

PROPERTY ADDRESS:

**801 South Oak Park Avenue
Oak Park, IL 60302**

P.I.N. 16-18-135-021-0000

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

(for recorder's use only)

**PUBLIC ART EASEMENT AGREEMENT BETWEEN
THE VILLAGE OF OAK PARK AND OAK PARK I HOUSING OWNER LLC**

THIS PUBLIC ART AGREEMENT (hereinafter referred to as the "Agreement") is entered into this _____ day of _____, 2020, by and between Oak Park I Housing Owner LLC, an Illinois limited liability company, with offices at 185 Dartmouth Street, Boston, Massachusetts 02116 (hereinafter referred to as "GRANTEE"), and the Village of Oak Park, an Illinois home rule municipal corporation with offices at 123 Madison Street, Oak Park, Illinois 60302 (hereinafter referred to as "GRANTOR").

WHEREAS, GRANTEE is the owner of certain real property legally described in Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the "Premises"); and

WHEREAS, GRANTEE has constructed a building (the "Building") and certain other improvements on the Premises; and

WHEREAS, GRANTEE intends to install a public art installation (the "Sculpture"), the design of which has been approved by the GRANTOR, on the public sidewalk on the north side

of the Building, in the approximate location as shown on Exhibit B attached hereto (the area of the public right of way on which the Sculpture will be located is herein referred to as the "Easement Area"); and

WHEREAS, GRANTOR has determined that it is in the public interest for the Sculpture to be installed in the Easement Area; and

WHEREAS, GRANTOR has agreed to grant GRANTEE a permanent easement for the purpose of construction, installation, operation, ownership, maintenance, repair, replacement relocation, removal and use of the Sculpture in the Easement Area.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the parties hereby agree that:

1. **RECITALS INCORPORATED.** The foregoing recitals are incorporated herein by reference as though fully set forth.

2. **EASEMENT GRANT.** GRANTOR hereby grants to GRANTEE a permanent easement over, upon, along, and across the Easement Area as depicted in Exhibit B for the purpose of construction, installation, operation, maintenance, repair, replacement, relocation, removal and use of the Sculpture.

3. **EASEMENT ACCESS.** GRANTOR further grants to GRANTEE or any of its officers, agents, representatives, employees, licensees, successors, or assigns the perpetual right, privilege and authority to enter upon the Easement Area and other portions of the Easement Area adjacent to the Easement Area, either by vehicle or on foot to survey, construct, reconstruct, repair, inspect, maintain, renew, operate, relocate and remove the Sculpture.

4. **EASEMENT CONDITIONS.** This grant of easement shall be subject to the following conditions:

a) All construction and other work by any entity within the Easement Area shall be performed in accordance with the various requirements of municipal, county, state, and federal

laws, ordinances, or regulations, and Grantee shall perform all work in a good and workmanlike manner, including, but not limited to, any and all required Village permits.

b) GRANTOR retains the right perform necessary construction, maintenance and repair work in the public right of way in and around the Easement Area. If any such work requires that the Sculpture be moved, GRANTOR will provide GRANTEE thirty (30) days' prior written notice of the need to move the Sculpture. In an emergency, or other situation where thirty days' notice is not reasonably practicable, GRANTOR will provide as much prior written notice as it can under the circumstances. Any notice will be given to the addresses set forth below in Section 5 and will state the deadline for moving the Sculpture and the proposed length of time the Easement Area will not be available for the location of the Sculpture. Upon receipt of the GRANTOR notice, GRANTEE will, at its expense, move the Sculpture from the Easement Area, and keep it protected and ready for return to the Easement Area. GRANTOR will send a written notice to GRANTEE informing GRANTEE of the completion of the public way work and the date that the Sculpture can be moved back.

5. NOTICE OF CONSTRUCTION WORK, MAINTENANCE OR REPAIRS.

GRANTEE shall notify GRANTOR in writing at least forty-eight (48) hours in advance of any construction work, installation of the Sculpture, maintenance or repairs to be undertaken within the Easement Area, except in the event that emergency repairs are required. Any notice required to be given pursuant to this paragraph, or by this Agreement, shall be by personal delivery, a nationally recognized overnight delivery service, or facsimile as follows:

To GRANTOR: Village Manager
Village of Oak Park
123 Madison Street
Oak Park, Illinois 60302
Facsimile: (708) 358-5101

To GRANTEE: Oak Park I Housing Owner LLC
185 Dartmouth Street
Boston, MA 02116
Attention: General Counsel

With a copy to: The Community Builders, Inc.
185 Dartmouth Street
Boston, Massachusetts 02116
Attention: General Counsel
Facsimile: (857) 221-8616

And to: Applegate & Thorne-Thomsen, P.C.
425 S. Financial Pl
Suite 1900
Chicago, Illinois 60605
Attention: Paul Davis
Facsimile: (312) 491-4411

And to: Banc of America CDC Special Holding Company, Inc.
225 Franklin Street
Boston, MA 02110
Attention: Daniel Devin

And to: Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attention: James E. McDermott, Esq.

All notices shall be deemed given upon the time of delivery if by personal delivery or nationally recognized overnight delivery service or upon confirmed transmission by facsimile. Either party by notice to the other may change or add persons and places where notices are to be sent or delivered pursuant to the provisions of this paragraph.

6. **HOLD HARMLESS.** GRANTEE shall indemnify, defend and hold GRANTOR 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 GRANTEE'S use of the Easement Area or any activities taken by Grantee pursuant to this Agreement; provided, however, that the foregoing obligation of GRANTEE to indemnify and hold GRANTOR harmless shall not extend to Claims arising from the negligence or willful misconduct of GRANTOR or its agents, employees or contractors. Further, GRANTEE shall not permit any liens to be placed on the Easement Area or any other property of GRANTOR resulting from the installation, repair, replacement, modification or maintenance of the Sculpture in the Easement Area, and will immediately cause such liens to be extinguished.

7. **ENTIRE AGREEMENT.** This instrument contains the entire agreement between the parties relating to the rights granted herein and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect, and modifications to this Agreement must be in writing and must be signed by all parties to this Agreement.

8. **COVENANT RUNNING WITH THE LAND.** The easement and the promises contained in this Agreement shall be a covenant running with the land and shall be binding upon GRANTEE, GRANTOR and any of their lessees, successors in interest, heirs, tenants, devisees and assigns from and after the date of execution by the parties hereto.

9. **LAW GOVERNING.** The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance.

10. **ACCEPTANCE OF EASEMENT AREA AND USE AT GRANTEE'S RISK.** GRANTEE accepts the Easement Area in its present condition. GRANTEE shall expend any time, money or labor in the Easement Area at GRANTEE's own risk and shall conduct any and all work in the Easement Area at its own risk.

11. **INSURANCE.** GRANTEE 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 Easement Area and construction activities within the Easement Area. The Village, its officers, officials, employees, agents and volunteers shall be named as additional insureds on said policy. GRANTEE shall be responsible for the payment of any deductibles pursuant to said policy. The coverage shall contain no special limitations on the scope of protection afforded to the Village, its officers, employees, agents and volunteers. Said policy shall be maintained as long as the Agreement remains in effect and GRANTEE's Sculpture remains in the Easement Area and shall be binding upon GRANTEE's successors and assigns to this Agreement. GRANTEE shall provide the Village with a certificate of insurance evidencing the village, its officers, employees, agents and volunteers as additional insureds. GRANTEE shall provide thirty (30) days written notice of any

change in coverage or cancellation of coverage and shall provide the Village with a new certificate of insurance meeting the requirements of this paragraph. GRANTEE, its successors and assigns, shall provide a certificate of insurance at any time to the Village while this Agreement remains in effect. [Under review by TCB insurance]

12. **HEADINGS AND TITLES.** The headings and titles of any provisions of this Agreement are for convenience or reference only and are not to be considered in construing this Agreement.

13. **TERMINATION; REMOVAL.** The easement granted by this Agreement and the promises and obligations contained herein shall terminate and expire if for any reason GRANTEE or GRANTOR permanently removes the Sculpture from the Easement Area. The Sculpture will be removed on a permanent basis (A) if GRANTOR and GRANTEE agree to remove the Sculpture, (B) if GRANTOR or GRANTEE reasonably determines that the Sculpture is a safety hazard, (C) if GRANTEE decides to remove the Sculpture, or (D) if GRANTOR determines that the Sculpture no longer meets the GRANTOR's requirements for public art or does not fit within the character of the neighborhood surrounding the Building. Either GRANTOR or GRANTEE, as applicable, will give the other written notice of the occurrence of any of the conditions of removal, and GRANTEE will remove the Sculpture within a reasonable time after receipt of such notice. GRANTEE's removal of the Sculpture shall include the removal of any concrete pad and footings as required to approximately 6" below grade. Upon GRANTEE's removal of the Sculpture, GRANTEE shall restore the Easement Area to at least the same condition as it existed prior the installation of the Sculpture, including the installation of grass turf at the Easement Area.

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

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

OAK PARK I HOUSING OWNER LLC,
an Illinois limited liability company

By: TCB Oak Park I MM LLC,
an Illinois limited liability company,
its managing member

By: _____
Name: _____
Title: _____

State of _____)
County of _____)

On this, the _____ day of _____, 2020, before me, a Notary Public, the above signed officer, _____, personally appeared before me and acknowledged herself/himself to be the _____ of Oak Park I Housing Owner LLC, an Illinois limited liability company, and that she/he, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of said limited liability company.

- NOTARY SEAL -

Notary Public

GRANTOR – 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 _____, 2020.

- 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

LEGAL DESCRIPTION OF PRIVATE PARCEL

LOTS 1 AND 2 IN BLOCK 4 IN OAK PARK AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 2 AND 3 AND THAT PART OF LOT 1, LYING WEST OF OAK PARK AVENUE, IN THE PARTITION BY THE CIRCUIT COURT OF COOK COUNTY, OF THE EAST HALF OF LOT 2 IN THE SUBDIVISION OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE WEST HALF OF THE SOUTHWEST QUARTER), IN COOK COUNTY, ILLINOIS.***

PERMANENT REAL ESTATE INDEX NUMBER: 16-18-135-021-0000

COMMON ADDRESS: 801 SOUTH OAK PARK AVENUE, OAK PARK, IL 60304

DEPICTION OF EASEMENT AREA

