

**AGREEMENT FOR ENVIRONMENTAL REMEDIATION WORK
BETWEEN THE VILLAGE OF OAK PARK, COOK COUNTY, ILLINOIS AND
OAK PARK MADISON STREET, LLC IN AN AMOUNT NOT TO EXCEED \$1,650,000**

THIS AGREEMENT FOR ENVIRONMENTAL REMEDIATION WORK (the “**Agreement**”) is made and entered into as of this 18th day of October 2021 (the “**Effective Date**”), by and between the **VILLAGE OF OAK PARK, COOK COUNTY, ILLINOIS**, an Illinois municipal home rule corporation (the “**Village**”), and Oak Park Madison Street LLC, an Illinois limited liability company (the “**Developer**”).

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 and the Village are parties to that certain Redevelopment Agreement dated December 10, 2018, as may be amended and/or assigned (the “**Redevelopment Agreement**”) for the parcels located at 711-725 Madison Street, Oak Park, Illinois (the “**Property**”) as more fully set forth in Exhibit A attached hereto and incorporated herein by reference.
- B. The Developer has agreed to perform certain environmental remediation actions on the Property as part of the Developer’s redevelopment of the Property, and the Village has agreed to reimburse the Developer for costs and expenses incurred by the Developer in connection with the Environmental Work.
- C. This Agreement has been submitted to the Corporate Authorities (as defined in the Redevelopment Agreement) for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement 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.

SECTION 2 - ENVIRONMENTAL WORK

- A. **Environmental Work by the Developer.** The Developer shall cause the following “**Environmental Work**” to be completed on the Property, in accordance with all applicable environmental laws: (1) completion of the environmental remediation actions identified in the scope of work set forth in Exhibit B attached hereto and incorporated herein by reference; and (2) if applicable, the demolition and removal of concrete slabs, foundations and footings, asphalt, existing wet utilities, stone backfill of open foundation and utility trenches and exporting of spoils. The Environmental

Work shall be supervised and controlled by the Developer. The Developer, or the Developer's agents, contractors or representatives, shall contact, consult and otherwise deal with all governmental authorities in connection with the Environmental Work.

- B. Environmental Work-No Further Remediation Letter.** Developer anticipates obtaining a so-called Comprehensive No Further Remediation Letter ("**NFR Letter**") from the Illinois Environmental Protection Agency as part of the Environmental Work. It is anticipated that the NFR Letter will be issued following the completion of the physical Environmental Work and any delay in obtaining the same shall not be cause for the Village to delay the balance of the development of the Property, including, but not limited to, the construction of improvements on the same.
- C. Costs of the Environmental Work.** The Village shall reimburse the Developer for all of the actual costs of the Environmental Work and other TIF-eligible Redevelopment Project Costs (as defined in the Redevelopment Agreement) (the "**Environmental Costs**"). The estimated Environmental Costs are identified in Exhibit C attached hereto and incorporated by this reference herein. If the Environmental Costs are less than that shown in Exhibit C the Developer shall be entitled to be paid by the Village only the lesser actual cost. If the actual Environmental Costs are more than as shown in Exhibit C, the Developer shall be entitled to be reimbursed by the Village for such additional costs. The Environmental Costs shall be deemed part of the Redevelopment Project Costs for all purposes under the Redevelopment Agreement. The Village hereby agrees that the Environmental Costs are qualified for payment under the Redevelopment Agreement and applicable law, and shall be reimbursed to the Developer by the Village pursuant to the procedures set forth in Section 7.10 of the Redevelopment Agreement.
- D. Reimbursement of Environmental Costs.** The Village will reimburse the Developer from time to time on a monthly draw basis for the Environmental Costs in accordance with this Agreement within thirty (30) days of and upon satisfaction of the following conditions:
1. Developer has submitted to the Village's Director of the Department of Development Customer Services, from time to time, but no more often than once each calendar month, a disbursement request on a form reasonably acceptable to the Village with respect to such Environmental Costs for which Developer is seeking reimbursement.
 2. The requested disbursement is for Environmental Costs which have been incurred in connection with the Environmental Work.
 3. None of the Environmental Costs for which reimbursement is requested has previously been reimbursed by the Village to the Developer.

4. The Developer shall provide to the Village evidence of amounts owed (e.g., invoice copy), or previously paid (e.g., a copy of Developer's previously issued check) by the Developer, to its construction manager, contractor, subcontractor, material supplier or other consultant or agent, for the Environmental Costs to be paid or reimbursed to Developer.
5. The Developer has certified that the Environmental Work for which reimbursement is sought has been done.
6. Developer provides such information as is reasonably necessary for the Village to determine that reimbursement is being sought for Environmental Costs and is otherwise due and payable hereunder.
7. As part of its disbursement request, the Developer shall provide the Village with all documentation reasonably required to evidence the Environmental Costs, such records to include, but not be limited to, Developer's contract with its general contractor redacted to show only the scope of the Environmental Costs and Environmental Work, and all subcontractors, contractor's sworn affidavits, lien waivers and any other documentation reasonably specified by the Village and/or in the possession of the Developer. The Village may require an audit of all evidence of the Environmental Costs, such audit to be performed by an auditor selected by the Village in its sole discretion and at the Village's cost.

SECTION 3 - 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.

SECTION 4 – TERM

- A. This Agreement shall be in full force and effect commencing on the Effective Date and continuing until all Environmental Costs have been reimbursed by the Village to the Developer (the “**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.

SECTION 5 – 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; provided, however, that no covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Corporate Authorities, the Village Manager (as such term is defined in the Redevelopment Agreement), any elected official, officer, partner, member, director, agent, employee or attorney of the Village or Developer, in his or her individual capacity, and no elected official, officer, partner, member, director, agent, employee or attorney of the Village or Developer shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.
- B. **Notice and Cure.** Neither party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section without first providing written notice to the other party of the breach or alleged breach and allowing thirty (30) business days to cure the breach or alleged breach. If the breach cannot be cured within the thirty (30) business-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 6 - 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 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 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. The Developer represents, warrants and agrees as the basis for the undertakings on its part contained in this Agreement that:

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 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. No consent or authorization of, filing with, or other act by or in respect of any governmental authority 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 7 - GENERAL PROVISIONS

- A. **Entire Agreement.** 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.
- 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 (c) 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

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

Oak Park Madison Street LLC
c/o Pete's Fresh Market
4333 South Pulaski Road
Chicago, IL 60632
Attn: Stephanie Dremonas

With a copy to:

David H. Sachs, Esq.
Horwood Marcus & Berk
500 West Madison Street, Suite 3700
Chicago, IL 60661

- 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 or the Developer.
- 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. **Exhibits.** Exhibit A, Exhibit B and Exhibit C are 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. **Effective Date.** The "Effective Date" of this Agreement shall be as set forth on the first page of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly signed, scaled, and delivered this Agreement as of the Effective Date.

DEVELOPER:

Oak Park Madison Street LLC, an Illinois Limited Liability Company

By: _____

Name: _____

Its: _____

Dated: _____, 2021

ATTEST

By: _____

Name: _____

Its: _____

Dated: _____, 2021

VILLAGE:

**Village of Oak Park Cook County, Illinois, an Illinois municipal
home rule corporation**

By: _____
Name: Lisa Shelley
Its: Interim Village Manager

Dated: _____, 2021

ATTEST

By: _____
Name: Christina M. Waters
Its: Village Clerk

Dated: _____, 2021

Exhibit "A"

Property PIN

700 Madison Street, Oak Park, IL 60302 PIN 16-07-418-018-0000

710 Madison Street, Oak Park, IL 60302 PIN 16-07-418-017-0000

722 Madison Street, Oak Park, IL 60302 PIN 16-07-418-020-0000

728 Madison Street, Oak Park, IL 60302 PIN 16-07-418-014-0000

644 Madison Street, Oak Park, IL 60302 PIN 16-07-419-017-0000 though and including 16-07-419-023-0000

EXHIBIT B

Scope of Environmental Work

Document Attached:

Comprehensive Site Investigation (CSI), Oversight, IEPA Site Remediation (SRP) No Further Remediation (NFR) Proposal dated April 17, 2020

700-28 Madison Street, Oak Park, Illinois

EPI Project/Proposal #191134/20-249

EXHIBIT C

Document Attached:

Preliminary Estimate dated August 4, 2021