

P.I.N. 16-07-124-004-0000
16-07-215-004-0000
16-07-125-027-0000
16-07-125-029-0000

Return to:

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

(for recorder's use only)

COST SHARING AND MAINTENANCE AGREEMENT

THIS COST SHARING AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2017, between the Village of Oak Park, an Illinois home rule municipal corporation (hereinafter referred to as the "Village") and SDOP Corp., a Delaware corporation authorized to conduct business in the State of Illinois (hereinafter referred to as "Corporation").

RECITALS

WHEREAS, it has been determined by the corporate authorities of the Village and the Corporation, respectively, that this Agreement would be beneficial to both Parties and the public at large for the Village to construct a streetscape project ("Project") to be located adjacent to the Corporation's property located at 401-417 North Harlem Avenue, Oak Park, Illinois 60301 and legally described in Exhibit A, attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, the materials and division of costs is reflected in the "Project Scope," attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, the Corporation shall compensate the Village for the lesser of (i) one-half (1/2) of the costs of the Project, or (ii) \$50,000.00 pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, it is agreed by and between the Village and Corporation, in consideration of the public health, welfare and safety, and the mutual covenants contained herein, as follows:

1. **RECITALS.** The above recitals are substantive and are incorporated herein by reference.

2. **RESPONSIBILITY FOR PROJECT.** The Village shall be solely responsible for the construction of the Project, including the selection of any contractor(s) for the Project and the entry into an agreement with any selected contractor(s). Notwithstanding the foregoing, the Company's obligation to contribute is conditioned upon:

a) The Village's completion of the Project substantially and materially in conformance with the plans presented to, and reasonably approved by, the Company, and the Project Scope attached hereto as Exhibit B.

b) Submission of documentation reasonably appropriate to demonstrate the cost incurred and paid in connection with the Project in accordance with Section 3 hereof.

3. **COMPENSATION.** For and in consideration of the Village's construction of the Project, the Corporation shall compensate the Village for one-half (1/2) of the costs of the Project. Upon completion of the Project in accordance with Section 2 hereof, the Village shall issue the Corporation an invoice which shall contain supporting documentation for the invoice, including any applicable contractor(s) statements and relating to the completion of the Project. The invoice shall be paid by the Corporation to the Village within thirty (30) days from the date of issuance.

Any payment more than thirty (30) days past due shall be deemed delinquent, and shall accrue interest at the rate of 18%, compounded annually. The Corporation agrees to pay reasonable attorneys' fees and costs of collection, including litigation costs, should it fail to make any payment due pursuant to this Agreement or otherwise be in breach of this Agreement. The Village may cease any and all work for the Project due to the Corporation's failure to pay an invoice on a timely basis.

4. **WARRANTY.** The Village warrants and guarantees that all workmanship, materials, equipment, and supplies performed, furnished, used, or installed under this Agreement shall be free from defects and flaws in workmanship or design for a period of three (3) years from the date of completion of the Project. The Village shall, at no expense to the Corporation, correct any failure to fulfill the above guaranty that may appear at any time during said three (3) year period.

5. **MAINTENANCE.** The Corporation shall maintain the Property, excluding the warranty items set forth in Section 4 above. Said maintenance shall include, but not be limited to, snow and ice removal, irrigation, sidewalk pavement, tree trimming, weed removal, landscaping and other applicable maintenance to a first class standard. If the Corporation fails to maintain the Property to a first class standard, the Village shall have the right, but not the obligation, to perform such maintenance at the Corporations cost and expense. The Corporation shall pay for such cost and expense pursuant to an invoice issued by the Village subject to the past due provisions of Section 3 above.

6. **HOLD HARMLESS.** The Corporation shall indemnify, defend and hold the Village and its officers, officials, employees, agents and volunteers harmless from any and all claims, causes of action, damages, lawsuits, reasonable attorney fees, and/or administrative

proceedings (collectively, "Claims") now or hereafter existing and resulting from any use of the Property; provided, however, that the foregoing obligation of Corporation to indemnify and hold the Village and its officers, officials, employees, agents and volunteers harmless shall not extend to Claims arising from the negligence or willful misconduct of the Village or and its officers, officials, employees, agents and volunteers.

7. **INSURANCE.** The Village and any of its contractors shall maintain an insurance policy with minimum coverage of \$1,000,000.00 per occurrence for all risks applicable to the Property and construction activities pursuant to this Agreement within the Property and the Corporation and its officers, agents, and employees shall name shall be named as additional insureds on said policy. The Corporation shall maintain an insurance policy with minimum coverage of \$1,000,000.00 per occurrence for all risks applicable to the Property pursuant to the Corporation's maintenance obligations set forth herein for as long as this Agreement is in effect and the Village and officers, officials, employees, agents and volunteers shall be named as additional insureds on said policy.

8 **AMENDMENTS AND MODIFICATIONS.** This Agreement, including without limitation the scope of the Project and applicable plans referenced in Section 2 above, may be modified or amended from time to time by the authorized representatives of the Village and the authorized representative of the Corporation, provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representative of the Village and the authorized representative of the Corporation.

9. **SAVINGS CLAUSE.** If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason

of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

10. **CAPTIONS AND SECTION HEADINGS.** Captions and section headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

11. **NON-WAIVER OF RIGHTS.** No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

12. **NOTICES, INVOICES AND COMMUNICATIONS.** All notices, invoices or other communications under or in respect to this Agreement shall be in writing and sent by United States mail, personal service or by electronic transmission to the persons and addresses indicated below, or said persons designees who shall be designated in writing pursuant to this Section, or to such addresses and persons as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

TO THE VILLAGE:

Village Manager
Village of Oak Park
123 Madison Street
Oak Park, Illinois 60302
Email: villagemanager@oak-park.us

TO THE CORPORATION:

SDOP Corp.
c/o Mid-America Asset Management, Inc.
One Parkview Plaza, 9th Floor
Oakbrook Terrace, IL 60181
Attn: Ms. Kay Nelson
Email: knelson@midamericagrp.com

Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing. Notice by electronic transmission shall be effective as of date and time of electronic transmission, provided that the

notice transmitted shall be sent on business days during business hours (9:00 a.m. to 5:00 p.m. Chicago time). In the event electronic notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission.

13. **ENTIRE AGREEMENT.** This Agreement together with the attached exhibit and the referenced plans sets forth all the covenants, conditions and promises between the parties. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement.

14. **GOVERNING LAW AND VENUE.** The laws of the State of Illinois shall apply to the interpretation of this Agreement. Venue for any action taken by either the Village or the Corporation to enforce the terms of this Agreement shall be in the Circuit Court of Cook County, Illinois.

15. **BINDING AUTHORITY.** The individuals executing this Agreement on behalf of the Parties represent that they have the legal power, right, and actual authority to bind their respective Party to the terms and conditions of this Agreement.

16. **EFFECTIVE DATE AND TERM.** The effective date of this Agreement as reflected above shall be the last date that it is executed by one of the parties as reflected below.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

VILLAGE OF OAK PARK

By: Cara Pavlicek
Its: Village Manager

State of Illinois)
)
County of Cook)

The foregoing instrument was acknowledged before me by Cara Pavlicek, Village Manager of the Village of Oak Park, this ____ day of _____, 2017.

- NOTARY SEAL -

Notary Public

SDOP CORP.

By:
Its:

State of Illinois)
)
County of Cook)

The foregoing instrument was acknowledged before me by _____, _____ of SDOP CORP., this ____ day of _____, 2017.

- NOTARY SEAL -

Notary Public

This instrument was prepared by: Paul L. Stephanides, Village Attorney, Village of Oak Park, 123 Madison Street, Oak Park, Illinois 60302

EXHIBIT A

THE EAST 12 FEET OF LOT 10 (INCLUDING THE 15 FEET PREVIOUSLY VACATED STREET RIGHT-OF-WAY) IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

AND

THE EAST 12 FEET (EXCEPT THE 1 FOOT) OF THE WEST HALF OF LOT 5 (INCLUDING THE 10 FEET PREVIOUSLY VACATED STREET RIGHT-OF-WAY) IN WHAPLE'S SUBDIVISION OF PART OF THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

EXHIBIT B

PROJECT SCOPE