager’s designee, unless applicable law requires action by the Corporate Authorities, 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, including, without limitation, amendments to the Project Schedule as provided in Subsection 2.B of 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.

5. Developer’s Authorized Representative. 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 Andy Stein 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, including, without limitation, amendments to the Project Schedule as provided in Subsection 2.B of this Agreement. Developer shall have the right to change its authorized representative by providing the Village with written notice of such change which notice shall be sent in accordance with Section 11 of this Agreement.

SECTION 2. 1118 PROPERTY DEVELOPMENT.

A. Description. The development and construction of the 1118 Project will take place in two phases. “**Phase One**” will consist of the Initial 1118 Work. “**Phase Two**” will consist of all other construction and development activities necessary to complete the 1118 Project. In accordance with the schedule set forth in Subsection B of this Section, Phase One will be accomplished as follows:

1. The Village will retain ownership of the 1118 Property during Phase One. At the conclusion of Phase One and contingent upon and simultaneous with the Real Estate Closing, there will be a separate closing at which the Village will convey the 1118 Property to the Developer (“**1118 Closing**”). Unless and until the Real Estate Closing takes place, the Developer will have no obligation to proceed with the 1118 Project. The Developer will take ownership of the 1118 Property in its own name or by a special purpose entity established by the Developer. Following additional site work as part of the 1118 Project, the Developer will dedicate and convey back to the Village for relocated ComEd facilities and other alley work that portion of the 1118 Property (“**Surplus Property**”) required by the Village for additional right-of-way as part of the entire alley to the east of the 1118 Property (collectively, “**Village Alley**”).

2. The Parties will agree on schedule for the completion of the Initial 1118 Work, specifically related to demolition, retention, and stabilization of the front approximately 15 feet of the façade of the Existing 1118 Building, and preparation of the Surplus Property to be

conveyed to the Village. The Initial 1118 Work will include measures related to the Village's ultimate construction and repavement of the Village Alley and protection of the new building from damage from roll-off trash dumpsters and other materials in the Village Alley. The Village's actual construction and repavement of the Village Alley will not take place until the completion of Phase Two. This schedule will be consistent with the Real Estate Closing and other dates in the Project Schedule under Section 6.1 of the RDA.

3. The Parties have mutually agreed upon a scope of work for the Initial 1118 Work, which is attached to this Agreement as **Exhibit B**. Exhibit B does not include the asbestos abatement and other environmental remediation required with regard to the Existing 1118 Building and the 1118 Project ("**Environmental Work**"), but the Environmental Work is part of the Initial 1118 Work. The Village shall be responsible for the cost of the Environmental Work ("**1118 Environmental Costs**"). The Parties have also agreed on a preliminary cost estimate for the Initial 1118 Work, which is also included as part of **Exhibit B** ("**Preliminary 1118 Cost Estimate**"). The Preliminary 1118 Cost Estimate does not include the 1118 Environmental Costs. **Exhibit C** is the preliminary site plan for the new building to be constructed by the Developer as part of the 1118 Project ("**1118 Plans**").

4. The Parties will mutually agree upon a final cost estimate for the Initial 1118 Work based on bids received for the Work and other related information prior to commencement of the Initial 1118 Work ("**Final 1118 Cost Estimate**"). The Developer will undertake the Initial 1118 Work and the Village will initially pay for the actual costs incurred by the Developer for the Initial 1118 Work ("**Actual Initial 1118 Work Costs**"). At the conclusion of Phase One and contingent upon and simultaneous with the Real Estate Closing and the 1118 Closing, the Developer will reimburse the Village for the Actual Initial 1118 Work Costs (other than the 1118 Environmental Costs). To secure this repayment, prior to commencement of the Initial 1118 Work, the Developer will post an amount equal to the Final 1118 Cost Estimate in the form of cash, letter of credit, or other form of security mutually agreed upon by the Parties ("**1118 Security**"). If the Actual Initial 1118 Work Costs (other than the 1118 Environmental Costs) are greater than the Final 1118 Cost Estimate, the Developer will pay the difference to the Village upon the Real Estate and 1118 Closings or the Village will have the right to draw from the 1118 Security for the difference. The 1118 Security shall be extinguished upon the Developer's satisfaction of its obligations as provided in this Paragraph.

5. The Developer will contract for and otherwise provide all of the professionals to undertake the Initial 1118 Work, including the Environmental Work, with the review and approval of the Village. The Developer will be responsible to oversee the construction management of the Initial 1118 Work.

6. After the Real Estate Closing and the 1118 Closing, the Developer will proceed to complete the 1118 Project, including the construction of a new building on the 1118 Property (behind the retained façade from the Existing 1118 Building) consistent with the 1118 Plans.

7. The Village agrees that the 1118 Project will not require zoning or other relief or any public hearings under the Zoning Code or Article 9 of the Village Code, provided that the Developer's construction is in substantial compliance with the 1118 Plans and this Agreement, and provided further that the use of the 1118 Property will be a permitted use under the Zoning Code as of the Effective Date. The Village will review and expeditiously issue the necessary demolition, building, and other permits required for the 1118 Project.

B. 1118 Project Schedule. The development and construction of Phase One of the 1118 Project will be undertaken in accordance with the following general schedule (“**Project Schedule**”):

1. Village Board approval of Planned Development under the RDA, Third Amendment, and this Agreement – August 3, 2015
2. The Parties’ final review and approval of asbestos abatement plan -- August 17, 2015
3. Developer’s initial preparation of architectural, civil, and structural plans – August 31, 2015
4. Developer’s filing of application for asbestos removal with Cook County --: September 1, 2015
5. Bid and Award Phase One of Project -- September 14, 2015
6. Completion of Asbestos Remediation -- September 14, 2015
7. Submittal of Demolition Permit Application -- September 28, 2015
8. Demolition and Façade Stabilization and Completion of Phase One -- September 28 - October 26, 2015.
9. Real Estate Closing and 1118 Closing – November 2, 2015

The Village and Developer agree to undertake all actions respectively necessary by each Party, including without limitation, the application, review, and approvals of plans and permits related to the 1118 Plans, to allow for the development and construction of the Project in accordance with the Project Schedule. The Parties acknowledge that the Project Schedule is based on the Parties' best understanding of the Project and related milestones as of the Effective Date. The Parties may amend the Project Schedule as necessary to ensure that it accurately reflects the key milestones in the development and construction of the Project, and the Parties specifically agree that the milestone dates will be automatically extended by the number of days after the date in the Project Schedule that any Village required action is accomplished. Each Party agrees to not unreasonably withhold approval of a request by the other Party to amend the Project Schedule for such purposes. The amendment to the Project Schedule pursuant to this Subsection shall be in writing but shall not require or constitute an amendment to this Agreement.

C. General Use and Development Restrictions. The redevelopment and use of, and the construction on, the 1118 Property, must, except for minor alterations due to final engineering and site work approved by the Village Manager, comply, and be in accordance, with the following:

1. this Agreement;
2. the Zoning Code;
3. the Building Code;

4. the Village Code; and
5. the Requirements of Law.

D. Title and Survey Review. The Village and Developer will identify, review, and confirm all title and survey matters related to the development of the 1118 Property for the 1118 Project. In accordance with Section 7.8 of the RDA, the Parties acknowledge that Developer has ordered and provided the Village with a current title commitment, covering title to the Property and the Survey of the 1118 Property. The Title Commitment and the Survey are at the Village's expense, subject to approval of the Village. The Parties agree that work on all outstanding title and survey matters will continue without waiver so that such matters must be resolved as a condition to the 1118 Closing. The Village specifically agrees to obtain an appropriate estoppel certificate or other mutually agreed assurance regarding any party wall agreement related to the 1118 Property and the adjacent property to the west, such that any such agreement or related matter will not prevent the Developer from undertaking the 1118 Construction Project.

SECTION 3. CONSTRUCTION.

A. Diligent Pursuit of Construction. Developer must pursue, or cause to be pursued, all required redevelopment, demolition, construction, and installation of structures, buildings, and improvements related to the 1118 Project in a diligent and expeditious manner, and in compliance with the Village Code and the Requirements of Law.

B. Construction Traffic.

1. **Construction and Traffic Management Plan.** Developer and Village will mutually agree on a construction and traffic management plan related to the 1118 Project, which plan shall generally govern (i) the location, storage, and traffic routes for construction equipment and construction vehicles, and (ii) the location of alternative off-street parking during the construction. The Parties agree that the construction and traffic management plan will include provisions related to the periodic closure of the Village Alley as necessary to accomplish the 1118 Project.

2. **Designated Routes of Access.** The Village reserves the right to designate certain prescribed routes of access to the 1118 Property for construction traffic to provide for the protection of pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that the designated routes will not: (a) be unreasonably or unduly circuitous; nor (b) unreasonably or unduly hinder or obstruct direct and efficient access to the Property for construction traffic.

3. **Maintenance of Routes of Access.** At all times during the construction, Developer will keep all routes used for construction traffic reasonably free and clear of mud, dirt, debris, obstructions, and hazards.

C. Prevailing Wage. To the extent required by, the Developer must conduct the 1118 Project in full compliance with, the Prevailing Wage Act of the State of Illinois, 820 ILCS 130/0.01 *et seq.*, as amended ("**Act**"). The Developer shall indemnify, hold harmless, and defend the Village, its governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees thereof ("**Indemnified Parties**"), against all regulatory actions, complaints, damages, claims, suits, liabilities, liens, judgments, costs and expenses, including reasonable attorney's fees, which may in any way

arise from or accrue against the Indemnified Parties as a consequence of compliance with the Act or which may in any way result therefrom, including a complaint by the Illinois Department of Labor under Section 4(a-3) of the Act, that any or all of the Indemnified Parties violated the Act by failing to give proper notice to the Developer or any other party performing the 1118 Project that not less than the prevailing rate of wages shall be paid to all laborers, workers and mechanics performing that Work, including interest, penalties or fines under Section 4(a-3). The indemnification obligations of this Subsection on the part of the Developer shall survive the termination or expiration of this Agreement. In any such claim, complaint or action against the Indemnified Parties, the Developer shall, at its own expense, appear, defend and pay all charges of reasonable attorney's fees and all reasonable costs and other reasonable expenses arising therefrom or incurred in connection therewith, and, if any judgment or award shall be rendered against the Indemnified Parties in any such action, the Developer shall at its own expense, satisfy and discharge such judgment or award.

SECTION 4. NATURE, SURVIVAL AND TRANSFER OF OBLIGATIONS.

A. Successors and Transferees. To assure that all grantees, successors, assigns, and transferees of Developer and all successor owners of all or any portion of the Property have notice of this Agreement and the obligations created by it, Developer must:

1. Deposit with the Village Clerk, concurrent with the Village's approval of this Agreement, any consents or other documents necessary to authorize the Village to record this Agreement in the office of the Cook County Recorder of Deeds;
2. Notify the Village in writing at least 30 days prior to any date on which Developer transfers a legal or beneficial interest in any portion of the Property to a third party;
3. Incorporate this Agreement into any and all real estate sales contracts for "transfers," as that term is defined in Section 6.B of this Agreement, entered into for the sale of all or any portion of the Property; and
4. Except as provided in Section 4.C of this Agreement, require, prior to the transfer of all or any portion of the Property, or any legal or equitable interest therein, to any third party, the transferee of said portion or interest in the Property to execute an enforceable written agreement, in substantially the form of **Exhibit D** to this Agreement, agreeing to be bound by the provisions of this Agreement ("**Transferee Assumption Agreement**") and to provide the Village, upon request, with such reasonable assurance of the financial ability of the transferee to meet those obligations as the Village may require. The Village agrees that upon a successor becoming bound to the obligation created in the manner provided in this Agreement and providing the financial assurances required pursuant to this Agreement, the liability of Developer will be released to the extent of the transferee's assumption of the liability. The failure of Developer to provide the Village with a copy of a Transferee Assumption Agreement fully executed by the transferee and, if requested by the Village, with the transferee's proposed assurances of financial capability before completing any transfer, will result in Developer remaining fully liable for all of its obligations under this Agreement but will not relieve the transferee of its liability for all such obligations as a successor to Developer.

B. Transfer Defined. For purposes of this Agreement, the term "transfer" includes any assignment, sale, transfer to a receiver or to a trustee in bankruptcy, transfer in trust, or other disposition of the Property, or any beneficial interest in the Property, in whole or in part, by

voluntary or involuntary sale, foreclosure, merger, sale and leaseback, consolidation, or otherwise.

C. Mortgagees of Property. This Agreement is 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 entering into a Transferee Assumption Agreement. Until such time, however, a mortgagee or other secured party has no personal liability hereunder.

SECTION 5. TERM.

The provisions of this Agreement run with and bind the 1118 Property and inure to the benefit of, are enforceable by, and obligate the Village, Developer, and any of their respective, grantees, successors, assigns, and transferees, including all successor legal or beneficial owners of all or any portion of the Property, from the date of this Agreement and until the work under the building permit for the 1118 Project has been completed. The Village agrees, upon the completion of the 1118 Project to execute appropriate and recordable evidence of the termination of this Agreement. If any of the privileges or rights created by this Agreement would otherwise be unlawful or void for violation of: (i) the rule against perpetuities or some analogous statutory provision; (ii) the rule restricting restraints on alienation; or (iii) any other statutory or common law rules imposing time limits, then the affected privilege or right will continue only until 21 years after the death of the last survivor of the now living lawful descendants of the current President of the United States, or for any shorter period that may be required to sustain the validity of the affected privilege or right.

SECTION 6. EVENTS OF DEFAULT.

A. Developer Events of Default. The following are Developer Events of Default under this Agreement:

1. If any representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by Developer in writing and delivered to the Village pursuant to or in connection with this Agreement, proves to be untrue or incorrect in any material respect as of the date made.

2. Default by Developer for a period of 30 days after written notice thereof in the performance or breach of any covenant contained in this Agreement concerning the existence, structure or financial condition of Developer; provided, however, that such default or breach will not constitute an Event of Default if such default cannot be cured within said 30 days and Developer, within said 30 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 90 days after such notice.

3. Default by Developer for a period of 30 days after written notice thereof from the Village in the performance or breach of any covenant, warranty or obligation contained in this Agreement; provided, however, that such default will not constitute an Event of Default if such default cannot be cured within said 30 days and Developer, within said 15 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 90 days after such notice.

4. Failure to have funds to meet Developer's obligations.

5. Sale, assignment, or transfer of the 1118 Property except in accordance with the Transferee Assumption provisions in Section 6 of this Agreement.

6. Developer fails to comply with the Requirements of Law in relation to the construction and maintenance of the New 1118 Building any other improvements on the 1118 Property as contemplated by this Agreement.

B. Events of Default by the Village. The following are Village Events of Default under this Agreement:

1. If any material representation made by the Village in this Agreement, or in any certificate, notice, demand or request made by the Village in writing and delivered to Developer pursuant to or in connection with any of said documents, proves to be untrue or incorrect in any material respect as of the date made.

2. Subject to Force Majeure, default by the Village for a period of 30 days after written notice thereof from Developer in the performance or breach of any covenant contained in this Agreement; provided, however, that such default will not constitute an Event of Default if such default cannot be cured within said 30 days and the Village, within said 30 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 90 days after such notice.

SECTION 7. REMEDIES FOR DEFAULT AND ENFORCEMENT.

A. Remedies for Default. In the case of an Event of Default under this Agreement:

1. Except as otherwise provided in this Agreement and subject to the provisions hereinafter set forth, the non-defaulting Party may institute such proceedings in law or in equity, by suit, action, mandamus, or any other proceeding, 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.

2. In case the Village proceeds to enforce its rights under this Agreement and such proceedings are discontinued or abandoned for any reason, then Developer and the Village will be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the Village will continue as though no such proceedings had been taken.

B. Limitation. Notwithstanding anything to the contrary contained in this Agreement, 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 or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys of the Village, on account of the negotiation, execution or breach of any of the terms and conditions of this Agreement.

SECTION 8. WARRANTIES AND REPRESENTATIONS.

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 law 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 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) will 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 1118 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.

4. Prior to the 1118 Closing, the Village shall disclose to the Developer any and all existing conditions on the 1118 Property that are not in compliance with applicable provisions of the Village Code, including, without limitation, the Zoning Code and the Building Code, or any and all other rules and regulations thereunder ("**Existing Violations**"). The Village agrees that the Developer shall in no way be responsible for any of the Existing Violations, even after the 1118 Property is conveyed to the Developer under this Agreement, provided that the Developer will be responsible for eliminating the Existing Violations only at the time of the issuance by the Village of a certificate of occupancy at the completion of the 1118 Project.

B. By Developer. Developer, and the person executing this Agreement on behalf of Developer, represent, warrant, and covenant, as of the Effective Date of this Agreement, that:

1. Developer is a Delaware limited liability company duly organized, validly existing, and qualified to do business in Illinois;

2. Developer has the right, power, and authority to enter into, execute, deliver and perform this Agreement, and Developer is in compliance with all Requirements of Law, the failure to comply with which could affect the ability of Developer to perform its obligations under this Agreement;

3. The execution, delivery and performance by Developer of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate its organizational documents, as amended and supplemented, any of the applicable Requirements of Law, or constitute a breach of or default under, or require any consent under, any agreement, instrument, or document to which Developer is now a party or by which Developer is now or may become bound;

4. There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened, or affecting Developer which would impair its ability to perform under this Agreement;

5. Developer will apply for and will maintain all government permits, certificates, and consents (including, without limitation, appropriate environmental approvals)

necessary to conduct its business and to construct and complete its obligations as required by this Agreement; and

6. Developer has sufficient financial and economic resources to implement and complete its obligations under this Agreement;

7. Developer has no knowledge of any liabilities, contingent or otherwise, of Developer which might have a material adverse effect upon its ability to perform its obligations under this Agreement.

SECTION 9. GENERAL PROVISIONS.

A. Notices. All notices required or permitted to be given under this Agreement must be given by the Parties by: (i) personal delivery; (ii) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon; or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section 14.A. The address of any Party may be changed by written notice to the other Parties. Any mailed notice will be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier will be deemed to have been given and received within 24 hours after deposit. Notices and communications to the Parties will be addressed to, and delivered at, the following addresses:

If to the Village: Village of Oak Park
Village President
123 Madison
Oak Park, IL 60302

with a copy to: Village of Oak Park
Village Manager
123 Madison
Oak Park, IL 60302

And to: Village of Oak Park
Village Attorney
123 Madison
Oak Park, IL 60302

If to Developer: Andy Stein
Clark Street Development LLC
980 North Michigan Avenue
Suite 1280
Chicago, IL 60611

With a copy to: Peter Friedman
Holland & Knight LLP
131 South Dearborn Street, 30th Floor
Chicago, IL 60603

B. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

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

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

E. Consents. Whenever the consent or approval of any Party to this Agreement is required, the consent or approval must be in writing and will not be unreasonably withheld, delayed or conditioned, and, in all matters contained herein, all parties have an implied obligation of reasonableness, except as may be expressly set forth otherwise.

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

G. 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 remaining provisions of this Agreement and the validity, enforceability, and application to any person, firm, corporation, or property will not be impaired thereby, but the remaining provisions will be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

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

I. Interpretation. This Agreement will be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Each provision of this Agreement will be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. Any rule or construction that a document is to be construed against the drafting party is not applicable to this Agreement.

J. Headings. The table of contents, heading, 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.

K. Exhibits/Conflicts. Exhibits A through D attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit to this Agreement and the text of this Agreement, the latter will control.

L. Amendments and Modifications.

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

2. Amendments or modifications to the 1118 Plans can be considered and acted on by the Village without the same being deemed an amendment or modification to this

Agreement provided that all applicable procedural requirements of the Village Code and the provisions of this Agreement are satisfied.

M. Changes in Laws. Unless otherwise explicitly provided in this Agreement, any reference to any Requirements of Law is deemed to include any modifications of, or amendments to the Requirements of Law as may, from time to time, hereinafter occur.

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

O. Recording. The Developer will record this Agreement against the Property, at the sole cost and expense of Developer, with the Office of the Cook County Recorder of Deeds promptly following the full execution of this Agreement by the Parties.

P. Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original document and together will constitute the same instrument.

[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 of Oak Park,
Cook County, Illinois
An Illinois municipal corporation

ATTEST:

By: _____
Village Clerk

By: _____
Village Manager

[VILLAGE SEAL]

ATTEST:

By: _____
Its: Member

DEVELOPER:
Clark Street Development LLC, a Delaware
limited liability company

By: _____
Its: Manager/Member

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
)
COUNTY OF COOK)

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

GIVEN under my hand and official seal, this ____ day of August, 2015

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY** that Andrew Stein, personally known to me to be the Manager/Member of Clark Street Development LLC, and James Kurtzweil, personally known to me to be a Member of said Delaware limited liability company, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Manager/Member and Member, they signed and delivered the said instrument, pursuant to authority given by the Members of said Delaware limited liability company, as their free and voluntary act, and as the free and voluntary act and deed of said Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this ____ day of August, 2015

Notary Public

INDEX OF EXHIBITS

EXHIBIT A	LEGAL DESCRIPTION OF THE 1118 PROPERTY
EXHIBIT B	INITIAL 1118 WORK AND PRELIMINARY 1118 COST ESTIMATE
EXHIBIT C	1118 PLANS
EXHIBIT D	TRANSFeree ASSUMPTION AGREEMENT

EXHIBIT A

LEGAL DESCRIPTION OF THE 1118 PROPERTY

Lots 5 and 6 (except the South 18 ½ feet of said lots) in Hoard and Others Subdivision of Lot 1 (except the North 100 feet thereof) in Niles' Subdivision of Lots 10 to 16 both inclusive and the West 13 feet of Lot 17 in Skinner's Subdivision in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, East of the Third Principal Meridian, in Cook County, Illinois.

PIN = 16-07-124-022

Commonly known as 1118 Westgate Street, Oak Park, Illinois 60602

EXHIBIT B

INITIAL 1118 WORK AND PRELIMINARY 1118 COST ESTIMATE

EXHIBIT C

1118 PLANS

EXHIBIT D

FORM OF TRANSFEEE ASSUMPTION AGREEMENT

THIS AGREEMENT, made as of this _____ day of _____, 20___, by, between and among Clark Street Development, LLC, a Delaware limited liability company ("*Developer*"), _____ ("*Transferee*"), and the Village of Oak Park, Illinois, an Illinois home rule municipal corporation ("*Village*").

WITNESSETH:

WHEREAS, pursuant to that certain Development Agreement dated August 3, 2015 ("*Development Agreement*"), the Developer and the Village provided for the redevelopment of the property and building located at 1118 Westgate Street in Oak Park, Illinois, and legally described in Exhibit A attached hereto and by this reference incorporated herein and made a part hereof ("*Property*"); and

WHEREAS, Section 6 of the Development Agreement requires that this Agreement be entered into by any third party acquiring all or any portion of the Property agreeing to comply with all the terms, requirements and obligations set forth in the Development Agreement;

NOW, THEREFORE, in consideration of the agreement of the Developer to convey the Property to the Transferee and of the Village to accept the transfer of obligations as provided herein and to grant the releases granted herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by, between and among the Village, the Developer and the Transferee as follows:

1. **Recitals**. The foregoing recitals are incorporated in and made a part of this Agreement as substantive provisions by this reference.

2. **Assumption of Obligations**. The Transferee, on its behalf and on behalf of its successors, assigns, heirs, executors and administrators, hereby agrees, at its sole cost and expense, to comply with all of the terms, requirements and obligations of the Development Agreement, including all exhibits and attachments thereto, regardless of whether such terms, requirements and obligations are to be performed and provided by, or are imposed upon, the Developer of the Property.

3. **Assurances of Financial Ability**. The Transferee shall, upon the request of the Village, provide the Village with such reasonable assurances of financial ability to meet the obligations assumed hereunder as the Village may, from time to time, require, pursuant to Section 6 of the Development Agreement.

4. **Acknowledgment and Release of Transferor**. The Village hereby acknowledges its agreement to the Transferee's assumption of the obligation to comply with the terms, requirements and obligations of the Development Agreement, including all exhibits and attachments thereto, and the Village hereby releases the Developer from any personal liability for failure to comply with the terms, requirements and obligations of the Development Agreement.

[SIGNATURES APPEAR ON THE NEXT PAGE]

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

ATTEST:

VILLAGE OF OAK PARK

Village Clerk

By: Village Manager

ATTEST:

[DEVELOPER]

By:

ATTEST:

[TRANSFEREE]

By:

Its:

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 20__, by _____, the Village Manager of the **VILLAGE OF OAK PARK**, an Illinois home rule municipal corporation, and by _____, the Village Clerk of said municipal corporation.

Signature of Notary

My Commission expires:

SEAL

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 20__, by _____, President of **TRANSFEREE**, and _____, Secretary of said

Signature of Notary

My Commission expires:

SEAL

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 20__, by _____, President of **NAME OF DEVELOPER OR DEVELOPERS**, as **NATURE OF OWNERSHIP**.

Signature of Notary

My Commission expires:

SEAL
