

**STATE OF ILLINOIS**  
**COMPTROLLER**  

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**SUSANA A. MENDOZA**

Name of Municipality:	<u>Village of Rosemont</u>	Reporting Fiscal Year:	<b>2021</b>
County:	<u>Cook</u>	Fiscal Year End:	<b>12 /31/2021</b>
Unit Code:	<b>016/505/32</b>		

### **FY 2021 TIF Administrator Contact Information**

First Name:	Donald	Last Name:	Calmeyn		
Address:	9501 W Devon	Title:	Finance Director		
Telephone:	847-825-4404	City:	Rosemont	Zip:	60018
E-mail- required	CalmeynD@villageofrosemont.org				

I attest to the best of my knowledge, that this FY 2021 report of the redevelopment project area(s) **Rosemont** in the City/Village of: is complete and accurate pursuant to Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-3 et. seq.] and or Industrial Jobs Recovery Law [65 ILCS 5/11-74.6-10 et. seq.].

D. C. Calmeyer  
Written signature of TIF Administrator

July 14, 2022  
Date

**Section 1 (65 ILCS 5/11-74.4-5 (d) (1.5) and 65 ILCS 5/11-74.6-22 (d) (1.5)\*)**

**FILL OUT ONE FOR EACH TIF DISTRICT**

[illegible]

\*All statutory citations refer to one of two sections of the Illinois Municipal Code: The Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-3 et. seq.] or the Industrial Jobs Recovery Law [65 ILCS 5/11-74.6-10 et. seq.]

**SECTION 2 [Sections 2 through 5 must be completed for each redevelopment project area listed in Section 1.]**

**FY 2021**

**Name of Redevelopment Project Area (below):**

**VILLAGE OF ROSEMONT TIF 4 SOUTH RIVER ROAD**

**Primary Use of Redevelopment Project Area\*: Combination Mixed**

\* Types include: Central Business District, Retail, Other Commercial, Industrial, Residential, and Combination/Mixed.

**If "Combination/Mixed" List Component Types:** Comml, Retail, Hotel

**Under which section of the Illinois Municipal Code was Redevelopment Project Area designated? (check one):**

**Tax Increment Allocation Redevelopment Act** **X**

**Industrial Jobs Recovery Law** \_\_\_\_\_

**Please utilize the information below to properly label the Attachments.**

	No	Yes
Were there any amendments to the redevelopment plan, the redevelopment project area, or the State Sales Tax Boundary? [65 ILCS 5/11-74.4-5 (d) (1) and 5/11-74.6-22 (d) (1)] <b>If yes, please enclose the amendment (labeled Attachment A).</b>	X	
Certification of the Chief Executive Officer of the municipality that the municipality has complied with all of the requirements of the Act during the preceding fiscal year. [65 ILCS 5/11-74.4-5 (d) (3) and 5/11-74.6-22 (d) (3)] <b>Please enclose the CEO Certification (labeled Attachment B).</b>		X
Opinion of legal counsel that municipality is in compliance with the Act. [65 ILCS 5/11-74.4-5 (d) (4) and 5/11-74.6-22 (d) (4)] <b>Please enclose the Legal Counsel Opinion (labeled Attachment C).</b>		X
Statement setting forth all activities undertaken in furtherance of the objectives of the redevelopment plan, including any project implemented and a description of the redevelopment activities. [65 ILCS 5/11-74.4-5 (d) (7) (A and B) and 5/11-74.6-22 (d) (7) (A and B)] <b>If yes, please enclose the Activities Statement (labeled Attachment D).</b>		X
Were any agreements entered into by the municipality with regard to the disposition or redevelopment of any property within the redevelopment project area or the area within the State Sales Tax Boundary? [65 ILCS 5/11-74.4-5 (d) (7) (C) and 5/11-74.6-22 (d) (7) (C)] <b>If yes, please enclose the Agreement(s) (labeled Attachment E).</b>		X
Is there additional information on the use of all funds received under this Division and steps taken by the municipality to achieve the objectives of the redevelopment plan? [65 ILCS 5/11-74.4-5 (d) (7) (D) and 5/11-74.6-22 (d) (7) (D)] <b>If yes, please enclose the Additional Information (labeled Attachment F).</b>		X
Did the municipality's TIF advisors or consultants enter into contracts with entities or persons that have received or are receiving payments financed by tax increment revenues produced by the same TIF? [65 ILCS 5/11-74.4-5 (d) (7) (E) and 5/11-74.6-22 (d) (7) (E)] <b>If yes, please enclose the contract(s) or description of the contract(s) (labeled Attachment G).</b>	X	
Were there any reports <u>submitted to</u> the municipality <u>by</u> the joint review board? [65 ILCS 5/11-74.4-5 (d) (7) (F) and 5/11-74.6-22 (d) (7) (F)] <b>If yes, please enclose the Joint Review Board Report (labeled Attachment H).</b>	X	
Were any obligations issued by the municipality? [65 ILCS 5/11-74.4-5 (d) (8) (A) and 5/11-74.6-22 (d) (8) (A)] <b>If yes, please enclose any Official Statement (labeled Attachment I). If Attachment I is answered yes, then the Analysis must be attached and (labeled Attachment J).</b>	X	
An analysis prepared by a financial advisor or underwriter setting forth the nature and term of obligation and projected debt service including required reserves and debt coverage. [65 ILCS 5/11-74.4-5 (d) (8) (B) and 5/11-74.6-22 (d) (8) (B)] <b>If attachment I is yes, then Analysis <u>MUST</u> be attached and (labeled Attachment J).</b>	X	
Has a cumulative of \$100,000 of TIF revenue been deposited into the special tax allocation fund? 65 ILCS 5/11-74.4-5 (d) (2) and 5/11-74.6-22 (d) (2) <b>If yes, please enclose Audited financial statements of the special tax allocation fund (labeled Attachment K).</b>		X
Cumulatively, have deposits of incremental taxes revenue equal to or greater than \$100,000 been made into the special tax allocation fund? [65 ILCS 5/11-74.4-5 (d) (9) and 5/11-74.6-22 (d) (9)] <b>If yes, the audit report shall contain a letter from the independent certified public accountant indicating compliance or noncompliance with the requirements of subsection (q) of Section 11-74.4-3 (labeled Attachment L).</b>		X
A list of all intergovernmental agreements in effect to which the municipality is a part, and an accounting of any money transferred or received by the municipality during that fiscal year pursuant to those intergovernmental agreements. [65 ILCS 5/11-74.4-5 (d) (10)] <b>If yes, please enclose the list only, not actual agreements (labeled Attachment M).</b>	X	

**SECTION 3.1 - (65 ILCS 5/11-74.4-5 (d)(5)(a)(b)(d)) and (65 ILCS 5/11-74.6-22 (d) (5)(a)(b)(d))****Provide an analysis of the special tax allocation fund.****FY 2021****VILLAGE OF ROSEMONT TIF 4 SOUTH  
RIVER ROAD**

Special Tax Allocation Fund Balance at Beginning of Reporting Period \$ (3,777,561)

<b>SOURCE of Revenue/Cash Receipts:</b>	<b>Revenue/Cash Receipts for Current Reporting Year</b>	<b>Cumulative Totals of Revenue/Cash Receipts for life of TIF</b>	<b>% of Total</b>
Property Tax Increment	\$ 18,377,297	\$ 99,185,450	34%
State Sales Tax Increment			0%
Local Sales Tax Increment			0%
State Utility Tax Increment			0%
Local Utility Tax Increment			0%
Interest	\$ 13,263	\$ 118,339	0%
Land/Building Sale Proceeds			0%
Bond Proceeds		\$ 171,865,000	59%
Transfers from Municipal Sources		\$ 20,497,347	7%
Private Sources			0%
Other (identify source _____; if multiple other sources, attach schedule)			0%

**All Amount Deposited in Special Tax Allocation Fund** \$ 18,390,560**Cumulative Total Revenues/Cash Receipts** \$ 291,666,136 100%**Total Expenditures/Cash Disbursements (Carried forward from Section 3.2)** \$ 14,492,316**Transfers to Municipal Sources****Distribution of Surplus****Total Expenditures/Disbursements** \$ 14,492,316**Net/Income/Cash Receipts Over/(Under) Cash Disbursements** \$ 3,898,244**Previous Year Adjustment (Explain Below)** \$ -**FUND BALANCE, END OF REPORTING PERIOD\*** \$ 120,683

\* If there is a positive fund balance at the end of the reporting period, you must complete Section 3.3

**Previous Year Explanation:**

[illegible]



[illegible]

7. Costs of eliminating or removing contaminants and other impediments.		
		\$ -
8. Cost of job training and retraining projects.		
		\$ -
9. Financing costs.		
Bond interest	5,657,316	
Bond principal	5,560,000	
		\$ 11,217,316
10. Capital costs.		
		\$ -
11. Cost of reimbursing school districts for their increased costs caused by TIF assisted housing projects.		
		\$ -
12. Cost of reimbursing library districts for their increased costs caused by TIF assisted housing projects.		
		\$ -

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8. Cost of job training and retraining projects.		
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		\$	-
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Bond interest	5,657,316	
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10. Capital costs.		
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		\$	-
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		\$	.
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[illegible]




		\$	-
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## SECTION 3.2 A

## PAGE 3

13. Relocation costs.		
		\$ -
14. Payments in lieu of taxes.		
		\$ -
15. Costs of job training, retraining, advanced vocational or career education.		
		\$ -
16. Interest cost incurred by redeveloper or other nongovernmental persons in connection with a redevelopment project.		
		\$ -
17. Cost of day care services.		
		\$ -
18. Other.		
		\$ -
TOTAL ITEMIZED EXPENDITURES		\$ 14,492,316

[illegible]

**SECTION 3.3 - (65 ILCS 5/11-74.4-5 (d) (5d) 65 ILCS 5/11-74.6-22 (d) (5d)**

**Breakdown of the Balance in the Special Tax Allocation Fund At the End of the Reporting Period by source**

**FY 2021**

**TIF NAME:**

**VILLAGE OF ROSEMONT TIF 4 SOUTH RIVER**

**FUND BALANCE BY SOURCE**

\$ 120,683

	Amount of Original Issuance	Amount Designated
<b>1. Description of Debt Obligations</b>		
General Obligation Bonds Series 2010A	\$ 12,075,000	\$ 11,535,000
General Obligation Bond Series 2010C	\$ 32,635,000	\$ 17,350,000
General Obligation Bonds Series 2011B	\$ 24,795,000	\$ 18,915,000
General Obligation Bonds Series 2011D	\$ 19,160,000	\$ 2,275,000
General Obligation Bonds Series 2012A	\$ 59,390,000	\$ 59,390,000
General Obligation Bonds Series 2013B	\$ 3,485,000	\$ 595,000
General Obligation Bonds Series 2017	\$ 22,345,000	\$ 22,345,000

<b>Total Amount Designated for Obligations</b>	\$ 173,885,000	\$ 132,405,000
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**2. Description of Project Costs to be Paid**

Redevelopment Cost Advances		\$ 9,188,387

<b>Total Amount Designated for Project Costs</b>	\$ 9,188,387
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<b>TOTAL AMOUNT DESIGNATED</b>	\$ 141,593,387
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<b>SURPLUS/(DEFICIT)</b>	\$ (141,472,704)
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**SECTION 4 [65 ILCS 5/11-74.4-5 (d) (6) and 65 ILCS 5/11-74.6-22 (d) (6)]****FY 2021****TIF NAME:****VILLAGE OF ROSEMONT TIF 4 SOUTH RIVER ROAD**

Provide a description of all property purchased by the municipality during the reporting fiscal year within the redevelopment project area.

**X****Check here if no property was acquired by the Municipality within the Redevelopment Project Area.****Property Acquired by the Municipality Within the Redevelopment Project Area.**

Property (1):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (2):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (3):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (4):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (5):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (6):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (7):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (8):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

## SECTION 5 - 20 ILCS 620/4.7 (7)(F)

PAGE 1

FY 2021

TIF Name:

VILLAGE OF ROSEMONT TIF 4 SOUTH RIVER ROAD

Page 1 is to be included with TIF report. Pages 2 and 3 are to be included **ONLY** if projects are listed.Select **ONE** of the following by indicating an 'X':

1. <b>NO</b> projects were undertaken by the Municipality Within the Redevelopment Project Area.	
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2. The Municipality <b>DID</b> undertake projects within the Redevelopment Project Area. (If selecting this option, complete 2a.)	X
2a. The total number of <b>ALL</b> activities undertaken in furtherance of the objectives of the redevelopment plan:	4

LIST <b>ALL</b> projects undertaken by the Municipality Within the Redevelopment Project Area:			
TOTAL:	11/1/99 to Date	Estimated Investment for Subsequent Fiscal Year	Total Estimated to Complete Project
Private Investment Undertaken (See Instructions)	\$ 370,000,000	\$ -	\$ -
Public Investment Undertaken	\$ 110,700,000	\$ -	\$ -
Ratio of Private/Public Investment	3 25/73		0

\*PROJECT NAME TO BE LISTED AFTER PROJECT NUMBER

**Project 1\*: Lowes Hotel**

Private Investment Undertaken (See Instructions)	\$ 120,000,000		
Public Investment Undertaken	\$ 5,700,000		
Ratio of Private/Public Investment	21 1/19		0

**Project 2\*: Chicago Fashion Mall and Parking**

Private Investment Undertaken (See Instructions)	\$ 250,000,000		
Public Investment Undertaken	\$ 36,000,000		
Ratio of Private/Public Investment	6 17/18		0

**Project 3\*: Entertainment Restaurant District**

Private Investment Undertaken (See Instructions)			
Public Investment Undertaken	\$ 55,000,000		
Ratio of Private/Public Investment	0		0

**Project 4\*: Sports Dome Ball Park**

Private Investment Undertaken (See Instructions)			
Public Investment Undertaken	\$ 14,000,000		
Ratio of Private/Public Investment	0		0

**Project 5\*:**

Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

**Project 6\*:**

Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Optional: Information in the following sections is not required by law, but would be helpful in evaluating the performance of TIF in Illinois. **\*even though optional MUST be included as part of the complete TIF report**

## SECTION 6

FY 2021

TIF NAME: VILLAGE OF ROSEMONT TIF 4 SOUTH RIVER ROAD

Provide the base EAV (at the time of designation) and the EAV for the year reported for the redevelopment project area

Year redevelopment project area was designated	Base EAV	Reporting Fiscal Year EAV
1999	\$ 16,792,103	\$ 179,644,484

List all overlapping tax districts in the redevelopment project area.

If overlapping taxing district received a surplus, list the surplus.

☒ Check if the overlapping taxing districts did not receive a surplus.

Overlapping Taxing District	Surplus Distributed from redevelopment project area to overlapping districts
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -

## SECTION 7

Provide information about job creation and retention:

Number of Jobs Retained	Number of Jobs Created	Description and Type (Temporary or Permanent) of Jobs	Total Salaries Paid
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -

## SECTION 8

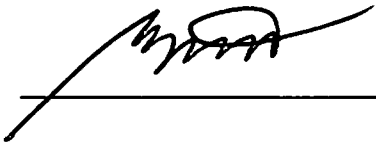
Provide a general description of the redevelopment project area using only major boundaries:

Optional Documents	Enclosed
Legal description of redevelopment project area	
Map of District	

**Attachment B.**      Certification of the Chief Executive Officer of the municipality that the municipality has complied with all of the requirements of the Act during the reporting fiscal year

**Re: Village of Rosemont TIF No. 4**

I, Bradley A. Stephens, the Chief Executive Officer of the Village of Rosemont, County of Cook, State of Illinois, do hereby certify that to the best of my knowledge, the Village complied with the requirements pertaining to the Illinois Tax Increment Redevelopment Allocation Act during the fiscal year beginning January 1, 2021 and ending December 31, 2021.

  
\_\_\_\_\_

7-15-2022  
\_\_\_\_\_  
DATE



Attachment C

**RE: Attorney Review TIF Compliance TIF No. 4**

To Whom it May Concern:

This will confirm that I am the Village Attorney for the Village of Rosemont, Illinois. I have reviewed all information provided to me by the Village, staff and consultants, and I find that the Village of Rosemont has conformed to all applicable requirements of the Illinois Tax Increment Redevelopment Allocation Act set forth thereunder for the fiscal year beginning January 1, 2021 and ending December 31, 2021 to the best of my knowledge and belief.

Sincerely,



Terrence D. McCabe

Ryan & Ryan Law, LLC, Special Attorneys

**Attachment D.** Statement setting forth all activities undertaken in furtherance of the objectives of the Redevelopment Plan, including:

- A. Any project implemented during the reporting fiscal year; and
- B. A description of the redevelopment activities undertaken.

The Village continued to monitor existing agreements and projects as well as existing obligations.

**Attachment E.**      Description of Agreements Regarding Property Disposition or Redevelopment

The Village entered into a real estate purchase and sale agreement to sell and convey Village owned property containing approximately 13,400 square feet of leased premises for redevelopment to an alternate use and providing for a companion parking agreement with the contract purchaser providing for the right to park in the municipally controlled and owned parking garage and surface parking spaces and a lease cancellation and termination agreement for the existing lease.

The Village entered into a real estate purchase and sale option agreement to sell and convey Village owned property containing approximately 6,000 square feet of leased premises for redevelopment to an alternate use. The Village entered into a companion parking agreement with the contract purchaser providing for the right to park in the municipally controlled and owned parking garage and surface parking spaces and a lease providing the contract purchaser possession of the leased premises for the renovation to the alternate use.

The Village entered into a real estate purchase and sale agreement to sell and convey Village owned property containing approximately 10,000 square feet of leased premises. The Village entered into a companion parking agreement with the contract purchaser providing for the right to park in the municipally controlled and owned parking garage and surface parking spaces, a storage license and a lease cancellation and termination agreement for the existing lease.

**Attachment F.** Additional Information on Uses of Funds Related to Achieving Objectives of the Redevelopment Plan

The Village applied funds to the payment of existing debt service obligations and to TIF eligible costs incurred by the Village in the furtherance of redevelopment activities as well as the transfer to contiguous TIF 4 in the continuation of redevelopment activities.

**REAL ESTATE SALE AND PURCHASE AGREEMENT  
AND DEVELOPMENT AGREEMENT**

By and Between

**PARK PLACE HOLDINGS, LLC,**  
an Illinois limited liability company

and

**VILLAGE OF ROSEMONT, ILLINOIS,**  
an Illinois municipal corporation

February 8, 2021

**REAL ESTATE SALE AND PURCHASE AGREEMENT  
AND DEVELOPMENT AGREEMENT**

THIS REAL ESTATE SALE AND PURCHASE AGREEMENT AND DEVELOPMENT AGREEMENT is made and entered into and effective this 8 day of February, 2021 (hereinafter referred to as the "Agreement") by and between the PARK PLACE HOLDINGS, LLC, an Illinois limited liability company or its assignee (referred to herein as "Purchaser"), and VILLAGE OF ROSEMONT, an Illinois home rule municipal corporation (referred to herein as the "Village").

**RECITALS**

A. Pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended ("TIF Act") and the terms of the Village's South River Road TIF No. 4 Redevelopment Plan and Project the Village designated a certain area within its municipal limits for redevelopment and revitalization with commercial and retail uses.

B. The property subject of this Agreement is within the South River Road TIF No. 4 Project Area, the legal description of the property is attached hereto and made a part hereof as Exhibit A ("Parcel 1") and the legal description of the dominant tenement of the Signage Easement as provided for in Section 3.5 is attached hereto and made a part hereof as Exhibit A.1 ("Parcel 2").

C. The Village currently owns and RBH Brewery, Inc. d/b/a Hofbrauhaus Chicago at Rosemont currently leases from the Village the premises having the common address of 5500 Park Place, Rosemont, Illinois (hereinafter referred to as the "Subject Property") of which Parcel 1 is a part and which is improved with an approximately 20,425 square foot building (hereinafter referred to as the "Building").

D. RBH Brewery, Inc. d/b/a Hofbrauhaus Chicago at Rosemont has agreed to execute and shall deliver at the Closing a Lease Cancellation and Termination Agreement.

E. Village now desires to sell to Purchaser and Purchaser now desires to purchase from the Village Parcel 1 and approximately 13,400 square feet of the Building on a portion of the Subject Property subject to Aria Group Architects, Inc.'s final determination of the actual as-built square footage of Building on Parcel 1 ("As-built Square Footage") so that Parcel 1 can be re-purposed and developed as provided for in this Agreement.

F. The Village, in order to ensure the development of Parcel 1 requires certain assurances, as hereinafter set forth, that Purchaser will perform certain acts and fulfill certain conditions.

G. Purchaser, in order to ensure the development of Parcel 1 requires certain assurances, as hereinafter set forth, that the Village will perform certain acts and fulfill certain conditions.

H. It is the desire of the Village and Purchaser that the development of Parcel 1 proceed as conveniently and expeditiously as possible, subject to the Village's ordinances, codes and regulations, now or hereafter in force and effect, as limited, modified or amended by, and subject to the provisions of this Agreement and applicable law.

I. The corporate authorities of the Village, after due and careful consideration, have concluded that the sale and development of Parcel 1 as provided in this Agreement furthers the goals and objectives of the South River Road TIF No. 4 Redevelopment Plan and Project, will further the growth of the Village, increase the assessed valuation of the real estate situated within the Village, increase the sales tax revenues realized by the Village and foster increased economic activity within the Village.

J. The corporate authorities of the Village, after due and careful consideration, have concluded the sale of Parcel 1 and the fulfillment generally of this Agreement, are in the vital and best interests of the Village and the health, safety and welfare of its residents and taxpayers.

K. Pursuant to the Village's powers as a home rule municipal corporation of the State of Illinois, pursuant to Article VII of the 1970 Constitution of the State of Illinois, the Village possesses the authority and power to enter into this Agreement.

L. As a result of the improvements to be undertaken as part of this Agreement, the Village expects that significant real estate tax and sales tax revenues will be generated by the sale of Parcel 1.

NOW THEREFORE, in consideration of the mutual agreements herein and in this Agreement contained, the Village and the Purchaser do hereby agree to the covenants, conditions, limitations and agreements herein contained and agree as follows:

1. INCORPORATION OF RECITALS.

The representations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

2. DEFINITIONS.

The terms defined in this Article (except as herein otherwise expressly provided or required by the context) shall have the following meanings:

2.1 "Closing" shall be the consummation of the transfer of Parcel 1 from the Village to the Purchaser together with the execution and delivery of the Parking Agreement and between Purchaser and the Village in the manner provided in and by this Agreement.

2.2 "Closing Date" shall mean the date of the Closing to be on or before March 15, 2021 or such other date as the parties may mutually agree.

2.3 "Concept Site Plan" shall mean the site plan layout and proposed elevations for Parcel 1 attached hereto and made a part hereof as Exhibit B.

2.4 "Effective Date" shall be the date of this Agreement.

2.5 "Parking Agreement" shall mean that certain parking agreement to be entered into by Purchaser and the Village at the time of the Closing providing for the non-exclusive use of surface parking spaces and parking spaces within the parking garage located within and serving of the Parkway Bank Park.

2.6 "Plans and Specifications" shall mean the plans and specifications submitted by the Purchaser for Parcel 1 in the manner provided in this Agreement, as amended from time to time in the manner provided in and by this Agreement.

2.7 "Purchase Price" shall mean the price paid to the Village by the Purchaser for Parcel 1 in the manner provided in and by this Agreement.

2.8 "Purchase Price Funding Date" shall mean September 13, 2021 or such other date as the parties may agree to in writing at which Purchaser shall pay the Purchase Price and Interest as provided for in Section 3.2 herein in the manner provided in and by this Agreement.

2.9 "Purchaser" shall mean Park Place Holdings, LLC, an Illinois limited liability company and those parties who become its successors and assigns in the manner authorized by this Agreement.

2.10 "Title Company" shall mean Chicago Title Insurance Company or such other title company and agent designated by Purchaser or otherwise agreed upon by the parties.

2.11 "Village" shall mean the Village of Rosemont, a home rule municipal corporation under the laws of the State of Illinois, together with any successors or assigns.

2.12 "Village Municipal Code" shall mean the municipal code, ordinances and regulations of the Village of Rosemont as adopted and in place from time to time.

2.13 "Village Work" shall mean the construction and improvements to be undertaken by the Village to the Subject Property as set forth in the Area Work Letter attached hereto and made a part hereof as Exhibit C which are required for and shall be a part of the construction and development of Parcel 1 in the manner provided in this Agreement.

2.14 "Village Zoning Code" shall mean the zoning code of the Village of Rosemont as adopted and in place from time to time.

### 3. CLOSING DATE; PURCHASE PRICE; CONVEYANCE OF PARCEL 1; SURVEY; RE-CONVEYANCE FOR FAILURE TO COMMENCE CONSTRUCTION.

3.1 Closing Date. The Closing shall be consummated and the transfer of Parcel 1 shall occur on the Closing Date.

3.2 Purchase Price. On the Purchase Price Funding Date, subject to the terms and conditions set forth in this Agreement, Purchaser shall pay to Village a purchase price to be allocated based and calculated at ONE HUNDRED SIXTY ONE and 57/100 DOLLARS



(\$161.57) per square foot of As-built Square Footage of Building area on Parcel 1 as determined by Aria Group Architects, Inc. in the manner provided by and subject to the terms of this Agreement. Purchaser shall pay interest on the Purchase Price at the interest rate of 4 ½ % per annum from the Closing date to the Purchase Price Funding Date ("Interest") and the Interest shall be paid on the Purchase Price Funding Date.

### 3.3 Conveyance of Parcel 1.

Subject to the satisfaction of conditions precedent and provided RBH Brewery, Inc. d/b/a Hofbrauhaus Chicago at Rosemont has executed a Lease Cancellation and Termination Agreement and Purchaser has materially satisfied to the reasonable satisfaction of the Village all other pre-Closing requirements and obligations in the manner provided in this Agreement, at Closing the Village shall deposit into the Closing Escrow as provided for herein a Special Warranty Deed into the Closing Escrow conveying to Purchaser fee simple title to Parcel 1 subject only to the encumbrances of this Agreement, use restrictions within and related to the Parkway Bank Park (including but not limited to use restrictions related to movie theaters, theater popcorn and packaged theater candy, Brazilian steakhouse venues, bowling venues, Irish-themed venues and live music venues), an easement for signage on the west elevation of the Building located on Parcel 1 as set forth in Section 3.35 herein ("Signage Easement") and the Permitted Exceptions as herein defined. The Title Company or other escrow agent shall retain the Special Warranty Deed after the Closing until the Purchase Price and any Interest thereon has been paid on the Purchase Price Funding Date. Closing shall be consummated through an escrow with the Title Company in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement (the "Closing Escrow") used by the Title Company with such special provisions inserted in the Closing Escrow as may be required to conform with this Agreement including but not limited to the return of the Special Warranty Deed to the Village in the event Purchaser fails to pay the Purchase Price and the Interest thereon on the Purchase Price Funding Date or is otherwise in default under this Agreement. The cost of such escrow shall be divided equally between Purchaser and the Village, except the cost of any moneylender's escrow and any special costs incurred by reason of the Purchaser's financing shall be borne by the Purchaser. Village shall be responsible for and pay real estate tax transfer taxes and all other transfer taxes, if any. Village shall deliver possession of Parcel 1 to Purchaser at Closing in an "As Is, Where As" condition free of any title encumbrances that would hinder Purchaser's development of Parcel 1 subject only to the encumbrances of this Agreement, use restrictions within and related to the Parkway Bank Park, the Signage Easement and the Permitted Exceptions.

### 3.4 Survey; Plats.

(a) The Village, at the Village's cost, shall provide Purchaser with an ALTA land survey of Parcel 1 ("Survey"). Such Survey shall plot all exceptions to title (to the extent plottable) and shall plot any easements that benefit or burden Parcel 1. The Village shall pay for the cost of Survey except for any incremental increase attributable to the cost of including additional information as may be requested by the Purchaser or its lender provided, however, that the Purchaser shall pay for the cost of the Survey in the event the Purchaser does not purchase Parcel 1. The Survey shall be subject to Purchaser's review and approval pursuant to the provisions of Section 4.(c) herein.

(b) The Village shall, at its sole cost, prepare, approve and record, any and all plats of subdivision, abrogations, easements, vacation, and dedication (collectively, the "Plats"), as may be reasonably required to convey Parcel 1 to the Purchaser.

3.5. Signage Easement. The Village and Purchaser agree that the Village shall retain an easement for signage on the west elevation of the Building located on Parcel 1 to allow signage in a manner and size as determined and approved as part of the special use ordinance adopted by the Village for use by both Parcel 1 and the owner or tenant of Parcel 2. The Signage Easement shall run with the land for both Parcel 1 as the servient tenement and Parcel 2 as the dominant tenement until the Signage Easement is either released or rescinded by agreement of both Purchaser and the owner of Parcel 2 or their respective successors.

3.6 Return of Special Warranty Deed for Failure to Pay Purchase Price and Interest; Reimbursement of Village Costs.

(a) Notwithstanding anything in this Agreement to the contrary and unless the September 13, 2021 Purchase Price Funding Date is extended in writing by the mutual agreement of the parties, in the event Purchaser fails to pay the Purchase Price and any Interest thereon on the Purchase Price Funding Date or is otherwise in default under this Agreement, then the Village, in its sole and absolute discretion, may demand by written notice to the Purchaser and the Title Company and the Title Company or other escrow agent shall immediately release and return the Special Warranty Deed and the Parking Agreement to the Village from the Closing Escrow without delay and without requiring additional authorization.

(b) Notwithstanding anything in this Agreement to the contrary and subject to the Village Work being substantially completed, in the event Purchaser fails to pay the Purchase Price and any Interest thereon on the Purchase Price Funding Date, Purchaser agrees to reimburse and pay the Village the actual cost of the Village Work and the Village reimbursement or contribution for Aria's Architectural Fees attributable to and associated with Parcel 1 within thirty (30) days of Purchaser receiving written notice and demand thereof.

(c) This provision shall survive the Closing.

3.7 No Encumbrance of Subject Property or Parcel 1 by Purchaser. Purchaser may not encumber Parcel 1 with any lien or encumbrance prior to the Purchase Price Funding Date.

3.8 Guaranty of Purchaser's Performance. At Closing Michael Mutuschka shall provide a personal guaranty securing performance of Purchaser's obligations under this Agreement ("Guaranty"). A copy of the Guaranty form has been attached hereto and made a part hereof as Exhibit E.

4. TITLE INSURANCE. The Village and Purchase shall cause the following to occur prior to the time of the Closing:

(a) The Village, at the Village's cost, shall provide Purchaser a current title commitment for an Owner's Title Insurance Policy issued by the Title Company (the "Title Commitment") in the amount of the Purchase Price covering title to and for an owner's title policy for Parcel 1 and any easements that benefit Parcel 1, with said Title Commitment to be accompanied by copies of all instruments and plats described on Schedule B ("Initial Title Commitment").

(b) All title commitments provided by the Village under this Section shall be updated and delivered to Purchaser prior to the Closing (collectively the "Updated Title Commitment").

(c) The Purchaser shall have five (5) days after its receipt of each of: (i) the Initial Title Commitment or any Updated Title Commitment, and (ii) the Survey to review same and notify the Village of any objections ("Defects"). The Village shall have ten (10) days to respond to such objections and up to thirty (30) days to attempt to have the Defects removed from either the Updated Title Commitment and the Survey, or have, with the Purchaser's concurrence, the Title Company commit to insure against loss or damage that may be occasioned by such Defects (the "Cure Period") at the Village's cost. All such title exceptions as approved by the Purchaser shall be deemed the "Permitted Title Exceptions." The Cure Period may be extended by notice from the Village to Purchaser for a thirty (30) day period if the Village is diligently attempting to remove and/or delete such Defects. Village agrees to use commercially reasonable efforts to remove such Defects, provided that the Village shall not be required to make the payment of money to remove such Defects, exceeding \$200,000.00 in the aggregate, unless such Defects are the result of the action of the Village.

## 5. CONTINGENCY PERIODS AND DATES.

5.1 Concept Site Plan. The Concept Site Plan is attached hereto and made a part hereof as Exhibit B. Purchaser's renovation, construction and development of Parcel 1 shall conform in all material respects to the Concept Site Plan.

5.2 Plans and Specifications Contingency Date. Purchaser shall obtain and submit plans and specifications for improvements to Parcel 1 to the Village in a timely manner to allow the Village to issue by April 1, 2021 building permits to alter Parcel 1. Purchaser shall design, obtain and submit to the Village complete and final construction drawings, plans and specifications for Parcel 1 including exterior elevations and façade materials to ensure Parcel 1 is consistent with and complementary to architectural and aesthetic characteristics of other buildings within Parkway Bank Park. Any schematics, design drawings, construction drawings, or plans and specifications shall be referred to as and shall be considered "Plans and Specifications" for purposes of this Agreement.

5.3 Purchaser Price Funding Date Contingency. The Purchase Price Funding Date shall be on or before September 13, 2021. Notwithstanding anything in the Agreement to the contrary, if the Purchase Price Funding Date has not occurred on or before September 13, 2021 the Village shall have the right to terminate the Agreement on written notice to the Purchaser and the Title Company shall release and return the Special Warranty Deed and the Parking

Agreement to the Village from the Closing Escrow. Notwithstanding that the Village may have issued an occupancy permit or that Parcel 1 may otherwise be ready to be open for business, Parcel 1 may not be open for business until the Purchase Price Funding Date has occurred.

5.4 Commencement of Renovation and Construction of Parcel 1. Unless otherwise agreed to by the parties, Purchaser agrees it shall (i) begin demolition and renovation of the interior of the Building located on Parcel 1 by April 15, 2021 and (ii) diligently prosecute to completion the renovation by the September 13, 2021 Purchase Price Funding Date, subject to delays caused solely by the Village, provided, however, that all performance dates required of Purchaser in this Section 5.4 herein shall be extended by one day for each day that the Village fails to meet any segment or phase of its obligations under this Agreement as set forth in in a timely manner. Purchaser agrees that for a period of two (2) years following the Purchase Price Funding Date Purchaser shall own Parcel 1 (the "Initial Opening Period").

6. ZONING AND PERMITS. Purchaser shall, at its expense, properly and timely apply for and obtain any approvals including a Special Use Permit then deemed necessary or desirable by Purchaser and required by the Village for the renovation and construction of the interior and exterior of Parcel 1 from the Village so as to secure any approvals and Village building permits by April 1, 2021. The Village shall promptly issue all approvals and Village permits within its powers including without limitation building and occupancy certificates provided Purchaser has made proper and timely application and met the requirements for any approvals and permits under the Village Municipal Code and the Village Zoning Code. The Village shall approve and adopt any plat of re-subdivision related to Parcel 1 consistent with the division and use of the Subject Property as approved by the Village.

7 ALTERNATE BIDS. The Village shall publish a request for alternative bids as required pursuant to the South River Road TIF No. 4 Redevelopment Plan and Project and TIF Act to the extent required by law providing for alternative bids to be submitted to the Village within thirty (30) days of such publication.

8. VILLAGE WORK AND ARIA WORK LETTER. The Village and Purchaser agree that the Village Work set forth in Sections 8.1, 8.2, and 8.3 (the "Village Work") are required for and shall be part of the renovation and construction of Parcel 1. The Village Work will be set out and detailed in a work letter provided by Aria Group Architects, Inc. ("Aria Work Letter") and constructed by the Village pursuant to the Aria Work Letter, and the costs of constructing and completing the Village Work shall be paid by the Village.

8.1 Utilities. The Village shall deliver, separate and construct the Village Work relating to utilities pursuant to the Aria Work Letter and the Village shall provide Purchaser with a plan showing the location of utilities (the "Parcel 1 Utilities") provided. The Village shall cooperate with Purchaser to coordinate the work and to diligently prosecute to completion its work to bring utilities to the exterior wall of the Building on Parcel 1 to allow the Purchaser to carry forward with Purchaser's renovation, construction and development of Parcel 1's opening for business in a timely manner as provided for herein. Purchaser agrees to pay for all utility services rendered or furnished to Parcel 1 based on usage and where possible to be metered and charged directly to Purchaser.

8.2 Demising Wall. The Village shall be responsible for the costs and construction of the Village Work relating to the construction of a demising wall within the Building (the "Demising Wall") pursuant to the Aria Work Letter to create and separate Parcel 1 from the adjoining parcel. The Village shall provide Purchaser with a plan showing the location of the Demising Wall. The Village shall cooperate with Purchaser to coordinate the work and to diligently prosecute to completion its work to complete the Demising Wall to allow the Purchaser to carry forward with Purchaser's renovation, construction and development of Parcel 1's opening for business in a timely manner as provided for herein.

8.3 Village Work. All construction required of the Village pursuant to Sections 8.1, 8.2 or otherwise required under this Section 8.3 and pursuant to the Aria Work Letter shall be conducted in a good and workman-like manner, pursuant to required governmental laws, regulations, ordinances, permits and approvals, utilizing new materials and performed in substantial conformity with the Village plans and specifications for such Village Work. Except as provided for otherwise, the Village will use all commercially reasonable efforts to complete construction of all such Village Work. The Village shall keep Purchaser reasonably informed as to the progress of the Village Work required of the Village and the Village Work will be substantially completed by \_\_\_\_\_, 2021.

9. PARKING AGREEMENT. At Closing the Village and Purchaser shall execute and enter into the Parking Agreement in substantially the same form as attached hereto and made a part hereof as Exhibit D providing for the non-exclusive use of surface parking spaces and parking spaces within the parking garage located within and serving of the Parkway Bank Park which parking spaces shall be available to the general public including, but not limited to guests, patrons, invitees, and permittees of Parcel 1.

#### 10. REAL ESTATE TAXES.

10.1 Prc-Closing Taxes. The Village represents that Parcel 1 is currently exempt from real estate taxes and is subject to leasehold real estate taxes. The Village agrees to pay any general real estate taxes, special assessments and special taxes due or to become due for Parcel 1 up to the date of Closing.

10.2 Post-Closing Taxes. Purchaser shall be responsible to pay or cause to be paid by others when due any real estate taxes, leasehold taxes, sales taxes, parking taxes, or any other taxes levied or assessed against Parcel 1 related to Purchaser's ownership or leasing of Parcel 1 or Purchaser's use of the parking garage located within and serving of the Parkway Bank Park before such taxes become delinquent.

11. CERTIFICATE OF OCCUPANCY. The Village shall promptly issue a certificate of occupancy for Parcel 1 provided it is substantially completed and ready for its intended use, subject to all applicable Village requirements and the provisions of this Agreement.

12. GENERAL DEVELOPMENT ISSUES. The general development provisions including, but not limited to, landscaping requirements, signage requirements, construction fencing, common access requirements and screening requirements shall be governed by the applicable requirements under the Village Municipal Code, the Village Zoning Code, and any other applicable Village ordinances, and shall be consistent with the Concept Site Plan and the Plans and Specifications as approved by the Village.

13. ALTERNATE USE. Prior to the Purchase Price Funding Date Purchaser shall have the right to propose an alternative use for Parcel 1 and the Village may, at its sole option and in its sole discretion, approve an alternate use of Parcel 1. The Village and Purchaser agree the Village's approval of an alternate use of Parcel 1 is required as the use of Parcel 1 is fundamental to this Agreement and may require the Village and Purchaser to amend certain terms and provisions of this Agreement or enter into a new agreement providing new terms and provisions for development of Parcel 1.

14. BROKER'S COMMISSION. Purchaser and the Village acknowledge that no person or entity has acted as broker for or on behalf of the Purchaser and the Village and agree that should any broker make a claim for a commission based upon the actions of the Purchaser and the Village, then the party upon whose actions such claim is based shall indemnify, defend and hold the other harmless from any such claim.

15. NOTICES. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefor; or (ii) e-mail; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their respective addresses set forth below, and the same shall be effective (a) upon receipt of e-mail; (b) one (1) business day after depositing with such overnight courier service; or (c) two (2) business days after deposit in the mails, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance herewith. All notices by e-mail shall be subsequently confirmed by deposit with U.S. mail.

As to Seller: Village of Rosemont  
Attn: Village Clerk  
9501 West Devon  
Rosemont, Illinois 60018  
E-Mail: mayorsoffice@villageofrosemont.org

With Copy to: William E. Ryan  
Ryan and Ryan  
9501 West Devon, Suite 300  
Rosemont, Illinois 60018  
E-Mail: wryan@ryanryanlaw.com

As to Purchaser: Park Place Holdings, LLC  
c/o Michael Matuschka

5500 Park Place  
Rosemont, Illinois 60018

With Copy to: Harvey L. Teichman  
Law Offices of Harvey L. Teichman  
2500 W. Higgins Road  
Suite 420  
Hoffman Estates, IL 60169  
E-Mail: harvey@teichlegal.com

Any notice in accordance herewith shall be deemed received when delivery is received or refused, as the case may be. Additionally, notices may be given by telephone facsimile transmission or email, provided that an original copy of said transmission shall be delivered to the addressee via overnight delivery service for delivery on the business day following such transmission. Telephone facsimiles or emails shall be deemed delivered on the date of such transmission.

16. SURVIVAL; MEMORANDUM OF AGREEMENT.

16.1 Survival. Except to the extent otherwise performed by a Party, all the continuing terms set forth in this Agreement shall survive Closing and shall remain in full force and effect thereafter.

16.2 Memorandum of Agreement. Neither party shall record this Agreement, but each party agrees to execute and to deliver to the other party when this Agreement is executed and delivered, if requested, multiple copies of a Memorandum of this Agreement in a form mutually acceptable to the parties setting forth relevant terms of this Agreement. Either party, at its sole expense, may record the Memorandum in the Offices of the Recorder of Deeds of Cook County, Illinois.

17. PARTIES BOUND. This Agreement shall be binding upon and inure to the benefit of the Village and the Purchaser and their respective successors and assigns.

18. GOVERNING LAW. The laws of the State of Illinois shall govern the validity, construction, enforcement and interpretation of this Agreement.

19. NON-BUSINESS DAYS. If the Closing Date or the date for delivery of a notice or performance of some other obligation of the Village or the Purchaser falls on a Saturday, Sunday or legal holiday in the State of Illinois, then the date for Closing or such notice or performance shall be postponed until the next business day.

20. DEFAULTS; REMEDIES.

(a) This Agreement shall be enforceable in the Circuit Court of Cook County, Illinois by either the Village, Purchaser, or by any successor or successors in title or interest or by the assigns of the Parties for the purposes of any suit, action or other proceeding arising out of or relating to any default or breach of this Agreement and any relief or remedy sought by either of the Parties. Except as provided in this Agreement, and subject to force majeure, failure or delay beyond stated periods for performance by either party to perform any material term or provision of this Agreement shall constitute a breach of such party's obligations under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default specifying the default complained of by the injured party. Purchaser shall have fifteen (15) days after receiving written notice from the Village to cure any monetary default for its failure or refusal to pay any monies that become due and payable under this Agreement, including but not limited to paying the Purchase Price on the Purchase Price Funding Date. Except as required to protect against further damages, and except as to monetary defaults as otherwise expressly provided in this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute an Event of Default under this Agreement. If: (i) such default does not relate to the lack of funds or the obligation of a party to pay money to the other; (ii) such default cannot reasonably be cured within such thirty (30) day period; and (iii) the defaulting party shall commence to cure the same within such thirty (30) day period and diligently and in good faith continue to prosecute the cure of such default in a commercially reasonable manner to its conclusion, then said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default. If such default is cured within such extended period, the default shall not be deemed to constitute an Event of Default under this Agreement. However, a default not cured as provided above shall constitute an Event of Default under this Agreement.

(b) Prior to Closing and upon an Event of Default by the Village, Purchaser's remedies shall be limited to (i) bringing an action for specific performance, or (ii) terminating this Agreement. Purchaser shall have no monetary remedy and the parties shall have no further obligations to each other. Prior to Closing and upon an Event of Default by the Purchaser, Village's remedies shall include (i) bringing an action for specific performance, or (ii) terminating this Agreement and bringing an action for damages caused by an Event of Default by Purchaser.

(c) After the Purchase Price Funding Date and upon an Event of Default by Purchaser the Village may institute legal action to cure, correct or remedy an Event of Default, to recover damages for any default or to obtain any other remedy consistent with the purposes of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance.

(d) After the Purchase Price Funding Date and upon an Event of Default by the Village Purchaser may institute legal action to cure, correct or remedy an Event of Default, to recover damages for any default or to obtain any other remedy consistent with the purposes of



this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance.

(e) In the event either party shall institute legal action because of breach of any agreement or obligation contained in this Agreement and an Event of Default shall be established, the non-failing party shall be entitled to recover all damages, costs and expenses, including reasonable attorneys' fees incurred therefor.

21. PERMITTED DELAYS; FORCE MAJEURE. None of the parties shall be deemed to be in default hereunder in the performance of any obligation where delays or defaults in such performance are due to: war; insurrection; strikes; riots; floods; earthquakes; fires, casualties or acts of God; the failure of the other party to this Agreement to keep and perform the covenants and obligations on its part to be kept and performed; or any other cause similar to the foregoing that is not within a party's control excluding lack of funds, the COVID-19 pandemic or other pandemic. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than ten (10) days after the commencement of such cause. In order to claim an event of force majeure the claiming party must send written notice to the other party within ten (10) days of the claimed force majeure event. Notwithstanding the foregoing, Purchaser may not claim force majeure to extend the Purchase Price Funding Date and no event of force majeure shall extend the Purchase Price Funding Date, provided, however the September 13, 2021 Purchase Price Funding Date shall be extended by one day for each day that the March 15, 2021 Closing Date is delayed or extended.

22. INTEGRATION AND AMENDMENT. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between the parties relative to the subject matter hereof and thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as are herein and therein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless reduced to writing and duly executed by them. All exhibits to this Agreement are expressly incorporated herein by this reference thereto.

23. SEVERABILITY. In the event any phrase, article, section or portion of this Agreement is found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such finding of invalidity, illegality or unenforceability as to that portion shall not affect the validity, legality or enforceability of the remaining portions of this Agreement.

24. CAPTIONS AND PRONOUNS. The captions and headings of the various articles and sections of this Agreement are for convenience only and are not to be construed as confining, defining, expanding or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

25. NO DISCRIMINATION. Purchaser agrees to comply with all applicable laws prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, national origin or sexual orientation. Purchaser shall require that applicants for employment with Purchaser be treated during the application process and during employment without regard to race, creed, color, religion, sex, national origin, disability or sexual orientation in accordance with applicable laws.

26. NO JOINT VENTURE. Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership or joint venture between or among such parties.

27. LIMITED LIABILITY. The parties hereto specifically agree, that neither the Village of Rosemont nor Purchaser shall have any liability for any breach of any of the terms of this Agreement in the form of consequential or punitive damages.

28. AUTHORIZED EXECUTION. The parties represent and warrant that they have been duly authorized to execute this Agreement.

29. ASSIGNMENT BY PURCHASER.

29.1 Assignment Prior to Closing and During Two Year Ownership Period. For a period of two (2) years following the Purchase Price Funding Date, Purchaser may not sell, convey, assign, or otherwise transfer or dispose ("Transfer") any interest, leasehold interest or other interest in Parcel 1, or any interest in the Parking Agreement without the prior written consent of the Village, which consent shall may be unreasonably withheld, conditioned or delayed.

29.2 Assignment Following Two Year Ownership Period. Following the two (2) year ownership period set forth in Section 29.1 above and except as otherwise provided in Section 5.4 of this Agreement, and provided a Transfer includes the transfer of all of Parcel 1 and all rights under the Parking Agreement, Purchaser may Transfer all of Parcel 1 and all rights under the Parking Agreement without the prior written consent of the Village.

30. APPLICABLE LAW AND CONSTRUCTION. The laws of the State of Illinois shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the Village and the Purchaser and the Agreement, together with all of the terms and provisions of this Agreement, shall not be deemed to have been prepared by either the Village or the Purchaser, but both equally.

31. SUBMISSION TO JURISDICTION. Each party to this Agreement hereby submits to the jurisdiction of the State of Illinois, Cook County and the Circuit Court of Cook County, Illinois for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by the Circuit Court of Cook County, Illinois.

32. EXECUTION OF WRITTEN INSTRUMENTS. The Village and Purchaser agree to make, execute and deliver such written instruments and agreements and as shall from time to time be reasonably required to carry out the terms, provisions and intent of this Agreement.

33. ATTORNEY'S FEES. If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, proceeding, trial or appeal, shall be entitled to its reasonable attorneys' fees, costs and expenses to be paid by the losing party as fixed by the court.

34. NO WAIVER. Any requirement or conditions contained in this Agreement may only be waived in writing.

35. CERTIFICATION OF ELIGIBILITY.

(a) Purchaser certifies that it is not barred from bidding on contracts offered for bid by any unit of state or local government in the State of Illinois as a result of having been convicted of a violation of either Section 33E-3 [Bid Rigging] or Section 33E-4 [Bid Rotation] of the Illinois Criminal Code.

(b) Purchaser certifies that it is not delinquent in the payment of any tax administered by the Department of Revenue unless Purchaser is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in 65 ILCS 5/11-42.1-1.

36. INDEMNITY.

(a) Prior to and during Purchaser's renovation and construction of Parcel 1, Purchaser shall indemnify, defend and hold the Village harmless from and against any and all objections, liabilities, actions, claims, damages, penalties, including reasonable attorneys' fees in a reasonable amount, in connection with loss of life, personal injury and/or damage to property or otherwise, arising from or out of any occurrence, in or upon Parcel 1 or any part thereof, or occasioned wholly or in part by any act or omission of Purchaser, its agents, contractors, subcontractors, employees, tenants, guests, patrons, invitees, and permittees of Parcel 1 thereon ("Purchaser's Group") or in connection therewith, except loss or damage resulting from the negligence or misconduct of the Village, its agents, contractors or employees.

(b) Prior to and during the Village Work on of Parcel 1, the Village shall indemnify, defend and hold the Purchaser harmless from and against any and all objections, liabilities, actions, claims, damages, penalties, including reasonable attorneys' fees in a reasonable amount, in connection with loss of life, personal injury and/or damage to property or otherwise, arising from or out of any occurrence, in or upon Parcel 1 or any part thereof, or occasioned wholly or in part by any act or omission of the Village, its agents, contractors, subcontractors and employees thereon or in connection therewith, except loss or damage resulting from the negligence or misconduct of the Purchaser's Group.

37. COMMON AREA MAINTENANCE CHARGES; PROMOTIONAL FEE.

(a) Purchaser agrees to pay to the Village as invoiced from time to time common area maintenance ("CAM") charges for all costs maintenance of the common areas, including without limitation the surface parking spaces and the parking garage of the Parkway Bank Park based and calculated on the actual As-built Square Footage of the Building located on Parcel 1 and calculated at Two Dollars (\$2.00) per square foot of Building which shall automatically increase three percent (3%) per January of each year following the Closing. This provision shall survive the Closing.

(b) Purchaser or its tenant, as the case may be, agrees to pay to the Village as invoiced from time to time a promotional marketing fee ("Promo Fee") for the marketing of the Parkway Bank Park based and calculated on the actual As-built Square Footage of Building located on Parcel 1 and calculated at One Dollar (\$1.00) per square foot of Building which shall automatically increase three percent (3%) per January of each year following the Closing. This provision shall survive the Closing.

38. DESIGN, RENOVATION, CONSTRUCTION; DEVELOPMENT COSTS.

Except as may otherwise be provided in and by this Agreement, the costs of the renovation, construction and development of Parcel 1 shall be borne and paid for by the Purchaser provided the Village shall reimburse or contribute fifty percent (50%) of the design fees of Aria Group Architects, Inc. for the approximately 20,425 square feet of Building on the Subject Property ("Aria's Architectural Fees") provided that in all events the Village reimbursement or contribution for Aria's Architectural Fees shall not exceed \$122,000.00 in the aggregate as related to the entire approximately 20,425 square feet of Building on the Subject Property. Notwithstanding the foregoing, Purchaser may additionally request that the Village reimburse Purchaser or contribute to the cost of the exterior elevations and façade materials to ensure Parcel 1 is consistent with and complementary to architectural and aesthetic characteristics of other buildings within Parkway Bank.

39. TIME OF THE ESSENCE. The parties hereto expressly agree that time is of the essence with respect to this Agreement, the Closing Date and the Purchase Price Funding Date.

40. EXCLUSIVE USE. So long as Purchaser or Purchaser's tenant is open and operating a restaurant and bar at the Property whose primary use is the sale of on or off premises pizza, the Village, as Landlord and owner of other venues within Parkway Bank Park, agrees not lease or sell property owned by the Village within Parkway Bank Park to any person or entity whose primary use is the sale of on or off premises pizza. "Primary Use" as used in this Section 40 shall mean uses where on or off premises pizza makes up to eighty percent (80%) of the menu; provided, however, this exclusive use excludes the sale of pizza by any existing tenant operating within Parkway Bank Park.

41. ENTIRE AGREEMENT. This Agreement entered into by Purchaser and Village embody the entire Agreement of the parties in respect of the transaction herein contemplated, superseding all prior agreements whether oral or written. Any amendments hereto shall be in

writing and executed by the parties hereto.

42. MULTIPLE COUNTERPARTS. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one Agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

**PURCHASER:**

PARK PLACE HOLDINGS, LLC,  
an Illinois limited liability company

By: 

Printed Name: Mike MATUSCHKA

Its: MANAGER

**VILLAGE:**

VILLAGE OF ROSEMONT, ILLINOIS, an Illinois  
municipal corporation

By: 

Bradley A. Stephens, Its President

**ATTEST:**

By: 

Debbie Dreihobl, Village Clerk

### LIST OF EXHIBITS

- Exhibit A - Legal Description of Parcel 1 [To be provided by Village Attorney]
- Exhibit B - Concept Site Plan [To be provided by Purchaser's Attorney]
- Exhibit C - Village/Aria Work Letter [To be provided by Village Attorney]
- Exhibit D - Parking Agreement [To be provided by Village Attorney]
- Exhibit E - Personal Guaranty [To be provided by Village Attorney]



**PARKING AGREEMENT**

**between**

**The Village of Rosemont,  
an Illinois municipal corporation**

**and**

**PARK PLACE HOLDINGS LLC,  
an Illinois limited liability company**

**April <sup>20<sup>th</sup></sup>   , 2021**

## PARKING AGREEMENT

This Parking Agreement (the "Parking Agreement") is made as of the 20<sup>th</sup> day of April, 2021 by and between the VILLAGE OF ROSEMONT, an Illinois home rule municipal corporation, (the "Village") and PARK PLACE HOLDINGS LLC, an Illinois limited liability company ("PPH").

### RECITALS

A. The Village and PPH entered into a Real Estate Sale and Purchase Sale Agreement and Development Agreement dated March 10, 2021 ("Purchase Contract") whereby the Village agreed to sell and PPH agreed to purchase and develop certain real estate ("Parcel 1") located in the Village of Rosemont, Illinois.

B. The Purchase Contract provides that the Village and PPH shall enter into this Parking Agreement.

C. The Village is the holder of legal title to a certain parcel of land which is improved with a municipally-owned parking structure commonly known as the Entertainment District Parking Structure and having the common address of 9550 Williams Street, Rosemont, IL and as depicted on Exhibit A attached hereto and made a part hereof (the "Parking Garage") and the Village owns, controls and operates certain surface parking spaces and area (the "Surface Parking") within the municipally-owned Parkway Bank Park at Rosemont. Together the spaces within the Parking Garage and the Surface Parking are hereinafter sometimes collectively referred to as the "Parking Spaces".

D. PPH intends lease for commercial and retail use a certain parcel of land legally described on Exhibit B attached hereto and made a part hereof (the "PPH Site") improved with a building (the "PPH Building").

E. It is the intention of the Village and PPH to enter into this Parking Agreement to provide PPH, its tenant and its customers, employees, guests, patrons, licenses and invitees of the PPH Site (all of whom are collectively referred to herein as "Authorized Users") with the right to the non-exclusive use of the Parking Spaces (including valet and handicap spaces) (1) free of charge with validation subject to the terms and provisions of this Parking Agreement or (2) on such other similar terms as the majority of other tenants and users of Parkway Bank Park at Rosemont including without limitation the Village having the right to charge a reasonable market parking fee to PPH and Authorized Users.

F. This Parking Agreement provides for the respective parties' responsibilities, liabilities and indemnities with regard to the Parking Spaces and is intended by the parties to provide to PPH the non-exclusive right to the use the Parking Spaces.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village and PPH agree as follows:

1. Recitals. The foregoing recitals are material to this Parking Agreement and are incorporated herein as though fully set forth in this Section 1 and any terms used in this Parking Agreement which are defined in the Recitals shall have the same definition for purposes of this Parking Agreement.

2. Parking Agreement Granted. The Village grants to PPH and its successors and assigns, this Parking Agreement providing for the non-exclusive right to use the Parking Spaces in the Project Area for the parking of motor vehicles of PPH and Authorized Users. The Village agrees that the Parking Spaces are sufficient to meet the Village of Rosemont's parking requirements for PPH and the PPH Site.

3. Use of the Parking Spaces.

A. PPH and Authorized Users shall have the non-exclusive right to use the Parking Spaces. The Village shall determine, in the reasonable exercise of its discretion, the method, if necessary, to be used to mark or designate the Parking Spaces for use by PPH and Authorized Users.

B. PPH shall not have the right to operate its own valet service to serve the PPH Site unless the Village ceases to operate its own valet service or allow a third-party valet service to serve the Parkway Bank Park at Rosemont.

C. PPH shall have the right to use the Parking Spaces (1) free of charge with validation subject to the terms and provisions of this Parking Agreement or (2) on such other similar terms as the majority of other tenants and users of Parkway Bank Park at Rosemont including without limitation the Village having the right to charge a reasonable market parking fee to PPH and Authorized Users.

4. Operation of the Parking Spaces.

A. The Parking Spaces shall be accessible for pedestrian and vehicular ingress and egress by PPH and Authorized Users on a daily basis, provided that the Village upon three days written notice to PPH (except in case of emergency in which case notice shall be given as soon as possible) may limit the accessibility of the Parking Spaces where it is necessary to limit access in order to perform repair or maintenance work on the Parking Spaces.

B. The Village shall have the sole responsibility for operating the Parking spaces. The Parking Spaces shall be operated by the Village in accordance with a standard which is the equivalent or greater than the highest standards which the Village uses to operate other public parking garages, facilities and spaces owned by and operated by or on behalf of the Village.

C. The Village shall have the responsibility for providing PPH's tenant with a single parking validation unit and shall be responsible for maintenance, repair and replacement of such parking validation unit. In the event PPH or its tenant request additional parking

validation equipment, PPH and/or its tenant shall be responsible for the cost, maintenance repair and replacement of such additional parking validation equipment.

D. PPH shall use the Parking Spaces only for the purpose of providing parking spaces for Authorized Users. PPH and its Authorized Users shall not (i) injure, overload, deface or otherwise harm the Parking Spaces or commit any nuisance thereon or use the Parking Spaces in a manner which tends to create a nuisance, (ii) make any use of the Parking Spaces which is improper, offensive or contrary to any law, ordinance or regulation of any governmental authority or this Parking Agreement (iii) use any advertising in the Parking Spaces that is not specifically authorized by the Village (iv) load or unload any truck or any delivery vehicle in any area of the Parking Spaces and (v) use the Parking Spaces for an off-site airport parking enterprise. The Village hereby grants PPH and its Authorized Users the non-exclusive right to use all access drives, walkways, elevators and other areas of the Parking Garage reasonably necessary or convenient to access the Parking Spaces, the PPH Building and the PPH Site.

5. Repair and Maintenance of the Parking Garage and Parking Spaces; CAM and Promotional Fee.

A. The Village shall be responsible for repairing and maintaining the Parking Garage and the Parking Spaces. The Village shall maintain (or cause to be maintained, operated and repaired) the Parking Garage and the Parking Spaces in an economical and efficient manner according to a commercially reasonable standard for comparable municipally owned and operated parking garages, facilities and parking spaces located in Rosemont, Illinois including but not limited to repairing and replacing paving and keeping the Parking Spaces in a neat, clean, orderly and slightly condition.

B. The Village shall keep the Parking Garage suitably lighted during all non-daylight hours.

C. The Village has instituted a common area maintenance charge for costs associated with the repair and maintenance of the Parkway Bank Park at Rosemont, the Parking Garage and the Parking Spaces (the "Park CAM"). PPH's Park CAM charge shall be \$2.00 per square foot calculated on the approximately 13,400 square feet of the PPH Building subject to Aria Group Architects, Inc.'s final determination of the actual as-built square footage of the PPH Building on Parcel 1 ("As-built Square Footage") and shall commence as of the effective date hereof. PPH's Park CAM charge shall increase three percent (3%) per year thereafter as of January 1. PPH's Park CAM shall be invoiced from time to time by the Village and paid within thirty (30) days of PPH's or its tenant's receipt of the invoice.

D. The Village has instituted a Promotional Fee for costs associated with promoting the Parkway Bank Park at Rosemont and businesses within the Parkway Bank Park at Rosemont (the "Promo Fee"). PPH's Promo Fee shall be \$1.00 per square foot calculated on the approximately 13,400 square feet of the PPH Building subject to Aria Group Architects, Inc.'s final determination of the actual as-built square footage of the PPH Building on Parcel 1 ("As-built Square Footage") and shall commence as of the effective date hereof. on the 6,000 square feet of the PPH Building and shall commence as of the effective date hereof. PPH's Promo Fee charge shall increase three percent (3%) per year thereafter as of January 1. PPH's Promo Fee

shall be invoiced from time to time by the Village and paid within thirty (30) days of PPH's or its Tenant's receipt of the invoice.

6. Term. Subject to the terms of this Parking Agreement, PPH and its Authorized Users shall have the right to use the Parking Spaces for an initial term of ten (10) years following the effective date hereof (the "Initial Term") and three (3) consecutive options to extend the Initial Term for a period of sixty (60) months each on such other similar terms as the majority of other tenants and users of Parkway Bank Park at Rosemont including without limitation the Village having the right to charge a reasonable market parking fee to PPH and Authorized Users.

7. Rules and Regulations. The Village shall have the right to impose rules and regulations relating to the use and operation of the Parking Spaces provided that such rules and regulations are not inconsistent with the provisions of this Parking Agreement, and are enforced on a uniform basis for similarly situated users of the Parking Spaces.

8. Cooperation. PPH and the Village shall cooperate with one another and other users of the Parking Spaces as may be required to maintain and enhance the orderly and efficient operation of the Parking Spaces. Each of the parties acknowledges the working nature of this Parking Agreement and each party agrees to cooperate and consult with the other party in an effort to speedily and amicably resolve any unforeseen difficulties or problems not covered by this Parking Agreement.

9. Indemnification. PPH and its successors and assigns shall indemnify and hold harmless the Village, its agents, officers, contractors, employees, its Authorized Users and successors from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys fees) for injury to persons or death or property damage arising out of or resulting from PPH's or an Authorized User's use of the Parking Spaces except for such liability, loss, damage, costs and expenses arising from the negligent or intentional acts of the Village or its agents.

10. Notices, Demands and Other Instruments. All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this Parking Agreement shall be in writing and shall be deemed to have been properly given if personally delivered, sent, postage prepaid, by first class registered or certified United States mail, return receipt requested or by prepaid overnight courier, addressed to each party hereto at the following address:

Village: Village of Rosemont  
Attention: Village Clerk  
9501 West Devon  
Rosemont, IL 60018

With a copy to: Ryan and Ryan  
Attention: William Ryan  
9501 West Devon, Suite 300  
Rosemont, IL 60018

PPH:

Park Place Holdings, LLC  
c/o/ Michael Matushcka  
5500 Park Place  
Rosemont, IL 60018

With Copy to:

Harvey L. Teichman  
Law Offices of Harvey L. Teichman  
2500 W. Higgins Road Suite 420  
Hoffman Estates, IL 60169  
E-Mail: [harvey@teichlegal.com](mailto:harvey@teichlegal.com)

or at such other address(es) in the United States as Village or PPH may from time to time designate by like notice. Any such notice, demand, request or other communication shall be considered received on the date of personal delivery or on the date of actual receipt or five (5) business days after deposit in the United States mail as provided above or the next business day after deposit with an overnight courier. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, request or other communication.

11. Certifications by Village. The Village shall upon request of PPH certify whether this Parking Agreement is in full force and effect, whether this Parking Agreement is modified or unmodified, and whether or not there exists any default in the Parking Agreement or provision contained in the Parking Agreement. It is intended by the parties hereto that such statements may be relied upon by the requesting party or the party to whom the Village is asked by PPH to make the certification.

12. Attorneys Fees and Costs. In the event of any action at law or inequity in relation to this Parking Agreement, the prevailing party shall be entitled to recover a reasonable sum for the attorneys' fees it incurred as a result of this action.

13. Default. If either party (the "Defaulting Party") fails to perform any of the terms, covenants, agreements or conditions on its part to be performed under this Parking Agreement and such failure continues uncorrected for thirty (30) days, after notice from the other party, (the "Non-Defaulting Party"), unless otherwise specified herein, the Non-Defaulting Party may invoke any right or remedy allowed at law or in equity or by statute or otherwise. If any default by a Defaulting Party cannot reasonably be remedied within thirty (30) days after written notice of the default from the Non-Defaulting Party and if the Defaulting Party has commenced to remedy such default and diligently pursues such remedy thereafter, then the Defaulting Party shall have such additional time as is reasonably necessary to remedy the default before this Parking Agreement can be terminated or other remedies enforced.

14. Assignment and Transfer of Parking Agreement. PPH may assign and transfer rights of this Parking Agreement. The terms and provisions of the Purchase Contract providing for an assignment or transfer of the Purchase Contract by PPH are material and shall

be applicable to an assignment or transfer of this Parking Agreement by PPH and are incorporated herein as though fully set forth in this Section 14.

15. Provisions of Law Deemed Included. Each and every provision of state and federal law required to be included in municipal agreements shall be deemed to be included herein, and this Parking Agreement shall be read, construed and enforced as though the same were included herein. If, through mistake, inadvertence or otherwise, any such provision or clause is not included herein or is incorrectly included herein, then, upon application of either party hereto, this Parking Agreement shall forthwith be amended to include the same or to correct the inclusions of the same and shall be deemed to have been so amended from the effective date hereof.

16. Invalid Provisions. If any provision of this Parking Agreement is held invalid, the remainder of this Parking Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and if the remainder of this Parking Agreement can be reasonably performed without material hardship.

17. Applicable Law and Construction. The laws of the State of Illinois shall govern the validity, performance and enforcement of this Parking Agreement. This Parking Agreement shall become effective only upon execution and delivery thereof by the Village and PPH. This Parking Agreement has been negotiated by the Village and PPH and the Parking Agreement, together with all of the terms and provisions hereof, shall not be deemed to have been prepared by either the Village or PPH, but by both equally.

18. Submission to Jurisdiction. Each party to this Parking Agreement hereby submits to the jurisdiction of the State of Illinois, Cook County and the courts thereof for the purposes of any suit, action or other proceeding arising out of or relating to this Parking Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts. If PPH or any permitted assignee hereof shall be a foreign corporation or shall have no agent, member or partner available for service of process in the State of Illinois, PPH hereby designates the Secretary of State, State of Illinois, its agent for the service of process in any court action between it and the Village arising out of or related to this Parking Agreement and such service shall be made as provided by the laws of the State of Illinois for service upon a non-resident provided, however, that a copy of such service shall be sent by prepaid, registered mail, return receipt requested, at the time of service to PPH at the address for notices specified in Section 12 of this Parking Agreement.

19. Entire Agreement. This Parking Agreement contains the entire agreement of the parties hereto respecting the subject matters of this Parking Agreement and supersedes all prior understandings, contracts or agreements.

20. Captions. The Article headings and captions of this Parking Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Parking Agreement or in any way affect this Parking Agreement.

21. Successors and Assigns. The terms herein contained in this Parking Agreement shall bind and inure to the benefit of the Village, its successors and assigns, and PPH, its authorized successors and assigns.

22. Authority. Each party represents that the execution of this Parking Agreement by the signatories set forth below and the performance of the terms of the Parking Agreement have been duly authorized by their respective governing authority.

23. Real Estate, Use or Leasehold Taxes. The parties contemplate that the Parking Garage is exempt from real estate taxes, use or leasehold taxes under Illinois law. In the event that real estate taxes, use or leasehold taxes are levied against the Parking Garage as a result of PPH's use of the Parking Garage, as a result of this Parking Agreement, or for any other reason, PPH shall be liable for payment of those taxes to the extent of its right to use the Parking Garage. PPH shall be liable regardless of whether the Village or PPH is assessed such real estate taxes, use or leasehold taxes.

24. Required Insurance Coverages. PPH shall secure or cause others to secure and keep in full force and effect during the entire Initial Term of this Parking Agreement or any Option Period such insurance against any risk and peril for PPH, its tenant, invitees, employees, its Authorized Users and customers including but not limited to PPH's employee's liability, garage liability and garage legal liability related to PPH's use of the Parking Spaces and general liability insurance for any occurrence on or about the Parking Garage in limits of not less than \$2,000,000.00 combined single limit per occurrence for bodily injury and property damage. Notwithstanding the foregoing to the contrary, the Village acknowledges that PPH shall be permitted to utilize its umbrella coverage to satisfy the coverage amounts herein as it relates to PPH, its successors and assigns, its tenant and their Authorized Users use of the Parking Spaces.

25. Recording of Memorandum. Upon execution hereof, the parties hereto may enter into a Memorandum of Parking Agreement in recordable form, which Memorandum may be recorded by either party in the recorder's office, provided however, that no economic terms shall be described in the Memorandum.

26. Non-Liability of Village Officials and Employees: No present or future official, employee or agent of the Village shall have any personal liability, directly or indirectly, under or in connection with this Parking Agreement or any agreement made or entered into under or in connection with the provisions of this Parking Agreement, and PPH and its successors and assigns shall look solely to the Village for the payment of any claim or for any performance, and PPH hereby waives any and all such personal liability. The provisions of this Section 28 shall survive the termination of this Parking Agreement.




27. Multiple Counterparts. This Parking Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one agreement, but in making proof of this Parking Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]

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

**VILLAGE OF ROSEMONT**


By:   
Name: Bradley A. Stephens  
Its: President

Attest:

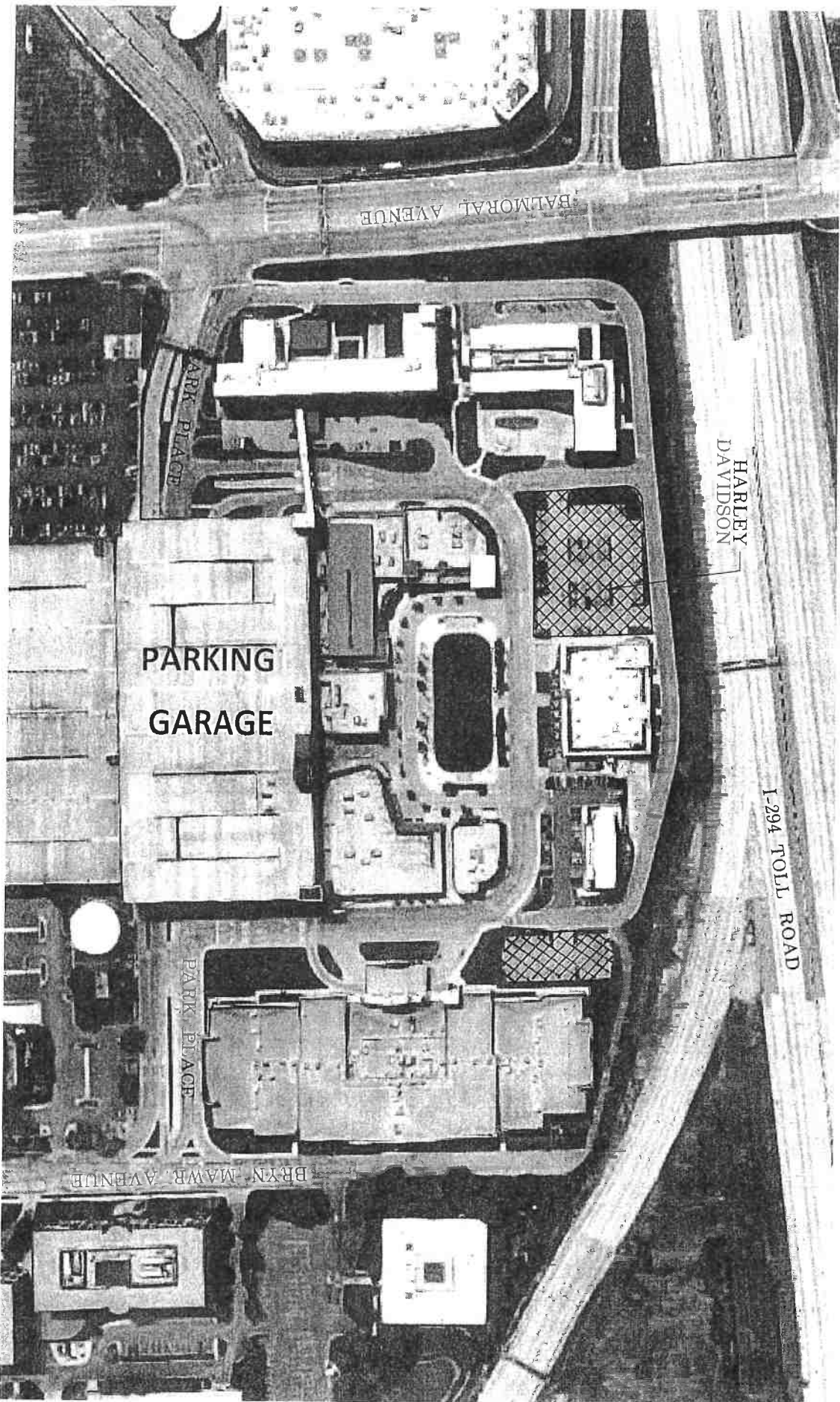
By:   
Name: Debbie Drehobl  
Its: Village Clerk

PPH:

**PPH PARK PLACE LLC,**  
an Illinois limited liability company

By:   
Name: MIKE MARUSCHKA  
Its: Manager

SECRET JMWAVE  
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***EXHIBIT B***

LOT 2 IN ROSEMONT ENTERTAINMENT DISTRICT THIRD RESUBDIVISION, BEING A RESUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 2, 2021 AS DOCUMENT NUMBER 2106147042.

## REAL ESTATE PURCHASE AND SALE OPTION AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE OPTION AGREEMENT (the "**Option Agreement**") is made and entered into and effective this 22 day of February, 2021 (the "**Effective Date**") by and between the VILLAGE OF ROSEMONT, an Illinois home rule municipal corporation (the "**Village**"), and BRE PARK PLACE 2, LLC, an Illinois limited liability company ("**BRE**").

### RECITALS

A. The Village is the record owner of certain property having the common address of 5500 Park Place, Rosemont, Illinois improved with an approximately 20,425 square foot building (hereinafter referred to as the "**Building**") located in Rosemont, Cook County, Illinois (the "**Subject Property**").

B. The Village proposes to subdivide the Subject Property into two separate parcels and the Village desires to enter into this Option Agreement with BRE granting BRE an option to purchase from the Village Lot 1 of the subdivided parcels that will consist, in part, of approximately 7,025 square feet of the Building ("**Lot 1**"). The proposed and anticipated legal description of Lot 1 is attached hereto and made a part hereof as **Exhibit A**. The actual square footage of the Building to be located and the total square footage of part of Lot 1 shall be subject to Aria Group Architects, Inc.'s ("**Aria**") final determination.

C. The Village and BRE desire to enter into this Option Agreement to facilitate the sale and purchase of Lot 1 as conveniently and expeditiously as possible subject to the terms and provisions of this Option Agreement.

NOW THEREFORE, in consideration of the mutual agreements herein and in this Option Agreement contained, the Village and BRE do hereby agree to the covenants, conditions, limitations and agreements herein contained and agree as follows:

#### 1. INCORPORATION OF RECITALS.

The representations set forth in the foregoing recitals are material to this Option Agreement and are hereby incorporated into and made a part of this Option Agreement as though they were fully set forth in this Section 1.

#### 2. GRANT OF RIGHT AND OPTION; OPTION AGREEMENT PAYMENT.

The Village hereby grants to BRE the right and option to purchase Lot 1 at a purchase price of to be allocated based and calculated at ONE HUNDRED SIXTY-ONE and 57/100 DOLLARS (\$161.57) per square foot or of as-built square footage of Building area on Lot 1, plus and minus prorations (the "**Purchase Price**") as determined by Aria plus and minus prorations, for a period from the Effective Date to and including April 1, 2021 upon the payment of TEN THOUSAND DOLLARS (\$10,000.00) within four (4) business days of the Effective Date by BRE to the Village.

3. EXERCISE OF OPTION.

To exercise its right and option to purchase Lot 1 at the Purchase Price BRE must deliver a signed Real Estate Sale and Purchase Agreement and Development Agreement attached hereto and made a part hereof in substantial form as Exhibit B (the “**Purchase Contract**”) to the Village on or before April 1, 2021.

4. TERMS OF PURCHASE.

The terms of the purchase and sale of Lot 1 shall be on terms and conditions to be contained in the Purchase Contract to be negotiated and entered into by the Village and BRE. The Purchase Contract shall provide for, *inter alia*, (i) the purchase price per this Option Agreement, (ii) a closing date on or before May 3, 2021, (iii) conveyance by the Village of Lot 1 by Special Warranty Deed, free and clear of all monetary liens and encumbrances, leases or other occupancy rights or agreements, (iv) at closing the Village shall deliver an owner’s title insurance policy and a current ALTA survey of the Subject Property, and (iv) such other terms and conditions negotiated and mutually acceptable to the parties.

5. NOTICES.

All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by email in PDF format, with written confirmation deposited within two (2) business days by overnight or first class mail, in which case notice shall be deemed delivered when such email notice is sent, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by email or personal delivery and delivered after 5:00 p.m. Central Time shall be deemed received on the next business day. A party’s address may be changed by written notice to the other party pursuant to the delivery methods set forth herein. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to Developer shall be deemed given by Developer and notices given by counsel to the Village shall be deemed given by the Village.

As to Village: Village of Rosemont  
Attn: Village Clerk  
9501 West Devon  
Rosemont, Illinois 60018  
Email: [MayorsOffice@VillageofRosemont.org](mailto:MayorsOffice@VillageofRosemont.org)

With Copy to: William E. Ryan  
Ryan and Ryan  
9501 West Devon, Suite 300  
Rosemont, Illinois 60018  
Email: [wryan@ryanryanlaw.com](mailto:wryan@ryanryanlaw.com)

As to Purchaser: BRE Park Place 2, LLC  
222 Northfield Rd., Suite 104  
Northfield, IL 60093

With Copy to: Marc Joseph, Esq  
Levenfeld Pearlstein, et al.  
2 N. LaSalle St. Suite 1300  
Chicago, IL 60602

6. PARTIES BOUND.

This Option Agreement shall be binding upon and inure to the benefit of the Village and BRE and their respective successors and assigns.

7. AUTHORIZED EXECUTION.

The Village and BRE each represent and warrant to the other that it has the authority to enter into this Option Agreement and perform all of the terms and provisions herein provided to be performed, as applicable.

8. ASSIGNMENT BY BRE.

BRE may not sell, convey, assign or otherwise transfer or dispose of this Option Agreement or BRE's right and option to purchase Lot 1 without the written consent of the Village which consent may be withheld, conditioned or delayed.

9. MULTIPLE COUNTERPARTS.

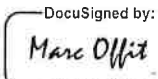
This Option Agreement may be executed in any number of counterparts each of which shall be deemed to be an original, and all of such counterparts shall constitute one Option Agreement. To facilitate execution of this Option Agreement, the parties may execute and exchange by email in PDF format counterparts of the signature pages, which shall be deemed an original and in making proof of this Option Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties hereto have executed this Option Agreement on the day and year written below.

**BRE:**

BRE PARK PLACE 2, LLC,  
an Illinois limited liability company

By:  \_\_\_\_\_  
F4E865077B96446...

Printed Name: Marc Offit

Its: Manager

**VILLAGE:**

VILLAGE OF ROSEMONT, ILLINOIS, an Illinois  
municipal corporation

By:  \_\_\_\_\_

Bradley A. Stephens, Its President

**ATTEST:**

By:  \_\_\_\_\_

Debbie Drehabl, Village Clerk





Exhibti B

**REAL ESTATE SALE AND PURCHASE AGREEMENT  
AND DEVELOPMENT AGREEMENT**

**By and Between**

**BRE PARK PLACE 2, LLC,  
an Illinois limited liability company**

**and**

**VILLAGE OF ROSEMONT, ILLINOIS,  
an Illinois municipal corporation**

**February \_\_\_\_, 2021**

**REAL ESTATE SALE AND PURCHASE AGREEMENT  
AND DEVELOPMENT AGREEMENT**

THIS REAL ESTATE SALE AND PURCHASE AGREEMENT AND DEVELOPMENT AGREEMENT is made and entered into and effective this \_\_\_\_\_ day of February, 2021 (hereinafter referred to as the "Agreement") by and between the BRE PARK PLACE 2, LLC, an Illinois limited liability company or its assignee (referred to herein as "Purchaser"), and VILLAGE OF ROSEMONT, an Illinois home rule municipal corporation (referred to herein as the "Village").

**RECITALS**

A. Pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended ("TIF Act") and the terms of the Village's South River Road TIF No. 4 Redevelopment Plan and Project the Village designated a certain area within its municipal limits for redevelopment and revitalization with commercial and retail uses.

B. The property subject of this Agreement is within the South River Road TIF No. 4 Project Area, the legal description of the property is attached hereto and made a part hereof as Exhibit A ("Lot 1").

C. The Village currently owns and RBH Brewery, Inc. d/b/a Hofbrauhaus Chicago at Rosemont currently leases from the Village the premises having the common address of 5500 Park Place, Rosemont, Illinois (hereinafter referred to as the "Subject Property ") of which Lot 1 is a part and which is improved with an approximately 20,425 square foot building (hereinafter referred to as the "Building").

D. RBH Brewery, Inc. d/b/a Hofbrauhaus Chicago at Rosemont has agreed to execute and shall deliver at the Closing a Lease Cancellation and Termination Agreement.

E. Village now desires to sell to Purchaser and Purchaser now desires to purchase from the Village Lot 1 and approximately 7,025 square feet of the Building on a portion of the Subject Property subject to Aria Group Architects, Inc.'s final determination of the actual as-built square footage of Building on Lot 1 ("As-built Square Footage") so that Lot 1 can be re-purposed and developed as provided for in this Agreement.

F. The Village, in order to ensure the development of Lot 1 requires certain assurances, as hereinafter set forth, that Purchaser will perform certain acts and fulfill certain conditions.

G. Purchaser, in order to ensure the development of Lot 1 requires certain assurances, as hereinafter set forth, that the Village will perform certain acts and fulfill certain conditions.

H. It is the desire of the Village and Purchaser that the development of Lot 1 proceed as conveniently and expeditiously as possible, subject to the Village's ordinances, codes and

regulations, now or hereafter in force and effect, as limited, modified or amended by, and subject to the provisions of this Agreement and applicable law.

I. The corporate authorities of the Village, after due and careful consideration, have concluded that the sale and development of Lot 1 as provided in this Agreement furthers the goals and objectives of the South River Road TIF No. 4 Redevelopment Plan and Project, will further the growth of the Village, increase the assessed valuation of the real estate situated within the Village, increase the sales tax revenues realized by the Village and foster increased economic activity within the Village.

J. The corporate authorities of the Village, after due and careful consideration, have concluded the sale of Lot 1 and the fulfillment generally of this Agreement, are in the vital and best interests of the Village and the health, safety and welfare of its residents and taxpayers.

K. Pursuant to the Village's powers as a home rule municipal corporation of the State of Illinois, pursuant to Article VII of the 1970 Constitution of the State of Illinois, the Village possesses the authority and power to enter into this Agreement.

L. As a result of the improvements to be undertaken as part of this Agreement, the Village expects that significant real estate tax and sales tax revenues will be generated by the sale of Lot 1.

NOW THEREFORE, in consideration of the mutual agreements herein and in this Agreement contained, the Village and the Purchaser do hereby agree to the covenants, conditions, limitations and agreements herein contained and agree as follows:

1. INCORPORATION OF RECITALS.

The representations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

2. DEFINITIONS.

The terms defined in this Article (except as herein otherwise expressly provided or required by the context) shall have the following meanings:

2.1 "Closing" shall be the consummation of the transfer of Lot 1 from the Village to the Purchaser together with the execution and delivery of the Parking Agreement and between Purchaser and the Village in the manner provided in and by this Agreement.

2.2 "Closing Date" shall mean the date of the Closing to be on or before \_\_\_\_\_, 2021 or such other date as the parties may mutually agree.

2.3 "Concept Site Plan" shall mean the site plan layout and proposed elevations for Lot 1 attached hereto and made a part hereof as Exhibit B.

2.4 "Effective Date" shall be the date of this Agreement.

2.5 “Parking Agreement” shall mean that certain parking agreement to be entered into by Purchaser and the Village at the time of the Closing providing for the non-exclusive use of surface parking spaces and parking spaces within the parking garage located within and serving of the Parkway Bank Park.

2.6 “Plans and Specifications” shall mean the plans and specifications submitted by the Purchaser for Lot 1 in the manner provided in this Agreement, as amended from time to time in the manner provided in and by this Agreement.

2.7 “Purchase Price” shall mean the price paid to the Village by the Purchaser for Lot 1 in the manner provided in and by this Agreement.

2.8 “Purchase Price Funding Date” shall mean September 13, 2021 or such other date as the parties may agree to in writing at which Purchaser shall pay the Purchase Price and Interest as provided for in Section 3.2 herein in the manner provided in and by this Agreement.

2.9 “Purchaser” shall mean BRE Park Place 2, LLC, an Illinois limited liability company and those parties who become its successors and assigns in the manner authorized by this Agreement.

2.10 “Title Company” shall mean Chicago Title Insurance Company or such other title company and agent designated by Purchaser or otherwise agreed upon by the parties.

2.11 “Village” shall mean the Village of Rosemont, a home rule municipal corporation under the laws of the State of Illinois, together with any successors or assigns.

2.12 “Village Municipal Code” shall mean the municipal code, ordinances and regulations of the Village of Rosemont as adopted and in place from time to time.

2.13 “Village Work” shall mean the construction and improvements to be undertaken by the Village to the Subject Property as set forth in the Area Work Letter attached hereto and made a part hereof as Exhibit C which are required for and shall be a part of the construction and development of Lot 1 in the manner provided in this Agreement.

2.14 “Village Zoning Code” shall mean the zoning code of the Village of Rosemont as adopted and in place from time to time.

### 3. CLOSING DATE; PURCHASE PRICE; CONVEYANCE OF LOT 1; SURVEY; RE-CONVEYANCE FOR FAILURE TO COMMENCE CONSTRUCTION.

3.1 Closing Date. The Closing shall be consummated and the transfer of Lot 1 shall occur on the Closing Date.

3.2 Purchase Price. On the Purchase Price Funding Date, subject to the terms and conditions set forth in this Agreement, Purchaser shall pay to Village a purchase price to be allocated based and calculated at ONE HUNDRED SIXTY ONE and 57/100 DOLLARS (\$161.57) per square foot of As-built Square Footage of Building area on Lot 1 as determined by Aria Group Architects, Inc. in the manner provided by and subject to the terms of this Agreement. Purchaser shall pay interest on the Purchase Price at the interest rate of 4 ½ % per annum from the Closing

date to the Purchase Price Funding Date (“Interest”) and the Interest shall be paid on the Purchase Price Funding Date.

### 3.3 Conveyance of Lot 1.

Subject to the satisfaction of conditions precedent and provided RBH Brewery, Inc. d/b/a Hofbrauhaus Chicago at Rosemont has executed a Lease Cancellation and Termination Agreement and Purchaser has materially satisfied to the reasonable satisfaction of the Village all other pre-Closing requirements and obligations in the manner provided in this Agreement, at Closing the Village shall deposit into the Closing Escrow as provided for herein a Special Warranty Deed into the Closing Escrow conveying to Purchaser fee simple title to Lot 1 subject only to the encumbrances of this Agreement, use restrictions within and related to the Parkway Bank Park (including but not limited to use restrictions related to movie theaters, theater popcorn and packaged theater candy, Brazilian steakhouse venues, bowling venues, Irish-themed venues and live music venues), an easement for signage on the west elevation of the Building located on Parcel 1 (“Signage Easement”) and the Permitted Exceptions as herein defined. The Title Company or other escrow agent shall retain the Special Warranty Deed after the Closing until the Purchase Price and any Interest thereon has been paid on the Purchase Price Funding Date. Closing shall be consummated through an escrow with the Title Company in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement (the “Closing Escrow”) used by the Title Company with such special provisions inserted in the Closing Escrow as may be required to conform with this Agreement including but not limited to the return of the Special Warranty Deed to the Village in the event Purchaser fails to pay the Purchase Price and the Interest thereon on the Purchase Price Funding Date or is otherwise in default under this Agreement. The cost of such escrow shall be divided equally between Purchaser and the Village, except the cost of any moneylender’s escrow and any special costs incurred by reason of the Purchaser’s financing shall be borne by the Purchaser. Village shall be responsible for and pay real estate tax transfer taxes and all other transfer taxes, if any. Village shall deliver possession of Lot 1 to Purchaser at Closing in an “As Is, Where As” condition free of any title encumbrances that would hinder Purchaser’s development of Lot 1 subject only to the encumbrances of this Agreement, use restrictions within and related to the Parkway Bank Park, the Signage Easement and the Permitted Exceptions.

### 3.4 Survey; Plats.

(a) The Village, at the Village’s cost, shall provide Purchaser with an ALTA land survey of Lot 1 (“Survey”). Such Survey shall plot all exceptions to title (to the extent plottable) and shall plot any easements that benefit or burden Lot 1. The Village shall pay for the cost of Survey except for any incremental increase attributable to the cost of including additional information as may be requested by the Purchaser or its lender provided, however, that the Purchaser shall pay for the cost of the Survey in the event the Purchaser does not purchase Lot 1. The Survey shall be subject to Purchaser’s review and approval pursuant to the provisions of Section 5 herein.

(b) The Village shall, at its sole cost, prepare, approve and record, any and all plats of subdivision, abrogations, easements, vacation, and dedication (collectively, the "Plats"), as may be reasonably required to convey Lot 1 to the Purchaser.

3.5 Return of Special Warranty Deed for Failure to Pay Purchase Price and Interest; Reimbursement of Village Costs.

(a) Notwithstanding anything in this Agreement to the contrary, in the event Purchaser fails to pay the Purchase Price and any Interest thereon on the Purchase Price Funding Date or is otherwise in default under this Agreement, then the Village, in its sole and absolute discretion, may demand by written notice to the Purchaser and the Title Company and the Title Company or other escrow agent shall immediately release and return the Special Warranty Deed and the Parking Agreement to the Village from the Closing Escrow without delay and without requiring additional authorization.

(b) Notwithstanding anything in this Agreement to the contrary, in the event Purchaser fails to pay the Purchase Price and any Interest thereon on the Purchase Price Funding Date, Purchaser agrees to reimburse and pay the Village the actual cost of the Village Work and the Village reimbursement or contribution for Aria's Architectural Fees attributable to and associated with Lot 1 within thirty (30) days of Purchaser receiving written notice and demand thereof.

(c) This provision shall survive the Closing.

3.6 No Encumbrance of Subject Property or Lot 1 by Purchaser. Purchaser may not encumber Lot 1 with any lien or encumbrance prior to the Purchase Price Funding Date.

3.7 Guaranty of Purchaser's Performance. At Closing [OFFIT/KILLERMAN] shall jointly and severally provide a personal guaranty securing performance of Purchaser's obligations under this Agreement ("Guaranty"). A copy of the Guaranty form has been attached hereto and made a part hereof as Exhibit E.

4. TITLE INSURANCE. The Village and Purchase shall cause the following to occur prior to the time of the Closing:

(a) The Village, at the Village's cost, shall provide Purchaser a current title commitment for an Owner's Title Insurance Policy issued by the Title Company (the "Title Commitment") in the amount of the Purchase Price covering title to and for an owner's title policy for Lot 1 and any easements that benefit Lot 1, with said Title Commitment to be accompanied by copies of all instruments and plats described on Schedule B ("Initial Title Commitment").

(b) All title commitments provided by the Village under this Section shall be updated and delivered to Purchaser prior to the Closing (collectively the "Updated Title Commitment").

(c) The Purchaser shall have five (5) days after its receipt of each of: (i) the Initial Title Commitment or any Updated Title Commitment, and (ii) the Survey to review same and notify the Village of any objections ("Defects"). The Village shall have ten (10) days to respond

to such objections and up to thirty (30) days to attempt to have the Defects removed from either the Updated Title Commitment and the Survey, or have, with the Purchaser's concurrence, the Title Company commit to insure against loss or damage that may be occasioned by such Defects (the "Cure Period") at the Village's cost. All such title exceptions as approved by the Purchaser shall be deemed the "Permitted Title Exceptions." The Cure Period may be extended by notice from the Village to Purchaser for a thirty (30) day period if the Village is diligently attempting to remove and/or delete such Defects. Village agrees to use commercially reasonable efforts to remove such Defects, provided that the Village shall not be required to make the payment of money to remove such Defects, exceeding \$200,000.00 in the aggregate, unless such Defects are the result of the action of the Village.

## 5. CONTINGENCY PERIODS AND DATES.

5.1 Concept Site Plan. The Concept Site Plan is attached hereto and made a part hereof as Exhibit B. Purchaser's renovation, construction and development of Lot 1 shall conform in all material respects to the Concept Site Plan.

5.2 Plans and Specifications Contingency Date. Purchaser shall obtain and submit plans and specifications for improvements to Lot 1 to the Village in a timely manner to allow the Village to issue by April 1, 2021 building permits to alter Lot 1. Purchaser shall design, obtain and submit to the Village complete and final construction drawings, plans and specifications for Lot 1 including exterior elevations and façade materials to ensure Lot 1 is consistent with and complementary to architectural and aesthetic characteristics of other buildings within Parkway Bank Park. Any schematics, design drawings, construction drawings, or plans and specifications shall be referred to as and shall be considered "Plans and Specifications" for purposes of this Agreement.

5.3 Purchaser Price Funding Date Contingency. The Purchase Price Funding Date shall be on or before September 13, 2021. Notwithstanding anything in the Agreement to the contrary, if the Purchase Price Funding Date has not occurred on or before September 13, 2021 the Village shall have the right to terminate the Agreement on written notice to the Purchaser and the Title Company shall release and return the Special Warranty Deed and the Parking Agreement to the Village from the Closing Escrow. Notwithstanding that the Village may have issued an occupancy permit or that Lot 1 may otherwise be ready to be open for business, Lot 1 may not be open for business until the Purchase Price Funding Date has occurred.

5.4 Commencement of Renovation and Construction of Lot 1. Unless otherwise agreed to by the parties, Purchaser agrees it shall (i) begin demolition and renovation of the interior of the Building located on Lot 1 by April 15, 2021 and (ii) diligently prosecute to completion the renovation by the September 13, 2021 Purchase Price Funding Date, subject to delays caused solely by the Village, provided, however, that all performance dates required of Purchaser in this Section 8 herein shall be extended by one day for each day that the Village fails to meet any segment or phase of its obligations under this Agreement as set forth in in a timely manner. Purchaser agrees that for a period of two (2) years following the Purchase Price Funding Date Purchaser shall own Lot 1 (the "Initial Opening Period").



6. ZONING AND PERMITS. Purchaser shall, at its expense, properly and timely apply for and obtain any approvals including a Special Use Permit then deemed necessary or desirable by Purchaser and required by the Village for the renovation and construction of the interior and exterior of Lot 1 from the Village so as to secure any approvals and Village building permits by April 1, 2021. The Village shall promptly issue all approvals and Village permits within its powers including without limitation building and occupancy certificates provided Purchaser has made proper and timely application and met the requirements for any approvals and permits under the Village Municipal Code and the Village Zoning Code. The Village shall approve and adopt any plat of re-subdivision related to Lot 1 consistent with the division and use of the Subject Property as approved by the Village.

7 ALTERNATE BIDS. The Village shall publish a request for alternative bids as required pursuant to the South River Road TIF No. 4 Redevelopment Plan and Project and TIF Act to the extent required by law providing for alternative bids to be submitted to the Village within thirty (30) days of such publication.

8. VILLAGE WORK AND ARIA WORK LETTER. The Village and Purchaser agree that the Village Work set forth in Sections 8.1, 8.2, and 8.3 (the “Village Work”) are required for and shall be part of the renovation and construction of Lot 1. The Village Work will be set out and detailed in a work letter provided by Aria Group Architects, Inc. (“Aria Work Letter”) and constructed by the Village pursuant to the Aria Work Letter, and the costs of constructing and completing the Village Work shall be paid by the Village.

8.1 Utilities. The Village shall deliver, separate and construct the Village Work relating to utilities pursuant to the Aria Work Letter and the Village shall provide Purchaser with a plan showing the location of utilities (the “Lot 1 Utilities”) provided. The Village shall cooperate with Purchaser to coordinate the work and to diligently prosecute to completion its work to bring utilities to the exterior wall of the Building on Lot 1 to allow the Purchaser to carry forward with Purchaser’s renovation, construction and development of Lot 1’s opening for business in a timely manner as provided for herein. Purchaser agrees to pay for all utility services rendered or furnished to Lot 1 based on usage and where possible to be metered and charged directly to Purchaser.

8.2 Demising Wall. The Village shall be responsible for the costs and construction of the Village Work relating to the construction of a demising wall within the Building (the “Demising Wall”) pursuant to the Aria Work Letter to create and separate Lot 1 from the adjoining parcel. The Village shall provide Purchaser with a plan showing the location of the Demising Wall. The Village shall cooperate with Purchaser to coordinate the work and to diligently prosecute to completion its work to complete the Demising Wall to allow the Purchaser to carry forward with Purchaser’s renovation, construction and development of Lot 1’s opening for business in a timely manner as provided for herein.

8.3 Village Work. All construction required of the Village pursuant to Sections 8.1, 8.2 or otherwise required under this Section 8.3 and pursuant to the Aria Work Letter shall be conducted in a good and workman-like manner, pursuant to required governmental laws, regulations, ordinances, permits and approvals, utilizing new materials and performed in

substantial conformity with the Village plans and specifications for such Village Work. Except as provided for otherwise, the Village will use all commercially reasonable efforts to complete construction of all such Village Work. The Village shall keep Purchaser reasonably informed as to the progress of the Village Work required of the Village and the Village Work will be completed by \_\_\_\_\_, 2021.

9. PARKING AGREEMENT. At Closing the Village and Purchaser shall execute and enter into the Parking Agreement in substantially the same form as attached hereto and made a part hereof as Exhibit D providing for the non-exclusive use of surface parking spaces and parking spaces within the parking garage located within and serving of the Parkway Bank Park which parking spaces shall be available to the general public including, but not limited to guests, patrons, invitees, and permittees of Lot 1.

10. REAL ESTATE TAXES.

10.1 Pre-Closing Taxes. The Village represents that Lot 1 is currently exempt from real estate taxes and is subject to leasehold real estate taxes. The Village agrees to pay any general real estate taxes, special assessments and special taxes due or to become due for Lot 1 up to the date of Closing.

10.2 Post-Closing Taxes. Purchaser shall be responsible to pay or cause to be paid by others when due any real estate taxes, leasehold taxes, sales taxes, parking taxes, or any other taxes levied or assessed against Lot 1 related to Purchaser's ownership or leasing of Lot 1 or Purchaser's use of the parking garage located within and serving of the Parkway Bank Park before such taxes become delinquent.

11. CERTIFICATE OF OCCUPANCY. The Village shall promptly issue a certificate of occupancy for Lot 1 provided it is completed and ready for its intended use, subject to all applicable Village requirements and the provisions of this Agreement.

12. GENERAL DEVELOPMENT ISSUES. The general development provisions including, but not limited to, landscaping requirements, signage requirements, construction fencing, common access requirements and screening requirements shall be governed by the applicable requirements under the Village Municipal Code, the Village Zoning Code, and any other applicable Village ordinances, and shall be consistent with the Concept Site Plan and the Plans and Specifications as approved by the Village.

13. ALTERNATE USE. Prior to the Purchase Price Funding Date Purchaser shall have the right to propose an alternative use for Lot 1 and the Village may, at its sole option and in its sole discretion, approve an alternate use of Lot 1. The Village and Purchaser agree the Village's approval of an alternate use of Lot 1 is required as the use of Lot 1 is fundamental to this Agreement and may require the Village and Purchaser to amend certain terms and provisions of this Agreement or enter into a new agreement providing new terms and provisions for development of Lot 1.

14. BROKER'S COMMISSION. Purchaser and the Village acknowledge that no person or entity has acted as broker for or on behalf of the Purchaser and the Village and agree that should any broker make a claim for a commission based upon the actions of the Purchaser and the Village, then the party upon whose actions such claim is based shall indemnify, defend and hold the other harmless from any such claim.

15. NOTICES. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefor; or (ii) e-mail; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their respective addresses set forth below, and the same shall be effective (a) upon receipt of e-mail; (b) one (1) business day after depositing with such overnight courier service; or (c) two (2) business days after deposit in the mails, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance herewith. All notices by e-mail shall be subsequently confirmed by deposit with U.S. mail.

As to Seller: Village of Rosemont  
Attn: Village Clerk  
9501 West Devon  
Rosemont, Illinois 60018  
E-Mail: mayorsoffice@villageofrosemont.org

With Copy to: William E. Ryan  
Ryan and Ryan  
9501 West Devon, Suite 300  
Rosemont, Illinois 60018  
E-Mail: wryan@ryanryanlaw.com

As to Purchaser: BRE Park Park 2, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
E-Mail: \_\_\_\_\_

With Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-Mail: \_\_\_\_\_

Any notice in accordance herewith shall be deemed received when delivery is received or refused, as the case may be. Additionally, notices may be given by telephone facsimile transmission or email, provided that an original copy of said transmission shall be delivered to the

addressee via overnight delivery service for delivery on the business day following such transmission. Telephone facsimiles or emails shall be deemed delivered on the date of such transmission.

16. SURVIVAL; MEMORANDUM OF AGREEMENT.

16.1 Survival. Except to the extent otherwise performed by a Party, all the continuing terms set forth in this Agreement shall survive Closing and shall remain in full force and effect thereafter.

16.2 Memorandum of Agreement. Neither party shall record this Agreement, but each party agrees to execute and to deliver to the other party when this Agreement is executed and delivered, if requested, multiple copies of a Memorandum of this Agreement in a form mutually acceptable to the parties setting forth relevant terms of this Agreement. Either party, at its sole expense, may record the Memorandum in the Offices of the Recorder of Deeds of Cook County, Illinois.

17. PARTIES BOUND. This Agreement shall be binding upon and inure to the benefit of the Village and the Purchaser and their respective successors and assigns.

18. GOVERNING LAW. The laws of the State of Illinois shall govern the validity, construction, enforcement and interpretation of this Agreement.

19. NON-BUSINESS DAYS. If the Closing Date or the date for delivery of a notice or performance of some other obligation of the Village or the Purchaser falls on a Saturday, Sunday or legal holiday in the State of Illinois, then the date for Closing or such notice or performance shall be postponed until the next business day.

20. DEFAULTS; REMEDIES.

(a) This Agreement shall be enforceable in the Circuit Court of Cook County, Illinois by either the Village, Purchaser, or by any successor or successors in title or interest or by the assigns of the Parties for the purposes of any suit, action or other proceeding arising out of or relating to any default or breach of this Agreement and any relief or remedy sought by either of the Parties. Except as provided in this Agreement, and subject to force majeure, failure or delay beyond stated periods for performance by either party to perform any material term or provision of this Agreement shall constitute a breach of such party's obligations under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default specifying the default complained of by the injured party. Purchaser shall have fifteen (15) days after receiving written notice from the Village to cure any monetary default for its failure or refusal to pay any monies that become due and payable under this Agreement, including but not limited to paying the Purchase Price on the Purchase Price Funding Date. Except as required to protect against further damages, and except as to monetary defaults as otherwise expressly provided in this Agreement, the injured party may

not institute proceedings against the party in default until thirty (30) days after giving such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute an Event of Default under this Agreement. If: (i) such default does not relate to the lack of funds or the obligation of a party to pay money to the other; (ii) such default cannot reasonably be cured within such thirty (30) day period; and (iii) the defaulting party shall commence to cure the same within such thirty (30) day period and diligently and in good faith continue to prosecute the cure of such default in a commercially reasonable manner to its conclusion, then said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default. If such default is cured within such extended period, the default shall not be deemed to constitute an Event of Default under this Agreement. However, a default not cured as provided above shall constitute an Event of Default under this Agreement.

(b) Prior to Closing and upon an Event of Default by the Village, Purchaser's remedies shall be limited to (i) bringing an action for specific performance, or (ii) terminating this Agreement. Purchaser shall have no monetary remedy and the parties shall have no further obligations to each other. Prior to Closing and upon an Event of Default by the Purchaser, Village's remedies shall include (i) bringing an action for specific performance, or (ii) terminating this Agreement and bringing an action for damages caused by an Event of Default by Purchaser.

(c) After the Closing and upon an Event of Default by Purchaser the Village may institute legal action to cure, correct or remedy an Event of Default, to recover damages for any default or to obtain any other remedy consistent with the purposes of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance.

(d) In the event either party shall institute legal action because of breach of any agreement or obligation contained in this Agreement and an Event of Default shall be established, the non-failing party shall be entitled to recover all damages, costs and expenses, including reasonable attorneys' fees incurred therefor.

21. PERMITTED DELAYS; FORCE MAJEURE. None of the parties shall be deemed to be in default hereunder in the performance of any obligation where delays or defaults in such performance are due to: war; insurrection; strikes; riots; floods; earthquakes; fires, casualties or acts of God; the failure of the other party to this Agreement to keep and perform the covenants and obligations on its part to be kept and performed; or any other cause similar to the foregoing that is not within a party's control excluding lack of funds, the COVID-19 pandemic or other pandemic. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than ten (10) days after the commencement of such cause. In order to claim an event of force majeure the claiming party must send written notice to the other party within ten (10) days of the claimed force majeure event. Notwithstanding the foregoing, Purchaser may not claim force majeure to extend the Purchase Price Funding Date and no event of force majeure shall extend the Purchase Price Funding Date.

22. INTEGRATION AND AMENDMENT. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between the parties relative to the subject matter hereof and thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as are herein and therein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless reduced to writing and duly executed by them. All exhibits to this Agreement are expressly incorporated herein by this reference thereto.

23. SEVERABILITY. In the event any phrase, article, section or portion of this Agreement is found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such finding of invalidity, illegality or unenforceability as to that portion shall not affect the validity, legality or enforceability of the remaining portions of this Agreement.

24. CAPTIONS AND PRONOUNS. The captions and headings of the various articles and sections of this Agreement are for convenience only and are not to be construed as confining, defining, expanding or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

25. NO DISCRIMINATION. Purchaser agrees to comply with all applicable laws prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, national origin or sexual orientation. Purchaser shall require that applicants for employment with Purchaser be treated during the application process and during employment without regard to race, creed, color, religion, sex, national origin, disability or sexual orientation in accordance with applicable laws.

26. NO JOINT VENTURE. Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership or joint venture between or among such parties.

27. LIMITED LIABILITY. The parties hereto specifically agree, that neither the Village of Rosemont nor Purchaser shall have any liability for any breach of any of the terms of this Agreement in the form of consequential or punitive damages.

28. AUTHORIZED EXECUTION. The parties represent and warrant that they have been duly authorized to execute this Agreement.

29. ASSIGNMENT BY PURCHASER.

29.1 Assignment Prior to Closing and During Two Year Ownership Period. For a period of two (2) years following the Purchase Price Funding Date, Purchaser may not sell, convey, assign, or otherwise transfer or dispose ("Transfer") any interest, leasehold interest or other interest in Lot 1, or any interest in the Parking Agreement without the prior written consent of the Village, which consent shall may be unreasonably withheld, conditioned or delayed.

29.2 Assignment Following Two Year Ownership Period. Following the two (2) year ownership period set forth in Section 29.1 above and except as otherwise provided in Section 5.4 of this Agreement, and provided a Transfer includes the transfer of all of Lot 1 and all rights under the Parking Agreement, Purchaser may Transfer all of Lot 1 and all rights under the Parking Agreement without the prior written consent of the Village.

30. APPLICABLE LAW AND CONSTRUCTION. The laws of the State of Illinois shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the Village and the Purchaser and the Agreement, together with all of the terms and provisions of this Agreement, shall not be deemed to have been prepared by either the Village or the Purchaser, but both equally.

31. SUBMISSION TO JURISDICTION. Each party to this Agreement hereby submits to the jurisdiction of the State of Illinois, Cook County and the Circuit Court of Cook County, Illinois for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by the Circuit Court of Cook County, Illinois.

32. EXECUTION OF WRITTEN INSTRUMENTS. The Village and Purchaser agree to make, execute and deliver such written instruments and agreements and as shall from time to time be reasonably required to carry out the terms, provisions and intent of this Agreement.

33. ATTORNEY'S FEES. If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, proceeding, trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court.

34. NO WAIVER. Any requirement or conditions contained in this Agreement may only be waived in writing.

35. CERTIFICATION OF ELIGIBILITY.

(a) Purchaser certifies that it is not barred from bidding on contracts offered for bid by any unit of state or local government in the State of Illinois as a result of having been convicted of a violation of either Section 33E-3 [Bid Rigging] or Section 33E-4 [Bid Rotation] of the Illinois Criminal Code.

(b) Purchaser certifies that it is not delinquent in the payment of any tax administered by the Department of Revenue unless Purchaser is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in 65 ILCS 5/11-42.1-1.

36. INDEMNITY. Prior to and during Purchaser's renovation and construction of Lot 1, Purchaser shall indemnify, defend and hold the Village harmless from and against any and all objections, liabilities, actions, claims, damages, penalties, including reasonable attorneys' fees in

a reasonable amount, in connection with loss of life, personal injury and/or damage to property or otherwise, arising from or out of any occurrence, in or upon Lot 1 or any part thereof, or occasioned wholly or in part by any act or omission of Purchaser, its agents, contractors, subcontractors, employees, tenants, guests, patrons, invitees, and permittees of Lot 1 thereon or in connection therewith, except loss or damage resulting from the negligence or willful misconduct of the Village, its agents, contractors or employees.

37. COMMON AREA MAINTENANCE CHARGES; PROMOTIONAL FEE.

(a) Purchaser agrees to pay to the Village as invoiced from time to time common area maintenance ("CAM") charges for all costs maintenance of the common areas, including without limitation the surface parking spaces and the parking garage of the Parkway Bank Park based and calculated on the actual As-built Square Footage of the Building located on Lot 1 and calculated at Two Dollars (\$2.00) per square foot of Building which shall automatically increase three percent (3%) per January of each year following the Closing. This provision shall survive the Closing.

(b) Purchaser or its tenant, as the case may be, agrees to pay to the Village as invoiced from time to time a promotional marketing fee ("Promo Fee") for the marketing of the Parkway Bank Park based and calculated on the actual As-built Square Footage of Building located on Lot 1 and calculated at One Dollar (\$1.00) per square foot of Building which shall automatically increase three percent (3%) per January of each year following the Closing. This provision shall survive the Closing.

38. DESIGN, RENOVATION, CONSTRUCTION; DEVELOPMENT COSTS.

Expect as may otherwise be provided in and by this Agreement, the costs of the renovation, construction and development of Lot 1 shall be borne and paid for by the Purchaser provided the Village shall reimburse or contribute fifty percent (50%) of the design fees of Aria Group Architects, Inc. for the approximately 20,425 square feet of Building on the Subject Property ("Aria's Architectural Fees") provided that in all events the Village reimbursement or contribution for Aria's Architectural Fees shall not exceed \$122,000.00 in the aggregate as related to the entire approximately 20,425 square feet of Building on the Subject Property. Notwithstanding the foregoing, Purchaser may additionally request that the Village reimburse Purchaser or contribute to the cost of the exterior elevations and façade materials to ensure Lot 1 is consistent with and complementary to architectural and aesthetic characteristics of other buildings within Parkway Bank.

39. TIME OF THE ESSENCE. The parties hereto expressly agree that time is of the essence with respect to this Agreement, the Closing Date and the Purchase Price Funding Date.

40. ENTIRE AGREEMENT. This Agreement entered into by Purchaser and Village embody the entire Agreement of the parties in respect of the transaction herein contemplated, superseding all prior agreements whether oral or written. Any amendments hereto shall be in writing and executed by the parties hereto.

41. MULTIPLE COUNTERPARTS. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one



Agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

**PURCHASER:**

BRE PARK PLACE 2, LLC,  
an Illinois limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**VILLAGE:**

VILLAGE OF ROSEMONT, ILLINOIS, an Illinois  
municipal corporation

By: \_\_\_\_\_

Bradley A. Stephens, Its President

**ATTEST:**

By: \_\_\_\_\_

Debbie Dreobl, Village Clerk

### **LIST OF EXHIBITS**

- Exhibit A - Legal Description of Lot 1 [To be provided by Village Attorney]
- Exhibit B - Concept Site Plan [To be provided by Purchaser's Attorney]
- Exhibit C - Village/Aria Work Letter [To be provided by Village Attorney]
- Exhibit D - Parking Agreement [To be provided by Village Attorney]
- Exhibit E - Personal Guaranty [To be provided by Village Attorney]

**LEASE**

**BY AND BETWEEN**

**BRE PARK PLACE 2, LLC**

**TENANT**

**AND**

**VILLAGE OF ROSEMONT**

**LANDLORD**

## **LEASE**

**THIS LEASE AGREEMENT** (the "Lease") is made this 13<sup>th</sup> day of September, 2021, by and between the parties named in **ARTICLE 1**, which parties, in consideration of the mutual covenants herein set forth, do hereby agree as herein specified.

### **ARTICLE 1** **PARTIES**

**1.1 Landlord:**

***Village of Rosemont, an  
Illinois municipal corporation***

herein called "Landlord"  
whose address is:

9501 West Devon  
Rosemont, IL 60018

**1.2 Tenant:**

***BRE Park Place 2, LLC, an Illinois  
Limited Liability Company***

herein called "Tenant"  
whose address is:

5510 Park Place  
Rosemont, IL 60018

### **ARTICLE 2** **BASIC LEASE PROVISIONS AND DEFINITIONS**

The following are presented for the convenience of the parties and included as a summary of the basic terms of this Lease. Each reference in this Lease to one of the following provisions shall be construed to incorporate all of the terms provided for under such provisions:

- 2.1 Land. (ARTICLE 3).** That land within the Property Boundaries (the "Land") identified on ***Exhibit A*** representing the parcel of land within and upon which the Premises will be located.
- 2.2 Premises. (ARTICLE 3).** That part of the building (the "Building") within which the Premises is located, associated areas and improvements constructed on the Land as identified on ***Exhibit A*** as Lot 1 and having the common address of 5510 Park Place, Rosemont, Illinois, it being understood that the part of the Building plus patio area identified as Lot 1 shall be hereinafter collectively referred to as the "Premises" and having a Floor Area of approximately 6,850 square feet for purposes of determining and calculating Tenant's CAM and Promotional Fee.
- 2.3 Term. (ARTICLE 4).** The Term shall be from the Commencement Date and include the two (2) successive Lease Years from the date the first of Tenant's subtenants Pete's Dueling Piano Bar and Tiki Tiki, (collectively referred to herein as "Subtenants" and individually referred to as "Subtenant") first opens for business.

- 2.4 **Minimum Rent. (ARTICLE 5).** Minimum Rent shall be fixed at \$52,515.00 per annum or \$4,376.25 per month beginning September 15, 2021 (the "Commencement Date") and continuing thereafter up to the first of Tenant's Subtenants first opens for business. As of the date the first of Tenant's Subtenants first opens for business Minimum Rent shall increase to \$87,525.00 per annum or \$7,293.75 per month for the successive twelve (12) month periods of this Lease and thereafter Minimum Rent shall increase two percent (2%) per Lease Year for the remainder of the Term. Minimum Rent shall be payable in equal monthly installments in advance upon the first (1<sup>st</sup>) day of each and every month commencing as of September 15, 2021 and continuing thereafter through and including the last month of this Lease.
- 2.5 **Additional Rent. (ARTICLE 5).** All charges or monies, other than Minimum Rent, due and payable by Tenant in accordance with the Lease, including but not limited to real estate, leasehold and/or any other tax charges, utilities not metered or directly charged to Tenant or its Subtenants, CAM Charges, Promotional Fee and the like.
- 2.6 **Tax Charge. (ARTICLE 7).** Tenant shall pay or cause its Subtenants to pay actual real estate taxes, leasehold taxes or any other taxes levied and assessed against the Premises and the Land within and upon which the Premises is located and related to Tenant or its Subtenants' use and occupancy of the Premises. Tenant shall be and remain obligated to pay actual real estate taxes, leasehold taxes or any other taxes levied and assessed against the Premises and the Land notwithstanding any obligation of its Subtenants to pay actual real estate taxes, leasehold taxes or any other taxes levied and assessed against the Premises and the Land contained in this Lease or any sublease to which a Subtenant is a party. In the event Lot 1 forms part of additional properties taxed under the same tax parcel Tenant will pay its prorated share of the real estate taxes attributable to its percentage of land making up such tax parcel as it relates to the entire tax parcel and one hundred percent (100%) of the assessment related to Tenant's Premises.
- 2.7 **CAM Charges. (ARTICLE 15).** Landlord has instituted a common area maintenance ("CAM") charge for the Landlord's Parking Facility (including but not limited to the cost of Landlord's electronic parking validation system for the Parking Facility), landscaping, street maintenance and snow removal for the common areas of the area as shown on **Exhibit B** commonly known as Parkway Bank Park at Rosemont (the "Park") and the other CAM Costs (as defined in **ARTICLE 15.3**, herein). Tenant's share of CAM Costs for the first Lease Year shall be Two and No/100 Dollar (\$2.00) per 6,850 square feet of Premises Floor Area (the "CAM Charge"). Tenant shall maintain or cause its Subtenants to maintain the Premises and all insurance costs for the Premises. Tenant's CAM Charge shall automatically increase three percent (3%) per Lease Year.
- 2.8 **Utilities. (ARTICLE 16).** All electricity, gas, water, sewer, telephone satellite and internet utility charges paid by Tenant or its Subtenants based on usage and where possible to be metered and charged directly to Tenant.
- 2.9 **Permitted Use. (ARTICLE 8).** The Premises shall be occupied and used solely for the operation of a live music venue Pete's Dueling Piano Bar and a Tiki Tiki

(including the sale of alcohol) and for no other purposes without the express written consent of the Landlord in its sole and absolute discretion. All food for off-premises consumption shall be packaged in sealed containers for "take-home" and/or "off-premises" consumption and the Premises shall not be used for (i) a movie theater, (ii) the sale of theater popcorn provided the restriction shall not apply to popcorn served which is incidental to business operations and the popcorn is served in open, returnable containers and is for in-house consumption at no charge, (iii) the sale of packaged theater candy of the type typically found in movie theater concession stands provided the restriction shall not apply to sale of candy on the interior of the Premises and is not advertised or promoted for consumption in the movie theater within the Rosemont Entertainment District, (iv) a Brazilian steakhouse venue, (v) a bowling venue, (vi) an Irish Pub-themed venue, (vii) a venue for the purpose of viewing a live performance of music or viewing any other type of live performance where tickets are available for purchase prior to the date of the live performance at the venue or over the internet and (viii) a business where on premises pizza sales comprise 20 percent (20%) or more of total gross food sales.

- 2.10 Promotion Fund. (ARTICLE 9).** Landlord has instituted a Promotion Fund for marketing The Park and Tenant's contribution to the Promotion Fund shall be One and No/100 Dollar (\$1.00) per 6,850 square feet of Premises Floor Area and shall automatically increase by three percent (3%) per Lease Year.
- 2.11 Floor Area. (ARTICLE 3).** The floor area within the Premises for purposes of this Lease and for calculating CAM and Promotional Fee charges shall be 6,850 square feet.
- 2.12 Lease Year. (ARTICLE 4).** A successive period of twelve (12) calendar months, other than the period beginning September 15, 2021 (the "Commencement Date") and continuing thereafter up to the date the first of Tenant's Subtenants first opens for business. The first Lease Year shall be from the date the first of Tenant's Subtenants first opens for business and the successive period of twelve (12) months (the "First Lease Year").
- 2.13 Effective Date. (ARTICLE 4).** That date upon which the Lease is fully executed.
- 2.14 Exhibits.** The following exhibits are attached to and are a part of this Lease:

<b>Exhibit A</b>	General Building Footprint and Premises
<b>Exhibit B</b>	The Park
<b>Exhibit C</b>	Parking Agreement

Execution of this Lease by Tenant shall constitute Tenant's receipt and acceptance of and Tenant's agreement to the attached **Exhibit A** and **Exhibit B** and are to be made part of this Lease.

**ARTICLE 3**  
**DEMISE**

- 3.1 Landlord hereby leases to Tenant, and the Tenant hereby rents from the Landlord, the Premises.
- 3.2 Landlord reserves the right to install, maintain, use, repair and replace utility lines, walkways, sidewalks, pipes, culverts, storm drains, roadways, parking areas, ducts, conduits and wires and the like, over, under, upon or through the Premises, for servicing the Premises, common areas, and/or Park at Landlord's expense, provided that Landlord shall exercise such reserved rights in a manner that does not interfere with Tenant's use and occupancy of the Premises.
- 3.3 The purpose of ***Exhibit A*** and ***Exhibit B*** is to show the approximate location of the Premises, Landlord's Parking Facility and The Park, generally, and Landlord reserves the right to relocate various other buildings, parking areas, and other common areas that may be shown thereon, provided that there shall be caused thereby no unreasonable interference with Tenant's permitted use or access or overall desirability of the location of the Premises or diminution of the Floor Area set forth in **ARTICLE 2.2**.

**ARTICLE 4**  
**TERM**

- 4.1 To have and to hold the Premises for the Term. The Commencement Date of the Term shall be September 15, 2021. The First Lease Year shall be for a period of from the date the first of Tenant's Subtenants first opens for business and the successive period of twelve (12) months following that date, except that if such date shall be other than the first day of a calendar month, the first (1<sup>st</sup>) Lease Year shall be the period from such date the first of Tenant's Subtenants first opens for business to the end of the calendar month in which it shall occur, plus the following twelve (12) calendar months. Each Lease Year after the First Lease Year shall be a successive period of twelve (12) calendar months. Following the Commencement Date of this Lease, Landlord may submit to Tenant a certificate confirming the Commencement Date and expiration date of this Lease, and in such event, Tenant shall execute such certificate and return same to Landlord within ten (10) business days following submission for purposes of certifying such information; provided, however, that the failure to execute such certificate shall not affect any of the terms hereof.
- 4.2 **Effective Date.** This Lease shall be binding and enforceable upon the Effective Date.

**ARTICLE 5**  
**MINIMUM RENT AND ADDITIONAL RENT**

- 5.1 Beginning upon the Commencement Date, Tenant covenants and agrees to pay the Minimum Rent and Additional Rent without prior written demand and without recoupment or set-off to Landlord c/o Village of Rosemont, Director of Finance, 9501 West Devon, Rosemont, IL 60018 or to such other entity or at such place as



Landlord shall designate in writing. Tenant shall pay to Landlord the Minimum Rent on or before the first (1<sup>st</sup>) day of each calendar month during the Term of this Lease. If the Commencement Date shall fall upon a day other than the first (1<sup>st</sup>) day of a calendar month, Tenant's first payment of Minimum Rent shall also include rent for the fractional portion of the month between the Commencement Date and the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) full calendar month in the Term, on a per diem basis (calculated on a thirty (30) day month). When applicable, Tenant shall also pay with all rentals (whether Minimum Rent or Additional Rent) and payments due under this Lease an amount equal to all sales, use, excise, entertainment and other taxes now or hereafter imposed by any lawful authority on all amounts due and required under this Lease where Landlord is the so-called collection agent for such taxes. It is understood and agreed that Tenant shall have no right to deduct any amounts which are owed by Landlord to Tenant or which Tenant claims are owed by Landlord to Tenant from the Minimum Rent or Additional Rent which is payable from Tenant to the Landlord under this Lease.

- 5.2 If Tenant shall fail to pay any installment of Minimum Rent, or any item of Additional Rent, within ten (10) business days after the date the same become due and payable, then Tenant shall also pay the Landlord a late payment service charge ("Late Charge") in the amount of Fifty Dollars (\$50.00) per day following the tenth (10<sup>th</sup>) business day that any charges are due Landlord. The Late Charge shall not be construed to represent interest, but is intended to reimburse Landlord for its overhead and expense so incurred and shall not be construed to extend the date for payment of any sums required to be paid by Tenant hereunder or to relieve Tenant of its obligation to pay all such sums at the time or times herein stipulated.

## **ARTICLE 6**

### **PREPARATION OF PREMISES**

- 6.1 "**AS IS**" "**WHERE AS**" **Basis**. Landlord has delivered and Tenant has accepted the Premises in an "AS IS" "WHERE AS" basis.
- 6.2 **Tenant's Work**. Tenant agrees to construct any and all Tenant improvements required for Tenant's intended use and for the conduct of business by Tenant or its Subtenants. Tenant's work shall include but not be limited to the construction build-out of the Premises, site work, leasehold improvements and additional FF&E and complying with plans reasonably approved in advance by Landlord in its reasonable discretion not to be unreasonably withheld or delayed, including Landlord retaining approval rights over the location, design, elevation, height and signage of the Building provided that the same shall be in compliance with all then applicable building codes and ordinances. Landlord retains the right to approve all interior and exterior plans, which approvals will not be unreasonably withheld. Landlord and Tenant agree to cooperate with each other and work diligently and expeditiously in approving the Tenant's plans after submission thereof. Tenant shall perform all work of whatever nature necessary to prepare for the opening to the public of Tenant's Premises (the "Tenant's Work") and the Tenant improvements and all such other work, alterations and improvements shall be completed lien-free, in a good and workmanlike manner, in accordance with applicable laws and building codes, and in accordance with all other terms, conditions and provisions hereof. Tenant's Work shall include the construction of

the Tenant improvements including, but not limited to, obtaining all licenses and permits necessary for Tenant's Work and occupancy of the Premises. Landlord agrees that there are no Landlord impact fees with regard to Tenant's proposed construction of the Tenant improvements. Tenant covenants that all such fixtures and equipment visible to customers shall be new or otherwise reasonably acceptable to Landlord in appearance. No material deviations from the final plans and specifications, once approved by Landlord in its reasonable discretion, shall be permitted. Landlord's approval of Tenant's plans and specifications for the Tenant improvements shall not constitute the assumption of any responsibility by Landlord for their accuracy, sufficiency or compliance with sound architectural or engineering practices or compliance with any laws, rules, orders, regulations, codes, ordinances, requirements or other legal requirements (as hereinafter defined), and Tenant shall be solely responsible therefore. All work performed by Tenant shall comply with such reasonable rules and regulations as Landlord, and its representatives may make and comply with sound architectural or engineering practices or comply with any laws, rules, orders, regulations, codes, ordinances, requirements or other legal requirements.

Tenant shall obtain at its sole cost, and immediately thereafter furnish to Landlord, all certificates, permits and approvals with respect to work done (and to be done) and installations made (and to be made) by Tenant that may be required for the issuance of a Certificate of Occupancy for the Premises, so that such Certificate of Occupancy shall be issued and the Premises shall be ready for the opening of Tenant's business on the Commencement Date and that may otherwise be required with respect to the Tenant's Work.

**6.3** It is anticipated that prior to and subsequent to Tenant or its Subtenants opening the Premises for business, Landlord or entities affiliated with Landlord will be engaged in construction in areas of The Park that may be adjacent to or in close proximity to the Premises. Tenant acknowledges that during the course of that work, construction vehicles and machinery will be utilized. Landlord will use all diligent efforts to ensure that such construction work does not materially interfere with Tenant's ability to conduct business, provided, however, Tenant agrees that the conduct of said work and the potential disturbances caused thereby shall not be considered a violation of this Lease or any conditions and covenants contained herein, provided said work is diligently and expeditiously completed in a commercially reasonable time. If Landlord causes any disruption to Tenant's Work which delays Tenant's construction, Landlord is required to grant a day-for-day time extension (or such longer extension as may be reasonably required due to scheduling conflicts) for the Commencement Date to Tenant for the amount of the delay in order to compensate Tenant. Subsequent to Tenant opening the Premises for business, construction within or on the Premises shall be limited so as to not unreasonably or materially interfere with Tenant's ability to conduct business, and in no event shall the same interfere with access or egress to the Premises.

**6.4** Should Tenant and Landlord be engaged in construction activities in close proximity of each other, diligent efforts shall be made to coordinate the work to avoid interference to either party. In the event of a dispute, Landlord shall be responsible for coordinating and resolving said dispute in a manner deemed appropriate in its reasonable discretion.

**ARTICLE 7**  
**REAL ESTATE AND LEASEHOLD TAXES**

- 7.1** The parties agree that the Land and Premises or Tenant's leasehold interest may be a separately assessed tax parcel. Tenant shall pay or cause its Subtenants to pay actual real estate taxes or leasehold taxes, if any, to the Landlord until Tenant is billed directly for the real estate taxes or leasehold taxes and thereafter Tenant shall pay or cause its Subtenants to pay actual real estate taxes, leasehold taxes or any other taxes levied or assessed against the Premises and the Land within and upon which the Premises is located and related to Tenant's use and occupancy of the Premises at the rate of 1/12<sup>th</sup> of the total yearly amount due on a monthly basis. Alternatively, if possible, Landlord shall forward real estate or leasehold tax bills to Tenant for direct payment. Tenant shall provide Landlord with timely paid receipts for all real estate or leasehold taxes due on the Land and Premises. In the event Lot 1 forms part of additional properties taxed under the same tax parcel Tenant will pay its prorated share of the real estate taxes attributable to its percentage of land making up such tax parcel as it relates to the entire tax parcel and one hundred percent (100%) of the assessment related to Tenant's Premises.
- 7.2** Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than an income or franchise tax) upon or against the rentals payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax, on the land and buildings or otherwise, or any other substitute tax, the proceeds of which are used to fund the same governmental functions as were funded by *ad valorem* taxes, Tenant shall be responsible for and shall pay or cause its Subtenants to be pay such tax, excise and/or assessment, or shall reimburse the Landlord for the amount thereof, for Tenant's proportionate share thereof, as the case may be, on or before the date that any fine, penalty or interest would be added thereto for nonpayment. Substitute taxes as referred to above in this paragraph shall include surtax on parking spaces. Notwithstanding the foregoing, taxes shall not include income or franchise taxes or any other taxes imposed upon or measured by Landlord's income or profits unless the same shall be imposed in lieu of real estate taxes.
- 7.3** Tenant shall pay or cause its Subtenants to pay the following when due: all taxes assessed against Tenant's personal property; all license fees, occupational taxes, impact fees and other governmental charges assessed by reason of Tenant's use or occupancy of the Premises, including, without limitation, any rental or occupancy taxes and any other taxes arising out of the operation of Tenant's business or occupancy of the Premises. Tenant shall timely pay or Cause its Subtenants to timely pay any sales or occupation taxes that may become due by reason of Tenant's or its Subtenants' use or occupancy of the Premises or as a result of Tenant's or its Subtenants' operations on the Premises.
- 7.4** Tenant may contest any such taxes and in the event Tenant obtains a tax refund or reduction, Tenant shall receive any such refund or reduction.
- 7.5** Tenant shall be and remain obligated to pay actual real estate taxes, leasehold taxes or any other taxes levied and assessed against the Premises and the Land

notwithstanding any obligation of its Subtenants to pay actual real estate taxes, leasehold taxes or any other taxes levied and assessed against the Premises and the Land contained in this Lease or any sublease to which a Subtenant is a party.

## **ARTICLE 8** **USE**

- 8.1** Except as otherwise stated herein, Tenant agrees that the Premises shall be occupied by no other persons or entities except upon and with the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and shall be used for the Permitted Use of a live music venue and Landlord acknowledges Tenant Subtenants Pete's Dueling Piano Bar and Tiki Tiki; any material change in use requested by Tenant shall require Landlord's prior approval, which shall not be unreasonably withheld, conditioned or delayed, and which reasonable basis shall be limited to considerations regarding restrictions then in effect, competitive uses within The Park, and compatibility and quality of use with adjacent properties. Landlord will notify Tenant of Landlord's approval or its non-approval of the request for any material change in use within thirty (30) days of receipt of Tenant's request.
- 8.2** During the Term hereof, Tenant shall cause its Subtenant's business to remain open during reasonable business hours as determined by the Tenant and as reasonably approved by the Landlord, such approval not to be unreasonably withheld. Tenant realizes that it is beneficial to it and to all other tenants in The Park to maintain uniform business hours at all times, and therefore Tenant agrees that the obligation of Tenant to cause its business to remain open during the hours and days as aforesaid, it being understood that other tenants within The Park may offer extended or abbreviated hours based on guest traffic or the nature of their business. Tenant shall keep its exterior windows illuminated every day until at least 10:00 P.M., daily. Tenant reserves the right to close the store for any major holidays that Tenant may wish to observe. Tenant also reserves the right to close periodically for reasonable periods of time during the year not to exceed five (5) days aggregate per year (in addition to the aforementioned agreed-upon time and days for closing) in order to account for inventory and shall give Landlord reasonable prior notice of closures. Further, Tenant reserves the right to close for reasonable periods of time and in good faith when required to do so due to Acts of God that are beyond the control of Landlord or Tenant. Notwithstanding anything to the contrary, Tenant is not obligated to open before 4:00 PM each day.
- 8.3** Tenant will occupy or cause its Subtenants to occupy the Premises and thereafter continuously operate and conduct business in the Premises during each hour of the entire Lease Term when Tenant is required under this Lease to be open for the business permitted under **ARTICLE 8.2** hereof. Landlord shall give Tenant forty-eight (48) hours' prior notice and opportunity to cure a violation of this clause, and thereafter Landlord shall have the right to obtain specific performance by Tenant upon Tenant's failure to comply with the provisions of this **ARTICLE 8.3**. Landlord may elect as its remedy for a violation of this clause continuing for a period of thirty

(30) continuous days beyond notice (except as the result of casualty or force majeure), to terminate the Lease.

- 8.4** The Premises shall not be used for (i) a movie theater, (ii) the sale of theater popcorn provided the restriction shall not apply to popcorn served which is incidental to business operations and the popcorn is served in open, returnable containers and is for in-house consumption at no charge, (iii) the sale of packaged theater candy of the type typically found in movie theater concession stands provided the restriction shall not apply to sale of candy on the interior of the Premises and is not advertised or promoted for consumption in the movie theater within the Rosemont Entertainment District, (iv) a Brazilian steakhouse venue, (v) a bowling venue, (vi) an Irish Pub-themed venue, (vii) a venue for the purpose of viewing a live performance of music or viewing any other type of live performance where tickets are available for purchase prior to the date of the live performance at the venue or over the internet and (viii) a business where on premises pizza sales comprise 20 percent (20%) or more of total gross food sales. Tenant or its Subtenants shall not use or occupy, or permit anyone taking through or under Tenant or its Subtenants in any manner to use or occupy, the Premises for any other use, not being the Permitted Use.

#### **ARTICLE 9** **PROMOTION FUND**

Landlord has instituted a Promotion Fund for marketing The Park and Tenant's contribution to the Promotion Fund shall be One and No/100 Dollar (\$1.00) per square foot of Premises Floor Area and shall commence upon the First Lease Year and automatically increase by three percent (3%) per Lease Year.

#### **ARTICLE 10** **RULES AND REGULATIONS**

- 10.1** Landlord reserves the right from time to time to adopt and promulgate reasonable, nondiscriminatory rules and regulations applicable to the Premises and The Park, and to amend and supplement such rules and regulations. Notice of such rules and regulations and of any amendments and supplements thereto shall be given to Tenant and Tenant agrees and shall cause its Subtenants to agree to comply with and observe all such rules and regulations in all material respects, provided that the same shall, to the extent practicable, be applied uniformly to all of the tenants in The Park. A current copy of the rules and regulations applicable to the Premises and The Park shall be provided to Tenant from time to time. Notwithstanding the foregoing, in the event the rules and regulations conflict with the terms of this Lease, the terms of this Lease shall govern and control.
- 10.2** Tenant hereby agrees and shall cause its Subtenants to agree to comply with the conditions of all applicable governmental approvals and any recorded covenants and restrictions affecting the Premises and The Park.

**ARTICLE 11**  
**CONDUCT OF BUSINESS**

**11.1** Tenant agrees to conduct or cause its Subtenants to conduct its business in the Premises pursuant to the following standards:

- (A) Tenant or its Subtenants shall operate its business pursuant to the highest reasonable standards of its business category, to include both food service and at Tenant's option, entertainment, and shall, at all times, maintain an adequate stock, an experienced quality staff and manager/management company and will include appropriate fixtures so as to enable its business to be operated in such high standards and manner.
- (B) Tenant or its Subtenants shall not display any merchandise, solicit business or distribute advertising material in the common areas without Landlord's written consent not to be unreasonably withheld, nor in any manner use any part of the common areas for purposes other than for their intended common use and not to obstruct any part thereof.
- (C) No auction, fire, liquidation, bankruptcy or going out-of-business sale shall be conducted in the Premises without the advance written consent of Landlord, nor shall Tenant or its Subtenants conduct its business in such fashion as to give the impression such a prohibited sale is being conducted.
- (D) Tenant shall not commit or cause its Subtenants to commit not waste to the Premises or common areas and shall maintain the Premises in a safe, neat, clean and orderly condition.
- (E) Tenant shall not use or cause its Subtenants not to use the Premises or permit the same to be used in any manner: in violation of law; for lodging purposes; or that would constitute an extra-hazardous use or violate any insurance policy of Tenant or its Subtenants, Landlord or any other tenant in The Park or increase the cost thereof above its normal cost, provided however that if the Permitted Use increases the insurance premiums, the Tenant or its Subtenants shall pay any such increase.
- (F) All deliveries of merchandise, supplies and materials, or other services to the Premises, shall be as directed by the Landlord or his agent reasonably, and Tenant or its Subtenants will use all diligent efforts to ensure such deliveries shall be at hours other than the regular operating hours of The Park.
- (G) Other than Equipment indicated on the approved drawings, Tenant or its Subtenants shall not erect any additional radio, satellite dish, television aerial or other device ("Equipment") on the roof or exterior walls of the Premises without Landlord's written consent, which shall not be unreasonably withheld or delayed. In the event consent is provided, it shall be granted pursuant to the following conditions: (1) prior to installation, Tenant or its Subtenants shall obtain Landlord's written consent, which shall not be unreasonably withheld regarding location of the Equipment but

shall prevent visibility from street level; (2) no such Equipment shall transmit, but shall only receive, signals and in the event the Equipment creates transmission or reception interference with any other broadcast or reception equipment in the vicinity Tenant or its Subtenants shall remedy and cease such interference immediately upon notice; (3) Tenant or its Subtenants shall assume full responsibility for the installation, maintenance and/or removal of the Equipment; and (4) In doing any such work: (i) the Tenant or its Subtenants shall use due care when installing or removing the Equipment, proceed in a manner to minimize damage or injury to the Premises; (ii) the Equipment and its appurtenances shall be installed by a satellite or antenna installation company in a location as reasonably approved by Landlord. Tenant or its Subtenants agrees to obtain all permits required for the installation of the Equipment; (iii) a reputable company shall maintain the Equipment in good order and repair throughout the term of the Lease.

(H) Tenant shall or its Subtenants shall, in good faith using reasonable efforts, agree not to use or permit the Premises to be used in any way which will injure the reputation of the same (or of The Park) or may be a material nuisance, annoyance, or inconvenience to the tenants of The Park or of the neighborhood, including, without limiting the generality of the foregoing, permitting loud noise by the playing of musical instruments or radios or television, or the use of microphones, loudspeakers, electrical equipment, or utilizing flashing lights outside of the Premises, or search lights, or permitting the emission of noxious odors from the Premises, any of which, in the reasonable judgment of the Landlord, might cause disturbance, impairment, or interference with the use or enjoyment by any other tenant in The Park of its premises. Tenant or its Subtenants agree to keep the noise levels and odors to a level as is reasonable in Tenant or its Subtenants' nature of business. If Tenant or its Subtenants exceed reasonable noise levels, Landlord shall first provide written notice to Tenant or its Subtenants before taking any further steps and allow Tenant or its Subtenants a reasonable cure period.

(I) Tenant will maintain or cause its Subtenants to maintain the Premises, at its own expense, in a clean, orderly and sanitary condition and free of insects, rodents, vermin, and other pests; Tenant or its Subtenants will not permit accumulations of garbage, trash, rubbish and other refuse, but will remove the same at its expense and will keep such refuse in odor-proof, rat-proof containers shielded from the view of the general public until removed. Tenant or its Subtenants will not burn any trash or garbage whatsoever and will cause all such garbage, trash or rubbish to be removed by such persons or companies as may be specified by Landlord, and if Landlord provides such service directly to the Premises, Tenant or its Subtenants will pay such charges as incurred for Tenant's or its Subtenants' garbage pickup. If so directed by Landlord, Tenant or its Subtenants shall, at their sole expense, purchase or rent and continually maintain and use a dumpster for the disposal of garbage, trash and rubbish at the location designated by Landlord. Notwithstanding anything contained herein to the contrary, Tenant or its Subtenants' financial

obligations under this section shall be reasonably priced within the trash removal industry.

- (J) So long as it relates to the Premises, Tenant shall promptly comply or cause its Subtenants to promptly comply in all material respects with all present and future laws (including, but not limited to, the Americans With Disabilities Act), ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction, and observe and comply in all material respects with all covenants and restrictions of record and all notices from each mortgagee, affecting or applicable to the Premises (arising in connection with Tenant's specific use) or affecting or applicable to the Premises. Landlord hereby represents and warrants that as of the Execution Date, the Premises is in compliance with all applicable governmental rules, regulations, laws, and ordinances, including but not limited to the Americans with Disabilities Act.

## **ARTICLE 12**

### **ALTERATIONS BY TENANT AND LIENS**

#### **12.1 Alterations by Tenant.**

- (A) Tenant shall not make, cause or allow to be made any alterations, repairs, additions or improvements in or to the leased Premises which do not comply with plans reasonably approved in advance by Landlord except as permitted by **ARTICLE 12.2** hereof without the prior written consent thereto by Landlord which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall submit to Landlord plans and specifications for such work at the time consent is sought, in accordance with the criteria and procedures to be mutually agreed upon. If Landlord grants such consent, such alterations, additions or improvements shall be performed lien-free, in good and workmanlike manner and in accordance with all applicable legal requirements (as hereinafter defined) and insurance requirements and all drawings or specifications approved by Landlord, and in accordance with the provisions of this Lease, including the provisions of **ARTICLE 12**.
- (B) Notwithstanding anything in **ARTICLE 12.1(A)** above to the contrary, Tenant may make or allow its Subtenants to make non-structural alterations, repairs, additions or improvements to the interior of the Premises without Landlord's prior written consent; provided, however, with regard to the proposed alteration that (i) the cost of each such alteration does not exceed Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) and the aggregate amount of all such alterations during any twelve (12) month period does not exceed One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00); (ii) as to all alterations, and regardless of whether the same requires a building, construction or similar permit, at least ten (10) business days before commencing any of such alterations, Tenant shall deliver written notice to Landlord describing such alterations (and including any plans and specifications prepared or to be prepared with respect to such work), (iii) such alterations do not impair the value of the Premises,



(iv) such alterations do not interfere with the operation of the Premises or the common areas adjacent to the Premises, and (v) such alterations do not affect any warranties for the benefit of Landlord. If, however, the non-structural alterations to the interior of the Premises proposed by Tenant satisfy all of the above requirements and conditions of this **ARTICLE 12.1(B)** except that any of the dollar amounts set forth in clause (i) above in this **ARTICLE 12.1(B)** are exceeded, Tenant may not perform such alterations without first having obtained Landlord's prior written consent which shall not be unreasonably withheld, conditioned or delayed. Without in any way limiting the preceding provisions of this **ARTICLE 12.1**, in no event whatsoever may Tenant make any alterations directly or indirectly affecting structural components of the Premises, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

- 12.2** Tenant or its Subtenants shall not permit to be created nor to remain undischarged any lien, encumbrance or charge arising out of any work by any contractor, mechanic, laborer or materialman which might be or become a lien or encumbrance or charge upon the Premises or the Land or the income therefrom, and the Tenant or its Subtenants shall not suffer or perform any other matter or thing whereby the interest of Landlord in the Premises or in the Land might be impaired. The Land shall not be subject to attachment. Tenant or its Subtenants shall include in all contracts and subcontracts for work to be performed on Tenant's behalf at the Premises provisions wherein such contractor or subcontractor acknowledges that Landlord has no liability under such contracts and subcontracts and that such contractor or subcontractor waives any right it may have to lien or attach the Land. Furthermore, Tenant or its Subtenants shall cause any bonded contractor directed to do work in or about the Premises to enter into a no-lien contract in a form reasonably deemed acceptable to Landlord prior to the initiation of work. If any lien were filed by virtue of Tenant's Work, Tenant or its Subtenants shall cause the same to be discharged of record by payment, bond, order of court, or otherwise as required by law within thirty (30) days of filing. After the expiration of said thirty (30) day period if Tenant or its Subtenants fail to cause the lien to be discharged then Landlord may, at Landlord's option, cause such discharge and Tenant or its Subtenants shall reimburse Landlord, with interest at the Default Rate, for all of its costs and expenses, including reasonable attorneys' fees, incurred by Landlord within thirty (30) days of receipt of written demand thereof by Landlord. Nothing in this Lease shall be construed as in any way constituting a consent or request by Landlord, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific or general improvement, alteration, or repair of or to the Premises or to any buildings or improvements installed or constructed on the Premises.

### **ARTICLE 13**

#### **SIGNS**

- 13.1** Tenant or its Subtenants agree to provide and install at its cost signs and, if applicable, canopies designed, fabricated, located and installed pursuant to plans

approved in advance by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and in compliance with all applicable laws, permits and codes. For purposes of Landlord's review, Tenant or its Subtenants shall submit drawings and specifications detailing the size, color, type, elevations and method of attachment for the proposed sign and the proposed canopy. Tenant or its Subtenants agree that it will not erect any exterior signs or canopies unless it meets the standards and obtains the approvals of Landlord and without first obtaining Landlord's written approval. Tenant or its Subtenants agree to install all of said signs and canopies in conformance with applicable government regulations and to keep and maintain the same in a good state of repair and save Landlord harmless from any damages stemming from the installation, maintenance, existence or removal of the same and shall repair any damage which may have been caused by said installation, existence, maintenance or removal. Upon vacating the Premises, Tenant or its Subtenants agree to remove all signs and canopies and simultaneously repair any damage to the Premises or Land caused by such removal.

- 13.2** Tenant or its Subtenants shall not display any sensational sale signs (such as going out-of-business, fire, auction, liquidation, or bankruptcy), or similar temporary advertising or promotional items on the exterior of the Premises. Tenant or its Subtenants shall not display any temporary signs, banners, pennants, window signs, balloons, or similar temporary advertising or promotional items on the exterior of the Premises without first obtaining Landlord's written approval, not to be unreasonably withheld or delayed.
- 13.3** Tenant or its Subtenants' proposed signage shall be subject to and in compliance with all then applicable codes and ordinances.

#### **ARTICLE 14** **COMPETITION**

- 14.1** Tenant acknowledges that Landlord's obtaining a fair and equitable rental is dependent upon Tenant or its Subtenants concentrating all of its business efforts on the Premises and within The Park so as to maximize Subtenants' Gross Sales, and Tenant or its Subtenants further acknowledge that activity by Tenant of the same usage as listed herein within the immediate area or the geographical area of the Premises in operating or participating in the operating of a similar or competing business of the same usage as listed herein must necessarily have an adverse effect on the volume of Gross Sales by Tenant at the Premises to the detriment of Landlord and will deprive Landlord of a fair rental. Tenant accordingly covenants and agrees that during the Term of this Lease, neither Tenant nor Tenant's management, nor any person or entity controlled by Tenant or controlling Tenant, or controlled by the same person or entity or persons or entities who control Tenant, will directly or indirectly own, operate, be employed in, directed or serve any other place of business, the same, Tenant's business as set forth herein, within five (5) miles of the Premises without first obtaining Landlord's written reasonable approval. In the event that this covenant is violated, then, in addition to any other remedy Landlord may have, the Minimum Rent provided for in this Lease shall be increased by fifty (50%) percent.

**ARTICLE 15**  
**COMMON AREAS AND PARKING FACILITY**

- 15.1** Landlord shall make available from time to time to the Tenant and other occupants of The Park, such common areas as and to the extent Landlord shall from time to time deem appropriate and commercially reasonable. The Parking Facility is municipally owned and is public. Common areas of The Park and the Premises shall be defined as including but not limited to any parking areas, driveways, private roadways, service courts, access and egress roads, sidewalks, landscaped and planted areas, and public restrooms. Landlord shall operate, manage, equip, light, repair and maintain said common areas for their intended purposes in such manner as Landlord shall, using reasonable discretion from time to time determine, and may from time to time change the size, location, elevation, nature and/or use of any common areas and may make installations and/or construct or erect buildings, structures, booths and/or other amenities therein or thereon and move or remove the same and shall have the right to retain revenue from income-producing events whether or not conducted for promotional purposes.
- 15.2** Tenant, its officers, employees, customers and invitees shall have the nonexclusive right in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use said common areas as designated by Landlord, subject to such rules and regulations as Landlord may impose. Landlord may at any time close any common area to make repairs or changes or to prevent the acquisition of public rights in such area or to discourage non-customer parking so long as such changes are reasonable and do not materially negatively impact access to Tenant's Premises.
- 15.3** Landlord has instituted a common area maintenance ("CAM") charge for all CAM Costs (as defined below) for the common areas of The Park and the Land, including without limitation, the Landlord's Parking Facility and the Surface Parking Area (including but not limited to the cost of Landlord's electronic parking validation system for the Parking Facility), landscaping, street maintenance and snow removal. Tenant's share of CAM Costs for the first Lease Year shall be Two and No/100 Dollar (\$2.00) per square foot of Floor Area of the Premises (the "CAM Charge"). Tenant's CAM Charge for its share of all CAM Costs shall automatically increase three percent (3%) per Lease Year. For these purposes, the term "CAM Costs" shall mean all sums incurred in a manner deemed by Landlord to be reasonable and appropriate and for the best interests of the immediate area and connection with the operation, maintenance and repair of the common areas, and shall include, but not be limited to, the costs and expenses of:
- (A) Snow, ice, garbage and trash removal; maintenance and repair of all sidewalks, private roadways, parking lot surfaces, service areas and courts, including cleaning, sweeping, painting, striping and repaving; maintenance, repair and replacement of sidewalks, curbs, guardrails, bumpers, fences, screens, flagpoles, bicycle racks, identification signs, directional signs, traffic signals, and other traffic markers and signs;
  - (B) Maintenance, repair and replacement of the (i) storm and sanitary drainage systems, including disposal plants and lift stations and retention ponds or basin; (ii) irrigation systems; (iii) electrical, gas, water and telephone

systems; (iv) lighting systems (including sign illumination systems, bulbs, poles and fixtures) and After Hours Illumination; (v) emergency water and sprinkler systems; (vi) other utility systems; and (vii) security systems, including any utility charges in connection with any of the foregoing systems and further including the installation, maintenance and operation of any computerized system for any of the foregoing;

- (C) Planting, replanting and replacing of flowers, shrubbery, plants, trees and other landscaping, including park benches;
- (D) Maintenance, repair and acquisition cost (rental fees and/or purchase price or in lieu of purchase price, the annual depreciation allocable thereto) of all security devices, machinery and equipment used in the operation and maintenance of the common areas, and all personal property taxes and other charges incurred in connection with such security devices, machinery and equipment;
- (E) All license and permit fees, and all parking surcharges that may result from environmental or other laws, rules, regulations, guidelines or orders; the cost of obtaining and operating public transportation or shuttle bus systems as used in connection with bringing customers to the Premises or if required by any environmental or other laws, rules, regulations, guidelines or orders;
- (F) The cost of installation and operation of music program services and loudspeaker systems;
- (G) Personnel, including, without limitation, security and maintenance people of The Park or those contracted with by The Park, (including, without limitation, the payroll taxes and employee benefits of such personnel);
- (H) Landlord's administrative costs in an amount equal to eight (8%) percent of the total aggregate cost of operating, maintaining and repairing the common areas, including but not limited to all items listed above;
- (I) Costs of utilities for the common area, including the cost of water and power for heating, lighting, air conditioning and ventilating, and operating of the fountains and ice rink;
- (J) Cost of Landlord's electronic parking validation system for the Parking Facility; and
- (K) Maintenance, repair and replacement of ice rink and related facilities.

Landlord agrees to keep The Park and a portion of the Landlord's Parking Facility adequately illuminated for safety of Tenant or its Subtenants' patrons and employees, for at least one hour after Tenant or its Subtenants close for business each day (the "After Hours Illumination"). Such portion of the Landlord's Parking Facility that shall remain illuminated shall be adequate to illuminate the requisite number of spaces pursuant to any applicable local,

municipal, state or other governmental laws, rules or regulations, to serve the Premises, and shall be located adjacent to The Park.

Notwithstanding anything to the contrary in this Lease, CAM Costs shall not include, and Tenant shall not be responsible for the following: (i) depreciation; (ii) legal fees, brokerage fees, and commissions, space planners' fees, architectural fees, engineering fees, and marketing and advertising fees and expenses incurred in connection with the leasing of The Park; (iii) costs relating to the initial construction or redevelopment of The Park and; (iv) interest, principal payments and other costs of any indebtedness encumbering The Park, and/or the land on which it is built, including, without limitation, costs associated with effectuating and/or administering same; (v) any cost or expenses for which Landlord is reimbursed from any tenant or other third party (except pursuant to clauses similar to this one); (vi) costs of alterations or improvements for any tenants of The Park, including, without limitation, fit-out and installation costs, to the premises of any tenants in The Park; (vii) fines and late payment charges with respect to any amounts due and owing from Landlord; (viii) the wages of employees who do not devote all of their time to The Park, provided, however, that the costs associated with such employees may be prorated and the amount allocable to the time such employees devote to The Park may be included; (ix) attorneys' fees incurred in the enforcement of any lease of space in The Park; (x) costs of selling, syndicating, financing, mortgaging, hypothecating, or ground leasing any of Landlord's interest in The Park or the land on which it is built; (xi) costs relating to the investigation, monitoring, remediation, removal or treatment of Hazardous Substances in, on or under The Park and the land on which it is built. Tenant or its Subtenants payment of their share of CAM Costs is for the purpose of reimbursing Landlord for costs expended to operate and maintain the Land and the common area of The Park in accordance with the Lease and is not intended to provide a profit to Landlord; and (xii) political or charitable contributions. There shall be no duplication of charges pursuant to any other provision of this Lease.

#### **ARTICLE 16** **UTILITIES**

Tenant agrees to pay or cause its Subtenants to pay for all utility services rendered or furnished to the Premises including heat, gas, water, electricity, telecommunications, sprinkler charges assessed by any governmental authority, fire line charges, sewer rental, sewage treatment facilities charges and the like, together with all taxes levied or other charges on such utilities and governmental charges based on utility consumption. Said utility services are intended by the parties to be provided directly to the Premises by the local utility company. If Landlord shall supply any such service, Tenant or its Subtenants will purchase same from Landlord at the market rate applied on a uniform basis with and for similarly situated occupants of The Park at Rosemont entertainment complex. Any such charges for services supplied by Landlord shall be due and payable within twenty (20) business days after billings there-for are rendered to Tenant or its Subtenants. In no such event shall Landlord be liable for the quality, quantity, failure or interruption of such services to the Premises. In the event that Tenant or its Subtenants are purchasing any such services from Landlord, Tenant or its

Subtenants payment to Landlord there-for is for the purpose of reimbursing Landlord there for and is not intended to provide a profit to Landlord.

## **ARTICLE 17** **MAINTENANCE**

- 17.1** Tenant or its Subtenants covenant and agree to keep and maintain repair and replace when necessary, at its own cost and expense in good order, condition and repair the Premises and every part thereof, including, but without limitation: the interior walls, finishes, all plumbing and sewage facilities within the Premises and to that point which those lines serving Tenant's Premises connect to a common line or main line, mechanical equipment systems wholly servicing the Premises and electrical systems and equipment, whether within or outside the Premises, including that portion of the electrical system where it connects to the Premises, fixtures, utility lines to the main, interior and exterior signage and canopies and all parts of the Premises originally constructed or provided to Tenant; provided however, Landlord shall maintain the HVAC system at Landlord's sole cost through the initial ten year term of the Lease. Tenant further agrees to replace any of the aforementioned items when necessary at Tenant's own cost and expense. Tenant also covenants and agrees to be responsible for any damage to the Premises or to the Land, the common areas of The Park, or any part thereof, caused by any act or negligence of Tenant, its employees, agents invitees, licensees or contractors. The Landlord covenants and agrees to keep and maintain, or cause to be kept, in good order, condition, repair and replace if necessary the roof, exterior walls, foundations and structural portions of the Premises Shell to the extent, but only to the extent, originally constructed by the Landlord (except glass and glass windows and doors and the so-called storefront, irrespective of which party installed the same) and common building systems and/or mechanical equipment systems and/or utilities, sewer system to the point of connection with the Premises, except for any damage thereto caused by any act or negligence of the Tenant, its employees, agents, licensees, or contractors. Landlord shall be obligated to maintain, repair and replace if necessary the Building including the roof, exterior walls, common areas and structural parts of the Building at Landlord's sole cost.
- 17.2** If Tenant refuses or neglects to commence or complete repairs promptly and adequately, Landlord shall first provide written notice to Tenant allowing a reasonable time to cure except in emergencies. If Tenant fails to cure within a reasonable time after receiving such notice, only then shall Landlord complete the repairs. If Landlord chooses to complete such repairs, Landlord may bill Tenant for the cost of such work with a ten (10) percent charge for costs for overhead and administration. Such costs are due to Landlord within thirty (30) days receipt by Tenant.
- 17.3** If Landlord refuses or neglects to commence or complete repairs promptly and adequately, Tenant shall first provide written notice to Landlord allowing a reasonable time to cure except in emergencies. If Landlord fails to cure within a reasonable time after receiving such notice, only then shall Tenant complete the repairs. If Tenant chooses to complete such repairs, Tenant may bill Landlord for

the cost of such work with a ten (10) percent charge for costs for overhead and administration.

- 17.4** Except as expressly set forth herein, Landlord shall not be responsible to make any other improvements or repairs of any kind in or upon the Premises.

### **ARTICLE 18** **PROPERTY IN THE PREMISES**

- 18.1** All leasehold or building improvements or additions, such as hardwood floors, carpeting and padding, light fixtures and heating and air-conditioning equipment and all construction work whether done by Tenant or its Subtenants when installed or completed, attach to the freehold and become and remain the property of the Landlord except that theme branded Sugar Factory equipment shall be considered as Tenant or its Subtenants personal property and may be removed by Tenant or its Subtenants at the end of the Lease Term or at the termination of the Lease for any reason. Except for the existing FF&E accepted by the Tenant, if any, all store fixtures or trade fixtures and signs shall remain the property of the Tenant subject at all times to the Landlord's claim for rent and other sums which may become due to the Landlord under this Lease, which such claim shall be subject and subordinate to any claims by any lender to or mortgagee of Tenant.
- 18.2** Tenant or its Subtenants further agree that all personal property of every kind or description that may at any time be in the Premises shall be at the Tenant or its Subtenants sole risk, or at the risk of those claiming under the Tenant or its Subtenants.

### **ARTICLE 19** **TRADE FIXTURES/EQUIPMENT**

Tenant or its Subtenants shall, unless otherwise directed by Landlord at the expiration of said Term, remove all Tenant or its Subtenants personal property, equipment (excluding any equipment integral to the Premises' mechanical, electrical, plumbing, heating, ventilating or air conditioning systems) and trade fixtures which can be removed without costly injury to, or undue defacement of said Premises, provided all rents stipulated herein are paid in full and Tenant is not otherwise in default hereunder, and that any and all damage to the Premises or to Landlord's Premises (resulting from or caused by such removal) shall be promptly repaired at Tenant's expense. For purposes of this **Article 19** the theme branded Sugar Factory equipment shall be considered as Tenant or its Subtenants personal property and may be removed by Tenant or its Subtenants at the end of the Lease Term or at the termination of the Lease for any reason.

### **ARTICLE 20** **SURRENDER OF PREMISES**

- 20.1** Upon the expiration or earlier termination of this Lease, Tenant or its Subtenants agree to vacate and surrender the possession of the Premises to the Landlord.

- 20.2** Upon the expiration or sooner termination of the Term of this Lease, Tenant or its Subtenants shall quit and surrender to Landlord the Premises, in good order and condition, ordinary wear and tear excepted, and shall surrender to Landlord all keys to or for the Premises and inform Landlord of all combinations of any safes and vaults, if any, in the Premises. Tenant or its Subtenants, at their expense, shall promptly remove all personal property of Tenant or its Subtenants, repair all material damage to the Premises caused by such removal and restore the Premises to the condition which existed prior to the installation of the property so removed. Any trade fixtures, equipment, furniture and other personal property which remain in the Premises following the expiration or earlier termination of the Lease Term, at Landlord's option, may thereafter be removed and stored at the cost of Tenant, or retained as the property of Landlord, or sold or otherwise disposed of by Landlord, in any such case without any liability to or recourse by Tenant or its Subtenants to anyone claiming by, through or under Tenant or its Subtenants. Tenant or its Subtenants obligation to observe and perform the covenants set forth in this **ARTICLE 20.2** shall survive the expiration or sooner termination of the Lease.

**ARTICLE 21**  
**ASSIGNMENT AND SUBLETTING**

- 21.1** Tenant shall not (a) assign, encumber, mortgage, or in any other manner transfer this Lease or any estate or interest therein; (b) sublet the Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Premises except to Subtenants Pete's Dueling Piano Bar and Tiki Tiki without the express written consent of Landlord; (c) if Tenant is an entity other than a corporation whose stock is publicly traded, permit the transfer of ownership interests in Tenant so as to result in a change in the control of Tenant; or (d) permit any other person to become Tenant by merger, consolidation, or otherwise (each a "Transfer") without the prior written consent of Landlord not to be unreasonably withheld. Consent by Landlord to one or more Transfers shall not operate as a waiver of Landlord's rights as to any subsequent Transfer. Notwithstanding any Transfer, Tenant and any guarantor of Tenant's obligations under this Lease shall remain fully and jointly and severally liable under this Lease, except in the case of a Transfer approved by Landlord where the assignee has a tangible net worth of at least \$3 million, in which case Tenant and such guarantor shall be released from any liability under this Lease accruing thereafter to the extent the assignee has assumed such liabilities.
- 21.2** Tenant shall give Landlord at least 30 days advance written notice of any proposed Transfer, accompanied by a copy of the proposed Transfer documents, including such additional information, including financial information, as Landlord may request regarding such transferee.
- 21.3** Notwithstanding anything contained herein, Tenant may, upon prior written notice to Landlord but without Landlord's prior consent and without having to pay any transfer fee or be subject to any right of Landlord to terminate this Lease and/or recapture the Premises, assign this Lease or sublease all or any portion of the Premises, to a Tenant Affiliate. "Tenant Affiliate" means: (a) any entity controlling,



controlled by or under common control with Tenant or an owner of Tenant; (b) any entity resulting from the merger, consolidation or reorganization of Tenant or an owner of Tenant with or into any other entity; or (c) any entity acquiring all or substantially all of the ownership of Tenant or all of Tenant's locations, or at least three (3) locations in a single packaged transaction. Tenant and any guarantor hereunder shall remain liable for the performance of the terms and conditions of the Lease in the event of any such assignment or sublease, except where the assignee has a tangible net worth of at least \$3 million, in which case Tenant and such guarantor shall be released from any liability under this Lease accruing thereafter to the extent the assignee has assumed such liabilities.

- 21.4** Any issuance of equity interests in Tenant, including a public offering, shall not constitute a Transfer herein or require Landlord's consent.

Any assignment or sublet **(a)** as to which Landlord has consented; or **(b)** which is required by reason of a final non-appealable order of a court of competent jurisdiction; or **(c)** which is made by reason of and in accordance with the provisions of any law or statute, including, without limitation, the laws governing bankruptcy, insolvency or receivership shall be subject to all terms and conditions of this Lease, and shall not be effective or deemed valid unless, at the time of such assignment:

**(A)** Each assignee or sub lessee shall agree, in a written agreement reasonably satisfactory to Landlord to assume and abide by all of the terms and provisions of this Lease, including those which govern the Permitted Uses of the Premises; and

**(B)** Each assignee or sub lessee has submitted a current financial statement, audited by a certified public accountant, showing a net worth and working capital in amounts reasonably determined by Landlord to be sufficient to assure the future performance by such assignee or sub lessee of Tenant's obligations hereunder; and

**(C)** Each assignee or sub lessee has submitted, in writing, evidence reasonably satisfactory to Landlord of substantial retailing experience in premises of comparable size to the Premises and in the operation of a restaurant and related services permitted under this Lease; and

**(D)** The business reputation of each assignee or sub lessee shall meet or exceed generally acceptable commercial standards; and

**(E)** The use of the Premises by each assignee or sub lessee shall not violate, or create any potential violation of applicable laws, codes or ordinances, nor violate any other agreements affecting the Premises, Landlord or other tenants in the Land.

**(F)** Tenant shall pay Landlord the sum of Three Hundred and 00/100 Dollars (\$300.00) as reimbursement to Landlord for administrative and legal expenses incurred by Landlord in connection with any such assignment or subletting.

(G) If the proposed use is substantially different than Tenant's current use, then such proposed use of the Premises is complimentary, as determined by Landlord in its sole discretion, to the current tenant mix of The Park and/or the immediate area.

The preceding sections (A) - (G) are inapplicable if the assignment or sublet is merely a change in the form of business organization under which the Tenant operates provided that new business organization remains under the control of the Tenant.

## **ARTICLE 22** **INSURANCE**

**22.1** Tenant agrees to maintain or cause its Subtenants to maintain in full force during the Lease Term the following policies:

- (A) Commercial General Liability insurance (or the then successor equivalent from time to time), without any so-called employee exclusion or the like, including contractual liability, products and completed operations, with combined bodily injury and property damage limits of liability of no less than One Million and 00/100 Dollars (\$1,000,000.00) each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) (per location) general aggregate, under which Landlord, Landlord's mortgagee or any other parties as Landlord may designate are named additional insured on a primary basis and Tenant or its Subtenants are the named insured. Tenant also shall obtain Fire Legal Liability insurance with a limit on general liability of no less than One Hundred Thousand and 00/100 Dollars (\$100,000.00) per occurrence.
- (B) Tenant also agrees that it shall continuously keep in full force and effect at all times during the Lease Term at its sole cost and expense (i) Property insurance coverage on an "All Risk" or Special Form of policy insuring all of Tenant's leasehold improvements, alterations, additions, fixtures, merchandise, equipment and other personal property installed or owned by Tenant in, on or at the Premises, against fire, vandalism, riot, malicious mischief, sprinkler leakage or other casualty, with extended coverage in amounts equal to the full one hundred (100%) replacement value, without coinsurance, of such improvements, alterations, additions, fixtures and contents, (ii) policies of business interruption or rental insurance insuring at a minimum the Minimum Rent and Additional Rental due and payable hereunder for a minimum of twelve (12) full calendar months with an option for twenty four (24) month extended period of indemnity, and (iii) Boiler and Machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating and air conditioning equipment, and (iv) plate glass insurance. It is understood and agreed that unless caused by the negligence or willful misconduct of Landlord, its employee(s), agent(s) or contractor(s), Tenant assumes all risk of damage to its own property arising from any cause whatsoever, including, without limitation, loss by theft or otherwise;

- (C) Such policies required hereunder shall name Landlord, Landlord's mortgagee or any other parties as Landlord may designate (and such other persons as are in privity of estate with Landlord as may be set out in notice from time to time) as an additional insured on a primary basis and Tenant as primary insured, and shall be written by reputable and financially sound, duly licensed insurance companies with an A- financial rating. Each such policy may only be cancelable upon at least thirty (30) days' prior written notice to Landlord. Prior to the Commencement Date, no less often than annually thereafter, and at any other time upon the request of Landlord, Tenant shall furnish to Landlord evidence of such continuous insurance coverage satisfactory to Landlord; and
- (D) Appropriate Liquor Liability Insurance as set forth in **ARTICLE 35.17** hereof.

**22.2** Tenant will indemnify, save harmless, and defend Landlord from and against any and all claims of liability and/or any demands in connection with any accident, injury (including death) or damage whatsoever caused to any person or property other than that caused by the negligence or willful misconduct of Landlord, its agents or employees, arising directly or indirectly out of the Tenant's initial construction, alteration, renovation, remodeling and/or fixturing of the Premises (whether or not occurring prior to the Commencement Date hereof), or out of the business conducted in the Premises or occurring in the Premises or any part thereof, or arising directly or indirectly from any act or omission of Tenant or any of its contractors, subcontractors, customers, guests invitees or concessionaires or subtenants or their respective licensees, servants, agents, employees, contractors or subcontractors, and from and against any and all costs, attorney's fees, expenses and liability incurred in connection with any such claim or proceeding brought thereon. The comprehensive general liability coverage maintained by Tenant pursuant to **ARTICLE 22.1** above shall specifically ensure the contractual obligations of Tenant as set forth herein.

**22.3** Tenant agrees, at its own cost and expense, to comply with all of the rules, regulations and recommendations of the Fire Insurance Rating Organization and any similar body and any governmental authority having jurisdiction; provided that such rules, regulations, and recommendations are made known to Tenant prior to commencement of Tenant's work. If Tenant installs any electrical equipment that overloads the lines in the Premises Tenant shall, at its own cost and expense promptly make whatever changes are necessary to remedy such condition and to comply with all reasonable requirements of the Landlord and comply with the requirements of the Board of Fire Insurance Underwriters and any similar body and any governmental authority having jurisdiction thereof. For the purpose of this paragraph, any finding or schedule of the Fire Insurance Rating Organization having jurisdiction thereof shall be deemed to be conclusive. In the event that this Lease so permits and Tenant engages in the preparation of food or packaged foods or engages in the use, sale or storage of inflammable or combustible material, Tenant shall install chemical extinguishing devices (such as ansul) approved by the Fire Insurance Rating Organization and shall keep such devices

under services as required by such organization. If gas is used in the Premises, Tenant shall install gas cutoff devices (manual and automatic).

- 22.4** Each insurance policy carried by Landlord or Tenant and insuring all or any part of the Shopping Center, the Premises, including improvements, alterations and changes in and to the Premises made by either of them and Tenant's trade fixtures and contents therein, shall be written in a manner to provide that the insurance company waives all right of recovery by way of subrogation against Landlord or Tenant, as the case may be, in connection with any loss or damage to the Premises, property or businesses, building and contents caused by any of the perils covered by fire and extended coverage, and business interruptions insurance, or for which either party may be reimbursed as a result of insurance coverage affecting any loss suffered by it. So long as the policy or policies involved can be so written and maintained in effect, neither Landlord or Tenant shall be liable to the other for any such loss or damage, provided, however, that the foregoing waivers of liability given by Landlord and Tenant to each other shall apply only to the extent of any recovery made by the parties hereto under any policy of insurance now or hereafter issued. In the event of inability on the part of either party to obtain such provisions in its policy or policies with the carrier with whom such insurance is then carried, or such carrier's requiring payment of additional premium for such provision, the party so affected shall give the other party written notice of such inability or the increase in premium as the case may be. The party to whom such notice is given shall have Fifteen (15) days from the receipt thereof within which: **(1)** in the case of such inability on the part of the other party, to procure from the aforesaid other party's insurance carrier in writing, at no increase in premium over that paid theretofore by the party so affected, such waiver of subrogation; **(2)** in the case of increase premium, to pay the other party so affected the amount of such increase; or **(3)** to waive, in writing, within the time limit set forth herein, such requirement to obtain the aforesaid waiver of subrogation. Should the party to whom such notice is given fail to comply as aforesaid within the same Fifteen (15) day period, each and every provision in this paragraph in favor of such defaulting party shall be cancelled and of no further force and effect.

### **ARTICLE 23** **FIRE OR OTHER CASUALTY**

- 23.1** Should the Premises (or any part thereof) be damaged or destroyed by fire or other casualty insured under the standard fire and casualty insurance policy with approved standard extended coverage endorsement applicable to the Premises, Tenant shall, except as otherwise provided herein repair and/or rebuild the same with reasonable diligence. Landlord shall repair and/or rebuild that portion of any Landlord's Work which was so damaged or destroyed and shall commence and pursue the same to completion with reasonable diligence. Tenant's obligation hereunder shall be limited to the Premises and any improvements constructed by Tenant at the Commencement Date of the Term of this Lease. If there should be a substantial interference with the operation of Tenant's business in the Premises as a result of such damage or destruction which requires Tenant to temporarily close its business to the public, the Minimum Rent shall abate for such period of time until Tenant has substantially completed such reparations or restoration and has re-opened for business, but in any event, not longer than 270 days (plus one

(1) day for every day of delay unreasonably caused by Landlord). Unless this Lease is terminated by Tenant, as hereinafter provided, Tenant shall, at its cost and expense, repair, restore, redecorate and re-fixture the Premises and restock the contents thereof in a manner and to at least a condition equal to that existing prior to such damage or destruction and the proceeds of all insurance carried by Tenant on the property, decorations and improvements as well as fixtures and contents in the Premises shall be held in trust by Tenant for such purposes. Tenant agrees to commence such work within thirty (30) days after the date of such damage or destruction and Tenant shall diligently pursue such work to its completion. Tenant further agrees that all such work required of it shall be commenced and diligently prosecuted to completion within a reasonable period. Tenant acknowledges notice (i) that Landlord shall not obtain insurance of any kind on Tenant's furniture or furnishings, equipment, fixtures, alternations, improvements and additions (other than Landlord's Work), (ii) that it is Tenant's obligation to obtain such insurance at Tenant's sole cost and expense, and (iii) that, except as otherwise expressly set forth herein, Landlord shall not be obligated to repair any damage thereto or replace the same. Tenant's obligation to repair and/or rebuild under this Section 26.1 is limited to insurance proceeds, including cash equal to Tenant's deductible, payable to Tenant as a result of such casualty.

**23.2** Notwithstanding anything to the contrary contained in the preceding subsection or elsewhere in this Lease, Tenant at its option may terminate this Lease on thirty (30) days notice to Landlord, given within ninety (90) days after the occurrence of any damage or destruction if **(1)** more than fifty percent (50%) of the Premises is damaged and/or the repairs for such damage will take more than 270 days to complete or **(2)** the Premises be damaged during the last year of the Term.

**23.3** Except to the extent specifically provided for in this Lease, none of the rentals payable by Tenant, nor any of Tenant's other obligations under any provisions of this Lease, shall be affected by any damage to or destruction of the Premises by any cause whatsoever; provided, however, that if Tenant elects to terminate the Lease pursuant to Section 26.2, Tenant's obligations, including the obligation to pay all Rent, shall terminate on the date of the notice of termination.

## **ARTICLE 24** **EMINENT DOMAIN**

### **24.1 Premises.**

- (A)** If the whole of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain, condemnation or expropriation or in the event of a conveyance in lieu thereof, then this Lease shall terminate on the date when Tenant is required to yield possession thereof.
- (B)** If less than twenty-five (25%) percent of the Premises shall be so taken or conveyed, then this Lease shall terminate only as to the part taken or conveyed as of the date Tenant is required to yield possession thereof,

provided however that if any portion of the Premises taken shall unreasonably interfere with Tenant's ingress and egress to the Premises, or materially impact the operations of Tenant's business, then Tenant may terminate this Lease by providing Landlord with notice within thirty (30) days prior to the date Tenant is required to surrender possession.

- (C) If more than twenty-five (25%) percent of the Premises shall be so taken or conveyed, and such partial taking or conveyance shall render that portion not so taken or conveyed unsuitable for the purpose for which the Premises were leased, then Landlord and Tenant shall each have the right to terminate this Lease by written notice given to the other within sixty (60) days of the date Tenant is required to surrender possession of the part so taken or conveyed.
- (D) If any part of the Premises is so taken or conveyed, and the Lease is not terminated as set forth above, then: (a) this Lease shall continue in full force and effect, except that the Minimum Rent and Additional Rent (including without limitation common area charges) shall be reduced in the same proportion of any reduction of the Floor Area of the Premises so taken or conveyed bears to the original Floor Area demised, such reductions commencing as of the date that Tenant is required to surrender possession of the part taken or conveyed; and (b) Landlord shall upon receipt of the award in condemnation or the consideration for a conveyance made in lieu of condemnation make all necessary repairs or alterations to restore that portion of the Premises remaining as near to its former condition as the circumstances will permit to the extent necessary to constitute the portion of the Premises not taken as a complete architectural unit; provided, however, that Landlord in any event shall not be required to spend for such repair and alteration work an amount in excess of the amount received by Landlord as damages for the taking of such part of the Premises exclusive of the portion of such damages attributable to the then current market value of the Land taken or condemned and after deducting the cost of collecting such damages, and Tenant, at Tenant's expense, shall make all necessary repairs and alterations to, and restoration of, Tenant's trade fixtures, floor covering, furniture, equipment, decorations, signs and contents. In the event that award is not sufficient for Landlord to restore that portion of the Premises remaining as near to its former condition as is reasonably necessary for Tenant to conduct its business, then Tenant shall have the option to either complete such restoration or terminate this Lease within sixty (60) days after notice to Landlord of such insufficient award.
- (E) As used in this **ARTICLE 24**, the amount received by Landlord as compensation for any such taking or consideration for any such conveyance shall mean that portion of the award in condemnation or consideration for such conveyance received by Landlord from such condemning authority which is free and clear of all prior claims or collections by the holders of any mortgages or other security interest.

- (F) As used in this **ARTICLE 24**, "Premises" and "Portion of Premises" shall not include fixtures, floor covering, furniture, equipment, decorations, signs and contents of Tenant, but this shall not limit Tenant's obligation above.

**24.2 Dispute as to Percentage of Taking.**

Whenever there is a dispute as to the percentage of any condemnation or any percentage conveyance in lieu of condemnation, as it affects the provisions of this **ARTICLE 24**, the good-faith determination of Landlord's Architect and Tenant's Architect shall be conclusive and binding upon the parties hereto. In the event Landlord's Architect and Tenant's Architect are unable to agree the parties shall retain and a third architect mutually agreed upon by the parties to make the good-faith determination and the fees and costs of the third architect shall be shared by the parties on a 50/50 basis.

**24.3 Waiver of Right to Compensation.**

In the event of a taking under the power of eminent domain of the Premises, common areas, or any other portion of the Land, whether whole or partial, all compensation awarded for such taking of the fee and leasehold estate, or consideration paid for a conveyance in lieu of condemnation, as damages or otherwise, shall belong to and be the property of Landlord, except that Tenant shall be entitled to recover from the condemning authority, but not from Landlord, such amounts as may be separately awarded to Tenant for fixtures, removal expenses, business dislocation damages and moving expenses, provided no such claim shall diminish or adversely affect Landlord's award. Tenant hereby assigns to Landlord all right, title and interest of Tenant in and to any award made for leasehold damages and/or diminution in the value of Tenant's leasehold estate.

**ARTICLE 25**  
**SUBORDINATION AND ATTORNMENT**

**25.1** The Landlord reserves the right and privilege to subject and subordinate this Lease at all times to the lien of any mortgage or mortgages now or hereafter placed upon the Landlord's interest in the said Premises (the holder of any such mortgage hereinafter referred to as mortgagee), and to any and all advances to be made under such mortgages, and all renewals, modifications, extensions, consolidations and replacements thereof; provided that, so long as Tenant is not in default under this Lease, its possession of the Premises and its rights and privileges hereunder shall not be interfered with by such mortgagee or any purchaser upon foreclosure of such mortgage.

**25.2** Tenant covenants and agrees to execute and deliver, within thirty (30) days of demand, such further instrument or instruments subordinating this Lease on the foregoing basis to the lien of any such mortgage or mortgages as shall be desired by the Landlord and any mortgagees or proposed mortgagees, provided that in such instrument of subordination the mortgagee agrees that so long as the Tenant shall not be in default under this Lease, after applicable notice and cure periods, the mortgagee will not disturb the peaceful, quiet enjoyment of the Premises by the Tenant.

- 25.3** Tenant shall, in the event of the sale or assignment of Landlord's interest in the Land or the Premises to a third-party purchaser, or in the event of any proceedings brought for the foreclosure of, or in the event of the exercise of the power or sale under any mortgage covering the Land, attorn to and recognize such purchaser or mortgagee as Landlord under this Lease, and in any such events, Landlord named herein shall not thereafter be liable on this Lease.
- 25.4** If any mortgagee shall have given prior written notice to Tenant that it is a holder of a mortgage as described in the first paragraph of this **ARTICLE 25** and such notice includes the address to which notices to such mortgagee are to be sent, then Tenant agrees to give to such mortgagee notice simultaneously with any notice given to Landlord to correct any default of Landlord as hereinabove provided and agrees that the mortgagee shall have the right, within thirty (30) days after receipt of said notice, to correct or remedy such default before Tenant may take any action under this Lease by reason of such default.

**ARTICLE 26**  
**ESTOPPEL CERTIFICATE**

- 26.1** At any time, and from time to time, upon the written request of Landlord or any mortgagee, Tenant, within fifteen (15) business days of the date of such written request, agrees to execute and deliver to Landlord and/or such mortgagee, without charge and in a form reasonably satisfactory to Landlord and/or such mortgagee, a written statement: (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the Term of this Lease; (c) certifying that Tenant is in occupancy of the Premises and that this Lease is in full force and effect and has not been modified, assigned, supplemented or amended, except by such writings as shall be stated; (d) certifying that all conditions and agreements under this Lease to be satisfied and performed have been satisfied and performed, except as shall be stated; (e) certifying that neither Landlord nor Tenant is in default under this Lease and there are no defenses or offsets against the enforcement of this Lease by either party, or stating the defaults and/or defenses claimed by either party; (f) reciting the amount of advance rental, if any, paid by Tenant and the date to which rental has been paid; (g) reciting the amount of security deposited with Landlord, if any; and (h) any other information which Landlord or the mortgagee shall reasonably require.
- 26.2** At any time, and from time to time, upon the written request of Tenant or any lender or mortgagee, Landlord, within fifteen (15) business days of the date of such written request, agrees to execute and deliver to Tenant and/or such mortgagee, without charge and in a form satisfactory to Tenant and/or such mortgagee, a written statement: (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the Term of this Lease; (c) certifying that Tenant is in occupancy of the Premises and that this Lease is in full force and effect and has not been modified, assigned, supplemented or amended, except by such writings as shall be stated; (d) certifying that all conditions and agreements under this Lease to be satisfied and performed have been satisfied and performed, except as shall be stated; (e) certifying that neither Landlord nor Tenant is in default under this Lease and there are no defenses or offsets against the enforcement of this Lease by either party, or stating the defaults and/or defenses claimed by either



party; (f) reciting the amount of advance rental, if any, paid by Tenant and the date to which rental has been paid; (g) reciting the amount of security deposited with Landlord, if any; and (h) any other information which Tenant or the mortgagee shall require.

## **ARTICLE 27** **BANKRUPTCY**

- 27.1** This is a lease of real property in Premises within the meaning of Subsection 365(b)(3) of the Bankruptcy Code, 11 U.S.C., Section 101 *et. seq.* ("Bankruptcy Code").
- 27.2** Tenant covenants and agrees that if, at any time, Tenant becomes a debtor under the Bankruptcy Code or is adjudged bankrupt or insolvent under the laws of the United States or any state thereof, or makes a general assignment for the benefit of creditors, or if a receiver of Tenant's property in the Premises is appointed and Tenant shall not commence proceedings to discharge the receiver within thirty (30) days of such appointment, then Landlord may, at its option, declare this Lease terminated and shall forthwith be entitled to immediate possession of the Premises except that if any such proceedings are pursuant to the Bankruptcy Code, then Landlord shall be entitled to all the rights and remedies accorded landlords, including without limitation those set forth in said Bankruptcy Code.
- 27.3** If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, to the extent provided in the Assignment clause of this Lease, any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment, shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord, and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assignment.
- 27.4** Tenant acknowledges that the continued operation of business in the Premises in the manner and upon the terms set forth in this Lease is of a special importance to the commercial viability of the Land. Therefore, in the event this Lease is not cancelled and terminated as set forth in **ARTICLE 27.2** above, then Tenant, the Trustee in Bankruptcy or other representative of Tenant, or Tenant's assignee of such be the case, shall, prior to the assumption of this Lease by such representative or Trustee or assignee, comply with all of the provisions of this Lease and provide reasonably adequate assurance to Landlord: **(a)** of the rent and other charges under this Lease; **(b)** that assumption or assignment of this Lease will not breach substantially any other provision in any other lease or document relating to the Land; **(c)** of the continued use of the Premises in accordance with the provisions of this Lease; and **(d)** of such assumption or assignment.

**ARTICLE 28**  
**DEFAULT**

**28.1** All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other rights or remedies allowed by law or in equity. The occurrence of any of the following shall constitute a default and breach of this Lease by Tenant:

- (A) If Tenant shall fail, neglect or refuse to pay any installment of fixed Minimum Rent, Additional Rent or other sums or charges due Landlord under this Lease at the time and in the amount as herein provided, or to pay any other monies agreed by it to be paid promptly when and as the same shall become due and payable under the terms hereof, and if any such default should continue for a period of more than fifteen (15) days after written notice; or if
- (B) Tenant shall abandon or vacate the Premises or fail to open or to keep the Premises continuously or uninterruptedly open for business each business day, as provided in this Lease, for a period of 60 consecutive days provided, however, that the Tenant shall have the right on one (1) occasion during the Term of this Lease to close the Premises for a period of 60 consecutive days to remodel or refit the Premises and such closure shall not constitute a default and breach of this Lease; or if
- (C) Tenant shall fail, neglect or refuse to keep and perform any of the other non-monetary covenants, conditions, stipulations or agreements herein contained, and in the event any such default shall continue for a period of more than thirty (30) days after notice thereof is given in writing to Tenant by Landlord (provided, however, that if the cause for giving such notice involves the making of repairs or other matters reasonably requiring a longer period of time than the period of such notice so long as it has commenced to comply with said notice within the period set forth in the notice and is diligently and expeditiously prosecuting compliance of said notice Tenant shall be provided a reasonable additional period of time not to exceed one hundred twenty (120) additional days; or if
- (D) Tenant shall, on more than three (3) occasions during any twelve (12) calendar month period, be excessively late in the payment of Minimum Rent, Additional Rent or other sums or charges due Landlord under this Lease or shall repeatedly default in the keeping, observing, or performing of any other covenants or agreements herein contained to be kept, observed or performed by Tenant (provided notice of non-payment or of other defaults shall have been given to Tenant, only if Tenant failed to cure such default.

**28.2** In the event of any such default or breach of this Lease by Tenant, Landlord shall have the right and option to declare the portion of the Minimum Rent and Additional Rent due at the time of the default immediately due and payable by Tenant. Landlord damages are agreed to be limited and offset by Landlord's mitigation in the event Landlord procures another Tenant for the Premises. Landlord and Tenant both agree to use commercially reasonable efforts to re-let

the Premises after a Tenant default or breach, and Tenant vacating the Premises in the condition required hereunder. The effect of any such re-letting acts to offset the remaining Rent amounts due from Tenant to Landlord in an event of default, as outlined in **ARTICLE 28.4**. Further, in the event of such default or breach of this Lease by Tenant the Tenant does hereby authorize and fully empower Landlord or Landlord's agent to cancel or annul this Lease at once and solely in conformity with Illinois law, reenter and remove all persons and their property, and such property may be stored in a public warehouse or elsewhere at the cost of the Tenant, all with service of notice and legal process;

**28.3** Any payment required to be made by Tenant under the provisions of this Lease not made by Tenant when and as due shall thereupon be deemed to be due and payable by Tenant to Landlord on demand with interest accruing only after such grace period allowed has passed and Tenant still fails to remit payment. The aforesaid interest shall be at the rate of one and one half (1 1/2) percent per month, if Tenant is a corporation, or if Tenant is not a corporation, at such lesser rate as shall be the maximum permitted by law (as applicable, the "Default Rate").

**28.4** In the event of default and termination of this Lease, Landlord and Tenant agree to make commercially reasonable efforts to relet the Premises and to lease or let the same or portions thereof for such periods of time and at such rentals and for such use and upon such covenants and conditions as are commercially reasonable. Landlord agrees to apply the net rentals from such reletting, after deductions for reasonable commissions and necessary, non-structural improvements, to payments due or payable by Tenant hereunder with the right reserved to Landlord to bring such action or proceedings for the recovery of any deficits remaining unpaid as Landlord may deem favorable from time to time without obligation to await the end of the Term hereof for the final determination of Tenant's account. If such rentals and other sums received from such re-letting during any month shall be less than that to be paid during that month by Tenant hereunder, Tenant shall immediately pay such deficiency to Landlord; if such rentals and the sums shall be more, Tenant shall have no right to, but shall receive credit for, the excess. If Tenant shall be in default hereunder, Landlord agrees to provide written notice to Tenant of any such default and provide an opportunity for Tenant to cure such default within the notice time periods described in **ARTICLE 28.1** above, or as may be otherwise specifically set forth in this Lease. If Tenant cures such default, Landlord shall accept this and shall not terminate the Lease. If Tenant refuses or fails to timely cure a default, then Landlord has the right to exercise any and all remedies available to it, including the option to elect to terminate the lease, and then Landlord shall have the option, but not the obligation, upon five (5) days' written notice to Tenant (except in the event of an emergency, in which event no notice shall be required), to cure the act or failure constituting said default for the account of and at the expense of Tenant (but without waiving or curing Tenant's default). If Landlord has already terminated the Lease, Landlord's cure or attempt to cure any act or failure constituting the default by Tenant which occasioned termination of the Lease shall not result in a waiver or withdrawal of such termination. Tenant agrees to pay to Landlord interest, in accordance with **ARTICLE 28.3** hereof, on all sums paid by Landlord pursuant to the terms of this **ARTICLE 28.4**, plus a charge of five (5%) percent of such costs, to Landlord within ten (10) days of demand, as Additional Rent. Tenant's obligations pursuant to **ARTICLE 28.4** shall survive the expiration or sooner termination of this Lease. Any

damage or loss of rent sustained by Landlord may be recovered by Landlord, at Landlord's option, at any time and from time to time, including at the time of the re-letting or termination, or in a single action or in separate actions, from time to time, as said loss of rents or damages shall accrue (Tenant hereby agreeing that any suit brought by Landlord at any one time to collect such rents or damages shall not prejudice Landlord's right to collect any other rents or damages in subsequent separate actions from time to time), or in a single proceeding deferred until the expiration of the term of this Lease (in which event Tenant hereby agrees that the cause of action shall not be deemed to have accrued until the date of expiration of said term). In addition to all other rights and remedies whatever of Landlord under this Lease, upon and following a default, Tenant shall pay to Landlord, at any time and from time to time upon demand, any and all costs and expenses whatsoever (including litigation expenses, court costs and reasonable attorneys' fees) incurred by Landlord in connection with the enforcement of this Lease and of Landlord's rights and remedies with respect thereto (and regardless of whether any lawsuit, action or other proceeding is commenced). The provision for in this Lease of any particular remedy shall not preclude Landlord from any other remedy, at law, in equity, by statute (or regulation) or otherwise.

Any damage or loss of rent sustained by Landlord may be recovered by Landlord, at Landlord's option, at any time and from time to time, including at the time of the re-letting or termination, or in a single action or in separate actions, from time to time, as said loss of rents or damages shall accrue (Tenant hereby agreeing that any suit brought by Landlord at any one time to collect such rents or damages shall not prejudice Landlord's right to collect any other rents or damages in subsequent separate actions from time to time), or in a single proceeding deferred until the expiration of the term of this Lease (in which event Tenant hereby agrees that the cause of action shall not be deemed to have accrued until the date of expiration of said term). In addition to all other rights and remedies whatever of Landlord under this Lease, upon and following a default, Tenant shall pay to Landlord, at any time and from time to time upon demand, any and all costs and expenses whatsoever (including litigation expenses, court costs and reasonable attorneys' fees) incurred by Landlord in connection with the enforcement of this Lease and of Landlord's rights and remedies with respect thereto (and regardless of whether any lawsuit, action or other proceeding is commenced). The provision for in this Lease of any particular remedy shall not preclude Landlord from any other remedy, at law, in equity, by statute (or regulation) or otherwise.

## **ARTICLE 29**

### **HOLDING OVER**

- 29.1** In the event Tenant or its Subtenants remain in possession of all or any part of the Premises after the expiration of the Term of this Lease, Tenant shall be deemed to be occupying the Premises as a tenant from month to month at a monthly rental equal to one and one-half the sum of (i) the monthly installment of Minimum Rent payable during the last month of the Term, and (ii) one-twelfth (1/12th) of all Additional Rent or other charges payable or paid during the last Lease Year. Such continued occupancy shall not defeat Landlord's rights to regain possession of the Premises. This section is inapplicable if Tenant and Landlord are actively engaged in negotiations regarding an extension of the Lease period not to exceed ninety

(90) days, and in such event, Tenant shall be deemed to be occupying the Premises as a month-to-month tenant at the last monthly rent then applicable until such time as Landlord and Tenant have executed a new Lease.

### **ARTICLE 30** **ACCESS TO PREMISES**

- 30.1** Tenant or its Subtenants further agree to permit the Landlord or the Landlord's agents access to inspect or examine the Premises at any reasonable time one time in every twelve month period so long as Landlord provides five (5) days prior written notice to Tenant or its Subtenants prior to inspection, and to permit the Landlord to make such repairs or improvements to the Premises that the Landlord may deem desirable or necessary in its reasonable discretion for its preservation and which the Tenant or its Subtenants has not covenanted herein to do or has failed to do; provided that Landlord shall not materially interfere with Tenant or its Subtenants business. In the event of an emergency, Landlord shall have the right to enter the Premises without Tenant's permission.
- 30.2** Tenant further agrees that on and after 180 days next preceding the expiration of the Term (or any extended Term) of this Lease the Landlord or its agents shall have their right to show the Premises to potential tenants, and to place notices offering the Premises "To Let" or "For Sale" at The Park, but not on the front of the Premises or any part thereof, so long as the Landlord's activity does not impair the business operations of the Tenant.

### **ARTICLE 31** **QUIET ENJOYMENT**

- 31.1** Landlord covenants and agrees that if the Tenant or its Subtenants shall perform, in all material respects, all of the covenants and agreements herein stipulated to be performed on the Tenant or its Subtenants part, the Tenant shall, at all times during said Term, have the peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from the Landlord or any persons lawfully claiming through the Landlord.

### **ARTICLE 32** **NOTICES**

- 2.1** Any bill, statement, notice, communication or payment which Landlord or Tenant may desire to be required to give to the other party shall be in writing and shall be sent to the other party by registered mail, certified mail, or by nationally utilized overnight delivery service, addressed to the parties to the address specified in **ARTICLE 1** or to such other address as either party shall have designated to the other by like notice, and the time of the rendition of which shall be when same is deposited in an official United States Post Office, postage prepaid or deposited with a nationally utilized overnight delivery service, delivery fee prepaid.

**ARTICLE 33**  
**EXCULPATION**

- 33.1** The Landlord or any successor in interest that may be an individual, joint venture, tenancy in common, firm or partnership, general or limited, shall not be subject to personal liability on such individual or on the members of such joint venture, tenancy in common, firm or partnership in respect to any of the covenants, conditions or obligations of this Lease. The Tenant shall look solely to the equity of the Landlord in the Premises and the rents, issues and profits derived there from for the satisfaction of the remedies of the Tenant in the event of a breach by the Landlord. It is mutually agreed that this clause is and shall be considered an integral part of the aforesaid Lease. No member, official or employee of the Landlord shall be personally liable to Tenant in the event of any default or breach by the Landlord or for any amount which may become due to Tenant under the terms of this Lease.

**ARTICLE 34**  
**ENVIRONMENTAL MATTERS**

- 34.1** Landlord shall not, nor shall it permit any other person or entity to, use, release, generate, place, store, discharge, transport or dispose of Hazardous Materials in, on or under the Land except in strict accordance with Environmental Regulations. If the presence of any Hazardous Material is discovered in, on or under the Land, then, unless caused by the acts or omissions of Tenant or its Subtenants, Landlord shall institute and proceed with diligence to complete site investigation, remediation, removal, restoration and/or clean-up ("Remedial Action") in accordance with Environmental Regulations.
- 34.2** **Emissions.** Tenant or its Subtenants shall not, without the prior written consent of Landlord:
- (A) Make, or permit to be made, any use of the Premises or any portion thereof which emits, or permits the emission of an unreasonable amount of dust, sweepings, dirt, cinders, fumes or odors into the atmosphere, the ground or any body of water, whether natural or artificial (including rivers, streams, lakes, ponds, dams, canals, or flood control channels), or which emits, or permits the emission of dust, sweepings, dirt, cinders, fumes or odors into the atmosphere, the ground or any body of water, whether natural or artificial (including rivers, streams, lakes, ponds, dams, canals, or flood control channels) which is in violation of any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement;
  - (B) Create, or permit to be created, any sound pressure level which will interfere with the quiet enjoyment of any real property by any occupant of the immediate area, or which will create a nuisance or violate any federal, state or local law, ordinance, order, rule, regulation, code or and other governmental restriction or requirement;

- (C) Transmit, receive, or permit to be transmitted or received any electromagnetic, microwave or other radiation which is harmful or hazardous to any person or property in, on or about the Premises or the Land, or which interferes with the operation of any electrical, electronic, telephonic or other equipment whatsoever located, whether on the Premises, the Land or the immediate area;
- (D) Create, or permit to be created, any ground vibration that is discernible outside the Premises; or
- (E) Produce or permit to be produced any intense glare, light or heat except within an enclosed or screened area and then only in such manner that the glare, light or heat shall not be discernible outside the Premises.

Provided however, none of the foregoing is intended to prohibit Tenant or its Subtenants from engaging in those lawful activities normally associated with the operation of a restaurant establishment.

**34.3** Tenant or its Subtenants shall not, cause or permit, knowingly or unknowingly, in violation of any applicable federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, any Hazardous Material (hereinafter defined) to be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at the Premises or the Land. As used in this Lease, "Hazardous Material(s)" shall mean any hazardous, toxic or radioactive substance, material, matter or waste which is regulated by any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include asbestos, petroleum products and the terms "Hazardous Material" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9601 et seq., and the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6901 et seq.

**34.4** In addition to, and in no way limiting, Tenant or its Subtenants duties and obligations as set forth in this Lease, should Tenant or its Subtenants breach any of its duties and obligations as set forth in this section of this Lease, or if the presence of any Hazardous Material(s) on the Premises results in contamination in violation of any applicable federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, of the Premises, the Land, any land other than the Land, the atmosphere, or any water or waterway (including groundwater), or if contamination in violation of any applicable federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, of the Premises or of the Land by any Hazardous Material(s) otherwise occurs for which Tenant or its Subtenants is the cause and legally liable to Landlord for damages resulting therefrom, Tenant or its Subtenants shall indemnify, save harmless and, at Landlord's option and with attorneys approved in writing by Landlord, defend Landlord, and its contractors, agents, employees, partners, officers, directors, and mortgagees, if any, from any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature (including, without limitation, diminution of value of the Premises or the Land, damages for the loss or restriction on use of the rentable or usable space or

of any amenity of the Premises or the Land, damages arising from any adverse impact on marketing space in the Land, and sums paid in settlement of claims and for reasonable attorney's fees, consultant fees and expert fees), which may arise during or after the Lease Term or any extension thereof as a result of such contamination. This includes, without limitation, costs and expenses, incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because the presence of Hazardous Material(s) on or about the Premises or the Land in violation of any applicable federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, or because of the presence of Hazardous Material(s) in violation of any applicable federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, anywhere else which came or otherwise emanated from Tenant or its Subtenants or the Premises. Without limiting the foregoing, if the presence of any Hazardous Material(s) on or about the Premises or the Land caused or permitted by Tenant or its Subtenants results in any contamination of the Premises or the Land, in violation of any applicable federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, Tenant or its Subtenants shall, at its sole expense, promptly take all actions and expense as are necessary to return the Premises and/or the Land to the condition existing prior to the introduction of any such Hazardous Material(s) in violation of any applicable federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, to the Premises or the Land; provided, however, that Landlord's approval of such actions shall first be obtained in writing.

- 34.5** Landlord makes no representations as to the environmental condition or the soil conditions of the Land and is leasing the Land to the Tenant on an "AS IS" and "WHERE IS" basis. Tenant may cause to be performed engineering, soil and environmental studies at Tenant's sole discretion and costs it deems necessary or prudent to determine the feasibility of the Land for its intended use within sixty (60) days of the execution of this Lease. Tenant and its agents shall have the right to reasonably access the Land. Tenant agrees to indemnify, defend and hold harmless Landlord, its beneficiary and their respective employees, agents, directors, officers, shareholders, attorneys, successors and assigns, from and against any and all claims, demands, causes of action, losses, costs, expenses, fines, penalties, liabilities and fees (including, reasonable attorneys' fees and court costs) of whatever kind or nature whatsoever which may be asserted against or incurred by Landlord or any such other indemnified party by Tenant as a result of, arising out of or relating to any of Tenant's activities on the Land, including without limitation, the performance or alleged performance by or on behalf of Tenant or any of its contractors or agents of the assessments contemplated by **ARTICLE 34.5** or any other matter arising out of relating to said assessments, provided however, that in no event shall this **ARTICLE 34.5** be constructed to imply or mean that Tenant indemnifies Landlord from and against any claims, demands, causes of action, losses, costs, expenses, fines, penalties, liabilities and fees (including, attorneys' fees and court costs) of whatever kind or nature whatsoever which may be asserted against or incurred by Landlord or any such other indemnified party, arising out of an environmental assessment conducted on behalf of the Tenant which identifies the existence of an environmental condition. In the event an environmental assessment identifies



the existence of an environmental condition on the Land that is unacceptable to the Tenant, in Tenant's sole discretion, then within ten (10) business days of Tenant's receipt of the environmental assessment, Tenant may notify Landlord in writing of the environmental condition and Tenant shall have the right to cancel and terminate this Lease within said sixty (60) day period following the execution of this Lease. In the event Tenant elects to cancel and terminate this Lease pursuant to this **ARTICLE 34.5**, then both Landlord and Tenant shall, except as otherwise expressly provided in this Lease, thereupon be relieved from any and all further liability or obligation hereunder.

- 34.6** This Lease constitutes the entire understanding of the parties with respect to the environmental condition and/or soil condition of the Land and supersedes any such prior oral or written representations, statements, documents or understandings. Tenant acknowledges that, except as disclosed in the Environmental Report, neither Landlord, nor any principal, agent, attorney, employee, other representative of Landlord has made any representations or warranties of any kind whatsoever regarding the Land, either express or implied, and Tenant is not relying on any warranty, representation or covenant, express or implied, with respect to the environmental condition and/or soil condition of the Land, other than as set forth in the Environmental Report.

#### **ARTICLE 35** **MISCELLANEOUS**

- 35.1 Landlord's Waiver - Fixture Financing.** The Landlord acknowledges that the Tenant shall have the right to finance the Tenant's inventory, theme branded equipment, trade fixtures, trade equipment and furniture that the Tenant will be installing in the Premises. The Landlord hereby agrees that the Landlord's rights, and any lien that the Landlord may have by reason of the Tenant's default under this Lease, shall be subordinate to the rights of any lender providing the Tenant with funds for the purchase, financing or refinancing of such inventory, fixtures, equipment and/or furniture; provided, however, that a precondition to such subordination shall be the execution by the Landlord, the Tenant and such lender of a Lien Waiver in form and substance reasonably acceptable to the lender. Except as set forth in **ARTICLE 35.2** herein below, under no circumstances shall Tenant be permitted to encumber any leasehold improvements or the leasehold estate granted hereby without Landlord's prior written consent, not to be unreasonably withheld or delayed. Landlord waives any rights of distraint that may be available to Landlord.
- 35.2 Leasehold Financing.** The Tenant shall have the right to finance its interest in this Lease from time to time in order to secure the cost of any leasehold improvements in the Premises. Any documentation required to be signed by Landlord in connection with such financing shall be satisfactory to Landlord in its reasonable discretion and, in the case of Tenant's default, shall include the obligation of the lender to cure all of Tenant's monetary defaults prior to taking possession of the Premises and to use reasonable commercial efforts to cure any non-monetary defaults to the extent possible and to comply with each and every term of the Lease. Notwithstanding the foregoing, all financing documents,

instruments, commitments and agreements shall be and shall remain subordinate to the fee interest of the Landlord and shall only encumber the leasehold estate created by this Lease and the rights and interests of the Tenant pursuant to this Lease. Landlord expressly does not subordinate its fee interests or any other interest retained by Landlord pursuant to this Lease or otherwise, to any such financing documents and instruments, commitments or agreements.

Nothing herein shall require Landlord to subordinate its interest in this Lease nor shall Landlord be or become liable on any promissory note. It is also expressly understood and agreed that any leasehold financing shall be subject to the terms of this Lease, and if this Lease shall be terminated or expire, any leasehold financing shall no longer be a lien upon the Premises.

**35.3 Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant, it being expressly understood and agreed that neither the computation of rent nor any other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

**35.4 Definition of Parties.** The words "Landlord" and "Tenant" shall mean each party named in **ARTICLE 1** as the Landlord or Tenant and if there shall be more than one, any notice required or permitted by this Lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to either party shall be deemed a proper reference even though Tenant may be an individual, a partnership, a corporation, a trust, or a group of two or more of any of the same. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one, as aforesaid, and to either corporations, partnership, individuals, trustees, males or females, shall, in all instances be assumed as though in each case fully expressed.

**35.5 No Option.** Submission of this Lease for examination does not constitute a reservation of or option for the Premises in favor of Tenant. This Lease shall be effective only upon execution hereof by the parties hereto. In the event Landlord executes this Lease prior to Tenant and Tenant does not execute and deliver the same to Landlord within ten (10) days of Landlord's execution hereof, this Lease shall be null and void unless otherwise indicated by Landlord in writing.

**35.6 No Brokers.** Landlord and Tenant both acknowledge that no broker has been involved in this transaction. Each party agrees to indemnify and hold the other party harmless against any and all such claims or demands for brokerage fees or agents' commission or other compensation asserted by any person, firm or corporation in connection with this Lease.

**35.7 Legal Construction.**

**(A) Governing Law and Jurisdiction.** Tenant and Landlord agree (a) that any action or proceeding brought by either party under this Lease will be

subject to the laws of the State of Illinois (without regard to the conflict of laws, rules and principles thereof); and (b) shall be subject to the jurisdiction of the state courts of (or sitting in) Cook County, Illinois.

(B) If any term, covenant or condition of this Lease capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which shall render it valid. If any term or provision of this Lease, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

(C) The captions, section numbers and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit or describe the scope of intent of such sections of this Lease nor in any way affect this Lease.

**35.8 Consent and Approval.** Whenever this Lease specifies that either party has the right of consent or approval or if either party shall desire the consent or approval of the other on any matter regarding this Lease, such consent or approval shall be effective only if in writing and signed by the consenting or approving party.

**35.9 Attorney's Fees.** If any action at law or in equity shall be brought to enforce any obligation under arising under this lease, or for damages for breach of or to enforce any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Premises, or for the enforcement of any indemnification arising herein, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's cost reasonable attorneys' fees and court costs, whether at trial or on appeal, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

**35.10 Force Majeure.** If either party shall be delayed or prevented from the performance of any act required by this Lease by reason of strikes, utility failures, restrictive laws, riot, war, terrorism, acts of God or other similar reasons not the fault of the non-performing party (any and all such events or circumstances collectively referred to as a "Force Majeure Event"), the party claiming a Force Majeure Event shall notify the other party within ten (10) days of the claimed Force Majeure Event and then the performance time for such act shall be extended for a period equivalent to the period of such delay of the Force Majeure Event. The provisions of this paragraph shall not operate to excuse Tenant from prompt payment of rent or other charges hereunder. Notwithstanding anything in this Section 35.10 to the contrary, if a Force Majeure Event occurs prior to the rent Commencement Date as set forth in Section 2.4 Tenant obligation to pay rent shall abate for such period of Force Majeure and until Tenant first opens for business.

- 35.11 Memorandum of Lease.** Once the Commencement Date of the Term has been established, and upon the request of Landlord, Tenant shall execute and deliver to Landlord, in form reasonably approved by Landlord, a Memorandum of this Lease revealing the existence of this Lease, the commencement and termination dates of the Term, and the provision set forth in the Article entitled Liens regarding the non-liability of Landlord's interest in the Premises for any mechanic's liens arising from construction by Tenant. Landlord may, in its sole option, record such Memorandum of Lease.
- 35.12 Time of Essence.** Time is of the essence of this Lease, and for each and every covenant, term, condition and provision hereof.
- 35.13 Binding Effect.** The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer and subletting, apply to and bind their heirs, executors, personal representatives, administrators, successors and assigns of all the parties hereof.
- 35.14 Entire Agreement.** This Lease and the Exhibits, and Rider(s), if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions of understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.
- 35.15 When Lease Becomes Binding.** Employees or agents of the either party have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both the Landlord and the Tenant. Tenant represents to Landlord that all information furnished by Tenant or any Guarantor to Landlord or Landlord's representatives in connection with this Lease or in respect of the financial condition of Tenant and such Guarantor is true and correct in all material respects and properly reflects the financial condition of Tenant and such Guarantor without material adverse change, in each case as of the date hereof.

All negotiations, considerations, representations, and understandings between the Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between the Landlord and the Tenant, and no act or omission of any employee or agent of the Landlord shall alter, change, or modify any of the provisions hereof. The Tenant specifically confirms and acknowledges that: (i) before entering into this Lease, the Tenant has made its own observations, studies, determinations and projections with respect to the Tenant's business in the Premises and all other factors relevant to the Tenant's decision to enter into this Lease, including, without limitation, competition, market size, sales volume, profitability and general, so-called "demographics" – both present and prospective; and (ii) neither the Tenant nor any representative of the Tenant has relied upon any representation by (or any "conversation" with) the Landlord or any representative of the Landlord with respect to any of said factors.

**35.16 Financial Statements.** In connection with each and any proposed sale of all of any of the Land or transfer or assignment of Landlord's interest therein, or modification or refinancing of any Mortgage or other borrowing of Landlord, upon Landlord's written request from time to time, Tenant shall, within thirty (30) days after Landlord's request therefore, furnish Landlord with financial statements outlining Tenant's then current financial condition.

**35.17 A. Liquor License.**

If desired and if, within one hundred fifty (150) days from the Effective Date of this Lease (the "Liquor Approval Date"), the Tenant has not obtained the approval of the Liquor License from the appropriate authorities and officials of the Municipality and the State, then the Tenant may terminate this Lease by notice to the Landlord given within ten (10) days thereafter; but, if the Tenant shall have commenced its construction work in the Premises and shall exercise the foregoing termination right, at the Landlord's election, the Tenant shall, as a condition to the effectiveness of such termination, restore the Premises to the condition originally delivered to the Tenant by the Landlord and remove all of its trade fixtures and equipment. Once the Tenant has obtained the Liquor License, neither party shall have the right to terminate this Lease under this subparagraph A of this **ARTICLE 35.17**. Notwithstanding the aforesaid to the contrary, in the event that the appropriate authorities and officials of the Municipality and the State, have denied the granting a Liquor License to Tenant, then Tenant shall have the option to exercise all appeals and other legal remedies afforded to it in an effort to obtain said Liquor License. In the event Tenant exercises such option, it shall notify Landlord of the same on or prior to the Liquor Approval Date, and in such event said Liquor Approval Date shall be extended for a period of up to sixty (60) days to afford Tenant the opportunity to exercise all appeals and legal remedies there for. Landlord shall reasonably aid and support the Tenant as may be necessary for Tenant to obtain the Liquor License; and the Tenant shall reimburse the Landlord for any and all reasonable and actual costs and expenses that the Landlord may incur.

**B. Sale of Liquor.** Provided that the Tenant (i) succeeds in obtaining the Liquor License as aforesaid, (ii) complies with all state, municipal and other governmental laws, regulations and rules with respect to the sale of liquor and all alcoholic beverages as aforesaid, and (iii) complies with applicable provisions of this Lease, the Landlord agrees that the Tenant shall have the right to sell liquor at retail for consumption within the Premises, subject to and in accordance with all applicable provisions of the Liquor License and this Lease.

**C. Indemnity and Liability Insurance.** Without limiting the generality of **ARTICLE 25** of this Lease, the Tenant agrees to indemnify and hold harmless the Landlord from and against any and all claims and any and all loss, cost, damage or expense relating to the sale of liquor and all alcoholic beverages in and from the Premises, including, without limitation, any such claim arising from any act, omission or negligence of the Tenant, or the Tenant's contractors, licensees, agents, employees or invitees, or from any accident, injury, or damage whatsoever caused to any person or to the property of any person occurring from and after the date the Tenant that possession of the Land and Premises is delivered to the Tenant until the end of the term of this Lease, whether such

claim arises or accident, injury or damages occurs within the Land, the Premises, within the immediate area but outside the Premises, or outside the immediate area relating to the sale of liquor and all alcoholic beverages in and from the Premises. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities (including, without limitation, reasonable legal fees, court costs and other reasonable disbursements) incurred or made in connection with any such claim or proceeding brought thereon, and the defense thereof and shall survive the termination of this Lease. It is understood that without this indemnification of the Landlord by the Tenant, the Landlord would not enter into this Lease and would not permit the sale of alcoholic beverages in or from the Premises, and the Tenant covenants that the Tenant's liability insurance referred to in this Lease shall cover, indemnify and hold harmless the Landlord from all such matters and items mentioned in this indemnity.

Without limiting the generality of other provisions of this Lease regarding insurance coverage to be maintained by the Tenant, including the provisions of **ARTICLE 22** hereof, for such period of time as the Tenant shall serve liquor or other alcoholic beverages, the Tenant agrees to maintain with a responsible and qualified insurance company approved by the Landlord, and with minimum combined limits of at least the minimum limits of insurance specified in **ARTICLE 22** above plus minimum limits of coverage of at least \$1,000,000 under an umbrella policy covering excess "liquor law" liability, or such higher limits as the Landlord may from time to time request provided such higher limits are then customarily being carried by a casual, sit-down restaurant and bar operations in the Municipality selling beer, wine and other alcoholic beverages, the broadest available so-called liquor law liability insurance (sometimes also known as "dram shop" insurance) policy or policies, which shall insure the Tenant and the Landlord (disclosed or undisclosed), and all those claiming by, through or under the Landlord, adequately in the Landlord's good faith judgment, against any and all claims, demands or actions for personal and bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like, including, without limitation, any claims mentioned in the immediately preceding indemnity paragraph; so that at all times the Landlord will be fully protected against any claims that may arise by reason of or in connection with the sale and dispensing of liquor and alcoholic beverages in and from the Premises. Certificates of such insurance shall at all times be deposited with the Landlord showing current insurance in force; and all such policies shall name the Landlord and the managing agent as an additional insured and shall provide that such policies shall not be canceled or the coverage reduced without at least Thirty (30) days prior written notice to the Landlord, and such certificate shall evidence the same.

**D. Suspension, Denial or Revocation.** If at any time after the Tenant obtains the Liquor License, the Liquor License is suspended, denied or revoked for any reason, including non-compliance with any governmental conditions, requirements, rules, regulations, ordinances or laws, the same shall immediately cease serving and selling alcohol at the Premises- at least until the Liquor License is reinstated by all applicable governmental authorities and the Tenant shall promptly (i) deliver to the Landlord written notice of such suspension, denial or revocation, and (ii) commence the applicable appeal proceedings and proceed

with all due diligence to reinstate the Liquor License. At the time that the Tenant makes any filing with or receives a notice or any other communication regarding a hearing or in connection with any purported such non-compliance from any governmental licensing board, agency, commission or like authority with respect to the Liquor License, the Tenant shall promptly deliver a copy of such filing, notice or other communication to the Landlord.

**35.20 Alternative Bids.** Landlord shall publish a request for alternative bids as required pursuant to the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/74.4-1 *et seq.*

**35.21 Parking Program.** Landlord shall have the right to charge Tenant's Authorized Users a reasonable "market" fee to park within the Parking Facility or such other location as Landlord may from time to time designate. Tenant may participate in Landlord's Tenant validation program for the Parking Facility for Tenant's guests, invitees, employees, patrons and customers (all of whom are collectively referred to as "Authorized Users"). The surface parking area as depicted on **Exhibit B** shall consist of non-exclusive access to a limited number of free two-hour parking surface parking spaces in surface parking area until 4:00 p.m. and as a valet parking area after 4:00 p.m. all to be maintained by the Landlord (the "Surface Parking Area"). Landlord shall have the right, in its sole discretion and at any time, to relocate, close, repurpose or develop all or part of the Surface Parking Area provided that Landlord shall give Tenant not less than thirty (30) days prior written notice of Landlord's intent to relocate, close, repurpose or develop all or part of the Surface Parking Area. Tenant shall not have the right to provide for a separate valet or other parking service for the Premises. Tenant shall not charge its Authorized Users a fee to park in the Parking Facility, the Surface Parking Area or such other location.

Landlord's Valet Parking Program shall provide for the Landlord to select a qualified valet company ("Valet Company") that shall be insured to provide valet service to the Premises in the Parking Facility or such other location as Landlord may from time to time designate. The Valet Company shall adequately staff the parking needs of the Premises during the Valet Parking Program Period as necessary. The Valet Company shall collect the valet parking fee from Tenant's Authorized Users. Tenant, at its election, may participate in a validation program to be implemented as part of the Valet Parking Program. The operation of the Valet Parking Program shall be administered and under the control of the Landlord. The cost and expense of the Valet Parking Program shall be borne exclusively by the Landlord.

**35.22 Parking Agreement.** Landlord and Tenant shall execute and enter into the Parking Agreement in substantially the same form as attached hereto and made a part hereof as Exhibit C providing for the non-exclusive use of surface parking spaces and parking spaces within the parking garage located within and serving of the Parkway Bank Park which parking spaces shall be available to the general public including, but not limited to guests, patrons, invitees, and permittees of the Tenant and the Subtenants and provide for CAM and Promo Fee as set forth in this Lease.

- 35.23 Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the Minimum Rent, Additional Rent or other charges herein stipulated shall be deemed to be other than on account of the earliest stipulated Minimum Rent, Additional Rent or other charges nor shall any endorsement or statement on a check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Minimum Rent, Additional Rent or other charges or pursue any remedy provided for in this Lease or available in law or in equity.
- 35.24 Waiver.** No waiver of any condition or legal right or remedy shall be implied by the failure of Landlord to declare forfeiture, or for any other reason, and no waiver of any condition or covenant shall be valid unless it is in writing signed by Landlord. No waiver by Landlord with respect to any other tenant, nor shall the waiver of a breach of any condition claimed or pleaded to excuse a future breach of the same condition or covenant.
- 35.25 Tenant Option to Purchase.** The Landlord grants to Tenant the right and option to purchase the Premises at a purchase price of ONE MILLION ONE HUNDRED FORTY-SEVEN THOUSAND EIGHT HUNDRED FIFTY-FIVE DOLLARS (\$1,147,855.00), plus and minus prorations, until December 31, 2022. To exercise this right and option, Tenant must deliver written notice to the Landlord Village on or before September 30, 2022. The terms of the purchase of the Premises shall be on same relevant and applicable terms and conditions contained in that certain Real Estate Sale and Purchase Agreement and Development Agreement (the "Purchase Contract") dated June 14, 2021 between the Tenant and the Village of Rosemont, such other terms and conditions negotiated and acceptable to the parties and a closing within sixty (60) days of the Tenant's exercise of its option to purchase the Premises.
- 35.26 Tenant to Remain Obligated.** Tenant shall be and remain obligated under the terms and provisions of this Lease notwithstanding that any obligation under this Lease is a joint obligation with its Subtenants or an obligation to be undertaken by its Subtenants either by virtue of this Lease or any sublease to which a Subtenant is a party.
- 35.27 Multiple Counterparts.** This Lease may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one document, but in making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart.

***[SIGNATURES APPEAR ON FOLLOWING PAGES]***

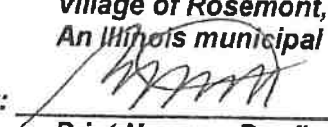


**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the Landlord and Tenant have caused this Lease to be signed and sealed as of the day and year first above written.


Signed in the presence of:

**LANDLORD:**

**Village of Rosemont,  
An Illinois municipal corporation**

By:   
\_\_\_\_\_  
**Print Name: Bradley A. Stephens**  
**Title: President**

**Attest**

By:   
\_\_\_\_\_  
**Print Name: Debbie Dreho**  
**Title: Village Clerk**

**TENANT:**

**BRE Park Place 2, LLC, an Illinois Limited Liability Company**

By:   
\_\_\_\_\_  
**Print Name: Marc Offit**  
**Title: Its Manager**

**TENANT ACKNOWLEDGMENT**

STATE OF Illinois )  
 )  
COUNTY OF COOK ) SS:

On this, the 8<sup>th</sup> day of September 2021, before me, a Notary Public, the undersigned officer, personally appeared Marc Offit known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



[Signature] Notary Public  
(Seal) My commission expires: 1/26/2025

**LANDLORD ACKNOWLEDGMENT**

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) SS:

On this, the 13<sup>th</sup> day of September 2021, before me, a Notary Public, the undersigned officer, personally appeared Bradley A. Stephens as President and Debbie Drehobl as Village Clerk for the Village of Rosemont, Illinois, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature] Notary Public

(Seal) My commission expires: 5/12/2022



PROJEKT	WZBUDZENIE	DOBRA
WZROST	CIĘŻAR	WZROST

**EXHIBIT A 2 of 2**

LOT 1 IN ROSEMONT ENTERTAINMENT DISTRICT THIRD RESUBDIVISION, BEING A RESUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 2, 2021 AS DOCUMENT NUMBER 2106147042.

5/11/2008 2:00:22 PM  
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SCALE 1" = 50'

0 50 100

EXHIBIT C

**PARKING AGREEMENT**

**between**

**The Village of Rosemont,  
an Illinois municipal corporation**

**and**

**BRE Park Place 2, LLC,  
an Illinois limited liability company**

**September \_\_, 2021**

## PARKING AGREEMENT

This Parking Agreement (the "Parking Agreement") is made as of the \_\_\_\_ day of September, 2021 by and between the VILLAGE OF ROSEMONT, an Illinois home rule municipal corporation, (the "Village") and BRE PARK PLACE 2, LLC, an Illinois limited liability company ("BRE Park Place 2").

### RECITALS

A. The Village and BRE Park Place 2 entered into a Lease dated September \_\_, 2021 ("Lease") whereby the Village agreed to sell and BRE Park Place 2 agreed to lease and develop certain real estate located in the Village of Rosemont, Illinois.

B. The Lease provides that the Village and BRE Park Place 2 shall enter into this Parking Agreement.

C. The Village is the holder of legal title to a certain parcel of land which is improved with a municipally-owned parking structure commonly known as the Entertainment District Parking Structure and having the common address of 9550 Williams Street, Rosemont, IL and as depicted on Exhibit A attached hereto and made a part hereof (the "Parking Garage") and the Village owns, controls and operates certain surface parking spaces and area (the "Surface Parking") within the municipally-owned Parkway Bank Park at Rosemont. Together the spaces within the Parking Garage and the Surface Parking are hereinafter sometimes collectively referred to as the "Parking Spaces".

D. BRE Park Place 2 intends to use for commercial and retail use a certain parcel of land legally described on Exhibit B attached hereto and made a part hereof (the "BRE Park Place 2 Site") improved with a building (the "BRE Park Place 2 Building").

E. It is the intention of the Village and BRE Park Place 2 to enter into this Parking Agreement to provide BRE Park Place 2 and its Subtenants customers, employees, guests, patrons, licenses and invitees of the BRE Park Place 2 Site (all of whom are collectively referred to herein as "Authorized Users") with the right to the non-exclusive use of the Parking Spaces (including valet and handicap spaces) (1) initially free of charge with validation subject to the terms and provisions of this Parking Agreement or (2) on such other similar terms as the majority of other tenants and users of Parkway Bank Park at Rosemont including without limitation the Village having the right to charge a reasonable market parking fee to BRE Park Place 2 and Authorized Users.

F. This Parking Agreement provides for the respective parties' responsibilities, liabilities and indemnities with regard to the Parking Spaces and is intended by the parties to provide to BRE Park Place 2 the non-exclusive right to the use the Parking Spaces.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village and BRE Park Place 2 agree as follows:

1. Recitals. The foregoing recitals are material to this Parking Agreement and are incorporated herein as though fully set forth in this Section 1 and any terms used in this Parking Agreement which are defined in the Recitals shall have the same definition for purposes of this Parking Agreement.

2. Parking Agreement Granted. The Village grants to BRE Park Place 2 and its successors and assigns, this Parking Agreement providing for the non-exclusive right to use the Parking Spaces in the Project Area for the parking of motor vehicles of BRE Park Place 2 and Authorized Users. The Village agrees that the Parking Spaces are sufficient to meet the Village of Rosemont's zoning parking requirements for BRE Park Place 2 and the BRE Park Place 2 Site.

3. Use of the Parking Spaces.

A. BRE Park Place 2 and Authorized Users shall have the non-exclusive right to use the Parking Spaces.

B. BRE Park Place 2 shall not have the right to operate its own valet service to serve the BRE Park Place 2 Site unless the Village ceases to operate a valet service to serve the Parkway Bank Park at Rosemont.

C. BRE Park Place 2 shall have the right to use the Parking Spaces (1) initially free of charge with validation subject to the terms and provisions of this Parking Agreement or (2) on such other similar terms as the majority of other tenants and users of Parkway Bank Park at Rosemont including without limitation the Village having the right to charge a reasonable market parking fee to BRE Park Place 2 and its Authorized Users.

4. Operation of the Parking Spaces.

A. The Parking Spaces shall be accessible for pedestrian and vehicular ingress and egress by BRE Park Place 2 and Authorized Users on a daily basis, provided that the Village upon three days written notice to BRE Park Place 2 (except in case of emergency in which case notice shall be given as soon as possible) may limit the accessibility of the Parking Spaces where it is necessary to limit access in order to perform repair or maintenance work on the Parking Spaces.

B. The Village shall have the sole responsibility for operating the Parking spaces. The Parking Spaces shall be operated by the Village in accordance with a standard which is the equivalent or greater than the highest standards which the Village uses to operate other public parking garages, facilities and spaces owned by and operated by or on behalf of the Village.

C. The Village has provided or shall provide BRE Park Place 2 with a single parking validation unit and shall be responsible for maintenance, repair and replacement of such parking validation unit. In the event BRE Park Place 2 requests additional parking validation equipment, BRE Park Place 2 shall be responsible for the cost, maintenance repair and replacement of such additional parking validation equipment.



D. BRE Park Place 2 shall use the Parking Spaces only for the purpose of providing parking spaces for Authorized Users. BRE Park Place 2 and its Authorized Users shall not (i) injure, overload, deface or otherwise harm the Parking Spaces or commit any nuisance thereon or use the Parking Spaces in a manner which tends to create a nuisance, (ii) make any use of the Parking Spaces which is improper, offensive or contrary to any law, ordinance or regulation of any governmental authority or this Parking Agreement (iii) use any advertising in the Parking Spaces that is not specifically authorized by the Village (iv) load or unload any truck or any delivery vehicle in any area of the Parking Spaces and (v) use the Parking Spaces for an off-site airport parking enterprise or any other parking enterprise. The Village hereby grants BRE Park Place 2 and its Authorized Users the non-exclusive right to use all access drives, walkways, elevators and other areas of the Parking Garage reasonably necessary or convenient to access the Parking Spaces, the BRE Park Place 2 Building and the BRE Park Place 2 Site.

5. Repair and Maintenance of the Parking Garage and Parking Spaces; CAM and Promotional Fee.

A. The Village shall be responsible for repairing and maintaining the Parking Garage and the Parking Spaces. The Village shall maintain (or cause to be maintained, operated and repaired) the Parking Garage and the Parking Spaces in an economical and efficient manner according to a commercially reasonable standard for comparable municipally owned and operated parking garages, facilities and parking spaces located in Rosemont, Illinois including but not limited to repairing and replacing paving and keeping the Parking Spaces in a neat, clean, orderly and slightly condition.

B. The Village shall keep the Parking Garage suitably lighted during all non-daylight hours.

C. The Village has instituted a common area maintenance charge for costs associated with the repair and maintenance of the Parkway Bank Park at Rosemont, the Parking Garage and the Parking Spaces (the "Park CAM"). BRE Park Place 2 agrees or agrees to have its tenants pay to the Village as invoiced from time-to-time Park CAM charges based on 6,850 square feet of Building area and with the Park CAM being \$13,700.00 per annum as of the date hereof which amount shall automatically increase three percent (3%) in January of 2023.

D. The Village has instituted a Promotional Fee for costs associated with promoting the Parkway Bank Park at Rosemont and businesses within the Parkway Bank Park at Rosemont (the "Promo Fee"). BRE Park Place 2 agrees or agrees to have its tenants pay to the Village as invoiced from time-to-time a Promo Fee for the marketing of the Parkway Bank Park based on 6,850 square feet of Building area and with the Promo Fee being \$6,850 per annum as of the date hereof which amount shall automatically increase three percent (3%) in January 2023.

E. In the event BRE Park Place 2 fails to pay the Park CAM and/or the Promo Fee before they become delinquent, the Village, at its sole option, shall have the right to terminate this Parking Agreement and remove any and all parking validation units from the BRE Park Place 2 Site. Notwithstanding the foregoing, BRE Park Place 2 shall not be obligated to pay Park CAM and/or the Promo Fee unless BRE Park Place 2 has a Tenant for the Park Place 2 Site.

6. Term. Subject to the terms of this Parking Agreement, BRE Park Place 2 and its Authorized Users shall have the right to use the Parking Spaces for an initial term two (2) year term following the effective date hereof (the "Initial Term") on such other similar terms as the majority of other tenants and users of Parkway Bank Park at Rosemont including without limitation the Village having the right to charge a reasonable market parking fee to BRE Park Place 2 and Authorized Users.

7. Rules and Regulations. The Village shall have the right to impose rules and regulations relating to the use and operation of the Parking Spaces and any parking spaces or area owned by and located on property owned by BRE Park Place 2 provided that such rules and regulations are not inconsistent with the provisions of this Parking Agreement, and are enforced on a uniform basis for similarly situated users of the Parking Spaces.

8. Cooperation. BRE Park Place 2 and the Village shall cooperate with one another and other users of the Parking Spaces as may be required to maintain and enhance the orderly and efficient operation of the Parking Spaces. Each of the parties acknowledges the working nature of this Parking Agreement and each party agrees to cooperate and consult with the other party in an effort to speedily and amicably resolve any unforeseen difficulties or problems not covered by this Parking Agreement.

9. Indemnification. BRE Park Place 2 and its successors and assigns shall indemnify and hold harmless the Village, its agents, officers, contractors, employees, its Authorized Users and successors from and against any and all liability, loss, damage, costs and expenses (including reasonable attorney's fees) for injury to persons or death or property damage arising out of or resulting from BRE Park Place 2's or an Authorized User's use of the Parking Spaces except for such liability, loss, damage, costs and expenses arising from the negligent or intentional acts of the Village or its agents.

10. Notices, Demands and Other Instruments. All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this Parking Agreement shall be in writing and shall be deemed to have been properly given if personally delivered, sent, postage prepaid, by first class registered or certified United States mail, return receipt requested or by prepaid overnight courier, addressed to each party hereto at the following address:

Village: Village of Rosemont  
Attention: Village Clerk  
9501 West Devon  
Rosemont, IL 60018

With a copy to: Ryan and Ryan  
Attention: William Ryan  
9501 West Devon, Suite 300  
Rosemont, IL 60018

BRE Park Place 2: BRE Park Place 2, LLC  
222 Northfield Rd.  
Suite 104  
Northfield, IL 60093

or at such other address(es) in the United States as Village or BRE Park Place 2 may from time-to-time designate by like notice. Any such notice, demand, request or other communication shall be considered received on the date of personal delivery or on the date of actual receipt or five (5) business days after deposit in the United States mail as provided above or the next business day after deposit with an overnight courier. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, request or other communication.

11. Certifications by Village. The Village shall upon request of BRE Park Place 2 certify whether this Parking Agreement is in full force and effect, whether this Parking Agreement is modified or unmodified, and whether or not there exists any default in the Parking Agreement or provision contained in the Parking Agreement. It is intended by the parties hereto that such statements may be relied upon by the requesting party or the party to whom the Village is asked by BRE Park Place 2 to make the certification.

12. Attorney's Fees and Costs. In the event of any action at law or inequity in relation to this Parking Agreement, the prevailing party shall be entitled to recover a reasonable sum for the attorneys' fees it incurred as a result of this action.

13. Default. If either party (the "Defaulting Party") fails to perform any of the terms, covenants, agreements or conditions on its part to be performed under this Parking Agreement and such failure continues uncorrected for fifteen (15) days, after notice from the other party, (the "Non-Defaulting Party"), unless otherwise specified herein, the Non-Defaulting Party may invoke any right or remedy allowed at law or in equity or by statute or otherwise. If any default by a Defaulting Party cannot reasonably be remedied within thirty (30) days after written notice of the default from the Non-Defaulting Party and if the Defaulting Party has commenced to remedy such default and diligently pursues such remedy thereafter, then the Defaulting Party shall have such additional time as is reasonably necessary to remedy the default before this Parking Agreement can be terminated or other remedies enforced.

14. Assignment and Transfer of Parking Agreement. BRE Park Place 2 may not assign or transfer any rights to this Parking Agreement except as part of the Lease of the BRE Park Place 2 Site and the Building.

15. Provisions of Law Deemed Included. Each and every provision of state and federal law required to be included in municipal agreements shall be deemed to be included herein, and this Parking Agreement shall be read, construed and enforced as though the same were included herein. If, through mistake, inadvertence or otherwise, any such provision or clause is not included herein or is incorrectly included herein, then, upon application of either party hereto, this Parking Agreement shall forthwith be amended to include the same or to correct the inclusions of the same and shall be deemed to have been so amended from the effective date hereof.

16. Invalid Provisions. If any provision of this Parking Agreement is held invalid, the remainder of this Parking Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and if the remainder of this Parking Agreement can be reasonably performed without material hardship.

17. Applicable Law and Construction. The laws of the State of Illinois shall govern the validity, performance and enforcement of this Parking Agreement. This Parking Agreement shall become effective only upon execution and delivery thereof by the Village and BRE Park Place 2. This Parking Agreement has been negotiated by the Village and BRE Park Place 2 and the Parking Agreement, together with all of the terms and provisions hereof, shall not be deemed to have been prepared by either the Village or BRE Park Place 2, but by both equally.

18. Submission to Jurisdiction. Each party to this Parking Agreement hereby submits to the jurisdiction of the State of Illinois, Cook County and the courts thereof for the purposes of any suit, action or other proceeding arising out of or relating to this Parking Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts. If BRE Park Place 2 or any permitted assignee hereof shall be a foreign corporation or shall have no agent, member or partner available for service of process in the State of Illinois, BRE Park Place 2 hereby designates the Secretary of State, State of Illinois, its agent for the service of process in any court action between it and the Village arising out of or related to this Parking Agreement and such service shall be made as provided by the laws of the State of Illinois for service upon a non-resident provided, however, that a copy of such service shall be sent by prepaid, registered mail, return receipt requested, at the time of service to BRE Park Place 2 at the address for notices specified in Section 10 of this Parking Agreement.

19. Entire Agreement. This Parking Agreement contains the entire agreement of the parties hereto respecting the subject matters of this Parking Agreement and supersedes all prior understandings, contracts or agreements.

20. Captions. The Article headings and captions of this Parking Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Parking Agreement or in any way affect this Parking Agreement.

21. Successors and Assigns. The terms herein contained in this Parking Agreement shall bind and inure to the benefit of the Village, its successors and assigns, and BRE Park Place 2, its authorized successors and assigns.

22. Authority. Each party represents that the execution of this Parking Agreement by the signatories set forth below and the performance of the terms of the Parking Agreement have been duly authorized by their respective governing authority.

23. Real Estate, Use or Leasehold Taxes. The parties contemplate that the Parking Garage is exempt from real estate taxes, use or leasehold taxes under Illinois law. In the event that real estate taxes, use or leasehold taxes are levied against all or part of the Parking Garage as a result of BRE Park Place 2's use of the Parking Garage, as a result of this Parking

Agreement, or for any other reason, BRE Park Place 2 shall be liable for payment of those taxes to the extent of its right to use the Parking Garage. BRE Park Place 2 shall be liable regardless of whether the Village or BRE Park Place 2 is assessed such real estate taxes, use or leasehold taxes.

24. Required Insurance Coverages. BRE Park Place 2 shall secure or cause others to secure and keep in full force and effect during the entire Initial Term of this Parking Agreement or any Option Period such insurance against any risk and peril for BRE Park Place 2, its invitees, employees, its Authorized Users and customers including but not limited to BRE Park Place 2's employee's liability, garage liability and garage legal liability related to BRE Park Place 2's use of the Parking Spaces and general liability insurance for any occurrence on or about the Parking Garage in limits of not less than \$2,000,000.00 combined single limit per occurrence for bodily injury and property damage. Notwithstanding the foregoing to the contrary, the Village acknowledges that BRE Park Place 2 shall be permitted to utilize its umbrella coverage to satisfy the coverage amounts herein as it relates to BRE Park Place 2, its successors and assigns and their Authorized Users use of the Parking Spaces.

25. Recording of Memorandum. Upon execution hereof, the parties hereto may enter into a Memorandum of Parking Agreement in recordable form, which Memorandum may be recorded by either party in the recorder's office, provided however, that no economic terms shall be described in the Memorandum.

26. Non-Liability of Village Officials and Employees: No present or future official, employee or agent of the Village shall have any personal liability, directly or indirectly, under or in connection with this Parking Agreement or any agreement made or entered into under or in connection with the provisions of this Parking Agreement, and BRE Park Place 2 and its successors and assigns shall look solely to the Village for the payment of any claim or for any performance, and BRE Park Place 2 hereby waives any and all such personal liability. The provisions of this Section 26 shall survive the termination of this Parking Agreement.

27. Multiple Counterparts. This Parking Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one agreement, but in making proof of this Parking Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]

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

**VILLAGE::**

VILLAGE OF ROSEMONT

By: \_\_\_\_\_  
Name: Bradley A. Stephens  
Its: President

Attest:

By: \_\_\_\_\_  
Name: Debbie Drehabl  
Its: Village Clerk

**BRE Park Place 2:**

BRE Park Place 2 LLC,  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: Marc Offit  
Its: Manager

***Exhibit A***     Parking Garage  
***Exhibit B***     BRE Park Place 2 Site

**Exhibits to be provided by Landlord Attorney and approved by Tenant**

## REAL ESTATE PURCHASE AND SALE OPTION AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE OPTION AGREEMENT (the "**Option Agreement**") is made and entered into and effective this 22 day of February, 2021 (the "**Effective Date**") by and between the VILLAGE OF ROSEMONT, an Illinois home rule municipal corporation (the "**Village**"), and BRE PARK PLACE 2, LLC, an Illinois limited liability company ("**BRE**").

### RECITALS

A. The Village is the record owner of certain property having the common address of 5500 Park Place, Rosemont, Illinois improved with an approximately 20,425 square foot building (hereinafter referred to as the "**Building**") located in Rosemont, Cook County, Illinois (the "**Subject Property**").

B. The Village proposes to subdivide the Subject Property into two separate parcels and the Village desires to enter into this Option Agreement with BRE granting BRE and option to purchase from the Village Lot 1 of the subdivided parcels that will consist, in part, of approximately 7,025 square feet of the Building ("**Lot 1**"). The proposed and anticipated legal description of Lot 1 is attached hereto and made a part hereof as Exhibit A. The actual square footage of the Building to be located and the total square footage of part of Lot 1 shall be subject to Aria Group Architects, Inc.'s ("**Aria**") final determination.

C. The Village and BRE desire to enter into this Option Agreement to facilitate the sale and purchase of Lot 1 as conveniently and expeditiously as possible subject to the terms and provisions of this Option Agreement.

NOW THEREFORE, in consideration of the mutual agreements herein and in this Option Agreement contained, the Village and BRE do hereby agree to the covenants, conditions, limitations and agreements herein contained and agree as follows:

#### 1. INCORPORATION OF RECITALS.

The representations set forth in the foregoing recitals are material to this Option Agreement and are hereby incorporated into and made a part of this Option Agreement as though they were fully set forth in this Section 1.

#### 2. GRANT OF RIGHT AND OPTION; OPTION AGREEMENT PAYMENT.

The Village hereby grants to BRE the right and option to purchase Lot 1 at a purchase price of to be allocated based and calculated at ONE HUNDRED SIXTY-ONE and 57/100 DOLLARS (\$161.57) per square foot or of as-built square footage of Building area on Lot 1, plus and minus prorations (the "**Purchase Price**") as determined by Aria plus and minus prorations, for a period from the Effective Date to and including April 1, 2021 upon the payment of TEN THOUSAND DOLLARS (\$10,000.00) within four (4) business days of the Effective Date by BRE to the Village.



3. EXERCISE OF OPTION.

To exercise its right and option to purchase Lot 1 at the Purchase Price BRE must deliver a signed Real Estate Sale and Purchase Agreement and Development Agreement attached hereto and made a part hereof in substantial form as Exhibit B (the “**Purchase Contract**”) to the Village on or before April 1, 2021.

4. TERMS OF PURCHASE.

The terms of the purchase and sale of Lot 1 shall be on terms and conditions to be contained in the Purchase Contract to be negotiated and entered into by the Village and BRE. The Purchase Contract shall provide for, *inter alia*, (i) the purchase price per this Option Agreement, (ii) a closing date on or before May 3, 2021, (iii) conveyance by the Village of Lot 1 by Special Warranty Deed, free and clear of all monetary liens and encumbrances, leases or other occupancy rights or agreements, (iv) at closing the Village shall deliver an owner's title insurance policy and a current ALTA survey of the Subject Property, and (iv) such other terms and conditions negotiated and mutually acceptable to the parties.

5. NOTICES.

All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by email in PDF format, with written confirmation deposited within two (2) business days by overnight or first class mail, in which case notice shall be deemed delivered when such email notice is sent, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by email or personal delivery and delivered after 5:00 p.m. Central Time shall be deemed received on the next business day. A party's address may be changed by written notice to the other party pursuant to the delivery methods set forth herein. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to Developer shall be deemed given by Developer and notices given by counsel to the Village shall be deemed given by the Village.

As to Village: Village of Rosemont  
Attn: Village Clerk  
9501 West Devon  
Rosemont, Illinois 60018  
Email: [MayorsOffice@VillageofRosemont.org](mailto:MayorsOffice@VillageofRosemont.org)

With Copy to: William E. Ryan  
Ryan and Ryan  
9501 West Devon, Suite 300  
Rosemont, Illinois 60018  
Email: [wryan@ryanryanlaw.com](mailto:wryan@ryanryanlaw.com)

As to Purchaser: BRE Park Place 2, LLC  
222 Northfield Rd., Suite 104  
Northfield, IL 60093

With Copy to: Marc Joseph, Esq  
Levenfeld Pearlstein, et al.  
2 N. LaSalle St. Suite 1300  
Chicago, IL 60602

6. PARTIES BOUND.

This Option Agreement shall be binding upon and inure to the benefit of the Village and BRE and their respective successors and assigns.

7. AUTHORIZED EXECUTION.

The Village and BRE each represent and warrant to the other that it has the authority to enter into this Option Agreement and perform all of the terms and provisions herein provided to be performed, as applicable.

8. ASSIGNMENT BY BRE.

BRE may not sell, convey, assign or otherwise transfer or dispose of this Option Agreement or BRE's right and option to purchase Lot 1 without the written consent of the Village which consent may be withheld, conditioned or delayed.

9. MULTIPLE COUNTERPARTS.

This Option Agreement may be executed in any number of counterparts each of which shall be deemed to be an original, and all of such counterparts shall constitute one Option Agreement. To facilitate execution of this Option Agreement, the parties may execute and exchange by email in PDF format counterparts of the signature pages, which shall be deemed an original and in making proof of this Option Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties hereto have executed this Option Agreement on the day and year written below.

**BRE:**

BRE PARK PLACE 2, LLC,  
an Illinois limited liability company

By:  \_\_\_\_\_  
DocuSigned by:  
P4E885077B96446...

Printed Name: Marc offit

Its: Manager

**VILLAGE:**

VILLAGE OF ROSEMONT, ILLINOIS, an Illinois  
municipal corporation

By:  \_\_\_\_\_

Bradley A. Stephens, Its President

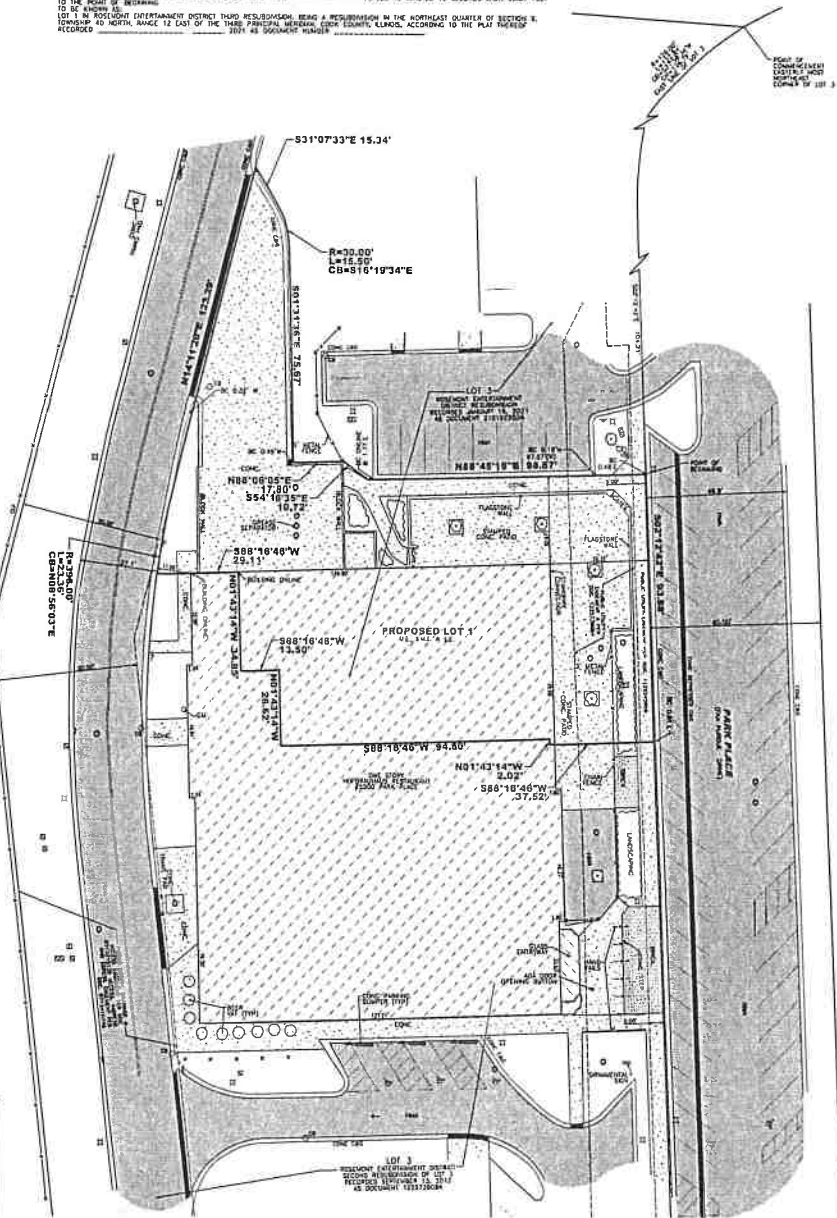
**ATTEST:**

By:  \_\_\_\_\_

Debbie Drehabl, Village Clerk

**ALTA/NSPS LAND TITLE SURVEY**[illegible]

I-294 (TRI-STATE TOLLWAY)



4. ALL DIMENSIONS ARE GIVEN IN FEET AND DECIMAL PARTS THEREOF.
5. ONLY THOSE BUILDING LOT LINES AND ADJACENT WATER COURSES ARE SHOWN WHICH ARE THE SUBJECT OF THIS SURVEY. NO DIMENSIONS ARE GIVEN THEREIN UNLESS THEY BE THE RESULT OF A MEASUREMENT MADE BY THE SURVEYOR. THE SURVEYOR ASSUMES NO LIABILITY FOR OTHER DIMENSIONS OR FOR OTHER RESTRICTIONS.
6. NO DIMENSIONS SHALL BE DERIVED FROM SCALE MEASUREMENTS.
7. CONTACT LEE AT 1-800-882-0123 FOR EXACT LOCATION OF BUILT STRUCTURES PRIOR TO EGRESS.
8. OBSERVABLE ABOVE GROUND UTILITIES AND ABOVE GROUND EVIDENCE OF UNDERGROUND UTILITIES LOCATED AND SHOWN HEREON.
9. DUE TO SHOW COVER AT THE TIME OF THE FIELD WORK, SOME IMPROVEMENTS AND FEATURES MAY NOT HAVE BEEN LOCATED.
10. CERTIFIED COPIES OF THIS SURVEY BEAR AN IMPRESSED SEAL.
11. PROPERTY NOT MONUMENTED AT THIS TIME AT CLIENT'S REQUEST.

[illegible]

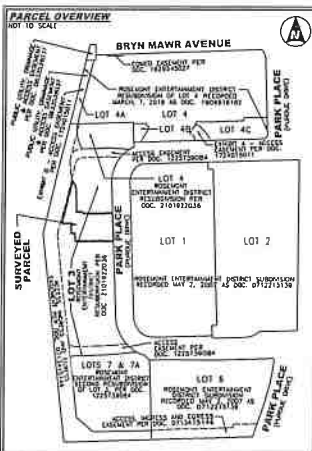
STATE OF ILLINOIS }  
COUNTY OF COOK } ss  
- VILLAGE OF ROSEMONT, AN ILLINOIS MUNICIPAL CORPORATION

THIS IS TO CERTIFY THAT THIS MAP OR PLAN AND THE SURVEY BY WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DATA REQUIREMENTS FOR ALTA/ASPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND MEPS, AND INCLUDES ITEMS 2, 3, 4, 7(a), 8, AND 9 OF TABLE A, THEREOF.

THE FIELD WORK WAS COMPLETED ON 01-05-21.  
DATE OF PLAN OR MAP: 02-10-21.

DATE: 4/2/2004

ILLINOIS PROFESSIONAL LAND SURVEYOR NUMBER 010-005057  
LICENSE EXPIRES NOVEMBER 30, 2022



9501 West Devon Avenue  
Rosemont, Illinois 60018



**Mackie Consultants, LLC**  
9575 W. Higgins Road, Suite 500  
Rosemont, IL 60018  
(847)696-1400  
[www.mackieconsult.com](http://www.mackieconsult.com)

			DESIGNED	
			DRAWN	SMC
			APPROVED	GKF
			DATE	02-12-21
DATE	DESCRIPTION OF REVISION	BY	SCALE	1"=30'

ALTA/NSPS LAND TITLE SURVEY  
5500 PARK PLACE (LOT 1)  
ROSEMONT, ILLINOIS

SHEET

**1 OF 1**

PROJECT NUMBER:	2084
JACKE CONSULTANTS LLC 2021	
1000 20th AVENUE, SUITE 2000	

Exhibit B

**REAL ESTATE SALE AND PURCHASE AGREEMENT  
AND DEVELOPMENT AGREEMENT**

**By and Between**

**BRE PARK PLACE 2, LLC,  
an Illinois limited liability company**

**and**

**VILLAGE OF ROSEMONT, ILLINOIS,  
an Illinois municipal corporation**

**February \_\_\_\_, 2021**

## REAL ESTATE SALE AND PURCHASE AGREEMENT AND DEVELOPMENT AGREEMENT

THIS REAL ESTATE SALE AND PURCHASE AGREEMENT AND DEVELOPMENT AGREEMENT is made and entered into and effective this \_\_\_\_ day of February, 2021 (hereinafter referred to as the "Agreement") by and between the BRE PARK PLACE 2, LLC, an Illinois limited liability company or its assignee (referred to herein as "Purchaser"), and VILLAGE OF ROSEMONT, an Illinois home rule municipal corporation (referred to herein as the "Village").

### RECITALS

A. Pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended ("TIF Act") and the terms of the Village's South River Road TIF No. 4 Redevelopment Plan and Project the Village designated a certain area within its municipal limits for redevelopment and revitalization with commercial and retail uses.

B. The property subject of this Agreement is within the South River Road TIF No. 4 Project Area, the legal description of the property is attached hereto and made a part hereof as Exhibit A ("Lot 1").

C. The Village currently owns and RBH Brewery, Inc. d/b/a Hofbrauhaus Chicago at Rosemont currently leases from the Village the premises having the common address of 5500 Park Place, Rosemont, Illinois (hereinafter referred to as the "Subject Property ") of which Lot 1 is a part and which is improved with an approximately 20,425 square foot building (hereinafter referred to as the "Building").

D. RBH Brewery, Inc. d/b/a Hofbrauhaus Chicago at Rosemont has agreed to execute and shall deliver at the Closing a Lease Cancellation and Termination Agreement.

E. Village now desires to sell to Purchaser and Purchaser now desires to purchase from the Village Lot 1 and approximately 7,025 square feet of the Building on a portion of the Subject Property subject to Aria Group Architects, Inc.'s final determination of the actual as-built square footage of Building on Lot 1 ("As-built Square Footage") so that Lot 1 can be re-purposed and developed as provided for in this Agreement.

F. The Village, in order to ensure the development of Lot 1 requires certain assurances, as hereinafter set forth, that Purchaser will perform certain acts and fulfill certain conditions.

G. Purchaser, in order to ensure the development of Lot 1 requires certain assurances, as hereinafter set forth, that the Village will perform certain acts and fulfill certain conditions.

H. It is the desire of the Village and Purchaser that the development of Lot 1 proceed as conveniently and expeditiously as possible, subject to the Village's ordinances, codes and

regulations, now or hereafter in force and effect, as limited, modified or amended by, and subject to the provisions of this Agreement and applicable law.

I. The corporate authorities of the Village, after due and careful consideration, have concluded that the sale and development of Lot 1 as provided in this Agreement furthers the goals and objectives of the South River Road TIF No. 4 Redevelopment Plan and Project, will further the growth of the Village, increase the assessed valuation of the real estate situated within the Village, increase the sales tax revenues realized by the Village and foster increased economic activity within the Village.

J. The corporate authorities of the Village, after due and careful consideration, have concluded the sale of Lot 1 and the fulfillment generally of this Agreement, are in the vital and best interests of the Village and the health, safety and welfare of its residents and taxpayers.

K. Pursuant to the Village's powers as a home rule municipal corporation of the State of Illinois, pursuant to Article VII of the 1970 Constitution of the State of Illinois, the Village possesses the authority and power to enter into this Agreement.

L. As a result of the improvements to be undertaken as part of this Agreement, the Village expects that significant real estate tax and sales tax revenues will be generated by the sale of Lot 1.

NOW THEREFORE, in consideration of the mutual agreements herein and in this Agreement contained, the Village and the Purchaser do hereby agree to the covenants, conditions, limitations and agreements herein contained and agree as follows:

#### 1. INCORPORATION OF RECITALS.

The representations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

#### 2. DEFINITIONS.

The terms defined in this Article (except as herein otherwise expressly provided or required by the context) shall have the following meanings:

2.1 "Closing" shall be the consummation of the transfer of Lot 1 from the Village to the Purchaser together with the execution and delivery of the Parking Agreement and between Purchaser and the Village in the manner provided in and by this Agreement.

2.2 "Closing Date" shall mean the date of the Closing to be on or before \_\_\_\_\_, 2021 or such other date as the parties may mutually agree.

2.3 "Concept Site Plan" shall mean the site plan layout and proposed elevations for Lot 1 attached hereto and made a part hereof as Exhibit B.

2.4 "Effective Date" shall be the date of this Agreement.

2.5 “Parking Agreement” shall mean that certain parking agreement to be entered into by Purchaser and the Village at the time of the Closing providing for the non-exclusive use of surface parking spaces and parking spaces within the parking garage located within and serving of the Parkway Bank Park.

2.6 “Plans and Specifications” shall mean the plans and specifications submitted by the Purchaser for Lot 1 in the manner provided in this Agreement, as amended from time to time in the manner provided in and by this Agreement.

2.7 “Purchase Price” shall mean the price paid to the Village by the Purchaser for Lot 1 in the manner provided in and by this Agreement.

2.8 “Purchase Price Funding Date” shall mean September 13, 2021 or such other date as the parties may agree to in writing at which Purchaser shall pay the Purchase Price and Interest as provided for in Section 3.2 herein in the manner provided in and by this Agreement.

2.9 “Purchaser” shall mean BRE Park Place 2, LLC, an Illinois limited liability company and those parties who become its successors and assigns in the manner authorized by this Agreement.

2.10 “Title Company” shall mean Chicago Title Insurance Company or such other title company and agent designated by Purchaser or otherwise agreed upon by the parties.

2.11 “Village” shall mean the Village of Rosemont, a home rule municipal corporation under the laws of the State of Illinois, together with any successors or assigns.

2.12 “Village Municipal Code” shall mean the municipal code, ordinances and regulations of the Village of Rosemont as adopted and in place from time to time.

2.13 “Village Work” shall mean the construction and improvements to be undertaken by the Village to the Subject Property as set forth in the Area Work Letter attached hereto and made a part hereof as Exhibit C which are required for and shall be a part of the construction and development of Lot 1 in the manner provided in this Agreement.

2.14 “Village Zoning Code” shall mean the zoning code of the Village of Rosemont as adopted and in place from time to time.

### 3. CLOSING DATE; PURCHASE PRICE; CONVEYANCE OF LOT 1; SURVEY; RE-CONVEYANCE FOR FAILURE TO COMMENCE CONSTRUCTION.

3.1 Closing Date. The Closing shall be consummated and the transfer of Lot 1 shall occur on the Closing Date.

3.2 Purchase Price. On the Purchase Price Funding Date, subject to the terms and conditions set forth in this Agreement, Purchaser shall pay to Village a purchase price to be allocated based and calculated at ONE HUNDRED SIXTY ONE and 57/100 DOLLARS (\$161.57) per square foot of As-built Square Footage of Building area on Lot 1 as determined by Aria Group Architects, Inc. in the manner provided by and subject to the terms of this Agreement. Purchaser shall pay interest on the Purchase Price at the interest rate of 4 ½ % per annum from the Closing



date to the Purchase Price Funding Date ("Interest") and the Interest shall be paid on the Purchase Price Funding Date.

### 3.3 Conveyance of Lot 1.

Subject to the satisfaction of conditions precedent and provided RBH Brewery, Inc. d/b/a Hofbrauhaus Chicago at Rosemont has executed a Lease Cancellation and Termination Agreement and Purchaser has materially satisfied to the reasonable satisfaction of the Village all other pre-Closing requirements and obligations in the manner provided in this Agreement, at Closing the Village shall deposit into the Closing Escrow as provided for herein a Special Warranty Deed into the Closing Escrow conveying to Purchaser fee simple title to Lot 1 subject only to the encumbrances of this Agreement, use restrictions within and related to the Parkway Bank Park (including but not limited to use restrictions related to movie theaters, theater popcorn and packaged theater candy, Brazilian steakhouse venues, bowling venues, Irish-themed venues and live music venues), an easement for signage on the west elevation of the Building located on Parcel 1 ("Signage Easement") and the Permitted Exceptions as herein defined. The Title Company or other escrow agent shall retain the Special Warranty Deed after the Closing until the Purchase Price and any Interest thereon has been paid on the Purchase Price Funding Date. Closing shall be consummated through an escrow with the Title Company in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement (the "Closing Escrow") used by the Title Company with such special provisions inserted in the Closing Escrow as may be required to conform with this Agreement including but not limited to the return of the Special Warranty Deed to the Village in the event Purchaser fails to pay the Purchase Price and the Interest thereon on the Purchase Price Funding Date or is otherwise in default under this Agreement. The cost of such escrow shall be divided equally between Purchaser and the Village, except the cost of any moneylender's escrow and any special costs incurred by reason of the Purchaser's financing shall be borne by the Purchaser. Village shall be responsible for and pay real estate tax transfer taxes and all other transfer taxes, if any. Village shall deliver possession of Lot 1 to Purchaser at Closing in an "As Is, Where As" condition free of any title encumbrances that would hinder Purchaser's development of Lot 1 subject only to the encumbrances of this Agreement, use restrictions within and related to the Parkway Bank Park, the Signage Easement and the Permitted Exceptions.

### 3.4 Survey; Plats.

(a) The Village, at the Village's cost, shall provide Purchaser with an ALTA land survey of Lot 1 ("Survey"). Such Survey shall plot all exceptions to title (to the extent plottable) and shall plot any easements that benefit or burden Lot 1. The Village shall pay for the cost of Survey except for any incremental increase attributable to the cost of including additional information as may be requested by the Purchaser or its lender provided, however, that the Purchaser shall pay for the cost of the Survey in the event the Purchaser does not purchase Lot 1. The Survey shall be subject to Purchaser's review and approval pursuant to the provisions of Section 5 herein.

(b) The Village shall, at its sole cost, prepare, approve and record, any and all plats of subdivision, abrogations, easements, vacation, and dedication (collectively, the "Plats"), as may be reasonably required to convey Lot 1 to the Purchaser.

3.5 Return of Special Warranty Deed for Failure to Pay Purchase Price and Interest; Reimbursement of Village Costs.

(a) Notwithstanding anything in this Agreement to the contrary, in the event Purchaser fails to pay the Purchase Price and any Interest thereon on the Purchase Price Funding Date or is otherwise in default under this Agreement, then the Village, in its sole and absolute discretion, may demand by written notice to the Purchaser and the Title Company and the Title Company or other escrow agent shall immediately release and return the Special Warranty Deed and the Parking Agreement to the Village from the Closing Escrow without delay and without requiring additional authorization.

(b) Notwithstanding anything in this Agreement to the contrary, in the event Purchaser fails to pay the Purchase Price and any Interest thereon on the Purchase Price Funding Date, Purchaser agrees to reimburse and pay the Village the actual cost of the Village Work and the Village reimbursement or contribution for Aria's Architectural Fees attributable to and associated with Lot 1 within thirty (30) days of Purchaser receiving written notice and demand thereof.

(c) This provision shall survive the Closing.

3.6 No Encumbrance of Subject Property or Lot 1 by Purchaser. Purchaser may not encumber Lot 1 with any lien or encumbrance prior to the Purchase Price Funding Date.

3.7 Guaranty of Purchaser's Performance. At Closing [OFFIT/KILLERMAN] shall jointly and severally provide a personal guaranty securing performance of Purchaser's obligations under this Agreement ("Guaranty"). A copy of the Guaranty form has been attached hereto and made a part hereof as Exhibit E.

4. TITLE INSURANCE. The Village and Purchase shall cause the following to occur prior to the time of the Closing:

(a) The Village, at the Village's cost, shall provide Purchaser a current title commitment for an Owner's Title Insurance Policy issued by the Title Company (the "Title Commitment") in the amount of the Purchase Price covering title to and for an owner's title policy for Lot 1 and any easements that benefit Lot 1, with said Title Commitment to be accompanied by copies of all instruments and plats described on Schedule B ("Initial Title Commitment").

(b) All title commitments provided by the Village under this Section shall be updated and delivered to Purchaser prior to the Closing (collectively the "Updated Title Commitment").

(c) The Purchaser shall have five (5) days after its receipt of each of: (i) the Initial Title Commitment or any Updated Title Commitment, and (ii) the Survey to review same and notify the Village of any objections ("Defects"). The Village shall have ten (10) days to respond

to such objections and up to thirty (30) days to attempt to have the Defects removed from either the Updated Title Commitment and the Survey, or have, with the Purchaser's concurrence, the Title Company commit to insure against loss or damage that may be occasioned by such Defects (the "Cure Period") at the Village's cost. All such title exceptions as approved by the Purchaser shall be deemed the "Permitted Title Exceptions." The Cure Period may be extended by notice from the Village to Purchaser for a thirty (30) day period if the Village is diligently attempting to remove and/or delete such Defects. Village agrees to use commercially reasonable efforts to remove such Defects, provided that the Village shall not be required to make the payment of money to remove such Defects, exceeding \$200,000.00 in the aggregate, unless such Defects are the result of the action of the Village.

## 5. CONTINGENCY PERIODS AND DATES.

5.1 Concept Site Plan. The Concept Site Plan is attached hereto and made a part hereof as Exhibit B. Purchaser's renovation, construction and development of Lot 1 shall conform in all material respects to the Concept Site Plan.

5.2 Plans and Specifications Contingency Date. Purchaser shall obtain and submit plans and specifications for improvements to Lot 1 to the Village in a timely manner to allow the Village to issue by April 1, 2021 building permits to alter Lot 1. Purchaser shall design, obtain and submit to the Village complete and final construction drawings, plans and specifications for Lot 1 including exterior elevations and façade materials to ensure Lot 1 is consistent with and complementary to architectural and aesthetic characteristics of other buildings within Parkway Bank Park. Any schematics, design drawings, construction drawings, or plans and specifications shall be referred to as and shall be considered "Plans and Specifications" for purposes of this Agreement.

5.3 Purchaser Price Funding Date Contingency. The Purchase Price Funding Date shall be on or before September 13, 2021. Notwithstanding anything in the Agreement to the contrary, if the Purchase Price Funding Date has not occurred on or before September 13, 2021 the Village shall have the right to terminate the Agreement on written notice to the Purchaser and the Title Company shall release and return the Special Warranty Deed and the Parking Agreement to the Village from the Closing Escrow. Notwithstanding that the Village may have issued an occupancy permit or that Lot 1 may otherwise be ready to be open for business, Lot 1 may not be open for business until the Purchase Price Funding Date has occurred.

5.4 Commencement of Renovation and Construction of Lot 1. Unless otherwise agreed to by the parties, Purchaser agrees it shall (i) begin demolition and renovation of the interior of the Building located on Lot 1 by April 15, 2021 and (ii) diligently prosecute to completion the renovation by the September 13, 2021 Purchase Price Funding Date, subject to delays caused solely by the Village, provided, however, that all performance dates required of Purchaser in this Section 8 herein shall be extended by one day for each day that the Village fails to meet any segment or phase of its obligations under this Agreement as set forth in in a timely manner. Purchaser agrees that for a period of two (2) years following the Purchase Price Funding Date Purchaser shall own Lot 1 (the "Initial Opening Period").

6. ZONING AND PERMITS. Purchaser shall, at its expense, properly and timely apply for and obtain any approvals including a Special Use Permit then deemed necessary or desirable by Purchaser and required by the Village for the renovation and construction of the interior and exterior of Lot 1 from the Village so as to secure any approvals and Village building permits by April 1, 2021. The Village shall promptly issue all approvals and Village permits within its powers including without limitation building and occupancy certificates provided Purchaser has made proper and timely application and met the requirements for any approvals and permits under the Village Municipal Code and the Village Zoning Code. The Village shall approve and adopt any plat of re-subdivision related to Lot 1 consistent with the division and use of the Subject Property as approved by the Village.

7 ALTERNATE BIDS. The Village shall publish a request for alternative bids as required pursuant to the South River Road TIF No. 4 Redevelopment Plan and Project and TIF Act to the extent required by law providing for alternative bids to be submitted to the Village within thirty (30) days of such publication.

8. VILLAGE WORK AND ARIA WORK LETTER. The Village and Purchaser agree that the Village Work set forth in Sections 8.1, 8.2, and 8.3 (the “Village Work”) are required for and shall be part of the renovation and construction of Lot 1. The Village Work will be set out and detailed in a work letter provided by Aria Group Architects, Inc. (“Aria Work Letter”) and constructed by the Village pursuant to the Aria Work Letter, and the costs of constructing and completing the Village Work shall be paid by the Village.

8.1 Utilities. The Village shall deliver, separate and construct the Village Work relating to utilities pursuant to the Aria Work Letter and the Village shall provide Purchaser with a plan showing the location of utilities (the “Lot 1 Utilities”) provided. The Village shall cooperate with Purchaser to coordinate the work and to diligently prosecute to completion its work to bring utilities to the exterior wall of the Building on Lot 1 to allow the Purchaser to carry forward with Purchaser’s renovation, construction and development of Lot 1’s opening for business in a timely manner as provided for herein. Purchaser agrees to pay for all utility services rendered or furnished to Lot 1 based on usage and where possible to be metered and charged directly to Purchaser.

8.2 Demising Wall. The Village shall be responsible for the costs and construction of the Village Work relating to the construction of a demising wall within the Building (the “Demising Wall”) pursuant to the Aria Work Letter to create and separate Lot 1 from the adjoining parcel. The Village shall provide Purchaser with a plan showing the location of the Demising Wall. The Village shall cooperate with Purchaser to coordinate the work and to diligently prosecute to completion its work to complete the Demising Wall to allow the Purchaser to carry forward with Purchaser’s renovation, construction and development of Lot 1’s opening for business in a timely manner as provided for herein.

8.3 Village Work. All construction required of the Village pursuant to Sections 8.1, 8.2 or otherwise required under this Section 8.3 and pursuant to the Aria Work Letter shall be conducted in a good and workman-like manner, pursuant to required governmental laws, regulations, ordinances, permits and approvals, utilizing new materials and performed in

substantial conformity with the Village plans and specifications for such Village Work. Except as provided for otherwise, the Village will use all commercially reasonable efforts to complete construction of all such Village Work. The Village shall keep Purchaser reasonably informed as to the progress of the Village Work required of the Village and the Village Work will be completed by \_\_\_\_\_, 2021.

9. PARKING AGREEMENT. At Closing the Village and Purchaser shall execute and enter into the Parking Agreement in substantially the same form as attached hereto and made a part hereof as Exhibit D providing for the non-exclusive use of surface parking spaces and parking spaces within the parking garage located within and serving of the Parkway Bank Park which parking spaces shall be available to the general public including, but not limited to guests, patrons, invitees, and permittees of Lot 1.

10. REAL ESTATE TAXES.

10.1 Pre-Closing Taxes. The Village represents that Lot 1 is currently exempt from real estate taxes and is subject to leasehold real estate taxes. The Village agrees to pay any general real estate taxes, special assessments and special taxes due or to become due for Lot 1 up to the date of Closing.

10.2 Post-Closing Taxes. Purchaser shall be responsible to pay or cause to be paid by others when due any real estate taxes, leasehold taxes, sales taxes, parking taxes, or any other taxes levied or assessed against Lot 1 related to Purchaser's ownership or leasing of Lot 1 or Purchaser's use of the parking garage located within and serving of the Parkway Bank Park before such taxes become delinquent.

11. CERTIFICATE OF OCCUPANCY. The Village shall promptly issue a certificate of occupancy for Lot 1 provided it is completed and ready for its intended use, subject to all applicable Village requirements and the provisions of this Agreement.

12. GENERAL DEVELOPMENT ISSUES. The general development provisions including, but not limited to, landscaping requirements, signage requirements, construction fencing, common access requirements and screening requirements shall be governed by the applicable requirements under the Village Municipal Code, the Village Zoning Code, and any other applicable Village ordinances, and shall be consistent with the Concept Site Plan and the Plans and Specifications as approved by the Village.

13. ALTERNATE USE. Prior to the Purchase Price Funding Date Purchaser shall have the right to propose an alternative use for Lot 1 and the Village may, at its sole option and in its sole discretion, approve an alternate use of Lot 1. The Village and Purchaser agree the Village's approval of an alternate use of Lot 1 is required as the use of Lot 1 is fundamental to this Agreement and may require the Village and Purchaser to amend certain terms and provisions of this Agreement or enter into a new agreement providing new terms and provisions for development of Lot 1.

14. BROKER'S COMMISSION. Purchaser and the Village acknowledge that no person or entity has acted as broker for or on behalf of the Purchaser and the Village and agree that should any broker make a claim for a commission based upon the actions of the Purchaser and the Village, then the party upon whose actions such claim is based shall indemnify, defend and hold the other harmless from any such claim.

15. NOTICES. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefor; or (ii) e-mail; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their respective addresses set forth below, and the same shall be effective (a) upon receipt of e-mail; (b) one (1) business day after depositing with such overnight courier service; or (c) two (2) business days after deposit in the mails, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance herewith. All notices by e-mail shall be subsequently confirmed by deposit with U.S. mail.

As to Seller: Village of Rosemont  
Attn: Village Clerk  
9501 West Devon  
Rosemont, Illinois 60018  
E-Mail: mayorsoffice@villageofrosemont.org

With Copy to: William E. Ryan  
Ryan and Ryan  
9501 West Devon, Suite 300  
Rosemont, Illinois 60018  
E-Mail: wryan@ryanryanlaw.com

As to Purchaser: BRE Park Park 2, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-Mail: \_\_\_\_\_

With Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-Mail: \_\_\_\_\_

Any notice in accordance herewith shall be deemed received when delivery is received or refused, as the case may be. Additionally, notices may be given by telephone facsimile transmission or email, provided that an original copy of said transmission shall be delivered to the

addressee via overnight delivery service for delivery on the business day following such transmission. Telephone facsimiles or emails shall be deemed delivered on the date of such transmission.

16. SURVIVAL; MEMORANDUM OF AGREEMENT.

16.1 Survival. Except to the extent otherwise performed by a Party, all the continuing terms set forth in this Agreement shall survive Closing and shall remain in full force and effect thereafter.

16.2 Memorandum of Agreement. Neither party shall record this Agreement, but each party agrees to execute and to deliver to the other party when this Agreement is executed and delivered, if requested, multiple copies of a Memorandum of this Agreement in a form mutually acceptable to the parties setting forth relevant terms of this Agreement. Either party, at its sole expense, may record the Memorandum in the Offices of the Recorder of Deeds of Cook County, Illinois.

17. PARTIES BOUND. This Agreement shall be binding upon and inure to the benefit of the Village and the Purchaser and their respective successors and assigns.

18. GOVERNING LAW. The laws of the State of Illinois shall govern the validity, construction, enforcement and interpretation of this Agreement.

19. NON-BUSINESS DAYS. If the Closing Date or the date for delivery of a notice or performance of some other obligation of the Village or the Purchaser falls on a Saturday, Sunday or legal holiday in the State of Illinois, then the date for Closing or such notice or performance shall be postponed until the next business day.

20. DEFAULTS; REMEDIES.

(a) This Agreement shall be enforceable in the Circuit Court of Cook County, Illinois by either the Village, Purchaser, or by any successor or successors in title or interest or by the assigns of the Parties for the purposes of any suit, action or other proceeding arising out of or relating to any default or breach of this Agreement and any relief or remedy sought by either of the Parties. Except as provided in this Agreement, and subject to force majeure, failure or delay beyond stated periods for performance by either party to perform any material term or provision of this Agreement shall constitute a breach of such party's obligations under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default specifying the default complained of by the injured party. Purchaser shall have fifteen (15) days after receiving written notice from the Village to cure any monetary default for its failure or refusal to pay any monies that become due and payable under this Agreement, including but not limited to paying the Purchase Price on the Purchase Price Funding Date. Except as required to protect against further damages, and except as to monetary defaults as otherwise expressly provided in this Agreement, the injured party may

not institute proceedings against the party in default until thirty (30) days after giving such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute an Event of Default under this Agreement. If: (i) such default does not relate to the lack of funds or the obligation of a party to pay money to the other; (ii) such default cannot reasonably be cured within such thirty (30) day period; and (iii) the defaulting party shall commence to cure the same within such thirty (30) day period and diligently and in good faith continue to prosecute the cure of such default in a commercially reasonable manner to its conclusion, then said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default. If such default is cured within such extended period, the default shall not be deemed to constitute an Event of Default under this Agreement. However, a default not cured as provided above shall constitute an Event of Default under this Agreement.

(b) Prior to Closing and upon an Event of Default by the Village, Purchaser's remedies shall be limited to (i) bringing an action for specific performance, or (ii) terminating this Agreement. Purchaser shall have no monetary remedy and the parties shall have no further obligations to each other. Prior to Closing and upon an Event of Default by the Purchaser, Village's remedies shall include (i) bringing an action for specific performance, or (ii) terminating this Agreement and bringing an action for damages caused by an Event of Default by Purchaser.

(c) After the Closing and upon an Event of Default by Purchaser the Village may institute legal action to cure, correct or remedy an Event of Default, to recover damages for any default or to obtain any other remedy consistent with the purposes of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance.

(d) In the event either party shall institute legal action because of breach of any agreement or obligation contained in this Agreement and an Event of Default shall be established, the non-failing party shall be entitled to recover all damages, costs and expenses, including reasonable attorneys' fees incurred therefor.

21. PERMITTED DELAYS; FORCE MAJEURE. None of the parties shall be deemed to be in default hereunder in the performance of any obligation where delays or defaults in such performance are due to: war; insurrection; strikes; riots; floods; earthquakes; fires, casualties or acts of God; the failure of the other party to this Agreement to keep and perform the covenants and obligations on its part to be kept and performed; or any other cause similar to the foregoing that is not within a party's control excluding lack of funds, the COVID-19 pandemic or other pandemic. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than ten (10) days after the commencement of such cause. In order to claim an event of force majeure the claiming party must send written notice to the other party within ten (10) days of the claimed force majeure event. Notwithstanding the foregoing, Purchaser may not claim force majeure to extend the Purchase Price Funding Date and no event of force majeure shall extend the Purchase Price Funding Date.



22. INTEGRATION AND AMENDMENT. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between the parties relative to the subject matter hereof and thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as are herein and therein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless reduced to writing and duly executed by them. All exhibits to this Agreement are expressly incorporated herein by this reference thereto.

23. SEVERABILITY. In the event any phrase, article, section or portion of this Agreement is found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such finding of invalidity, illegality or unenforceability as to that portion shall not affect the validity, legality or enforceability of the remaining portions of this Agreement.

24. CAPTIONS AND PRONOUNS. The captions and headings of the various articles and sections of this Agreement are for convenience only and are not to be construed as confining, defining, expanding or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

25. NO DISCRIMINATION. Purchaser agrees to comply with all applicable laws prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, national origin or sexual orientation. Purchaser shall require that applicants for employment with Purchaser be treated during the application process and during employment without regard to race, creed, color, religion, sex, national origin, disability or sexual orientation in accordance with applicable laws.

26. NO JOINT VENTURE. Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership or joint venture between or among such parties.

27. LIMITED LIABILITY. The parties hereto specifically agree, that neither the Village of Rosemont nor Purchaser shall have any liability for any breach of any of the terms of this Agreement in the form of consequential or punitive damages.

28. AUTHORIZED EXECUTION. The parties represent and warrant that they have been duly authorized to execute this Agreement.

29. ASSIGNMENT BY PURCHASER.

29.1 Assignment Prior to Closing and During Two Year Ownership Period . For a period of two (2) years following the Purchase Price Funding Date, Purchaser may not sell, convey, assign, or otherwise transfer or dispose ("Transfer") any interest, leasehold interest or other interest in Lot 1, or any interest in the Parking Agreement without the prior written consent of the Village, which consent shall may be unreasonably withheld, conditioned or delayed.

29.2 Assignment Following Two Year Ownership Period. Following the two (2) year ownership period set forth in Section 29.1 above and except as otherwise provided in Section 5.4 of this Agreement, and provided a Transfer includes the transfer of all of Lot 1 and all rights under the Parking Agreement, Purchaser may Transfer all of Lot 1 and all rights under the Parking Agreement without the prior written consent of the Village.

30. APPLICABLE LAW AND CONSTRUCTION. The laws of the State of Illinois shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the Village and the Purchaser and the Agreement, together with all of the terms and provisions of this Agreement, shall not be deemed to have been prepared by either the Village or the Purchaser, but both equally.

31. SUBMISSION TO JURISDICTION. Each party to this Agreement hereby submits to the jurisdiction of the State of Illinois, Cook County and the Circuit Court of Cook County, Illinois for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by the Circuit Court of Cook County, Illinois.

32. EXECUTION OF WRITTEN INSTRUMENTS. The Village and Purchaser agree to make, execute and deliver such written instruments and agreements and as shall from time to time be reasonably required to carry out the terms, provisions and intent of this Agreement.

33. ATTORNEY'S FEES. If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, proceeding, trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court.

34. NO WAIVER. Any requirement or conditions contained in this Agreement may only be waived in writing.

35. CERTIFICATION OF ELIGIBILITY.

(a) Purchaser certifies that it is not barred from bidding on contracts offered for bid by any unit of state or local government in the State of Illinois as a result of having been convicted of a violation of either Section 33E-3 [Bid Rigging] or Section 33E-4 [Bid Rotation] of the Illinois Criminal Code.

(b) Purchaser certifies that it is not delinquent in the payment of any tax administered by the Department of Revenue unless Purchaser is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in 65 ILCS 5/11-42.1-1.

36. INDEMNITY. Prior to and during Purchaser's renovation and construction of Lot 1, Purchaser shall indemnify, defend and hold the Village harmless from and against any and all objections, liabilities, actions, claims, damages, penalties, including reasonable attorneys' fees in

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

**PURCHASER:**

BRE PARK PLACE 2, LLC,  
an Illinois limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**VILLAGE:**

VILLAGE OF ROSEMONT, ILLINOIS, an Illinois  
municipal corporation

By: \_\_\_\_\_

Bradley A. Stephens, Its President

**ATTEST:**

By: \_\_\_\_\_

Debbie Drehobl, Village Clerk

### **LIST OF EXHIBITS**

- Exhibit A - Legal Description of Lot 1 [To be provided by Village Attorney]
- Exhibit B - Concept Site Plan [To be provided by Purchaser's Attorney]
- Exhibit C - Village/Aria Work Letter [To be provided by Village Attorney]
- Exhibit D - Parking Agreement [To be provided by Village Attorney]
- Exhibit E - Personal Guaranty [To be provided by Village Attorney]

REAL ESTATE PURCHASE AND SALE AGREEMENT

By and Between

OB PARK, LLC,  
an Illinois limited liability company

and

VILLAGE OF ROSEMONT, ILLINOIS,  
an Illinois municipal corporation

March 10, 2021

## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT is made and entered into and effective this 10<sup>th</sup> day of March, 2021 (hereinafter referred to as the "Agreement") by and between OB PARK, LLC, an Illinois limited liability company (referred to herein as "Purchaser") and the VILLAGE OF ROSEMONT, an Illinois home rule municipal corporation (referred to herein as "Village").

### RECITALS

- A. Pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended ("TIF Act"), the Village is empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified either as, or a combination of, a "conservation area" and/or "blighted area," as defined under the TIF Act.
- B. Pursuant to the terms of the South River Road TIF No. 4 Redevelopment Plan and Project the Village designated a certain area within its municipal limits for redevelopment and revitalization with commercial and retail uses.
- C. The property subject of this Agreement is within the South River Road TIF No. 4 area (Subject Property") and the Subject Property contains approximately 20,887 square feet of land and is legally described on Exhibit A, attached hereto and made a part hereof.
- D. Purchaser, having previously leased the Subject Property from the Village, Purchaser and having constructed a free-standing building on the Subject Property now desires to purchase the Subject Property from the Village.
- E. The corporate authorities of the Village, after due and careful consideration, have concluded that the sale of the Subject Property as provided in this Agreement furthers the goals and objectives of the South River Road TIF No. 4 Redevelopment Plan and Project, will further the growth of the Village, increase the assessed valuation of the real estate situated within the Village, increase the sales tax revenues realized by the Village and foster increased economic activity within the Village.
- F. The corporate authorities of the Village, after due and careful consideration, have concluded the sale of the Subject Property and the fulfillment generally of this Agreement, are in the vital and best interests of the Village and the health, safety and welfare of its residents and taxpayers.
- G. Pursuant to the Village's powers as a home rule municipal corporation of the State of Illinois, pursuant to Article VII of the 1970 Constitution of the State of Illinois, the Village possesses the authority and power to enter into this Agreement.

H. As a result of the improvements to be undertaken as part of this Agreement, the Village expects that significant real estate and sales tax revenues will be generated by the sale of the Subject Property.

NOW THEREFORE, in consideration of the mutual agreements herein and in this Agreement contained, the Village and the Purchaser do hereby agree to the covenants, conditions, limitations and agreements herein contained and agree as follows:

1. INCORPORATION OF RECITALS.

The representations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

2. DEFINITIONS.

The terms defined in this Article (except as herein otherwise expressly provided or required by the context) shall have the following meanings:

2.1 "Closing" shall be the consummation of the transfer of the Subject Property from the Village to the Purchaser, in the manner authorized by this Agreement.

2.2 "Closing Date" shall mean the date of the Closing to be within sixty (60) days following the Effective Date of this Agreement or such other date as the parties may mutually agree.

2.3 "Purchaser" shall mean OB Park, LLC and those parties who become its successors and assigns in the manner authorized by this Agreement.

2.4 "Effective Date" shall be the date of this Agreement.

2.5 "Parking Agreement" shall mean that certain parking agreement to be entered into by Purchaser and the Village at the time of the Closing providing for the non-exclusive use of surface parking spaces and parking spaces within the parking garage located within and serving of the Parkway Bank Park.

2.6 "Title Company" shall mean Chicago Title Insurance Company or such other title company and agent designated by Purchaser.

2.7 "Village" shall mean the Village of Rosemont, a home rule municipal corporation under the laws of the State of Illinois, together with any successors or assigns.

2.8 "Village Municipal Code" shall mean the municipal code, ordinances and regulations of the Village of Rosemont as adopted and in place from time to time.

2.9 "Village Zoning Code" shall mean the zoning code of the Village of Rosemont as adopted and in place from time to time.

3. PURCHASE PRICE: CONVEYANCE OF SUBJECT PROPERTY.

3.1 Purchase Price. At Closing, subject to conditions precedent to the conveyance of the Subject Property from the Village to the Purchaser, or its nominee and provided Purchaser has materially satisfied to the reasonable satisfaction of the Village all other pre-Closing requirements and obligations contained and set forth herein, the Purchaser shall pay to the Village a purchase price of TWO HUNDRED SIXTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$265,500.00) for the Subject Property. The Purchase Price shall be paid at the time of the Closing. The Closing shall be on or before May 15, 2021 or as otherwise mutually agreed to in writing by the parties.

3.2 Conveyance of the Subject Property: Approvals.

Subject to the conditions precedent to conveyance of the Subject Property from the Village to the Purchaser and provided Purchaser has materially satisfied to the reasonable satisfaction of the Village all other pre-Closing requirements and obligations set forth in this Agreement, at the Closing, Village shall convey to the Purchaser fee simple title to a Subject Property by special warranty deed, subject to use restrictions within and related to the Parkway Bank Park (including but not limited to height and use restrictions within Parkway Bank Park, use restrictions related to movie theaters, theater popcorn and packaged theater candy, Brazilian steakhouse venues, bowling venues, Irish-themed venues, pizza venues which sales of on or off premises pizza make up to eighty percent (80%) of the menu and live music venues) and Permitted Exceptions as defined in this Agreement. The Closing shall be consummated through an escrow with the Title Company in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement (the "Escrow Agreement") used by the Title Company with such special provisions inserted in the Escrow Agreement as may be required to conform with this Agreement. The cost of such escrow shall be divided equally between Purchaser and the Village, except the cost of any moneylender's escrow and any special costs incurred by reason of the Purchaser's financing shall be borne by the Purchaser. Village shall be responsible for and pay real estate tax transfer taxes and all other transfer taxes, if any. Village shall deliver possession of the Subject Property and Purchaser shall take and accept the Subject Property in an "As Is" condition subject only to the Permitted Exceptions herein defined with the Village having heretofore provided Purchaser with a survey of the Subject Property.

4. TITLE INSURANCE.

(a) Within fourteen (14) days prior to the Closing the Village, at Village's cost, shall provide Purchaser a title commitment for an Owner's Title Insurance Policy issued by the Title Company covering title to the Subject Property and any easements that benefit the Subject Property ("Title Report"). At Closing, the Village shall, at Village's cost, provide the Purchaser with an updated commitment for an Owner's Title Insurance Policy issued by the Title Company in the



amount of the Purchase Price covering title to a Subject Property, any easements that benefit the Subject Property and the Permitted Exceptions.

(b) The Purchaser shall have seven (7) days after its receipt of the Title Commitment to review same and notify the Village of any objections ("Defects"). The Village shall have fourteen (14) days to respond to such objections and up to thirty (30) days to attempt to have the Defects removed from the Title Commitment as the case may be, or have, with the Purchaser's concurrence, the Title Company commit to insure against loss or damage that may be occasioned by such Defects (the "Cure Period") at the Village's cost. All such title exceptions as approved by the objecting party shall be deemed the "Permitted Exceptions." The Cure Period may be extended by notice from the Village to the Purchaser for a sixty (60) day period if the Village is diligently attempting to remove and/or delete such Defects. The Village agrees to use commercially reasonable efforts to remove such Defects, provided that any payment of money by the Village to remove such Defects shall not exceed \$100,000.00 in the aggregate. If the Village is unable to cure any defect, after commercially reasonable efforts, Purchaser may elect to purchase the Subject Property as is and the Defects shall be Permitted Exceptions or Purchaser may elect by written notice to the Village not to accept title as it exists, then this Agreement shall terminate and the parties shall have no further obligations to each other.

5. ALTERNATIVE BIDS. The Village shall publish a request for alternative bids as required pursuant to the Redevelopment Plans and the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/74.4-1 *et seq.*

6. TAXES. Village agrees to pay all general real estate taxes, special assessments and special taxes due or to become due for the Subject Property up to the date of Closing except for any leasehold real estate taxes due for the Subject Property which shall be paid by the Purchaser.

7. BROKER'S COMMISSION. Purchaser and the Village acknowledge that no person or entity has acted as broker in this transaction and agree that should any broker make a claim of representation and request for a commission, then that party shall indemnify, defend and hold the other harmless from any such claim. Notwithstanding anything contained herein to the contrary, the provisions of this Section 7 shall survive the Closing.

8. NOTICES. All notices and other communications hereunder shall be in writing and shall be delivered personally against receipt or shall be sent by registered mail, certified mail, or Federal Express Overnight Mail service, postage prepaid and return receipt requested, by telephone facsimile transmission, or by nationally utilized overnight delivery service, addressed to the parties as follows:

As to Seller:                      Village of Rosemont  
   Attn: Village Clerk  
   9501 West Devon  
   Rosemont, Illinois 60018

With Copy to: William E. Ryan  
Ryan and Ryan  
9501 West Devon, Suite 300  
Rosemont, Illinois 60018

As to Purchaser: Marc Offit  
c/o Braden Real Estate, LLC  
222 Northfield Rd.  
Suite 104  
Northfield, Illinois 60093

With Copy to: Stephen E. Ryd  
Ryd Law Group, P.C.  
650 Warrenville Road  
Suite 100  
Lisle, Illinois 60532

Any notice in accordance herewith shall be deemed received when delivery is received or refused, as the case may be. Additionally, notices may be given by telephone facsimile transmission, provided that an original copy of said transmission shall be delivered to the addressee via overnight delivery service for delivery on the business day following such transmission. Telephone facsimiles shall be deemed delivered on the date of such transmission.

9. PARKING AGREEMENT.

At Closing the Village and Purchaser shall execute and enter into the Parking Agreement in substantially the same form as attached hereto as Exhibit B providing for the non-exclusive use of surface parking spaces and parking spaces within the parking garage located within and serving of the Parkway Bank Park as well as the Village's responsibility regarding maintaining the common areas of the Parkway Bank Park in which the Property resides.

10. PARTIES BOUND. This Agreement shall be binding upon and inure to the benefit of the Village and the Purchaser and their respective successors and assigns.

11. GOVERNING LAW. The laws of the State of Illinois shall govern the validity, construction, enforcement and interpretation of this Agreement.

12. TIME OF THE ESSENCE. The parties hereto expressly agree that time is of the essence with respect to this Agreement and the Closing.

13. ENTIRE AGREEMENT. This Agreement entered into by Purchaser and Village embody the entire Agreement of the parties in respect of the transaction herein contemplated, superseding all prior agreements whether oral or written. Any amendments hereto shall be in writing and executed by the parties hereto.

14. NON-BUSINESS DAYS. If the Closing Date or the date for delivery of a notice or performance of some other obligation of the Village or the Purchaser falls on a Saturday, Sunday or legal holiday in the State of Illinois, then the date for Closing or such notice or performance shall be postponed until the next business day.

15. DEFAULTS; REMEDIES.

(a) This Agreement shall be enforceable in the Circuit Court of Cook County, Illinois by either the Village, Purchaser, or by any successor or successors in title or interest or by the assigns of the Parties for the purposes of any suit, action or other proceeding arising out of or relating to any default or breach of this Agreement and any relief or remedy sought by either of the Parties. Prior to the Closing, subject to force majeure, failure or delay by either party to perform any term or provision of this Agreement shall constitute a breach of such party's obligations under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default specifying the default complained of by the injured party. Except as required to protect against further damages, and except as otherwise expressly provided in this Agreement, the injured party may not institute proceedings against the party in default until fifteen (15) days after giving such notice. If such default is cured within such fifteen (15) day period, the default shall not be deemed to constitute an Event of Default under this Agreement. If: (i) such default does not relate to the lack of funds or the obligation of a party to pay money to the other party; (ii) such default cannot reasonably be cured within such fifteen (15) day period; and (iii) the defaulting party shall commence to cure the same within such fifteen (15) day period and diligently and in good faith continue to prosecute the cure of such default in a commercially reasonable manner to its conclusion, then said fifteen (15) day period shall be extended for such time as is reasonably necessary for the curing of such default. If such default is cured within such extended period, the default shall not be deemed to constitute an Event of Default under this Agreement. However, a default not cured as provided above shall constitute an Event of Default under this Agreement.

(b) Prior to Closing and upon an Event of Default by the Village, Purchaser's remedies shall be limited to either (i) bringing an action for specific performance or (ii) terminating this Agreement and the parties shall have no further obligations to each other. Prior to Closing and upon an Event of Default by the Purchaser, Village's remedies shall be limited to either (i) bringing an action for specific performance or (ii) terminating this Agreement and the parties shall have no further obligations to each other.

(c) After the Closing and upon an Event of Default by either party, except as may otherwise be specifically provided herein, the Village and the Purchaser shall have the right to pursue an action for specific performance of such terms, conditions or provisions of this Agreement as its sole and exclusive remedy arising from the other party's Event of Default.

16. INTEGRATION, MODIFICATION, RELIANCE. This Agreement constitutes the entire agreement between the parties pertaining to the Subject Property and supersedes all prior agreements, understandings, and negotiations pertaining thereto. This Agreement may be modified only by a written amendment or other agreement that is lawfully approved and executed by the parties. The Purchaser acknowledges that no promise or inducement has been offered for this Agreement, except as contained in this Agreement, and that this Agreement is executed without reliance upon any statement or representation not set forth in the Agreement. All exhibits to this Agreement are expressly incorporated herein by this reference thereto

17. SEVERABILITY. In the event any phrase, Section, Article, section or portion of this Agreement is found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such finding of invalidity, illegality or unenforceability as to that portion shall not affect the validity, legality or enforceability of the remaining portions of this Agreement.

18. CAPTIONS AND PRONOUNS. The captions and headings of the various articles and sections of this Agreement are for convenience only and are not to be construed as confining, defining, expanding or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

19. NO DISCRIMINATION. Pursuant to the South River Road TIF No. 4 Redevelopment Plan and Project, Purchaser agrees to comply with all applicable laws prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, national origin or sexual orientation. Purchaser shall require that applicants for employment with Purchaser be treated during the application process and during employment without regard to race, creed, color, religion, sex, national origin, disability or sexual orientation in accordance with applicable laws.

20. NO JOINT VENTURE. Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership or joint venture between or among such parties.

21. LIMITED LIABILITY. The parties hereto specifically agree, that neither the Village of Rosemont nor Purchaser shall have any liability for any breach of any of the terms of this Agreement in the form of consequential or punitive damages.

22. AUTHORIZED EXECUTION. The parties represent and warrant that they have been duly authorized to execute this Agreement.

23. APPLICABLE LAW AND CONSTRUCTION. The laws of the State of Illinois shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the Village and the Purchaser and the Agreement, together with all of the terms and provisions of this Agreement, shall not be deemed to have been prepared by either the Village or the Purchaser, but both equally.

24. SUBMISSION TO JURISDICTION. Each party to this Agreement hereby submits to the jurisdiction of the State of Illinois, Cook County and the Circuit Court of Cook County, Illinois for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by the Circuit Court of Cook County, Illinois.

25. EXECUTION OF WRITTEN INSTRUMENTS. The Village and the Purchaser agree to make, execute and deliver such written instruments and agreements and as shall from time to time be reasonably required to carry out the terms, provisions and intent of this Agreement.

26. ATTORNEY'S FEES. If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, proceeding, trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court.

27. NO WAIVER. Any requirement or conditions contained in this Agreement may only be waived in writing.

28. CERTIFICATION OF ELIGIBILITY.

(a) Purchaser certifies that it is not barred from bidding on contracts offered for bid by any unit of state or local government in the State of Illinois as a result of having been convicted of a violation of either Section 33E-3 [Bid Rigging] or Section 33E-4 [Bid Rotation] of the Illinois Criminal Code.

(b) Purchaser certifies that it is not delinquent in the payment of any tax administered by the Illinois Department of Revenue a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Purchaser is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in 65 ILCS 5/11-42.1-1.

29. MULTIPLE COUNTERPARTS. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one Agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

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

**PURCHASER:**

OB PARK, LLC,  
an Illinois limited liability company

By its Managing Member:


By: \_\_\_\_\_

Printed Name: Man O'FH

Its: MANARCA

**VILLAGE:**

VILLAGE OF ROSEMONT, ILLINOIS, an Illinois  
municipal corporation

By: \_\_\_\_\_

Bradley A. Stephens, Its President

**ATTEST:**

By: \_\_\_\_\_

Debbie Dreihobl, Village Clerk

List of Exhibits

**EXHIBIT A –LEGAL DESCRIPTION OF SUBJECT PROPERTY**

**EXHIBIT B - PARKING AGREEMENT (Substantial Form)**



EXHIBIT A

LOT 5 IN ROSEMONT ENTERTAINMENT DISTRICT THIRD RESUBDIVISION LEGAL DESCRIPTION:

LOT 5 IN ROSEMONT ENTERTAINMENT DISTRICT THIRD RESUBDIVISION, BEING A RESUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 2, 2021 AS DOCUMENT NUMBER 2106147042.

**PARKING AGREEMENT**

**between**

**The Village of Rosemont,  
an Illinois municipal corporation**

**and**

**OB PARK, LLC,  
an Illinois limited liability company**

**March 10, 2021**

## PARKING AGREEMENT

This Parking Agreement (the "Parking Agreement") is made as of the 10<sup>th</sup> day of March, 2021 by and between the VILLAGE OF ROSEMONT, an Illinois home rule municipal corporation, (the "Village") and OB PARK, LLC, an Illinois limited liability company ("OB").

### RECITALS

A. The Village and OB entered into a Real Estate Purchase Contract dated March 10<sup>th</sup>, 2021 ("Purchase Contract") whereby the Village agreed to sell and OB agreed to purchase and develop certain real estate located in the Village of Rosemont, Illinois.

B. The Purchase Contract provides that the Village and OB shall enter into this Parking Agreement.

C. The Village is the holder of legal title to a certain parcel of land which is improved with a municipally-owned parking structure commonly known as the Entertainment District Parking Structure and having the common address of 9550 Williams Street, Rosemont, IL and as depicted on Exhibit A attached hereto and made a part hereof (the "Parking Garage") and the Village owns, controls and operates certain surface parking spaces and area (the "Surface Parking") within the municipally-owned Parkway Bank Park at Rosemont. Together the spaces within the Parking Garage and the Surface Parking are hereinafter sometimes collectively referred to as the "Parking Spaces" provided, however, the Parking Spaces shall not include and this Parking Agreement shall not affect or apply to any parking spaces or area owned by OB except as provided for in Section 7 below.

D. OB intends to use for commercial and retail use a certain parcel of land legally described on Exhibit B attached hereto and made a part hereof (the "OB Site") improved with a building (the "OB Building").

E. It is the intention of the Village and OB to enter into this Parking Agreement to provide OB and its customers, employees, guests, patrons, licenses and invitees of the OB Site (all of whom are collectively referred to herein as "Authorized Users") with the right to the non-exclusive use of the Parking Spaces (including valet and handicap spaces) (1) initially free of charge with validation subject to the terms and provisions of this Parking Agreement or (2) on such other similar terms as the majority of other tenants and users of Parkway Bank Park at Rosemont including without limitation the Village having the right to charge a reasonable market parking fee to OB and Authorized Users.

F. This Parking Agreement provides for the respective parties' responsibilities, liabilities and indemnities with regard to the Parking Spaces and is intended by the parties to provide to OB the non-exclusive right to the use the Parking Spaces.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village and OB agree as follows:

1. Recitals. The foregoing recitals are material to this Parking Agreement and are incorporated herein as though fully set forth in this Section 1 and any terms used in this Parking

Agreement which are defined in the Recitals shall have the same definition for purposes of this Parking Agreement.

2. Parking Agreement Granted. The Village grants to OB and its successors and assigns, this Parking Agreement providing for the non-exclusive right to use the Parking Spaces in the Project Area for the parking of motor vehicles of OB and Authorized Users. The Village agrees that the Parking Spaces are sufficient to meet the Village of Rosemont's zoning parking requirements for OB and the OB Site.

3. Use of the Parking Spaces.

A. OB and Authorized Users shall have the non-exclusive right to use the Parking Spaces.

B. OB shall not have the right to operate its own valet service to serve the OB Site unless the Village ceases to operate a valet service to serve the Parkway Bank Park at Rosemont.

C. OB shall have the right to use the Parking Spaces (1) initially free of charge with validation subject to the terms and provisions of this Parking Agreement or (2) on such other similar terms as the majority of other tenants and users of Parkway Bank Park at Rosemont including without limitation the Village having the right to charge a reasonable market parking fee to OB and its Authorized Users.

4. Operation of the Parking Spaces.

A. The Parking Spaces shall be accessible for pedestrian and vehicular ingress and egress by OB and Authorized Users on a daily basis, provided that the Village upon three days written notice to OB (except in case of emergency in which case notice shall be given as soon as possible) may limit the accessibility of the Parking Spaces where it is necessary to limit access in order to perform repair or maintenance work on the Parking Spaces.

B. The Village shall have the sole responsibility for operating the Parking spaces. The Parking Spaces shall be operated by the Village in accordance with a standard which is the equivalent or greater than the highest standards which the Village uses to operate other public parking garages, facilities and spaces owned by and operated by or on behalf of the Village.

C. The Village has provided or shall provide OB with a single parking validation unit and shall be responsible for maintenance, repair and replacement of such parking validation unit. In the event OB requests additional parking validation equipment, OB shall be responsible for the cost, maintenance repair and replacement of such additional parking validation equipment.

D. OB shall use the Parking Spaces only for the purpose of providing parking spaces for Authorized Users. OB and its Authorized Users shall not (i) injure, overload, deface or otherwise harm the Parking Spaces or commit any nuisance thereon or use the Parking Spaces in

a manner which tends to create a nuisance, (ii) make any use of the Parking Spaces which is improper, offensive or contrary to any law, ordinance or regulation of any governmental authority or this Parking Agreement (iii) use any advertising in the Parking Spaces that is not specifically authorized by the Village (iv) load or unload any truck or any delivery vehicle in any area of the Parking Spaces and (v) use the Parking Spaces for an off-site airport parking enterprise or any other parking enterprise. The Village hereby grants OB and its Authorized Users the non-exclusive right to use all access drives, walkways, elevators and other areas of the Parking Garage reasonably necessary or convenient to access the Parking Spaces, the OB Building and the OB Site.

5. Repair and Maintenance of the Parking Garage and Parking Spaces: CAM and Promotional Fee.

A. The Village shall be responsible for repairing and maintaining the Parking Garage and the Parking Spaces. The Village shall maintain (or cause to be maintained, operated and repaired) the Parking Garage and the Parking Spaces in an economical and efficient manner according to a commercially reasonable standard for comparable municipally owned and operated parking garages, facilities and parking spaces located in Rosemont, Illinois including but not limited to repairing and replacing paving and keeping the Parking Spaces in a neat, clean, orderly and slightly condition.

B. The Village shall keep the Parking Garage suitably lighted during all non-daylight hours.

C. The Village has instituted a common area maintenance charge for costs associated with the repair and maintenance of the Parkway Bank Park at Rosemont, the Parking Garage and the Parking Spaces (the "Park CAM"). OB agrees to pay to the Village as invoiced from time to time and before they become delinquent a Park CAM charge of \$2.06 per square foot calculated on the approximate 10,000 square feet of the OB Building and shall commence as of the effective date hereof. OB's Park CAM charge shall increase two percent (2%) per year thereafter as of January 1 of each year of the Term. OB's Park CAM shall be invoiced from time to time by the Village and paid within thirty (30) days of OB's receipt of the invoice.

D. The Village has instituted a Promotional Fee for costs associated with promoting the Parkway Bank Park at Rosemont and businesses within the Parkway Bank Park at Rosemont (the "Promo Fee"). OB agrees to pay to the Village as invoiced from time to time and before they become delinquent a Promo Fee of \$0.51 per square foot calculated on the approximate 10,000 square feet of the OB Building and shall commence as of the effective date hereof. OB's Promo Fee charge shall increase two percent (2%) per year thereafter as of January 1 of each year of the Term. OB's Promo Fee shall be invoiced from time to time by the Village and paid within thirty (30) days of OB's receipt of the invoice.

E. In the event OB fails to pay the Park CAM and/or the Promo Fee before they become delinquent, the Village, at its sole option, shall have the right to terminate this Parking Agreement and remove any and all parking validation units from the OB Site. Notwithstanding the foregoing, OB shall not be obligated to pay Park CAM and/or the Promo Fee unless OB has a Tenant for the OB Site.

6. Term. Subject to the terms of this Parking Agreement, OB and its Authorized Users shall have the right to use the Parking Spaces for an initial term of ten (10) years following the effective date hereof (the "Initial Term") and three (3) consecutive options to extend the Initial Term for a period of five (5) years each on such other similar terms as the majority of other tenants and users of Parkway Bank Park at Rosemont including without limitation the Village having the right to charge a reasonable market parking fee to OB and Authorized Users.

7. Rules and Regulations. The Village shall have the right to impose rules and regulations relating to the use and operation of the Parking Spaces and any parking spaces or area owned by and located on property owned by OB provided that such rules and regulations are not inconsistent with the provisions of this Parking Agreement, and are enforced on a uniform basis for similarly situated users of the Parking Spaces.

8. Cooperation. OB and the Village shall cooperate with one another and other users of the Parking Spaces as may be required to maintain and enhance the orderly and efficient operation of the Parking Spaces. Each of the parties acknowledges the working nature of this Parking Agreement and each party agrees to cooperate and consult with the other party in an effort to speedily and amicably resolve any unforeseen difficulties or problems not covered by this Parking Agreement.

9. Indemnification. OB and its successors and assigns shall indemnify and hold harmless the Village, its agents, officers, contractors, employees, its Authorized Users and successors from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys fees) for injury to persons or death or property damage arising out of or resulting from OB's or an Authorized User's use of the Parking Spaces except for such liability, loss, damage, costs and expenses arising from the negligent or intentional acts of the Village or its agents.

10. Notices, Demands and Other Instruments. All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this Parking Agreement shall be in writing and shall be deemed to have been properly given if personally delivered, sent, postage prepaid, by first class registered or certified United States mail, return receipt requested or by prepaid overnight courier, addressed to each party hereto at the following address:

Village: Village of Rosemont  
Attention: Village Clerk  
9501 West Devon  
Rosemont, IL 60018  
Telephone: (847) 825-4404

With a copy to: Ryan and Ryan  
Attention: William Ryan  
9501 West Devon, Suite 300  
Rosemont, IL 60018  
Telephone: (847) 825-8600

OB: OB Park, LLC  
c/o Braden Real Estate, LLC  
222 Northfield Road  
Suite 104  
Northfield, IL 60091

or at such other address(es) in the United States as Village or OB may from time to time designate by like notice. Any such notice, demand, request or other communication shall be considered received on the date of personal delivery or on the date of actual receipt or five (5) business days after deposit in the United States mail as provided above or the next business day after deposit with an overnight courier. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, request or other communication.

11. Certifications by Village. The Village shall upon request of OB certify whether this Parking Agreement is in full force and effect, whether this Parking Agreement is modified or unmodified, and whether or not there exists any default in the Parking Agreement or provision contained in the Parking Agreement. It is intended by the parties hereto that such statements may be relied upon by the requesting party or the party to whom the Village is asked by OB to make the certification.

12. Attorneys Fees and Costs. In the event of any action at law or inequity in relation to this Parking Agreement, the prevailing party shall be entitled to recover a reasonable sum for the attorneys' fees it incurred as a result of this action.

13. Default. If either party (the "Defaulting Party") fails to perform any of the terms, covenants, agreements or conditions on its part to be performed under this Parking Agreement and such failure continues uncorrected for fifteen (15) days, after notice from the other party, (the "Non-Defaulting Party"), unless otherwise specified herein, the Non-Defaulting Party may invoke any right or remedy allowed at law or in equity or by statute or otherwise. If any default by a Defaulting Party cannot reasonably be remedied within thirty (30) days after written notice of the default from the Non-Defaulting Party and if the Defaulting Party has commenced to remedy such default and diligently pursues such remedy thereafter, then the Defaulting Party shall have such additional time as is reasonably necessary to remedy the default before this Parking Agreement can be terminated or other remedies enforced.

14. Assignment and Transfer of Parking Agreement. OB may not assign or transfer any rights to this Parking Agreement except as part of the sale of the OB Site and the Building.

15. Provisions of Law Deemed Included. Each and every provision of state and federal law required to be included in municipal agreements shall be deemed to be included herein, and this Parking Agreement shall be read, construed and enforced as though the same were included herein. If, through mistake, inadvertence or otherwise, any such provision or clause is not included herein or is incorrectly included herein, then, upon application of either party hereto, this Parking Agreement shall forthwith be amended to include the same or to correct the inclusions of the same and shall be deemed to have been so amended from the effective date hereof.

16. Invalid Provisions. If any provision of this Parking Agreement is held invalid, the remainder of this Parking Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and if the remainder of this Parking Agreement can be reasonably performed without material hardship.

17. Applicable Law and Construction. The laws of the State of Illinois shall govern the validity, performance and enforcement of this Parking Agreement. This Parking Agreement shall become effective only upon execution and delivery thereof by the Village and OB. This Parking Agreement has been negotiated by the Village and OB and the Parking Agreement, together with all of the terms and provisions hereof, shall not be deemed to have been prepared by either the Village or OB, but by both equally.

18. Submission to Jurisdiction. Each party to this Parking Agreement hereby submits to the jurisdiction of the State of Illinois, Cook County and the courts thereof for the purposes of any suit, action or other proceeding arising out of or relating to this Parking Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts. If OB or any permitted assignee hereof shall be a foreign corporation or shall have no agent, member or partner available for service of process in the State of Illinois, OB hereby designates the Secretary of State, State of Illinois, its agent for the service of process in any court action between it and the Village arising out of or related to this Parking Agreement and such service shall be made as provided by the laws of the State of Illinois for service upon a non-resident provided, however, that a copy of such service shall be sent by prepaid, registered mail, return receipt requested, at the time of service to OB at the address for notices specified in Section 10 of this Parking Agreement.

19. Entire Agreement. This Parking Agreement contains the entire agreement of the parties hereto respecting the subject matters of this Parking Agreement and supersedes all prior understandings, contracts or agreements.

20. Captions. The Article headings and captions of this Parking Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Parking Agreement or in any way affect this Parking Agreement.

21. Successors and Assigns. The terms herein contained in this Parking Agreement shall bind and inure to the benefit of the Village, its successors and assigns, and OB, its authorized successors and assigns.

22. Authority. Each party represents that the execution of this Parking Agreement by the signatories set forth below and the performance of the terms of the Parking Agreement have been duly authorized by their respective governing authority.

23. Real Estate, Use or Leasehold Taxes. The parties contemplate that the Parking Garage is exempt from real estate taxes, use or leasehold taxes under Illinois law. In the event that real estate taxes, use or leasehold taxes are levied against all or part of the Parking



Garage as a result of OB's use of the Parking Garage, as a result of this Parking Agreement, or for any other reason, OB shall be liable for payment of those taxes to the extent of its right to use the Parking Garage. OB shall be liable regardless of whether the Village or OB is assessed such real estate taxes, use or leasehold taxes.

24. Required Insurance Coverages. OB shall secure or cause others to secure and keep in full force and effect during the entire Initial Term of this Parking Agreement or any Option Period such insurance against any risk and peril for OB, its invitees, employees, its Authorized Users and customers including but not limited to OB's employee's liability, garage liability and garage legal liability related to OB's use of the Parking Spaces and general liability insurance for any occurrence on or about the Parking Garage in limits of not less than \$2,000,000.00 combined single limit per occurrence for bodily injury and property damage. Notwithstanding the foregoing to the contrary, the Village acknowledges that OB shall be permitted to utilize its umbrella coverage to satisfy the coverage amounts herein as it relates to OB, its successors and assigns and their Authorized Users use of the Parking Spaces.

25. Recording of Memorandum. Upon execution hereof, the parties hereto may enter into a Memorandum of Parking Agreement in recordable form, which Memorandum may be recorded by either party in the recorder's office, provided however, that no economic terms shall be described in the Memorandum.

26. Non-Liability of Village Officials and Employees: No present or future official, employee or agent of the Village shall have any personal liability, directly or indirectly, under or in connection with this Parking Agreement or any agreement made or entered into under or in connection with the provisions of this Parking Agreement, and OB and its successors and assigns shall look solely to the Village for the payment of any claim or for any performance, and OB hereby waives any and all such personal liability. The provisions of this Section 26 shall survive the termination of this Parking Agreement.

27. Multiple Counterparts. This Parking Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one agreement, but in making proof of this Parking Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]

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

VILLAGE:

**VILLAGE OF ROSEMONT**

By: 

Name: Bradley A. Stephens

Its: President

Attest:

By: 

Name: Debbie Drehabl

Its: Village Clerk

OB:

**OB PARK LLC,**

an Illinois limited liability company

By: 

Name: Mike Off

Its: Manager

## STORAGE LICENSE AGREEMENT

This Storage License Agreement (the "Storage License") is made as of the 31<sup>st</sup> day of March, 2021 (the "Effective Date"), by and between the Village of Rosemont, Illinois, an Illinois home rule municipal corporation (the "Village"), and Lone Star-Cardinal Motorcycle Ventures, LLC, an Illinois limited liability company ("Licensee").

### RECITALS

A. The Village and OB Park, LLC, an Illinois limited liability company ("OB Park") entered into a Real Estate Purchase and Sale Agreement dated March 10, 2021 (the "PSA"), whereby the Village agreed to sell to OB Park, LLC real property located in the Parkway Bank Park, Rosemont, Illinois (the "Subject Property").

B. It is the intention of the Village and Licensee to enter into this Storage License to provide, *inter alia*, Licensee with the right to the exclusive use of a portion of the Village's Parkway Bank Park parking garage for the sole use and purpose of motorcycle storage related to Licensee's sale and rental operations on the Subject Property as shown on Exhibit A (the "Motorcycle Storage Area") and as provided for in this Storage License.

C. This Storage License provides for the parties' respective responsibilities, liabilities and indemnities with regard to the Motorcycle Storage Area.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village and Licensee agree as follows:

1. Recitals. The foregoing recitals are material to this Storage License and are incorporated herein as though fully set forth in this Section 1 and any terms used in this Storage License which are defined in the recitals shall have the same definition for purposes of this Storage License.

2. Storage License Granted. The Village hereby grants to Licensee and its authorized successors and assigns and Licensee hereby accepts, for the Term (as defined herein), a license for the exclusive use of the Motorcycle Storage Area for the sole use and purpose of motorcycle storage related to Licensee's sale and rental operations on the Subject Property pursuant to the terms and conditions of this Storage License.

3. Location of Motorcycle Storage Area: Right to Relocate Motorcycle Storage Area

A. The Motorcycle Storage Area licensed to Licensee shall be initially located as depicted on Exhibit A (the "Initial Location") but may be temporarily moved to such other comparable location as reasonably determined by the Village as set forth herein. Subject to the terms and conditions of this Storage License, the Village shall have the right, in its sole reasonable discretion, (i) to designate, sign or otherwise mark the Motorcycle Storage Area, and (ii) to temporarily relocate all or a portion of the Motorcycle Storage Area to another location in close proximity to the Subject Property for maintenance of the Motorcycle Storage Area, or for such other Village purposes as the Village may determine.

B. Subject to the terms and conditions of this Storage License, the Village shall have the right, in its sole reasonable discretion, to permanently relocate all or a portion of the Motorcycle Storage Area within the Parkway Bank Park parking garage or to another location in close proximity to the Subject Property. The Village shall provide Licensee sixty (60) days prior written notice of its intention to permanently relocate the Motorcycle Storage Area.

4. Term. The initial term of this Storage License (the "Initial Term") shall be for a period commencing on the Effective Date and ending on December 31, 2021 and thereafter shall annually automatically renew each successive year upon the same terms and conditions contained in this Storage Lease unless otherwise terminated in writing by the Owner or the Village as provided in Section 15. Unless otherwise terminated by the Village, the Storage License shall be co-terminus with Licensee's use of the Subject Property.

5. Use of the Motorcycle Storage Area; Coordination of Group Rentals.

A. Licensee and its successors and assigns shall have the right to use the Motorcycle Storage Area for the Initial Term and for any annual renewal period unless otherwise terminated by the Village. Licensee and the Village shall reasonably cooperate to implement systems reasonably designed by or on behalf of the Village to allow use of the Motorcycle Storage Area by only Licensee including, but not limited to, requiring that Licensee implement a system that will identify or designate motorcycle vehicles that are authorized to be parked in the Motorcycle Storage Area. The Village shall determine, in the reasonable exercise of its discretion, the design and method to be used to mark the Motorcycle Storage Area. Subject to the prior written approval of the Village, Licensee shall have the right to secure the Motorcycle Storage Area in the manner set forth on Exhibit B so as to not interfere with the operations and maintenance of the Parkway Bank Park parking garage.

B. Notwithstanding anything else in this Storage License to the contrary and subject to the prior written approval of the Village, Licensee, at its sole cost, shall be responsible for the costs to segregate, secure, and equip the Motorcycle Storage Area and to modify the Motorcycle Storage Area to be in compliance with Village building codes, ordinances and requirements including but not limited to air handling and fire suppression and prevention improvements to the Motorcycle Storage Area or the Parkway Bank Park parking garage required by the Village and related to Licensee's use.

C. Licensee shall not allow the Motorcycle Storage Area (i) to be marketed or utilized for off-airport or remote airport parking, (ii) to be marketed or utilized for any parking open to the general public or (iii) to be marketed or utilized for storage of motorcycles that are not being rented or being sold at the Subject Property. Licensee acknowledges and agrees that nothing herein shall be deemed or interpreted to authorize Licensee to store third party motorcycles (with or without the payment of rent, fee or otherwise) in the Motorcycle Storage Area with such use being expressly prohibited by this Storage License.

D. Licensee acknowledges that the Village operates the Parkway Bank Park and operates the Parkway Bank Park parking garage as a public parking garage. Licensee agrees to coordinate motorcycle

deliveries for group rentals with Parkway Bank Park management staff and provide Parkway Bank Park management staff weekly motorcycle rental delivery and rental return schedules so as to not interfere with the operations and maintenance of the Parkway Bank Park or the Parkway Bank Park parking garage. For purposes of this Parking Lease group rentals shall be considered rentals in excess of six (6) motorcycles (a "Group Rentals"). Group Rentals motorcycle deliveries shall be made outside the Motorcycle Storage Area and coordinated with Parkway Bank Park management staff. Licensee shall provide Parkway Bank Park management staff with a Group Rentals schedule and shall regularly provide updates of the schedule to Parkway Bank Park management staff as changes to the schedule occur but in all events such updates shall be provided at least two (2) weeks prior to any Group Rentals delivery.

E. Licensee shall not (i) injure, deface or otherwise harm the Motorcycle Storage Area, the Parkway Bank Park or the Parkway Bank Park parking garage or commit any nuisance thereon or use the Motorcycle Storage Area in a manner which tends to create a nuisance, (ii) make any use of the Motorcycle Storage Area which is contrary to any law, ordinance or regulation of any governmental authority or this Storage License, and (iii) load or unload any motorcycle group deliveries without providing prior notice to and coordinating motorcycle group deliveries with the Village and the Parkway Bank Park management staff.

F. The Village of Rosemont, in both its capacity and standing as the owner and operator of the Parkway Bank Park parking garage and as the licensor under this Storage License, shall not be responsible for any damage to or loss of personal property, including, but not limited to motorcycles, either stored or located within the Motorcycle Storage Area and owned by Licensee or any third party. Licensee shall indemnify, defend and hold the Village harmless from and against any and all liabilities, actions, claims, damages, including reasonable attorneys' fees, in connection with damage to or loss of property or otherwise, arising from or out of any occurrence, in or upon the Motorcycle Storage Area. Notwithstanding any prior statement or representation by the Village as to the Parkway Bank Park parking garage, generally, or the Motorcycle Storage Area use for motorcycle storage, specifically, Licensee acknowledges that the

Village has advised Licensee that the Motorcycle Storage Area floods from time to time and Licensee agrees that its use of the Motorcycle Storage Area for motorcycle storage and any other purpose is at its own risk and peril.

6. License Fee; No Maintenance Fee.

A. With respect to the Motorcycle Storage Area, Licensee shall be obligated to pay a license fee of ONE THOUSAND DOLLARS (\$1,000.00) per annum to be prorated for the Initial Term. The License shall be paid in full and in advance of the Initial Term and any successive annual term.

B. With respect to the Motorcycle Storage Area, Licensee shall not be obligated to pay a maintenance fee for the Motorcycle Storage Area provided that (a) Licensee at all times shall keep the Motorcycle Storage Area clean and free of debris and in an orderly fashion, (b) Licensee shall at all times not store any motorcycles outside the Motorcycle Storage Area without the prior written consent of Parkway Bank Park management staff, (c) Licensee shall not store motorcycles other than motorcycles related to sales and rental of motorcycles associated with or related to the use of the Subject Property, and (d) Licensee shall not collect revenue for storage of any motorcycles.

B. Licensee shall reimburse the Village for any damages or costs incurred by the Village for any damage (excluding normal wear and tear) to the Motorcycle Storage Area caused by Licensee and Licensee shall pay any such damages or costs within thirty (30) days of receipt of an itemized statement from the Village detailing such damages and costs. Payments and any other amounts due under this Storage License shall be made to the Village of Rosemont, Attention: Finance Officer, 9501 West Devon, Second Floor, Rosemont, Illinois, 60018.

7. Repair and Maintenance of the Motorcycle Storage Area. Licensee shall be solely responsible for repairing and maintaining the Motorcycle Storage Area in similar manner as other areas of the Parkway Bank Park parking garage. Except for emergencies, the Village will use best efforts to

schedule all repairs and maintenance in such manner to minimize interference with the use of the Motorcycle Storage Area.

8. Cooperation. Licensee and the Village shall reasonably cooperate with one another as may be required to maintain and enhance the use of the Motorcycle Storage Area. Licensee acknowledges that the Parkway Bank Park and the Parkway Bank Park parking garage are open to the public and are used by other users, and the parties acknowledge the working nature of this Storage License and each party agrees to cooperate and consult with the other party in an effort to speedily and amicably resolve any unforeseen difficulties or problems not covered by this Storage License.

9. Indemnification by Licensee.

Licensee shall indemnify and hold harmless the Village, its agents, officers, contractors, employees, and successors from and against any and all liability, loss, damage, costs and expenses (including reasonable attorney's fees) for injury to persons or death or property damage arising out of this Storage License or resulting from the negligence or willful misconduct of Licensee or its agents, officers, contractors, employees, and successors, except for such liability, loss, damage, costs and expenses arising from the negligent or intentional acts of the Village or its agents.

10. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by email in PDF format, with written confirmation deposited within two (2) business days by overnight or first class mail, in which case notice shall be deemed delivered when such email notice is sent, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by email or personal delivery and delivered after 5:00 p.m. Central Time shall be deemed received on the next business day. A party's address may be changed by written notice to the other party pursuant to the delivery methods set forth herein. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not



be deemed a failure to give notice. Notices given by counsel to Licensee shall be deemed given by Licensee and notices given by counsel to the Village shall be deemed given by the Village.

As to Village: Village of Rosemont  
Attn: Village Clerk  
9501 West Devon  
Rosemont, Illinois 60018  
Email: [MayorsOffice@VillageofRosemont.org](mailto:MayorsOffice@VillageofRosemont.org)

With Copy to: William E. Ryan  
Ryan and Ryan  
9501 West Devon, Suite 300  
Rosemont, Illinois 60018  
Email: [wryan@ryanryanlaw.com](mailto:wryan@ryanryanlaw.com)

As to Licensee: Anthony Giglio  
133 S. Randall Road  
St. Charles, Illinois 60174  
Email: [a.giglio@windycityhd.com](mailto:a.giglio@windycityhd.com)

With a copy to: Ryd Law Group  
1900 Spring Road, Suite 216  
Oak Brook, Illinois 60523  
Attn: Stephen E. Ryd  
Email: [sryd@rydlaw.com](mailto:sryd@rydlaw.com)

11. Default. If either party (the "**Defaulting Party**") fails to perform any of the terms, covenants, agreements or conditions on its part to be performed under this Storage License and such failure continues uncorrected for fifteen (15) days after written notice from the other party (the "**Non-Defaulting Party**"), the Non-Defaulting Party may pursue any right or remedy available at law or in equity. Notwithstanding the foregoing, if any breach by a Defaulting Party cannot reasonably be remedied within fifteen (15) days after written notice of the breach from the Non-Defaulting Party, and if the Defaulting Party has commenced to remedy such breach and diligently pursues such remedy thereafter, then the Defaulting Party shall have such additional time as is reasonably necessary to remedy the breach before the Non-Defaulting Party may deem the Defaulting Party in default hereunder.

12. Assignments.

This Storage License granted hereunder to Licensee may only be assigned, transferred or conveyed by Licensee with the consent of Village. All of the terms, conditions and provisions of this Storage License shall be binding upon and inure to the benefit of the Village and any Village authorized successor and assign. Any such authorized and consented to successor and assign shall assume all obligations hereunder relating to the periods beginning on the date of such transfer.

13. Required Insurance Coverages.

A. Licensee at its expense shall secure and keep in full force and effect during the entire term of this Storage License insurance against risk and peril of Licensee as follows: (i) Licensee's employer's liability in the amount of \$2,000,000 for each accident for bodily injury or property damage, and (ii) general liability insurance for any occurrence in or on the Motorcycle Storage Area or from the Subject Property to the Motorcycle Storage Area or other areas presently used as an adjunct to the Motorcycle Storage Area, in limits of not less than \$10,000,000 per occurrence and general aggregate for bodily injury and property damage.

B. Notwithstanding anything in this Storage License to the contrary, the parties acknowledge and agree that Licensee shall be permitted to utilize its umbrella coverage to satisfy the coverage amounts required herein.

C. Licensee shall provide the Village certificates of such insurance showing current insurance in force; and all such policies shall name the Village as an additional insured party, and shall, if reasonably commercially available, provide that such policies shall not be canceled or the coverage reduced without at least thirty (30) days prior written notice to the Village, and such certificate shall evidence the same.

14. Estoppels. Within thirty (30) days after request by either Licensee or Village, the other party shall execute and deliver to the requesting party a written certificate as to the status of this

Storage License, any existing defaults, the status of performance of the parties required hereunder and such other information that may be reasonably requested.

15. Right to Terminate. Licensee and the Village, at each party's sole election, may terminate this Storage License by providing the other party thirty (30) days prior written notice of such termination. Upon such termination Licensee shall restore the Motorcycle Storage Area to its original use and condition and any prep-paid rent shall be prorated.

16. Miscellaneous.

A. The article, section and other headings of this Storage License are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

B. If any portion of this Storage License is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Storage License shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Storage License shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

C. This Storage License shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of Illinois.

D. Unless otherwise expressly stated in this Storage License, each of the covenants, obligations, representations, and agreements contained in this Storage License shall survive the termination of this Storage License until the applicable statute of limitations with respect to any claim, cause of action,

suit or other action relating thereto shall have fully and finally expired.

E. This Storage License is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third-party beneficiary, decree or otherwise.

F. This Storage License, together with the exhibits attached hereto, constitutes the entire agreement between the parties pertaining to the Motorcycle Storage Area and supersedes all prior agreements, understandings, and negotiations pertaining thereto. This Storage License may be modified only by a written amendment or other agreement that is lawfully approved and executed by the parties. The Licensee acknowledges that no promise or inducement has been offered for this Storage License, except as contained in this Storage License, and that this Storage License is executed without reliance upon any statement or representation not set forth in this Storage License.

G. Time is of the essence in the performance of this Storage License.

H. If any litigation or other court action, arbitration or similar adjudicatory proceeding is sought, taken, instituted or brought by the Village or Licensee to enforce its rights under this Storage License, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, of the prevailing party in such action, suit or proceeding shall be borne by the party against whose interest the judgment or decision is rendered. This Section 16.11 shall survive the termination of this Storage License.

I. The parties acknowledge that this Storage License has been freely negotiated by both parties, that the parties and their counsel have reviewed and revised this Storage License and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Storage License or any exhibits or amendments hereto.

J. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Motorcycle Storage Area is located, in which event the period

shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. Central Time.

K. This Storage License shall be interpreted as a license only, not a lease, and shall not be interpreted to create a bailment with respect to any motorcycles or related product stored in the Motorcycle Storage Area.

L. Licensee agrees to its use best efforts to promote hotels within the Village of Rosemont in booking and coordinating accommodations for Group Rentals.

M. This Storage License may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Storage License. To facilitate execution of this Storage License, the parties may execute and exchange by email in PDF format counterparts of the signature pages, which shall be deemed an original.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties hereto have executed this Storage License on the day and year written below.


VILLAGE: Village of Rosemont, Illinois, an Illinois municipal corporation

By: 

Name: Bradley A. Stephens

Title: President

Date: APRIL 26, 2021

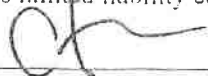
Attest: 

Name: Debbie Drehobl

Title: Village Clerk

Date: April 26, 2021

LICENSEE: Lone Star-Cardinal Motorcycle Ventures, LLC an Illinois limited liability company

By: 

Name: Anthony G. Giglio

Title: Manager

Date: MARCH 31, 2021

LIST OF EXHIBITS

Exhibit A - Depiction of Motorcycle Storage Area

**Attachment F.** Additional Information on Uses of Funds Related to Achieving Objectives of the Redevelopment Plan

The Village applied funds to the payment of existing debt service obligations and to TIF eligible costs incurred by the Village in the furtherance of redevelopment activities as well as the transfer to contiguous TIF 4 in the continuation of redevelopment activities.



# VILLAGE OF ROSEMONT, ILLINOIS

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SCHEDULES OF SPECIAL TAX ALLOCATION  
FUNDS AND COMPLIANCE WITH THE STATE  
OF ILLINOIS TAX INCREMENT ALLOCATION  
REDEVELOPMENT ACT

FOR THE YEAR ENDED  
DECEMBER 31, 2021

**VILLAGE OF ROSEMONT, ILLINOIS  
SCHEDULES OF SPECIAL TAX ALLOCATION FUNDS AND  
COMPLIANCE WITH THE STATE OF ILLINOIS TAX INCREMENT  
ALLOCATION REDEVELOPMENT DISTRICT**

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VILLAGE OF ROSEMONT, ILLINOIS

ANALYSIS OF THE SPECIAL TAX ALLOCATION FUNDS  
SECTION 3.1 (65 ILCS 5/11-74.4-5(d)(5) AND 65 ILCS 5/11-74.6-22(d)(5))

For the Fiscal Year Ended December 31, 2021

	Special Tax Allocation Funds									
	District #4		District #5		District #6		District #7		District #8	
	Current	Cumulative	Percent of Total	Current	Cumulative	Percent of Total	Current	Cumulative	Current	Cumulative
Revenues										
Taxes										
Property Taxes	\$ 18,377,297	99,185,450	99.89%	1,488,088	21,085,500	99.76%	1,265,598	3,954,723	1,644,038	5,458,190
Sales Taxes	-	-	0.00%	-	-	0.00%	-	-	-	-
Interest	13,263	106,099	0.11%	691	236,749	1.11%	702	5,688	654	5,221
Total Revenues (Increment)	18,390,560	99,291,549	100.00%	1,488,779	21,322,249	100.00%	1,266,300	3,960,411	1,644,692	5,463,411
Expenditures (Increment)	14,492,316			187,407			374,000		961,000	
Change in Fund Balances	3,898,244			1,301,372			892,300		683,692	
Fund Balances - Beginning	(3,777,561)			(3,694,287)			273,111		205,719	
Fund Balances - Ending	120,683			(2,392,915)			1,165,411		889,411	

**VILLAGE OF ROSEMONT, ILLINOIS**

**EXPENDITURES FROM THE SPECIAL TAX ALLOCATION FUNDS  
SECTION 3.2 (65 ILCS 5/11-74.4-5(d)(5) AND 65 ILCS 5/11-74.6-22(d)(5))**

**For the Fiscal Year Ended December 31, 2021**

	Redevelopment				
	District #4	District #5	District #6	District #7	District #8
Expenditures (Increment)					
Operating Transfers to Debt Service Funds Used to Pay Debt Service of the TIF Districts	\$ 11,217,316	-	-	-	-
Public Works and Economic Development	-	152,407	-	-	-
Operating Transfers to Other Funds Used to Pay Qualified Redevelopment Costs of the TIF Districts	3,275,000	35,000	1,010,000	374,000	961,000
Total Expenditures (Increment)	14,492,316	187,407	1,010,000	374,000	961,000

**BREAKDOWN OF THE BALANCE IN THE SPECIAL TAX ALLOCATION FUNDS**  
**SECTION 3.3 (65 ILCS 5/11-74.4-5(d)(5) AND 65 ILCS 5/11-74.6-22(d)(5))**

Special Tax Allocation Funds										
	District #4		District #5		District #6		District #7		District #8	
	Amount of Original Issuance	Amount Designated	Amount of Original Issuance	Amount Designated	Amount of Original Issuance	Amount Designated	Amount of Original Issuance	Amount Designated	Amount of Original Issuance	Amount Designated
Amount Available										
Fund Balance - End of Year (Increment)	\$	120,683		(2,392,915)		2,930,949		1,165,411		889,411
Less Amounts Designated for										
Principal Payments on Bonds Issued to Finance Redevelopment Costs:										
General Obligation Bonds, Series 2010A	12,075,000	11,535,000	-	-	-	-	-	-	-	-
General Obligation Bonds, Series 2010C	32,635,000	17,350,000	-	-	-	-	-	-	-	-
General Obligation Bonds, Series 2011B	24,795,000	18,915,000	-	-	-	-	-	-	-	-
General Obligation Bonds, Series 2011D	19,160,000	2,275,000	-	-	-	-	-	-	-	-
General Obligation Bonds, Series 2012A	59,390,000	59,390,000	-	-	-	-	-	-	-	-
General Obligation Bonds, Series 2013B	3,485,000	595,000	-	-	-	-	-	-	-	-
General Obligation Bonds, Series 2016A	-	-	-	-	-	-	-	-	80,375,000	78,720,000
General Obligation Bonds, Series 2016B	-	-	-	-	-	-	-	-	19,625,000	19,195,000
General Obligation Bonds, Series 2017	22,345,000	22,345,000	-	-	-	-	-	-	-	-
Total Amount Designated for Principal Payments	173,885,000	132,405,000	-	-	-	-	-	-	100,000,000	97,915,000
Project Costs		*		*		*		*		*
Total Amount Designated		132,405,000		-		-		-		97,915,000
Surplus / (Deficit)		(132,284,317)		(2,392,915)		2,930,949		1,165,411		(97,025,589)

\*Not Determined



**INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE AND OTHER  
MATTERS WITH THE STATE OF ILLINOIS TAX INCREMENT  
ALLOCATION REDEVELOPMENT ACT BASED ON AN AUDIT OF  
FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH  
AUDITING STANDARDS GENERALLY ACCEPTED IN THE UNITED STATES  
OF AMERICA**

June 3, 2022

The Honorable Village President  
Members of the Board of Trustees  
Village of Rosemont, Illinois

**VILLAGE OF ROSEMONT, ILLINOIS**

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Village of Rosemont, Illinois, as of and for the year ended December 31, 2021, which collectively comprise the Village's basic financial statements, and have issued our report thereon dated June 3, 2022. We conducted our audit in accordance with auditing standards generally accepted in the United States of America.

**Compliance**

We have audited the Village of Rosemont, Illinois' compliance with specific compliance requirements of the State of Illinois Tax Increment Allocation Redevelopment Act for the year ended December 31, 2021.

**Management's Responsibility for Compliance**

Compliance with 65 Illinois Compiled Statutes section 5/11-74.4-3, subsection (q) ("Subsection (q)") is the responsibility of the management of the Village of Rosemont, Illinois.

**Auditor's Responsibility**

Our responsibility is to express an opinion on the Village of Rosemont, Illinois' compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America and the specific compliance requirements of Subsection (q). Those standards and specific compliance requirements require that we plan and perform the audit to obtain reasonable assurance about whether material noncompliance with those requirements has occurred. An audit includes examining, on a test basis, evidence about the Village of Rosemont, Illinois' compliance with those specific compliance requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination of the Village of Rosemont, Illinois' compliance with those specific compliance requirements.

## **Opinion**

In our opinion, the Village of Rosemont, Illinois, complied, in all material respects, with the specific compliance requirements of Subsection (q) for the year ended December 31, 2021.

## **Other Matters**

Our audit of the basic financial statements of the Village of Rosemont, Illinois, as of and for the year ended December 31, 2021, was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying schedules as listed in the table of contents are presented for the purposes of additional analysis as required by the Illinois Tax Increment Allocation Redevelopment Act and are not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain other procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards general accepted in the United States of America, and in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

This report is intended solely for the information and use of the Village's elected officials and management and of the State of Illinois Comptroller and is not intended to be and should not be used by anyone other than these specified parties.

*Lauterbach & Amen, LLP*

LAUTERBACH & AMEN, LLP