

COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5380 desplaines.org

MEMORANDUM

Date: August 28, 2023

To: Michael G. Bartholomew, City Manager

From: John T. Carlisle, AICP, Director of Community and Economic Development

Cc: Stewart Weiss, Partner, Elrod Friedman, City Attorney

Timothy Oakley, Director of Public Works & Engineering

Allen Yanong, Chief Building Official

Subject: Proposed Mixed-Use Residential, Commercial, and Parking Development at

622 Graceland Avenue and 1332-1368 Webford Avenue: Approve Amended

and Restated Development Agreement to Exclude Adjacent Park at 1330

Webford and Pay All Building Permit Fees

Issue: Mylo Residential Graceland Property, LLC (formerly 622 Graceland Apartments, LLC; Joe Taylor of Compasspoint Development as Manager) is the developer of the proposed "Mylo," or Graceland-Webford, mixed-use residential, commercial, and parking project. The developer is the owner of 1332 Webford Avenue as of July 31, 2023. Pursuant to the purchase and sale agreement ("PSA") approved by the City Council in 2022 and amended on July 17, 2023, the City and developer are currently entered into a Development Agreement ("Agreement") governing the construction and operation of the proposed project. The Council approved the agreement on April 17, 2023.

The developer is now seeking revisions to the Agreement that will remove their obligation to provide a publicly accessible public park and open space at 1330 Webford, also known as "the Dance Building." In exchange, the developer is (i) offering \$300,000 as total consideration for the property at 1332 Webford, as opposed to the previously agreed upon \$10; (ii) agreeing to pay all building permit fees, which were waived by the initial Agreement; and (iii) acknowledging and agreeing to pay a revised parkland or fee-in-lieu-of obligation under the Subdivision Regulations, to be approved at a later time by the Council. These changes require Council's approval of an Amended and Restated Development Agreement.

Background: On September 6, 2022 via Ordinance M-22-22, the Council authorized the City's entry into the PSA for 1332 Webford, formerly a public parking lot. The contract was fully executed and effective on October 7, 2022. In addition to its contract with the City to acquire 1332 Webford, the developer is also pursuing final acquisition of the Journal & Topics property at 622 Graceland-1368 Webford. The developer is required to provide 25 public parking spaces within the proposed building's garage, which spaces are in addition to those required to meet the minimum requirements of the Zoning Ordinance for the proposed uses in the building. The developer's acquisition of 1332 Webford made the necessary zoning map amendment, approved by Ordinance Z-23-22, effective. However, the Agreement also serves as a pledge that the Developer will not object to a proposed City Council rezoning of the land if the Developer is not able to proceed with the project along the timeline expressed as an exhibit to the Agreement. Note that the timeline is edited in the Amended and Restated

Agreement, with an additional three months given to each benchmark (i.e., the Title Acquisition Date is revised to October 31, 2023 from the prior July 31, 2023, therefore causing the permitting and construction benchmarks to each move three months into the future).

Agreement: The Agreement provides a framework for how the proposed project would be built and how it would move through the phases of permitting, construction, and occupancy. Further, the Agreement is a mechanism for the City to reinforce certain requirements of the City Code, such as providing necessary public improvements in adjacent public right-of-way and the performance security guaranteeing completion. The Agreement also incorporates exhibits showing general building materials and design to ensure the project will fulfill the Council's expectations. The following non-exhaustively summarizes key terms and components of the Amended and Restated Agreement and notes important changes from the April 2023 initial version:

Development Plans (Revised)

The executed PSA for 1332 Webford states an expectation that the Agreement would ensure the project "...be constructed, maintained and operated in accordance with plans approved by the (City Council)." The following discusses the latest development plan submission:

- Building and site design: The latest elevations show proposed materials that are substantially consistent from the Council's last review in April 2023. The April iteration was updated from initial presentations in mid-2022. The elevations are intended to align with the developer's prior pledges to the Council regarding the color scheme and amount of face brick, particularly on the north and east elevations, as well as brick courses in the parking garage knee walls on the south elevation. The outdoor seating area for the proposed restaurant remains near the Graceland-Webford corner. On the Webford/south side, there is landscaping at the building foundation. However, the latest plans show an 8-foot masonry wall to screen an increased amount of mechanical equipment, which is in a new location. Therefore, language in the Amended and Restated Agreement clarifies that all components of building and site design must comply with the Zoning Ordinance for permit approval or that the developer would have to obtain necessary relief. On the Graceland/east side, shrubbery at the building's base is combined with parkway trees to attempt to create an attractive streetscape. The latest floor plans show a restaurant and bar in the southeast corner of the building as previously proposed, although this space is now fully on the first floor instead of spreading across the first and second floors. Resident amenities such as a pool and deck, fitness area/gym, coworking office, dog wash, and multiple recreational rooms are still proposed although repositioned in the building from the plans part of the original Agreement.
- Publicly accessible parks/open space: The amended plans exclude the 1330 Webford park. Further, the developer is no longer proposing to make the open space between the garage wall and the new Webford sidewalk roughly 1332 and 1368 Webford to be publicly accessible, given that an increased mechanical footprint seems to make public use of this space less practical or useful than before. References to this area as publicly accessible space have been removed from the Agreement. Nonetheless, the Council could discuss with the developer. If public access is desired to be retained, the Agreement could be passed as revised. However, note that in the April 2023 approvals, the Des Plaines Park District did not recommend and the Council did not grant a parkland fee-in-lieu credit for this Webford open space area.
- Development engineering, combined Tentative and Final Plats of Subdivision: The final engineering plans approved in April 2023 relied upon portions of 1330 Webford. Therefore, revision is required if the property is excluded from the design. Updated plans are currently not included in the Amended and Restated Agreement. However, the Agreement requires the developer to obtain future approval of Tentative and Final Plat of Subdivision, including final engineering, pursuant to the Subdivision Regulations. If approved at a later time, these documents would be automatically incorporated.

Permit Fees

The April 2023 version of the Agreement waived the in-house building permit fees, an estimated value of more than \$200,000. The amended and restated version excludes this waiver, which will require the developer to pay all fees.

Public Improvements and Performance Security

Exhibit C to the Agreement lists the Department of Public Works and Engineering's (PWE) required public improvements, which include, for example, stormwater and sanitary sewers, water mains and service lines, sidewalks, curb and gutter, and street lighting. There is a specific coordination plan and meeting required between (PWE) and the developer/contractors to occur at least one week before right-of-way construction begins. The improvements must be secured by the developer's posting of a letter of credit, with the City as the beneficiary. The process for approving reductions in the letter of credit amount is articulated in the City Code and reinforced by the Agreement, with the additional limitation that there may only be two requests for reduction: one at 50 percent completion and another at 100 percent completion.

Construction Logistics: Demolition and Traffic Management

Unchanged from the initial version, the Agreement requires obtaining all necessary demolition permits from the City and Cook County. The developer must present the City with a plan to mitigate dust, smoke, and other particulates resulting from demolition. The developer will be required to conduct all demolition in full compliance with the City's permitted work hours and to remove and dispose of all debris. Further requirements include installation of erosion control and such measures to temporarily divert or control any accumulation of stormwater away from or through the property while under construction. To facilitate the least disruptive construction staging and contractor access as possible, with sufficient continuous public safety access and service (i.e., Police and Fire), the developer must provide and have approved a Construction and Traffic Management Plan ("CTM Plan").

Occupancy: Temporary and Final

The Agreement contemplates that the City, within its discretion, may issue temporary certificates of occupancy, allowing use on an initial, short-term basis once the building's life safety components are completed. However, ultimately the developer must obtain final certificates of occupancy. Under the Agreement, the City may "... refuse to issue a final certificate of occupancy for any building or structure located on the Development Property, as the case may be, until the improvements that are the responsibility of Developer are completed by Developer and approved by the City." Such improvements include the right-of-way public improvements, such as the required widening of Webford for the segment in front of the property, on-street parking, sewers, street lighting, streetscaping, and sidewalks.

Diligent Pursuit of Construction

The Council's approval of the zoning change included discussion of assurances that the developer would move through with the project substantially as presented—that the project could not be abandoned after the developer's property acquisitions with the new zoning designation (C-5) remaining intact. Ordinance Z-23-22 and the approved 1332 Webford PSA establish that the developer/purchaser would not object to the City's rezoning the property to its former C-3 should the developer not pursue the project in accordance with the schedule incorporated into the Agreement; provided, however, the Agreement would allow the City Manager, based on a developer written request that identifies specific circumstance(s) beyond the developer's control, to extend deadlines within the timeline. The Amended and Restated Agreement contains a modified timelines that essentially adds three months to each benchmark.

Governing Documents

While the Agreement is intended to address all activities and operation while the components are being built and in process toward being finally occupied, it also states requirements for additional legal documents to be created or provided and to take effect after the Agreement's term has ended:

- Operating and Reciprocal Easement Agreement (OREA): The developer must provide and the City Manager and City Attorney must approve a recordable document to state obligations for the project's components to work effectively and be maintained (e.g., landscaping, driveways/aisle, stormwater facilities, snow removal utilities) and for easements to be granted for essential public safety access.
- Public Parking Leaseback: With a similar intent to a provision in the Parking License Agreement approved in 2018 for the Bayview-Compasspoint project at 1425 Ellinwood, the Graceland-Webford development agreement allows for the developer to survey the areas within the parking garage that are used for public parking and apply for a parcel division (PIN creation) through Cook County. Because the developer, or any successor/future owner, could not charge for or earn revenue from the 25 public parking spaces, the developer could seek tax-exempt status for the newly created public parking PIN within the garage.
 - o The "leaseback" structure is at the advice of the General Counsel to allow for a potential exemption to be carried out under state law. Nominal consideration \$10 per year from the City (lessee) to the developer or any successor (lessor) would be necessary. The specific details of the PIN creation process and the \$10-per-year arrangement would be expressed in the separate Public Parking Leaseback agreement; provided, however, that there would be no conflict between that agreement and the Amended and Restated Development Agreement.
- West Park Parcel Covenant (removed): A component of the original set of Governing Documents from the April 2023 version of the Agreement, this document would no longer be necessary, as the 1330 Webford park would be excluded.

City Council Action: The Council may vote to approve Resolution R-164-23, which authorizes the City's entry into an Amended and Restated Development Agreement at 622 Graceland Avenue and 1332-1368 Webford. The new agreement removes all obligations related to the abutting park/open space at 1330 Webford but requires the developer to pay all building permit fees, among other changes noted in this report. The Council will separately consider a Second Amendment to the Purchase and Sale Agreement for 1332 Webford.

Attachments:

Attachment 1: Request Letter from Developer Counsel

Attachment 2: Updated Building Renderings, Which Exclude 1330 Webford Park

Resolution R-164-23

Exhibits

Exhibit A: Amended and Restated Development Agreement





Bernard I. Citron 312 580 2209 direct bcitron@thompsoncoburn.com

August 17, 2023

VIA EMAIL (mbartholomew@desplaines.org)

Mr. Michael Bartholomew
City Manager
City of Des Plaines
1420 Miner Street
Des Plaines IL 60016

RE: Mylo Project - 622 Graceland Avenue (the "Project")-Request for

Amendment to Development Agreement between the City of Des Plaines and Mylo Residential Graceland Property LLC dated as of

April 18th, 2023 (the "Agreement")

Dear Mr. Bartholomew:

Mylo Residential Graceland Property LLC ("Mylo"), through its manager Joe Taylor, is requesting that it be provided the opportunity to appear before the City Council on August 21, 2023 to present the attached proposed amendment to the Agreement.

Specifically, Mylo is seeking to remove its obligation set forth in the Agreement to purchase the property located at 1330 Webford Avenue, Des Plaines, IL (the "1330 Property"). The 1330 Property was made part of the Project approvals solely for the construction of a public park that was to be retained and maintained by Mylo. The seller of the 1330 Property demanded a \$1 Million purchase price for the 1330 Property despite it having recently been purchased for \$400,000.00.

As a result of the financial hardship imposed on the Project by the high purchase price of the 1330 Property, the City agreed, at Mylo's request, to certain concessions, which are as follows: (1) the City reduced the purchase price of the City property that is part of the Project from \$300,000.00 to \$10.00; (2) the City agreed to waive any in-house building permit fees; and (3) the City agreed to waive a portion of the park district impact fees.

As you are aware, Mylo recently sought to extend the closing date on the 1330 Property. On July 17, 2023, the City Council agreed to amend the Purchase and Sale Agreement for the City parcel to allow Mylo to close on the non-City owned parcels later than the closing for the City parcel. Despite Mylo's best efforts, the seller of the 1330 Property did not agree to an extension nor was he ready to close on the original date set forth in that agreement. We have not been able to come to an agreement with the seller of the 1330 Property relating to the extension of the closing date for purchase and sale of the 1330 Property.

Mylo continues to be committed to completion of the Project, but due to the failure on the part of the seller of the 1330 Property to cooperate on an agreeable closing date based upon reasonable commercial terms, Mylo is seeking to amend the Agreement as follows:

Attachment 1 Page 5 of 81

Mr. Michael Bartholomew City Manager City of Des Plaines August 17, 2023

- 1. Eliminate the requirements that Mylo purchase the 1330 Property and develop it as a publicly accessible park;
- 2. Provide that Mylo pay to the City the prior agreed-upon purchase price of the City property of \$300,000.00; and
- 3. Pay all required Building Permit fees as set forth in the Code.
- 4. Commitment to pay an amended parkland fee in lieu to be approved by the City Council at a later date.

As you know, Mylo closed on the purchase of the City property on July 31, 2023. Mylo has entered into an extension of closing date of the 622 Graceland/1368 Webford property to no later than October 31, 2023. We are confident that we will obtain the necessary financing to close on the remaining parcel and be able to move forward with the construction of the Project.

We appreciate your attention to this request. Please let me know if you need any additional information.

Very truly yours,

Thompson Coburn LLP

By:

Bernard I. Citron

BIC/mu

cc: Joe Taylor (via email iztaylor@compasspointdevelopment.com);

Stewart Weiss (via email <u>Stewart.Weiss@ElrodFriedman.com</u>);

Peter Friedman (via email <u>Peter.Friedman@ElrodFriedman.com</u>);

John Carlisle (via <a href="mailto:ema

Gary Plotnick (via email gplotnick@thompsoncoburn.com)

Attachment 1 Page 6 of 81



Page 7 of 81



Page 8 of 81

CITY OF DES PLAINES

RESOLUTION R - 164 - 23

- A RESOLUTION APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF DES PLAINES AND MYLO RESIDENTIAL GRACELAND PROPERTY LLC (622 GRACELAND AVENUE & 1332-1368 WEBFORD AVENUE).
- **WHEREAS**, Mylo Residential Graceland Property, LLC, an Illinois limited liability company f/k/a 622 Graceland Apartments, LLC ("*Developer*"), is the owner of the parcel of real property at 1332 Webford Avenue ("*City Parcel*") and contract purchaser of those parcels of real property known as 622 Graceland and 1368 Webford ("*Journal & Topics Parcels*") in Des Plaines, Illinois (collectively, the "*Development Property*"); and
- **WHEREAS**, on July 31, 2023, the Developer acquired title to the City Parcel, pursuant to a Purchase and Sale Agreement ("*PSA*") last amended by Resolution R-139-23, adopted July 17, 2023; and
- **WHEREAS**, with the Developer's acquisition of the City Parcel, Ordinance Z-23-22, which changed the Development Property's zoning classification to the C-5 Central Business District, came into full force and effect; and
- **WHEREAS**, on April 17, 2023, the City Council adopted Resolution No. R-76-23, approving a development agreement with the Developer dated as of April 18, 2023 ("*Development Agreement*"); and
- **WHEREAS**, the Development Agreement required the Developer to acquire a parcel to the west of the Development Property commonly known as 1330 Webford ("West Parcel") and develop a publicly accessible passive recreation area thereupon; and
- **WHEREAS**, the City and Developer acknowledge and agree that Developer has been unable to acquire the West Parcel despite having made good faith efforts and taken all commercially reasonable steps to purchase the parcel; and
- **WHEREAS**, the City and Developer desire to move forward with the Development without the inclusion of the West Parcel, a change requiring an amendment and restatement of the Development Agreement; and
- **WHEREAS**, the City Council has determined that it is in the best interest of the City to enter into an Amended and Restated Development Agreement with the Developer;
- **NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: APPROVAL OF AMENDED AND RESTATED DEVELOPMENT

AGREEMENT. The Amended and Restated Development Agreement is approved in substantially the form attached to this Resolution as Exhibit A and in a final form to be approved by the General Counsel.

SECTION 3. AUTHORIZATION TO EXECUTE THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND ANCILLARY AGREEMENTS FOR PUBLIC PURPOSES. The City Manager is authorized and directed to execute, on behalf of the City, the final Amended and Restated Development Agreement, as well as any subsidiary agreements that are referenced within the Amended and Restated Development Agreement to effectuate the purpose of the Amended and Restated Development Agreement.

SECTION 4: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

CITY CLERK			Peter M. Friedman, General Counsel	l
ATTEST:			MAYOR Approved as to form:	
			MAYOD	
•	VOTE: AYES	NAYS	ABSENT	
A	APPROVED this _	day of	, 2023.	
J	PASSED this	_ day of	, 2023.	

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City Council Review Version

THIS DOCUMENT PREPARED BY AND AFTER RECORDING RETURN TO:	
Peter M. Friedman Elrod Friedman LLP 325 N. LaSalle Street, Suite 450 Chicago, IL 60654	

AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN

THE CITY OF DES PLAINES AND

MYLO RESIDENTIAL GRACELAND PROPERTY LLC

(622 GRACELAND AVENUE & 1332-1368 WEBFORD AVENUE)

DATED AS OF SEPTEMBER ____, 2023

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Exhibit A Page 11 of 81

AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN

THE CITY OF DES PLAINES AND MYLO RESIDENTIAL GRACELAND PROPERTY LLC (622 GRACELAND AVENUE & 1332-1368 WEBFORD AVENUE)

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is dated as of the _____ day of September, 2023 and is by and between the CITY OF DES PLAINES, an Illinois home rule municipal corporation ("City") and MYLO RESIDENTIAL GRACELAND PROPERTY LLC, an Illinois limited liability company, f/k/a 622 GRACELAND APARTMENTS, LLC ("Developer").

IN CONSIDERATION OF the agreements set forth in this Agreement, the receipt and sufficiency of which are mutually acknowledged, and pursuant to the City's statutory and home rule powers, the parties agree as follows:

SECTION 1. RECITALS.*

- **A.** The Development Property is an approximately one-acre assemblage of parcels located at the addresses known as 622 Graceland, 1332 and 1368 Webford in Des Plaines, Illinois.
- **B.** The Development Property consists of the J&T Parcels and the City Parcel, all of which are legally described in **Exhibit A**, attached to this Agreement.
- **C.** As of the Effective Date of this Amended and Restated Agreement, Developer is the owner of the City Parcel and the contract purchaser of the J&T Parcels.
- **D.** As of the Effective Date of this Amended and Restated Agreement, the Development Property is located entirely within the City's C-5 Central Business District.
- **E.** The Development Property is currently improved with the following buildings and structures:
 - 1. the J&T Parcels are improved with two single-story structures; and
 - 2. the City Parcel is improved with a surface parking lot.
- **F.** The City and Developer previously entered into a Development Agreement dated as of April 18, 2023 to memorialize the Parties' responsibilities and rights regarding the "**Development**," a mixed-use residential, commercial, and parking development on those parcels known as 622 Graceland Avenue, 1330, 1332, and 1368 Webford Avenue.
- **G.** In anticipation of, and concurrent with, the approval of the Development Agreement, the City adopted various ordinances and resolutions (i) authorizing the sale the City Parcel to Developer, (ii) rezoning the Development Property from the C-3 General Commercial District to the C-5 Central Business District, (iii) approving a Tentative and Final Plat of Subdivision

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Exhibit A Page 12 of 81

All capitalized words and phrases throughout this Agreement have the meanings set forth in the preamble above and in Section 2 of this Agreement, or as elsewhere specifically defined in this Agreement. If a word or phrase is not specifically defined in this Agreement, it has the meaning ascribed to it in the City Code, Zoning Ordinance, or Subdivision Regulations.

for the Development Property, and (iii) approving a Park Land Dedication/Fee-in-Lieu for the Development.

- **H.** The Development was originally intended to include a passive recreational area on the 1330 Webford parcel, designated as the "**West Parcel**" by the Development Agreement, to be constructed and maintained by Developer as an amenity accessible to the general public.
- **I.** The Parties acknowledge and agree that Developer has been unable to acquire the West Parcel despite having made good faith efforts and taken all commercially reasonable steps to purchase the property.
- **J.** The Parties desire to move forward with the Development without the inclusion of the West Parcel, a change requiring this full amendment and restatement of the Development Agreement.
- **K.** The Corporate Authorities have concluded that the development and use of the Development Property pursuant to and in accordance with this Amended and Restated Agreement will: (1) further enable the City to regulate the development of the Development Property; (2) produce increased tax revenues for the various taxing districts authorized to levy taxes on the Development Property; and (3) serve the best interests of the City and its residents.

<u>SECTION 2.</u> <u>DEFINITIONS; RULES OF CONSTRUCTION.</u>

A. <u>Definitions.</u> Whenever used in this Agreement, the following terms have the following meanings unless a different meaning is required by the context. All capitalized words and phrases throughout this Agreement have the meanings set forth in the preamble above and in this Section and the other provisions of this Agreement. If a word or phrase is not specifically defined in this Agreement, it has the meaning ascribed to it in the City Code, Zoning Ordinance, or Subdivision Regulations.

Business Day: Any calendar day other than a Saturday, Sunday or legal holiday under the laws of the State of Illinois.

City Attorney: The duly appointed City Attorney of the City.

City Clerk: The duly elected City Clerk of the City.

City Code: The City Code of the City of Des Plaines, as the same may be amended from time to time.

City Manager: The duly appointed City Manager of the City.

City Parcel: That parcel of real property known as 1332 Webford Avenue, Des Plaines, consisting of approximately 13,500 square feet, owned by the City, and legally described in **Exhibit A** attached to this Agreement.

Concurrent Approval: Defined in Section 3.B. of this Agreement.

Construction Regulations: Title 10 of the City Code, as may be amended from time to time.

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Exhibit A Page 13 of 81

Corporate Authorities: The Mayor and City Council of the City of Des Plaines, Illinois.

CTM Plan: The Construction and Traffic Management Plan, as further defined in Section 6.F.1 of this Agreement.

Declaration: That certain Declaration of Easements, Covenant, Conditions, and Restrictions that will be recorded against the Development Property pursuant to Section 7.A of this Agreement.

Developer: Defined in the first paragraph of this Agreement.

Development: The Mixed-Use Building and the Improvements, collectively.

Development Approvals: Those ordinances, resolution, permits, and administrative approvals listed in Section 3 of this Agreement including both the Prior Approvals listed in Section 3.A, the Concurrent Approval listed in Section 3.B, and the Subsequent Consideration Approvals listed in Section 3.C.

Development Engineering Plan: The engineering plan for the Development that will be approved as provided in Section 3.C of this Agreement listed and described in **Exhibit B** to this Agreement.

Development Landscape Plan: The landscape plan for the Development that will be approved as provided in Section 3.C of this Agreement listed and described in **Exhibit B** to this Agreement.

Development Permitting and Construction Schedule: The schedule established pursuant to Section 6.E and included as **Exhibit D** to this Agreement.

Development Plan: Collectively, those plans listed and described in **Exhibit B** to this Agreement, which may be updated and supplemented with the Replacement Development Plan prior to recordation of this Agreement.

Development Property: Defined in Section 1.B of this Agreement and collectively legally described in **Exhibit A** to this Agreement.

Development Site Plan and Elevations: The site plan and building elevations for the Development listed and described in **Exhibit B** to this Agreement.

Director of Public Works and Engineering: The duly appointed Director of Public Works and Engineering of the City.

Effective Date: The latest date of execution of this Agreement by all of the Parties as set forth in the first paragraph of page one of this Agreement.

Events of Default: Defined in Section 16.A of this Agreement with respect to Developer, in Section 16.B of this Agreement with respect to the City.

Governing Documents: Those agreements, easements, and covenants described in Section 7 including the Declaration and the Public Parking Leaseback Agreement.

Improvements: The on-site and off-site improvements to be constructed and installed in connection with the Development, as provided in Sections 4 and 5 of this Agreement, including, without limitation, the Public Improvements to be installed pursuant to the Development Plan, but specifically excluding the Mixed-Use Building and any other Structures to be constructed as part of the Development.

J&T Parcels: Those parcels of real property known as 622 Graceland Avenue and 1368 Graceland, Des Plaines, consisting of approximately 30,000 square feet, owned by Wessell Holdings LLC, and legally described in **Exhibit A** to this Agreement.

Maintenance Guarantee: Defined in Section 12.D of this Agreement.

Mixed-Use Building: The seven-story, approximately 187,000 square foot building proposed to be constructed by Developer on the Development Property to be used for residential, commercial, and parking purposes.

Parties: Developer and the City, collectively.

Person: Any corporation, partnership, individual, joint venture, limited liability company, trust, estate, association, business, enterprise, proprietorship, governmental body or any bureau, department or agency thereof, or other legal entity of any kind, either public or private, and any legal successor, agent, representative, authorized assign, or fiduciary acting on behalf of any of the above.

Planning and Zoning Board: The Planning and Zoning Board of the City, established by Section 2-2-1 of the City Code.

Plat of Subdivision: That certain "Tentative and Final Plat of Subdivision Graceland/ Webford Subdivision to Consolidate Lots" prepared by Gentile & Associates, Inc., consisting of two sheets, as may be approved by the Corporate Authorities as part of the Subsequent Consideration Approvals.

Prior Approvals: Defined in Section 3.A. of this Agreement.

PSA: That certain Real Estate Purchase and Sale Agreement by and between the City and Developer, then known as 622 Graceland Apartments, LLC, dated October 7, 2022, as subsequently amended by a First Amendment, dated as of July 20, 2023, and a Second Amendment dated as of September 6, 2023.

Public Improvements: Those Improvements that will be dedicated to, and accepted by, the City, and listed and described in **Exhibit C** to this Agreement.

Public Parking Spaces: Those 25 indoor parking spaces to be located within the Mixed-Use Building that will be reserved for use by the general public pursuant to the Public Parking Leaseback Agreement.

Public Parking Leaseback Agreement: The agreement entered into by the City and Developer as of July 31, 2023 for the leaseback to the City of the Public Parking Spaces to be constructed within the Mixed-Use Building.

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Exhibit A Page 15 of 81

Public Right-of-Way Improvements: Those Public Improvements to be constructed on or within the publicly owned rights-of-way that are adjacent to or in the vicinity of the Development Property, as listed and described in **Exhibit C** to this Agreement.

Requirements of Law: All applicable laws, statutes, codes, ordinances, resolutions, rules, regulations, and policies of the City and any federal, state, local government, or governmental agency with jurisdiction over the Development Property.

Site Restoration: Site restoration and modification activities to establish a park-like setting suitable for passive outdoor recreational activities, including, without limitation, demolition of partially constructed improvements and Structures, regrading, erosion control, and installation of sod or seeding.

Stormwater Improvements: Those stormwater improvements depicted on the Development Engineering Plans, including, without limitation, private storm sewers, related equipment, appurtenances, swales, mains, service lines, and storm drainage and detention areas installed and maintained on the Development Property to ensure adequate stormwater drainage and management and to collect and direct stormwater into the City's storm sewer system, as listed and described in **Exhibit C** to this Agreement.

Structure: Anything constructed or erected, the use of which requires permanent or temporary location on the ground or attachment to something having a permanent or temporary location on the ground. "Structure" shall in all cases be deemed to refer to both structures and buildings, including, without limitation, the Mixed-Use Building.

Subdivision Regulations: Title 13 of the City Code, as may be amended from time to time.

Subsequent Consideration Approvals: Defined in Section 3.C of this Agreement.

Title Acquisition Date: The date by which Developer has acquired title to the J&T Parcels.

Transferee Assumption Agreement: Defined in Section 14.B.4 of this Agreement.

Uncontrollable Circumstance: Any of the following events and circumstances that materially change the costs or ability of Developer to carry out its obligations under this Agreement:

- a. a change in the Requirements of Law;
- b. insurrection, riot, civil disturbance, sabotage, act of public enemy, explosion, nuclear incident, war, or naval blockade;
- c. pandemic, epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary weather conditions preventing performance of work, or other similar act of God;
- d. governmental condemnation or taking other than by the City;

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- e. strikes or labor disputes, other than those caused by the unlawful acts of Developer, its partners, or affiliated entities;
- f. delays caused by the breach of this Agreement or default under this Agreement by the City;
- g. governmental moratoriums;
- h. inability to obtain any material or service due to shortages or supply chain disruption.

Uncontrollable Circumstance does not include: (i) delays caused by weather conditions, unless the weather conditions are unusually severe or abnormal considering the time of year and the particular location involved; (ii) economic hardship or economic conditions; or (iii) a failure of performance by a contractor (except as caused by events that are Uncontrollable Circumstances as to such contractor).

Vertical Construction: The construction of any portion of a Structure above grade level.

City: The City of Des Plaines.

Zoning Ordinance: The "Des Plaines Zoning Ordinance of 1998," as amended.

B. Rules of Construction.

- 1. <u>Grammatical Usage and Construction</u>. In construing this Agreement, plural terms are to be substituted for singular and singular for plural, in any place in which the context so requires.
- 2. <u>Headings.</u> The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.
- 3. <u>Calendar Days; Calculation of Time Periods</u>. Unless otherwise specified in this Agreement, any reference to days in this Agreement will be construed to be calendar days. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event on 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 the last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Development Property 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 final day of any period will be deemed to end at 5:00 p.m., Central prevailing time.
- 4. <u>Compliance and Conflict with Other Requirements</u>. Unless otherwise provided in this Agreement either specifically or in context, in the event of a conflict between or among this Agreement and any plan, document, or Requirement of Law referenced in this Agreement, the plan, document, or Requirement of Law that provides the greatest control and protection for the City, as determined by the City Manager, will control. All of the provisions set forth in this Agreement, and all referenced plans, documents, and Requirements of Law are to be interpreted so that the duties and requirements imposed by any one of them are cumulative among all of them, unless otherwise provided in this Agreement either specifically or in context.

C. <u>Legal Effect</u>. This Amended and Restated Development Agreement replaces the Development Agreement between the Parties dated as of April 18, 2023 in its entirety. Upon the Effective Date of this Amended and Restated Agreement, all provisions of the April 18, 2023 Development Agreement will be rendered void and of no further force and effect.

SECTION 3. APPROVAL OF DEVELOPMENT.

- **A.** <u>Prior Approvals</u>. The Corporate Authorities previously granted the following approvals for the Development:
- 1. Ordinance M-22-22 "An Ordinance Approving and Authorizing the Execution of a Purchase and Sale Agreement for the Sale of the Development Property Located at 1332 Webford Avenue," adopted by the Corporate Authorities on September 6, 2022, which approved and authorized the execution of the PSA to convey the City Parcel to Developer.
- 2. Ordinance Z-23-22 "An Ordinance Approving a Zoning Map Amendment for 622 Graceland Avenue, 1332 Webford Avenue, and 1368 Webford Avenue," adopted by the Corporate Authorities on August 1, 2022, which rezoned the J&T Parcels and the City Parcel from the C-3 General Commercial District to the C-5 Central Business District. Ordinance Z-23-22 does not become legally effective unless and until the occurrence of the Title Acquisition Date.
- 3. Resolution R-74-23 "A Resolution Approving a Tentative and Final Plat of Subdivision for 622 Graceland and 1332-1368 Webford" approving the Plat of Subdivision for the Development Property; and
- 4. Resolution R-75-23 "A Resolution Approving Park Land Dedication/Fee-in-Lieu" approving park land dedication credits and the payment of a fee-in-lieu to satisfy the park land dedication requirements set forth in Chapter 4 of the Subdivision Regulations and as more fully described in Section 8 of this Agreement.
- 5. Resolution R-139-23 "A Resolution Approving a First Amendment to a Real Estate Purchase and Sale Agreement," approving an extension to the time periods by which Developer was required to acquire title to the J&T Parcels and the adjacent parcel to the west of the Development Property commonly known as 1330 Webford.
- **B.** <u>Concurrent Approval</u>. Concurrent with or subsequent to the approval of this Agreement, the Corporate Authorities intend to adopt a "Resolution Approving a Second Amendment to the Real Estate Purchase and Sale Agreement" for the City Parcel. This resolution will approve the release of the post-closing condition that Developer acquire the 1330 Webford parcel in exchange for a payment of \$300,000, along with other minor revisions to the Purchase and Sale Agreement.
- **C.** <u>Subsequent Approval Consideration</u>. Subsequent to the approval of this Agreement, the City will consider the following approvals in connection with the Development;
 - 1. Replacement Development Plan Revisions. City staff will review revised versions of the following plans provided by Developer and shall approve such plans contingent on their compliance with the Zoning Ordinance and Subdivision Regulations or obtaining appropriate relief:
 - a. The Development Site Plan and Elevations;

- b. The Development Floor Plans;
- c. The Development Engineering Plan; and
- d. The Development Landscape Plan;

A description of all components of the final, approved Replacement Development Plan will be incorporated into **Exhibit B** this Agreement prior to recordation of the Agreement in the Office of the Clerk of Cook County.

- 2. A Resolution Approving a Replacement Tentative and Final Plat of Subdivision for 622 Graceland and 1332-1368 Webford. This resolution will approve a new Plat of Subdivision for the Development Property to replace the Plat approved by Resolution R-74-23; and
- 3. A Restated Resolution Approving Park Land Dedication/Fee-in-Lieu. This resolution will approve park land dedication credits and the payment of a fee-in-lieu to satisfy the park land dedication requirements set forth in Chapter 4 of the Subdivision Regulations and as more fully described in Section 8 of this Agreement and will replace Resolution R-75-23.

Developer acknowledges and agrees that the City Council will not be obligated to approve a replacement Plat of Subdivision for the Development Property or any park land dedication credits that do not satisfy the standards set forth in the Subdivision Regulations.

SECTION 4. DEVELOPMENT, USE, OPERATION, AND MAINTENANCE OF THE DEVELOPMENT PROPERTY.

Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the City Code, the Zoning Ordinance, the Subdivision Regulations, or any other rights Developer may have, during the term of this Agreement, the Development Property may be developed, used, operated, and maintained only pursuant to, and in accordance with, the terms and provisions of this Agreement and its exhibits, including, without limitation, the following development conditions. Development, use, operation, and maintenance of the Development Property in a manner materially deviating from these conditions will be deemed a violation of this Agreement and Developer's obligations hereunder, as the case may be, and an Event of Default pursuant to Section 16.A of this Agreement, subject to any applicable notice or cure period.

A. Responsibilities.

- 1. Developer is responsible for development and construction of the Development in the manner set forth below.
- 2. Developer will ensure that the Development is used, operated, and maintained in compliance with the Development Approvals and the Governing Documents.
- **B.** <u>Development</u>. The Development must consist of the following required elements, all of which were promised by Developer and served as an enticement to the City to enter into this Agreement and to adopt the Development Approvals:
- 1. <u>Mixed-Use Building</u>. The Mixed-Use building will include the following characteristics and amenities as all depicted in the Development Plan:

a. <u>Building Dimensions</u>:

- i. Approximately 187,000 square feet of gross floor area; and
- ii. Seven stories reaching no more than 82 feet in building height, which is measured as prescribed by the Zoning Ordinance.
 - c. Residential Units: 131 Multi-family dwelling units including:
 - i. 17 studio apartments;
 - ii. 103 one-bedroom apartments; and
 - iii. 11 two-bedroom apartments.

The mix of apartment units may be revised by Developer, subject to City Council approval by resolution duly adopted, so long as the number of proposed bedrooms does not create a need for additional off-street parking on the Development Property. Developer will be responsible for any additional fee-in-lieu of park land dedication that may be due under Chapter 4 of the Subdivision Regulations as a result of a change in the mix of apartment units.

- d. Tenant Amenities: Residential tenant amenities including:
 - i. coworking office space;
 - ii. fitness area;
 - lounges and meeting rooms;
 - iv. club room;
 - v. game room;
 - vi. outdoor dog run and indoor dog wash;
 - vii. indoor bike parking; and
 - viii. outdoor swimming pool and recreation deck.
- e. <u>Commercial Areas</u>: Approximately 2,800 square foot first-floor commercial restaurant and bar featuring an outside seating area.
- f. <u>Parking</u>: An indoor parking garage containing 179 indoor parking spaces including:
 - i. 154 spaces reserved for residential tenants, commercial customers, and employees; and
 - ii. 25 spaces reserved for use by the general public;

Development will also include five on-street parking spaces and one loading space along the Webford Avenue frontage of the Development Property, to be constructed as part of the Public Improvements at Developer's sole cost and expense and dedicated to the City upon completion.

- **D.** General Use and Development Restrictions: The development, use, operation, and maintenance of the Development on the Development Property, as the case may be, must, except for minor alterations due to final engineering and site work approved by the Director of Public Works and Engineering or the Director of Community and Economic Development, as appropriate, comply, and be in accordance, with the following:
 - 1. This Agreement;
 - 2. The Development Approvals;
 - 3. The Replacement Development Plan, and all individual plans and documents of which it is comprised, including any plans approved subsequent to the Effective Date of this Agreement;
 - 4. The Zoning Ordinance;
 - 5. The Construction Regulations;
 - 6. The Subdivision Regulations;
 - 7. The Governing Documents; and
 - 8. The Requirements of Law.

Unless otherwise provided in this Agreement either specifically or in context, in the event of a conflict between or among any of the plans or documents listed as or within items 1 through 8 of this Section 4.D, the interpretative provisions of Section 2.B.4 will govern.

SECTION 5. IMPROVEMENTS.

A. Design and Construction of the Improvements.

- 1. <u>Description of Improvements</u>. The Improvements depicted and described on the Development Engineering Plan and the other components of the Development Plan, and include, without limitation, the following:
 - a. The Stormwater Improvements;
 - b. Sanitary sewer mains and service lines;
 - c. Water mains and service lines:
 - d. The Public Right-of-Way Improvements, as described in Section 5.C of this Agreement; and

{00131255.8}

Exhibit A Page 21 of 81

e. The landscaping, as depicted in the Development Landscape Plan.

The Public Improvements are more fully described in the Public Improvements Chart attached as **Exhibit C** to this Agreement.

2. **General Standards.** All Improvements must be designed and constructed pursuant to and in accordance with the Development Approvals, and will be subject to the reasonable written satisfaction of the Director of Public Works and Engineering in accordance with the City Code, and the Subdivision Regulations. All work performed on the Improvements must be conducted in a good and workmanlike manner, with due dispatch, and in compliance with the Public Improvement Construction Plan, as well as all permits issued by the City for construction of the Improvements, subject to Uncontrollable Circumstances. All materials used for construction of the Improvements must be new and of first-rate quality.

3. Public Improvement Construction Plan.

- a. Developer must submit all necessary documents required for the issuance by the City of building permits for the construction of the Improvements in accordance with the Development Permitting and Construction Schedule required by Section 6.F.
- b. Prior to commencing any construction of any Public Improvement, or of any part of the Development that will affect existing utilities or roadways, Developer must meet with the Director of Public Works and Engineering, or their designee, to develop a mutually agreeable plan and schedule for all such construction ("*Public Improvement Construction Plan*"). The meeting must take place not less than one week prior to the commencement of any such construction. After the meeting, Developer must prepare and submit minutes of the meeting to the Director of Public Works and Engineering. No construction may occur prior to the approval by the Director of Public Works and Engineering of the meeting minutes and the Public Improvement Construction Plan, which approval shall not be unreasonably withheld, conditioned, or delayed.
- c. Developer must complete and make ready the Improvements for inspection, approval and, where appropriate, acceptance by the City pursuant to the Public Improvement Construction Plan. Developer may be allowed extensions of time beyond the completion dates set forth in such construction schedule only for unavoidable delay caused by Uncontrollable Circumstances or as may be reasonably approved by the City Manager.
- 4. <u>Contract Terms; Prosecution of the Work.</u> Developer must include in every contract for work on the Improvements an acknowledgement from the contractor that (i) such contractor has received a copy of this Agreement, the Development Approvals, the Development Plan, and the Public Improvement Construction Plan and (ii) subject to Uncontrollable Circumstances, such contractor understands that this Agreement, the Development Approvals, the Development Plan, the Public Improvement Construction Plan and the Requirements of Law govern construction of the Development.
- 5. <u>Engineering Services</u>. Developer must provide, at its sole cost and expense, all engineering services for the design and construction of the Improvements that are the responsibility of Developer, by a registered Illinois professional engineer responsible for overseeing the construction of the Improvements and by an environmental construction manager with respect to any and all site remediation. Developer must promptly provide the City with the

name of a local owner's representative and a telephone number or numbers at which the owner's representative can be reached.

- 6. <u>City Inspections and Approvals.</u> All work on the Improvements is subject to reasonable inspection and approval by City representatives at all reasonable times upon reasonable prior written notice. Developer will provide access to the Development Property for the purpose of conducting these inspections during regular operating hours and within 12 hours outside of regular operating hours following reasonable prior written notice by the City. City representatives shall abide by the reasonable safety precautions established by Developer and/or Developer's contractor during any such access, and City representatives shall access the Development Property at their own risk.
- 7. Other Approvals. Where the construction and installation of any Improvement requires the consent, permission, or approval of any third-party public agency, utility, or private party, Developer must promptly file all applications, enter into all agreements, post all security, pay all fees and costs, and otherwise take all steps that may be reasonably required to obtain the consent, permission, or approval.
- **B.** <u>Utilities</u>. Developer must, at its sole cost and expense, and in accordance with and pursuant to the Development Plan, upgrade the connection of all utilities to facilities located on the Development Property. No utilities located on the Development Property may be connected to the sewer and water utilities belonging to the City except in accordance with the applicable provisions of the City Code and upon payment all fees required pursuant to the City Code.

C. Public Right-of-Way Improvements.

1. **Grant of Temporary Construction License.** Subject to the terms and conditions set forth in this Agreement, the City grants to Developer, and Developer accepts, a non-exclusive license, which may not be revoked during the term of this Agreement, and is for the benefit of Developer and its successors and assigns in this Agreement, for the construction, installation, completion, and maintenance at the sole effort, cost, and expense of Developer, of Improvements within City-owned rights-of-way and, as necessary, within adjacent City-owned parcels (collectively, the "Licensed Premises"), all as depicted in the Development Engineering Plan, and pursuant to and in strict accordance with the terms and provisions of this Section 5.C

and the other provisions of this Agreement ("PROW Construction License"), including, without limitation:

- a. The Public Right-of-Way Improvements listed in **Exhibit C** to the Agreement.
- b. <u>Utility Line Burial</u>. The burial of all existing and proposed utility lines and poles, on or in the public right-of-way adjacent to, the Development Property including conduit for street lighting; and
- c. <u>Landscaping in Public Rights-of-Way</u>. Installation of landscaping materials within the rights-of-way adjacent to the Development Property, as depicted in the Development Landscape Plan.

2. Limitation of Interest.

- a. Except for the PROW Construction License granted pursuant to this Section 5.C, Developer does not and will not have any legal, beneficial, or equitable interest, whether by adverse possession or prescription or otherwise, in any portion of the Licensed Premises, or the Webford Avenue right-of-way, or any other City-owned property or right-of-way. Specifically, and without limitation of the foregoing, Developer acknowledges and agrees that nothing in this Agreement is to be interpreted to provide a license to Developer to alter any City-owned right-of-way in any way other than for the installation of the Public Right-of-Way Improvements identified in this Section 5.C.
- b. Graceland Avenue is a right-of-way under the jurisdiction of the Illinois Department of Transportation (IDOT) and the City does not have the authority to grant any license or permission for work within the Graceland Avenue right-of-way. Developer will take all necessary actions to obtain the necessary permissions or licenses from IDOT for the construction of those Public Right-of-Way Improvements within the Graceland Avenue right-of-way.
- must construct the Public Right-of-Way Improvements. Developer must construct the Public Right-of-Way Improvements in substantial compliance with and pursuant to the Development Plan and this Agreement, in a good and workmanlike manner, and subject to inspection and approval by the City and, where appropriate, IDOT. Specifically, and without limitation of the foregoing, during the period of installation, Developer must: (a) construct all Public Right-of-Way Improvements in specific locations and of specific designs approved in advance by the Director of Public Works and Engineering, which approval shall not be unreasonably withheld, conditioned, or delayed, and, for landscaping improvements, by the City's Director of Public Works and Engineering, which approval shall not be unreasonably withheld, conditioned, or delayed; and (b) maintain the Licensed Premises and all streets, sidewalks, and other public property in and adjacent to the Licensed Premises in a safe, good and clean condition at all times.
- 4. <u>City's Reservation of Rights Over Licensed Premises</u>. The City hereby reserves the right to use the Licensed Premises in any manner that will not prevent, impede, or

{00131255.8}

Exhibit A Page 24 of 81

interfere in any way with the exercise by Developer of the rights granted pursuant to this Section 5.C. The City will have the right to grant other non-exclusive licenses or easements, including, without limitation, licenses or easements for utility purposes, over, along, upon, or across the Licensed Premises rights-of-way. The City further reserves its right of full and normal access to the Licensed Premises for the maintenance of any existing or future utility located thereon. The foregoing notwithstanding, any delays in Developer's construction within the Licensed Premises caused by the City's exercise of its reserved rights set forth herein shall be deemed delays arising from Uncontrollable Circumstances.

- 5. <u>Liens.</u> Developer must, at its sole cost and expense, take all necessary action to keep all portions of the Licensed Premises free and clear of all liens, claims, and demands, including without limitation mechanic's liens, in connection with any work performed by the Developer or its agents.
- 6. Maintenance of Right-of-Way by City. Without limitation of the provisions of Section 13 of this Agreement, the City will not be liable for any damage that may occur to the Public Right-of-Way Improvements as a result of the City's necessary maintenance responsibilities with regard to any right-of-way that is subject to the PROW Construction License, except to the extent arising from the gross negligence or willful misconduct of the City's representatives. Any maintenance, repair, or replacement of the Improvements necessary as a result of such City maintenance or other work will be at the sole cost and expense of Developer, through and including the date of expiration of the License, as set forth in Section 5.C.8 of this Agreement.
- 7. <u>Term.</u> The PROW Construction License granted pursuant to this Section 5.C will expire upon the acceptance by the City of all Public Right-of-Way Improvements pursuant to Section 5.E of this Agreement.
- **D.** Prevailing Wage. If applicable, Developer shall comply with the requirements of the Illinois Prevailing Wage Act (820 ILCS 130/00.1 et seq.) for construction of the Public Improvements and any Improvements which will be conveyed to any unit of government, including IDOT, or if the cost of constructing the Improvements will be reimbursed by public funds.
- E. <u>Timing of Construction of the Improvements</u>. The City has the right, but not the obligation, to refuse to issue a final certificate of occupancy for any building or Structure located on the Development Property, as the case may be, until the Improvements that are the responsibility of Developer are completed by Developer and approved by the City. The foregoing does not preclude the City's issuance of temporary certificates of occupancy pursuant to the applicable provisions of the City Code. The issuance of any temporary certificate of occupancy by the City at any time prior to completion of all of the Improvements by Developer, and approval of the applicable Improvements by the City will not constitute a waiver of the City's right to withhold any final certificate of occupancy and will not confer on Developer any right or entitlement to any other certificate of occupancy.

F. Dedication and Maintenance of the Improvements.

1. <u>Final Inspection and Approval of the Improvements</u>. The inspection, approval, acceptance, and maintenance of the Improvements must be in accordance with Section 13-2-8 and 13-3-5 of the Subdivision Regulations. Developer must notify the City when it believes that any or all of the Improvements on the Development Property have been fully and properly completed and must request final inspection and approval of the Improvement or Improvements

{00131255.8}

Exhibit A Page 25 of 81

by the City. The notice and request must be given far enough in advance, and in no event with less than one week's advance notice, to allow the City time to inspect the Improvements and to prepare a punch list of items requiring repair or correction and to allow Developer time to make all required repairs and corrections prior to the scheduled completion date (as may be established pursuant to this Agreement or in the permits issued by the City for construction of the Improvements). The Developer must promptly make all necessary repairs and corrections as specified on the punch list. The City is not required to approve any portion of the Improvements until: (a) all of the Improvements as may be required pursuant to this Agreement, including all punch list items, have been fully and properly completed; and (b) the City's Director of Public Works and Engineering has determined that the specific Improvement has been constructed to completion, in accordance with the Development Plan and Requirements of Law, which determination shall not be unreasonably withheld, conditioned, or delayed. Prior to the issuance by the City of a final certificate of occupancy for any Structure on the Development Property, as the case may be, the Developer must install all landscaping on the Development Property, as depicted on the Development Plan.

- 2. <u>Dedication and Acceptance of Public Improvements.</u> Neither the execution of this Agreement, nor the approval of the Development Approvals, nor the execution and recordation of the Plat of Subdivision constitutes acceptance by the City of any Public Improvements that are depicted as "dedicated" on the Plat of Subdivision or on the Development Plan, if any. The acceptance of ownership of, and responsibility for, a specific approved Improvement as a Public Improvement may be made only by the Corporate Authorities, by adoption of a resolution, and only in compliance with the requirements of the Subdivision Regulations.
- the City. Upon the approval of, and prior to acceptance of, the Public Improvements to be accepted by the City pursuant to Chapter 3 of the Subdivision Regulations and Section 5.E of this Agreement, Developer must execute, or cause to be executed, all documents as the City may request to transfer ownership of, or to provide easements in, the Public Improvements to, and to evidence ownership of the Public Improvements by, the City, free and clear of all liens, claims, encumbrances, and restrictions, unless otherwise approved by the City in writing, which instruments shall be subject to the review and approval of Developer, which approval shall not be unreasonably withheld, conditioned, or delayed. Developer must, at the same time (a) grant, or cause to be granted, to the City all insured easements or other property rights as the City may require to install, operate, maintain, service, repair, and replace the Public Improvements that have not previously been granted to the City, free and clear of all liens, claims, encumbrances, and restrictions, unless otherwise approved by the City in writing, and (b) provide a written estimate of the monetary value of each Public Improvement to be accepted by the City.
- 4. <u>Maintenance of Public Improvements</u>. For a period of 18 months following acceptance by the City of the Public Improvements, Developer must, at its sole cost and expense, maintain the Public Improvements without any modification, except as specifically approved in writing by the Director of Public Works and Engineering, in a first-rate condition at all times. Developer hereby guarantees, on its behalf and on behalf of its successors, the prompt and satisfactory correction of all defects and deficiencies in any of the Public Improvements that occur or become evident within 18 months after acceptance of the Public Improvement by the City pursuant to this Agreement. In the event the Director of Public Works and Engineering determines, in the Director of Public Works and Engineering's reasonable discretion, that Developer is not adequately maintaining, or has not adequately maintained, any Public Improvement, Developer must, after 15 days' prior written notice from the City (subject to

{00131255.8}

Exhibit A Page 26 of 81

Uncontrollable Circumstances), correct it or cause it to be corrected, provided, however, if the nature of the corrective work is such that it cannot reasonably be completed within such time, then Developer shall have such additional time as is reasonably necessary to complete such correct, provided Developer promptly commences such correction within such 15 days and thereafter diligently pursues same to completion. If Developer fails to correct the defect, commence the correction of the defect, or diligently pursue correction of the defect to completion following the expiration of the foregoing notice and cure period, then the City, after ten days' prior written notice to Developer, may, but will not be obligated to, enter upon any or all of the Development Property for the purpose of performing maintenance work on and to such Public Improvement. In the event that the City causes to be performed any work pursuant to this Section 5.E.4, Developer must, within 15 days after written demand by the City, pay the costs of the work to the City. If Developer fails to pay the costs, the City will have the right to draw from the Maintenance Guarantee required pursuant to Section 12.D of this Agreement, based on costs actually incurred, including reasonable legal fees and administrative expenses.

SECTION 6. CONSTRUCTION OF DEVELOPMENT.

A. <u>General Construction and Contracting Requirements.</u>

- 1. **Pre-Condition to Issuance of Building Permit.** The City will have the right, but not the obligation, to refuse to issue a building permit for any Structure to be constructed on the Development Property, prior to the approval of the (i) Concurrent Approval and (ii) Subsequent Consideration Approvals by the Corporate Authorities and the occurrence of the Title Acquisition Date.
- 2. <u>Compliance with Plans and Approvals.</u> The development of the Development Property must be designed and constructed pursuant to and in accordance with the Development Plan and the Development Approvals. All work must be conducted in a good and workmanlike manner and with due dispatch, subject to Uncontrollable Circumstances. All materials used for construction on the Development Property must be in accordance with the specifications for the work to be performed.
- 3. <u>Contracts for Work on Property</u>. Developer must include in every contract for work on the Development Property an acknowledgement from the contractor that (i) such contractor has received a copy of this Agreement, the Development Approvals, the Development Plan and the Public Improvement Construction Plan and (ii) subject to Uncontrollable Circumstances, such contractor understands that this Agreement, the Development Approvals, the Development Plan, the Development Permitting and Construction Schedule, and the Requirements of Law govern construction of the Development.
- 4. <u>City Inspections and Approvals</u>. All work on the Development Property will be subject to inspection and approval by City representatives at all times, subject to Section 5.A.6 above.
- **B.** <u>Demolition of Existing Structures</u>. Developer may commence demolition of existing Structures on the Development Property only after obtaining all necessary demolition permits from the City and Cook County and presenting the City with a plan to mitigate dust, smoke, and other particulates resulting from the demolition. Developer will conduct all demolition work on the Development Property in full compliance with the City's permitted construction work hours regulations. Developer will remove and dispose of all debris resulting from the demolition of existing Structures on the Development Property in compliance with the Requirements of Law.

- **C.** Phasing of Development. The construction of the Improvements and the Development must take place in one continuous phase, subject to seasonal conditions, except to the extent otherwise approved by the City, which approval shall not be unreasonably withheld, conditioned, or delayed.
- **D.** <u>Limits on Vertical Construction</u>. In addition to any other applicable provision of this Agreement and the Requirements of Law, Developer may not commence any Vertical Construction unless the City Manager has determined that the construction of the following Improvements is complete as required by this Agreement and Requirements of Law, except as may be authorized in writing by the City Manager in their sole discretion:
 - 1. The Stormwater Improvements; and
- 2. A functional water system that can deliver water to all proposed fire hydrants on the Development Property in the manner required by the City.

E. Diligent Pursuit of Construction.

- 1. <u>Development Permitting and Construction Schedule.</u> Developer agrees to pursue the development and construction of the Development in accordance with the Development Permitting and Construction Schedule set forth in **Exhibit D** to this Agreement. Failure of Developer to abide by the Development Permitting and Construction Schedule may be considered an abandonment of the Development, and will trigger the City's right to rezone the Development Property to the C-3 District as set forth in Section 5.D of Ordinance Z-23-22; provided, however, Developer may timely seek an extension of any date set forth in the Development Permitting and Construction Schedule from the City Manager. The basis for such extensions will be limited to the following circumstances:
 - a. <u>Infeasibility of Financing</u>. If changes in interest rates on construction loans render the Development financially infeasible, Developer may seek an extension until such time as Developer can prove to the City that financing is again feasible.
 - b. <u>Bankruptcy of Developer's General Contractor</u>. Developer may seek an extension sufficient to obtain a new general contractor that can resume construction of the Development in a diligent manner.
 - c. <u>Inability to Procure Necessary Materials</u>. If Developer is unable to obtain necessary materials caused by a systemic issue in the building material supply chain through no fault of Developer, Developer may seek an extension until such material(s) become available.
 - d. <u>Delay in Approvals from Third-Party Agencies</u>. The date to apply for permit from the City may be extended if the Developer or its consultants have not received approval of Development plans from the third-party agencies (including, without limitation, IEPA, IDOT, MWRD) in sufficient time to comply with the submission dates set forth in the Development Permitting and Construction Schedule. Developer must provide notice to the City of any such delays and seek assistance by the City in receiving the necessary approvals.

The City Manager will have the authority to extend dates for submission or completion set forth in the Development Permitting and Construction Schedule upon the occurrence of the circumstances set forth in this Section 6.E, but is not required to render such relief. To qualify for an extension, Developer must submit a detailed explanation of the circumstances and the City

Manager shall either review and approve or deny the extension. Any denial shall be accompanied by a written explanation and shall rendered in a commercially reasonable manner.

2. Once construction has commenced pursuant to this Agreement, Developer must pursue, or cause to be pursued, all required development, demolition, construction, and installation of Structures, buildings, and Improvements on the Development Property in a diligent and expeditious manner, and in strict compliance with the City Code the Requirements of Law, and the Development Permitting and Construction Schedule. The Developer will conduct all construction work on the Development Property in full compliance with the City's permitted construction work hours regulations.

F. Construction Traffic.

- Construction and Traffic Management Plan. Developer must prepare and submit, for review and approval by the City Director of Community and Economic Development and the Director of Public Works and Engineering, a Construction and Traffic Management Plan ("CTM Plan") for the construction of the Development. The CTM Plan will govern (i) the location, storage, and traffic routes for construction equipment, construction staging and construction vehicles, and (ii) the location of alternative off-street parking during the construction. The City has no obligation to issue a building permit for any Structure or Improvement, and no construction may be commenced with respect to the Structure or Improvement, unless and until the Director of Public Works and Engineering and the Director of Community and Economic Development has approved, in writing, the CTM Plan, which approval shall not be unreasonably withheld, conditioned, or delayed. The City agrees to cause the CTM Plan to be promptly and expeditiously reviewed; provided, however, that nothing in this Agreement is to be deemed or interpreted to require the City to approve the CTM Plan. Developer must comply with the CTM Plan, and failure to do so continuing beyond any applicable notice and cure period is a Developer Event of Default. The CTM Plan must include, without limitation, the following:
 - a. The schedule and traffic routes for construction traffic accessing the Development Property;
 - b. The designation of machinery and construction material storage areas on the Development Property:
 - c. Provisions for the screening of construction areas within the Development Property;
 - d. The hours of operation and schedule for construction on the Development Property;
 - e. The location of areas on the Development Property for the parking of construction vehicles and vehicles operated by construction employees;
 - f. The location of alternative off-street parking to replace any parking temporarily lost due to construction; and
 - g. The location of temporary and durable off-street parking on the Development Property for construction employees.

- 2. <u>Designated Routes of Access</u>. The City reserves the right to designate certain prescribed routes of access to the Development Property for construction traffic to provide for the protection of pedestrians and to minimize disruption of traffic and damage to paved street surfaces, to the extent practicable; provided, however, that the designated routes must not: (a) be unreasonably or unduly circuitous; nor (b) unreasonably or unduly hinder or obstruct direct and efficient access to the Development Property for construction traffic.
- 3. <u>Maintenance of Routes of Access.</u> At all times during the construction of the Structures and Improvements, each Developer must: (a) keep all routes used for such Developer's construction traffic free and clear of mud, dirt, debris, obstructions, and hazards; and (b) repair any damage caused by such Developer's construction traffic.
- G. Stormwater Management and Erosion and Dust Control During Construction. During construction of any of the Structures or Improvements on the Development Property, Developer must:
- 1. Install and implement such measures as necessary to temporarily divert or control any accumulation of stormwater away from or through the Development Property in a manner approved in advance by the Director of Public Works and Engineering, which approval shall not be unreasonably withheld, conditioned, or delayed, which method of diversion must include early installation of storm drains to collect water and convey it to a safe discharge point;
- 2. Install erosion control devices as necessary to prevent silt, dirt, snow, water, ice, and other materials from leaving the site and traveling onto other properties. All debris, spoils, materials, and waste generated by demolition, grading, construction, installation and paving on the Development Property must be properly removed or disposed of in accordance with the Requirements of Law; and
- 3. Mitigate dust, smoke, and other particulates resulting from construction activities.

All installations made pursuant to this Section 6.G must be maintained on the Development Property by Developer until all final certificates of occupancy have been issued by the City for the Development, except as otherwise may be approved by the City Manager.

H. Issuance of Permits and Certificates.

- 1. General Right to Withhold Permits and Certificates. In addition to every other remedy permitted by law for the enforcement of this Agreement, the City has the absolute right to withhold the issuance of any building permit or certificate of occupancy for the Development, at any time when, subject to applicable notice and cure provisions, Developer has failed or refused to meet fully any of its obligations under, or are in violation of, or is not in full compliance with, the terms of this Agreement, the Development Permitting and Construction Schedule, the Development Approvals, or the Requirements of Law.
- 2. Completion of Public Roads, Private Driveways, and Parking Areas. No final certificate of occupancy associated with any new Structure to be located on the Development Property will be issued until the final grading, application of final surface course, and, where applicable, striping of parking space for the roads, driveways, and parking areas serving the uses within such Structure has been completed.

I. <u>Completion of Construction; Site Restoration</u>.

- 1. Removal of Partially Constructed Structures and Improvements. Subject to Uncontrollable Circumstances, if Developer fails to diligently pursue all demolition and construction as required in, or permitted by, this Agreement to completion within the time period prescribed in the building permit or permits issued by the City for Developer's required demolition and construction, as the case may be, and if a perfected application to renew the building permit or permits is not filed within 30 days after the expiration of the permit or permits, Developer must, within 90 days after notice from the City: (a) remove any partially constructed or partially completed Structures or Improvements from the Development Property; and (b) perform Site Restoration on that portion of the Development Property in which Developer has failed to complete all such demolition and construction, all in accordance with plans approved by the City.
- Removal and Restoration by City. In the event Developer fails or refuses 2. to remove any partially completed buildings, Structures, and Improvements, or to perform Site Restoration, as required pursuant to Section 6.I.1 of this Agreement, the City will have, and is hereby granted the right, at its option, to: (a) demolish and/or remove any of the partially completed Structures and Improvements from the Development Property; (b) perform Site Restoration of the Development Property; and/or (c) cause the Structures or Improvements on the Development Property to be completed in accordance with the plans submitted. Developer must fully reimburse the City for all costs and expenses, including reasonable legal and administrative costs, actually incurred by the City for such work, with the responsibility for reimbursement being determined based on whether the work was the responsibility of Developer. If Developer does not so fully reimburse the City, the City will have the right to draw from the Guarantee and the Maintenance Guarantee, as described in and provided pursuant to Section 12 of this Agreement, an amount of money sufficient to defray the entire cost of the work actually incurred by the City, including reasonable legal fees and administrative expenses. If Developer does not so fully reimburse the City, and the Guarantee and Maintenance Guarantee have no funds remaining in them or are otherwise unavailable to finance such work, then the City will have the right to place a lien on the Development Property for all such costs and expenses in the manner provided by law. The rights and remedies provided in this Section 6.1.2 are in addition to, and not in limitation of, any other rights and remedies otherwise available to the City in this Agreement, at law, and/or in equity.
- J. <u>Damage to Public Property</u>. Developer must maintain the Development Property and all streets, sidewalks, and other public property in and adjacent to the Development Property in a good and clean condition at all times during the development of the Development Property and construction of the Development. Further, Developer must: (1) promptly clean all mud, dirt, or debris deposited on any street, sidewalk, or other public property in or adjacent to the Development Property by Developer or any agent of or contractor hired by, or on behalf of, Developer; and (2) repair all damage caused by the activities of Developer or any agent of or contractor hired by, or on behalf of, Developer.

K. [RESERVED].

- L. Exterior Lighting. All exterior lighting on the Development Property must comply at all times with the lighting requirements in the City Code and conform to the photometric plan that will be required to be submitted with the building permit application for the Mixed-Use Building.
- **M.** <u>As-Built Plans</u>. After completion of construction of any new Structure or Improvement, Developer must submit to the City Director of Community and Economic

{00131255.8}

Exhibit A Page 31 of 81

Development: (1) final electronic "as-built" plans related to drainage, grading, storm sewer, sanitary sewer and water mains, and associated Structures; and (2) other final construction documents (in electronic format) as required and approved by the Director of Public Works and Engineering and the City Director of Community and Economic Development. The as-built plans must indicate, without limitation, the amount, in square feet, of impervious surface area on the Development Property. A licensed Professional Engineer ("PE") and Professional Land Surveyor ("PLS") registered in the State of Illinois must stamp the as-built site construction plans. The PE and/or PLS must stamp and sign the final engineering pages of the site construction plans, and the PLS must stamp and sign the final site survey.

SECTION 7. GOVERNING DOCUMENTS. The Development Property will be governed by the following instruments that will bind the Development Property, or designated portions thereof, and Developer as well as all successor owners of the Development Property, or designated portions thereof, and shall run with the land.

- A. <u>Declaration of Easements, Covenants, Conditions, and Restrictions.</u> Concurrent with the Title Acquisition Date, Developer must record in the Office of the Clerk of Cook County the Declaration of Easements, Covenants, Conditions, and Restrictions for the Development against title to the Development Property to clearly define the rights and responsibilities of the owners and occupants of the various parcels that comprise the Development Property and all of their respective successors and assigns, with regard to operation and maintenance of the Development.
- **B.** Public Parking Leaseback Agreement. On July 31, 2023, the Parties entered into an agreement for the leaseback of the Public Parking Spaces to be constructed within the Mixed-Use Building to the City ("Leaseback Agreement"). The Leaseback Agreement is intended satisfy the real property tax exemption requirements of Section 15-185(a) of the Illinois Property Tax Code (35 ILCS 200/15-185(a)) for leaseback of public property. The Parties will record a notice of lease against the Development Property to provide all potential purchasers of the Development Property with notice of the terms of the Leaseback Agreement.

SECTION 8. DEDICATION OF PARK LANDS OR PAYMENTS OF FEES IN LIEU.

- A. <u>Park Lands Dedication Requirement</u>. Pursuant to the requirements of Chapter 4 of the Subdivision Regulations ("*Land Dedication Regulations*") and based on the projected resident population of the Development, Developer is required to either (1) dedicate 1.23 acres of land to the Des Plaines Park District ("*Park District*") for park purposes; or (2) pay a fee-in-lieu of dedication in the amount of \$289,023.36. Developer has opted to pay the fee-in-lieu subject to the application of the credits listed below.
- B. <u>Consideration of Adjusted Fee-in-Lieu of Park Lands Dedication</u>. The Developer is entitled to seek credits for private open space or recreation areas, which may be approved by the City Council only by resolution duly adopted and a based on a recommendation of the Park District as part of the Subsequent Consideration Approvals.
- C. <u>Payment of Fee-In-Lieu</u>. Any approved fee-in-lieu of land contributions to the City of Des Plaines are held in trust for the Park District. The fees required pursuant to this Section 8 are calculated on a per unit basis and must be paid in full prior to the issuance of any building permit for the Development on the Property. Developer acknowledges that the payment of fees in lieu imposed by the Land Dedication Regulations are reasonable and that Developer hereby holds harmless and releases the City and the Park District from any claim or other action

Developer may have against either or both the City or the Park District as a result of the Land Dedication Regulations and the fees paid thereunder for distribution to the Park District by the City.

SECTION 9. [RESERVED].

SECTION 10. [RESERVED].

SECTION 11. PAYMENT OF CITY FEES AND COSTS. In addition to all other costs, payments, fees, charges, contributions, or dedications required by this Agreement or by the Requirements of Law, and in addition to all other agreements between Developer and the City concerning the Development, Developer must pay to the City the following fees and costs, except as provided in this Section 11:

- **A.** All application, inspection, and permit fees, charges, and contributions, and all other fees, charges, and contributions pursuant to the Requirements of Law or otherwise due as a result of the Development, including all permit fees set forth in Section 10-13-3 of the City Code for the construction of the Mixed-Use Building and reimbursement of the City for any third-party costs incurred by the City in the review, approval, and inspection of the Development.
- **B.** All reasonable third-party legal, engineering, and other consulting or administrative fees, costs, and expenses actually incurred in connection with: (1) the development of the Development Property, including, without limitation, the preparation, review, and processing of plans, ordinances, resolutions, and other approvals therefor; and (2) the negotiation, preparation, consideration, and review of this Agreement and all exhibits and associated documents, including any amendments of this Agreement.

SECTION 12. PERFORMANCE SECURITY.

- A. <u>General Requirements</u>. As security to the City for the performance by Developer of its obligations pursuant to and in accordance with this Agreement, each Developer will provide to the City performance and payment security ("*Guarantee*") in the form of one or more letters of credit ("*Letter of Credit*") in an amount equaling 125% of the final Engineer's Estimate of Probable Costs (EOPC) provided by Developer for the Public Improvements. This amount must be included with the City's approval of Final Plat of Subdivision. The Letter of Credit must be in form and substance substantially conforming in all material respects with **Exhibit E** to this Agreement and satisfactory to the City Attorney. Specifically, and without limitation of the foregoing, the Letter of Credit must allow the City to draw from the Letter of Credit in the event that Developer does not fully reimburse the City for any costs and expenses incurred by the City for work performed on the Development Property pursuant to Section 6.I.2 of this Agreement. The Letter of Credit must be provided to the City prior to the issuance of any permits for the Development and must be maintained at all times until all Improvements have been approved for the Development, and, as appropriate, accepted.
- **B.** <u>Use of Guarantee Funds.</u> If Developer fails or refuses to remove any partially completed buildings, Structures, and Improvements, or to perform Site Restoration, as required pursuant to Section 6.I.1 of this Agreement, and such failure or refusal is an Event of Default with respect to Developer, then the City in its reasonable discretion may draw on and retain all or any of the funds remaining in the applicable Guarantee of the defaulting Developer which secure such completion or correction and are necessary to remedy such failure or refusal. The City thereafter will have the right, subject to an additional 30 days' notice and opportunity for cure (provided,

{00131255.8}

Exhibit A Page 33 of 81

however, if such remedy cannot reasonably be completed within 30 days, then the defaulting Developer shall have such additional time to complete such remedy so long as the defaulting Developer commences such remedy promptly within such 30 days and thereafter diligently pursues same to completion), to cause such Improvements to be completed or corrected, and subject to the terms of the immediately preceding sentence, to reimburse itself from the proceeds of the Letter of Credit for all of its reasonable out-of-pocket costs and expenses, including reasonable legal fees and administrative expenses, incurred as a result of Developer's failure or refusal. If the funds remaining in the Letter of Credit are insufficient to repay fully the City for all costs and expenses, Developer must, upon demand of the City, therefor deposit with the City any additional funds as the City determines are necessary, within 30 days of a request therefor, to fully repay such costs and expenses.

- **C.** Reductions in Guarantee. The Developer may request in writing to both the Director of Public Works and Engineering and Director of Community and Economic Development a reduction in Guarantee based on completing various construction benchmarks in the installation of required Public Improvements, including but not limited to:
 - 1. Underground sanitary and storm sewer improvements;
 - 2. Paving and curb construction along Webford Avenue;
 - Light pole installation;
 - 4. Street tree installation; and
 - 5. Streetscape restoration along Graceland Avenue.

Processing of reductions will be conducted in 13.2.8.B of the Subdivision Regulations; provided, however, that Developer may only request two reductions of the Guarantee, to 50% and 100% respectively. City will reduce or release the Guarantee in a timely fashion upon the City's approval and, as appropriate, acceptance of the Public Improvements; provided, however, that the City will only be required to release that percentage of the Guarantee that equals the portion of the Public Improvements that have been approved and, as appropriate, accepted.

D. Maintenance Guarantee. Immediately after any approval and, where appropriate, acceptance, by the City of the Public Improvements pursuant to this Agreement, Developer must post a new guarantee in the amount of 10% of the actual total cost of the Public Improvements caused to be constructed or installed by Developer on the Development Property provided as (i) all cash or (ii) a combination of cash and a letter of credit (with at least 10% cash), as security for the Developer's maintenance of such Improvements (each, a "Maintenance Guarantee"). The Maintenance Guarantee will be held by the City in escrow until the date that is 18 months after the approval of the Public Improvement and where appropriate, acceptance by the City of the Public Improvement, secured by the Maintenance Guarantee pursuant to this Agreement. If the City is required to draw on either Maintenance Guarantee by reason of the Developer's failure to fulfill its maintenance obligations under this Section 12, then the Developer must within 10 days thereafter cause their Maintenance Guarantee to be increased to its full original amount.

SECTION 13. LIABILITY AND INDEMNITY OF CITY.

A. <u>City Review.</u> Developer acknowledges and agrees that the City is not, and will not be, in any way liable for any damages or injuries that may be sustained as the result of the City's

{00131255.8}

Exhibit A Page 34 of 81

review and approval of any plans for the Development or the Improvements, or the issuance of any approvals, permits, certificates, or acceptances, for the development or use of the Development or the Improvements, and that the City's review and approval of any such plans and the Improvements and issuance of any such approvals, permits, certificates, or acceptances does not, and will not, in any way, be deemed to insure Developer or any of their successors, assigns, tenants and licensees, or any third party, against damage or injury of any kind at any time.

- **B.** <u>City Procedure</u>. Developer acknowledges and agrees that all notices, meetings, and hearings have been properly given and held by the City with respect to the approval of this Agreement and of the Development Approvals, and Developer agrees not to challenge such approvals on the grounds of any procedural infirmity or of any denial of any procedural right.
- **C.** <u>Indemnity.</u> Developer agrees to, and does hereby, hold harmless, indemnify, and, at the election of the City defend with counsel of the City's choice, the City and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of those parties in connection with: (i) the City's review and approval of any plans for the Development or the Improvements; (ii) the issuance of any approval, permit, certificate, or acceptance for the Development or the Improvements; and (iii) the development, construction, maintenance, or use of any portion of the Development or the Improvements (collectively the "*Indemnified Claims*"); provided, however, that this indemnity does not, and will not, apply to willful misconduct or gross negligence on the part of the City.

<u>SECTION 14.</u> <u>NATURE, SURVIVAL AND TRANSFER OF OBLIGATIONS.</u>

- **A.** <u>Binding Effect</u>. The terms of this Agreement bind and inure to the benefit of the Parties and their agents, successors, and assigns. All obligations assumed by Developer under this Agreement are and will be binding upon Developer personally, upon any and all of their heirs, successors, and assigns, and upon any and all of the respective successor legal or beneficial owners of all or any portion of the Development Property.
- **B.** <u>Successors and Transferees</u>. To assure that all grantees, successors, assigns, and transferees of Developer, and all successor owners of all or any portion of the Development Property have notice of this Agreement and the obligations created by it, Developer must, from and after the Effective Date:
- 1. Deposit with the City Clerk, concurrent with the City's approval of this Agreement, any consents or other documents necessary to authorize the City to record this Agreement on title to the Development Property in the office of the Cook County Clerk's Recording Division per Section 19.0;
- 2. Notify the City in writing at least 30 days prior to any date on which Developer transfers (as that term is defined in Section 14.C of this Agreement) a legal or beneficial interest in any portion of the Development Property to a third party with the exception of leases to residential or retail tenants of the Development;
- 3. Incorporate this Agreement by reference into any and all real estate sales contracts for transfers, as that term is defined in Section 14.C of this Agreement, entered into for the sale of all or any portion of the Development Property; and

{00131255.8}

Exhibit A Page 35 of 81

- Except as provided in Section 14.C of this Agreement, require, prior to the transfer of all or any portion of the Development Property, or any legal or equitable interest therein, to any third party, the transferee of said portion or interest in the Development Property, must: (a) obtain approval by the City Manager of an enforceable written agreement, in substantially the form of Exhibit F to this Agreement, agreeing to be bound by the provisions of this Agreement ("Transferee Assumption Agreement"); (b) execute the Transferee Assumption Agreement; and (c) provide the City, upon request, with such reasonable assurance of the financial ability of the transferee to meet those obligations as the City may require. The City agrees that upon a successor becoming bound to the obligation created in the manner provided in this Agreement, and providing the financial assurances required pursuant to this Agreement, and subsequent to discretionary approval of the City Manager, the liability of Developer will be released to the extent of the transferee's assumption of the liability. The failure of Developer to provide the City with a copy of a Transferee Assumption Agreement fully executed by the transferee and, if requested by the City, with the transferee's proposed assurances of financial capability before completing any transfer, will result in Developer remaining fully liable for all of its obligations under this Agreement but will not relieve the transferee of its liability for all such obligations as a successor to Developer, as the case may be.
- **C.** <u>Transfer Defined.</u> For purposes of this Agreement, the term "transfer" includes, without limitation, any assignment, sale, transfer to a receiver or to a trustee in bankruptcy, transfer in trust, or other disposition of the Development Property, or any beneficial interest in the Development Property, in whole or in part, by voluntary or involuntary sale, foreclosure, merger, sale and leaseback, consolidation, or otherwise; provided, however, that a lease of a residential or retail tenant space within the Development does not constitute a "transfer" hereunder.
- **D.** Mortgagees of Property. This Agreement is and will be binding on, and run to the benefit of, all mortgagees of the Development Property or other secured parties automatically upon such mortgagee assuming title to the Development Property, in whole or in part, by a foreclosure or a deed in lieu of foreclosure without the necessity of entering into a Transferee Assumption Agreement. Until such time, however, a mortgagee or other secured party will have no personal liability hereunder.

SECTION 15. TERM.

- A. <u>Term.</u> The provisions of this Agreement, unless terminated pursuant to the terms of this Agreement, run with and bind the Development Property and inure to the benefit of, be enforceable by, and obligate the Parties, and any of their respective, grantees, successors, assigns, and transferees, including all successor legal or beneficial owners of all or any portion of the Development Property from the date this Agreement is recorded and until the Structures and Improvements are approved by the City, and the Public Improvements, as required by this Agreement and the Subdivision Regulations, are accepted by the City. Following such approval and acceptance, the City agrees, upon written request of Developer, to execute appropriate and recordable evidence of the termination of this Agreement. Notwithstanding anything to the contrary in this Section 15, Developer' indemnity and defense obligations as set forth in Section 13 of this Agreement will survive the termination of this Agreement. Approval or acceptance pursuant to this Section 15 will not constitute a waiver of any rights or claims that the City has, before or after approval and acceptance, with respect to any breach of this Agreement by Developer or any right of indemnification of the City by Developer.
- **B.** Contingency. In the event that the Title Acquisition Date does not occur on or prior to October 31, 2023, and subject to Uncontrollable Circumstances or as mutually agreed to by

{00131255.8}

Exhibit A Page 36 of 81

Developer and the City, the City will have the right, in its sole and absolute discretion, to terminate this Agreement and all obligations of the City under this Agreement by delivery of notice to Developer. The City will take all legislative actions necessary to rescind, repeal, or otherwise terminate the Development Approvals prior to terminating this Agreement pursuant to this Section 15.B, and Developer covenants not to object to such legislative actions by the City. Developer agree that, notwithstanding the status of the Development Approvals, Developer' right to construct, maintain, and operate the Development on the Development Property will terminate upon the termination of this Agreement pursuant to this Section 15.B.

SECTION 16. EVENTS OF DEFAULT.

- **A.** <u>Developer Events of Default</u>. The following are Developer events of default (each an "*Event of Default*") under this Agreement:
- 1. If any representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by Developer in writing and delivered to the City pursuant to or in connection with this Agreement, proves to be untrue or incorrect in any material respect as of the date made.
- 2. Default by Developer for a period of 15 days after written notice thereof in the performance or breach of any covenant contained in this Agreement concerning the existence, structure, or financial condition of Developer; provided, however, that such default or breach will not constitute an Event of Default if such default cannot be cured within said 15 days and Developer, within said 15 days, initiates and diligently pursues appropriate measures to remedy the default and remedies such default within a reasonable time.
- 3. Default by Developer for a period of 15 days after written notice thereof from the City in the performance or breach of any covenant, warranty or obligation contained in this Agreement; provided, however, that such default will not constitute an Event of Default if such default cannot be cured within said 15 days and Developer, within said 15 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within a reasonable time.
- 4. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days.
- 5. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer or of any substantial part of the Development Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.

- 6. Developer fails to comply with the Requirements of Law in relation to the construction and maintenance of the Improvements and Structures contemplated by this Agreement.
- 7. Developer abandons the Development. Abandonment will be deemed to have occurred when work stops on the Development for more than 90 consecutive days for any reason other than Uncontrollable Circumstances, unless otherwise permitted by this Agreement.
- **B.** Events of Default by the City. The following are City Events of Default under this Agreement:
- 1. If any material representation made by the City in this Agreement, or in any certificate, notice, demand or request made by the City in writing and delivered to Developer pursuant to or in connection with any of said documents, proves to be untrue or incorrect in any material respect as of the date made.
- 2. Subject to Uncontrollable Circumstances, default by the City for a period of 30 days after written notice thereof from Developer in the performance or breach of any covenant contained in this Agreement; provided, however, that such default will not constitute an Event of Default if such default cannot be cured within said 30 days and the City, within said 30 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 90 days after such notice.

<u>SECTION 17.</u> <u>REMEDIES FOR DEFAULT AND ENFORCEMENT.</u>

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

- 1. Except as otherwise provided in this Agreement and subject to the provisions hereinafter set forth, the non-defaulting Party may institute such proceedings in law or in equity, by suit, action, mandamus, or any other proceeding, as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement.
- 2. Pursuant to Section 6.I of this Agreement, the City may, without prejudice to any other rights and remedies available to the City, require: (a) the demolition and removal of any partially constructed or partially completed buildings, Structures, or Improvements from the defaulting Developer's Property; and (b) the performance of Site Restoration. Concurrent with the City's exercise of its rights under Section 6.I, the Corporate Authorities will have the right, but not the obligation, to terminate the entitlements set forth in the Development Approvals and this Agreement, without protest or objection by Developer.
- 3. In case the City has proceeded to enforce its rights under this Agreement and such proceedings have been discontinued or abandoned for any reason, then, and in every such case, Developer and the City will be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the City will continue as though no such proceedings had been taken.
- **B.** <u>Limitation.</u> Notwithstanding anything to the contrary contained in this Agreement, including the provisions of this Section 17, Developer agree that neither will seek, and neither have the right to seek, to recover a judgment for monetary damages against the City or any elected or appointed officials, officers, employees, agents, representatives, engineers, or

attorneys of the City, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

- **C.** Repeal of Development Approvals. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the City will have the absolute right to repeal and revoke the Development Approvals if a Developer Event of Default occurs under this Agreement.
- **D.** Prevailing Party. In the event of a judicial proceeding brought by one Party against the other Party, the prevailing Party in the judicial proceeding will be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with the judicial proceeding.

SECTION 18. WARRANTIES AND REPRESENTATIONS.

- **A. By the City.** The City represents, warrants and agrees as the basis for the undertakings on its part contained in this Agreement that:
- 1. The City is a home rule municipal corporation duly organized and validly existing under the law of the State of Illinois and has all requisite corporate power and authority to enter into this Agreement;
- 2. The execution, delivery and the performance of this Agreement and the consummation by the City of the transactions provided for herein and the compliance with the provisions of this Agreement: (i) have been duly authorized by all necessary corporate action on the part of the City; (ii) require no other consents, approvals or authorizations on the part of the City in connection with the City's execution and delivery of this Agreement; and (iii) do not, by lapse of time, giving of notice or otherwise, result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the City is subject; and
- 3. To the best of the City's knowledge, there are no proceedings pending or threatened against or affecting the City or the Development Property in any court or before any governmental authority that involves the possibility of materially or adversely affecting the ability of the City to perform its obligations under this Agreement.
- **B.** By Developer. Developer, and the person executing this Agreement on behalf of Developer, represent, warrant, and covenant, as of the Effective Date of this Agreement, that:
- 1. Developer is an Illinois limited liability company duly organized, validly existing, and qualified to do business in Illinois;
- 2. Developer has the right, power, and authority to enter into, execute, deliver and perform this Agreement, and Developer is in compliance with all Requirements of Law, the failure to comply with which could affect the ability of Developer to perform its obligations under this Agreement;
- 3. The execution, delivery and performance by Developer of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate its organizational documents, as amended and supplemented, any of the applicable Requirements of Law, or constitute a breach of or default under, or require any consent under, any agreement, instrument, or document to which Developer is now a party or by which Developer is now or may

become bound including any mortgages, secured loans, or instruments granting another party a superior interest the Development Property or the Development.

- 4. The applications, plans, materials, and other submissions Developer has provided to the City accurately and truthfully represent Developer's capabilities, resource, and intentions for the construction of the Development on the Development Property as of the Effective Date. Developer agrees and acknowledges that these submissions have served to induce the City to enter into this Agreement and that any material misrepresentation contained in Developer's submissions will constitute an uncurable Event of Default pursuant to Section 16 of this Agreement;
- 5. There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened, or affecting Developer which would impair its ability to perform under this Agreement;
- 6. Developer will apply for and will maintain all government permits, certificates, and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and to construct and complete its obligations as required by this Agreement;
- 7. Developer has sufficient financial and economic resources to implement and complete its obligations under this Agreement;
- 8. Developer has no knowledge of any liabilities, contingent or otherwise, of Developer which might have a material adverse effect upon its ability to perform its obligations under this Agreement; and
- 9. All Improvements constructed or installed by or on behalf of Developer pursuant to this Agreement will be constructed and installed in accordance with high standards of professional practice, care, skill, and diligence practiced by recognized firms or licensed and accredited professionals in performing services of a similar nature. This warranty is in addition to any other warranties expressed in this Agreement. Any work required by law or by this Agreement to be performed by licensed professionals will be performed by professionals licensed by the State of Illinois to practice in the applicable professional discipline.

SECTION 19. GENERAL PROVISIONS.

A. <u>Notices</u>. Any notice required to be given under this Agreement must be in writing and must be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by e-mail. E-mail notices will be deemed valid and received by the addressee when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices will be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 19.A, each party will have the right to change the

address or the addressee, or both, for all future notices to the other party, but no notice of a change of addressee or address will be effective until actually received.

If to the City: City of Des Plaines

1420 Miner Street Des Plaines, IL 60016 Attention: City Manager

Email: MBartholomew@desplaines.org

with a copy to: Elrod Friedman LLP

325 North LaSalle Street

Suite 450

Chicago, IL 60654

Attention: Peter M. Friedman, City Attorney Email: Peter.Friedman@ElrodFriedman.com

If to Developer: Mylo Residential Graceland Property LLC

2500 Weston Rd. Suite 311

Weston, FL 3331 Attention: Joe Taylor IIII

Email: jztaylor@compasspointdevelopment.com

with copies to: Compasspoint Development, LLC

202 S. Cook Street, Suite 210

Barrington, IL 60010 Attention: Joe Taylor IIII

Email: jztaylor@compasspointdevelopment.com

and Thompson Coburn LLP

55 East Monroe Street

37th Floor

Chicago, IL 60603

Attention: Bernard Citron

Email: bcitron@thompsoncoburn.com

and Merchants Capital Corp.

410 Monon Boulevard, 5th Floor

Carmel, Indiana 46032 Phone: 317-569-7420

Email: mcc-hud-asset-managers@merchantscapital.com

Attention: FHA Asset Management

with a copy to: John W. Hamilton

Dinsmore & Shohl, LLP One Indiana Square

Suite 1800

Indianapolis, Indiana 46204 Phone: 317-639-6151

Email: John.Hamilton@insmore.com

- **B.** <u>Time of the Essence</u>. Time is of the essence in the performance of this Agreement.
- **C.** Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement will be cumulative and will not be exclusive of any other such rights, remedies, and benefits allowed by law
- **D.** <u>Non-Waiver</u>. No waiver of any provision of this Agreement will be deemed to or constitute a waiver of any other provision of this Agreement (whether or not similar) nor will any waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.
- **E.** <u>Consents.</u> Unless otherwise provided in this Agreement, whenever the permission, authorization, approval, acknowledgement, or similar indication of assent of any Party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent must be in writing.
- **F.** Governing Law; Venue. This Agreement will be interpreted according to the internal laws, but not the conflicts of laws rules, of the State of Illinois. Exclusive jurisdiction with regard to the any actions or proceedings arising from, relating to, or in connection with this Agreement will be in the Circuit Court of Cook County, Illinois or, where applicable, in the federal court for the Northern District of Illinois. The Parties waive their respective right to transfer or change the venue of any litigation filed in the Circuit Court of Cook County, Illinois.
- **G.** <u>Severability</u>. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the City will have the right, in its sole and absolute discretion, to determine if (i) the remainder of the provisions of this Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated, or (ii) the entire Agreement shall be invalid, void, and unenforceable.
- **H.** <u>Entire Agreement.</u> This Agreement, the Development Approvals, and the Governing Documents constitute the entire agreement between the parties and supersedes any and all previous or contemporaneous oral or written agreements and negotiations between the parties with respect to the subject matter of this Agreement.
- I. Interpretation. This Agreement will be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Every provision of this Agreement will be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement. Any rule or construction that a document is to be construed against the drafting party will not be applicable to this Agreement.
- **J.** <u>Headings.</u> The table of contents, heading, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.
- K. <u>Exhibits</u>. Exhibits A through G attached to this Agreement are incorporated in and made a part of this Agreement. In the event of a conflict between any Exhibit and the text of this Agreement, the text of this Agreement will control.

L. Amendments and Modifications.

- 1. No amendment to this Agreement will be effective unless and until the amendment is in writing, properly approved in accordance with applicable procedures, and executed.
- 2. Amendments or modifications to the Development Approvals can be considered and acted on by the City without the same being deemed an amendment or modification to this Agreement provided that all applicable procedural requirements of the Zoning Ordinance and Subdivision Regulations and the provisions of this Agreement are satisfied. Amendments or modifications to the Development Approvals will be incorporated into this Agreement and/or the Exhibits attached to this Agreement, without further action by the Parties.
- M. Changes in Laws. Unless otherwise explicitly provided in this Agreement, any reference to any Requirements of Law will be deemed to include any modifications of, or amendments to the Requirements of Law as may, from time to time, hereinafter occur.
- **N.** <u>Third Party Beneficiary.</u> The provisions of this Agreement are and will be for the benefit of Developer and City only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement. The City will not be liable to any vendor or other third party for any agreements made by Developer, purportedly on behalf of the City, without the knowledge and approval of the Corporate Authorities.
- **O.** Recording. The City will record this Agreement against title to the Development Property, at the sole cost and expense of Developer, with the Cook County Clerk's Recording Division concurrent with the Title Acquisition Date.
- **P.** <u>Counterpart Execution</u>. This Agreement may be executed in several counterparts, each of which is deemed to be an original but all of which will constitute one and the same instrument.
- **Q.** <u>City Actions, Consents, and Approvals</u>. Any action, consent, or approval needed to be taken or given under this Agreement by the City may only be performed by the City Manager or their designee, to the extent provided for by law. If an action, consent, or approval is expressly delegated to another officer or official of the City, that officer or official may designate an appropriate person to act in their stead.
- **R.** <u>HUD Rider</u>. Notwithstanding anything contained herein to the contrary, in the event that the Department of Housing and Urban Development insures a mortgage loan for the construction of the Development, the terms and provisions of this Agreement are subject to the terms and provisions of the HUD Rider to Development Agreement attached hereto as **Exhibit G** and by reference incorporated herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK - SIGNATURE PAGE FOLLOWS]

City Council Review Version

written.	
ATTEST:	CITY OF DES PLAINES, an Illinois home rule municipal corporation
Jessica M. Mastalski City Clerk	By: By: Michael G. Bartholomew Its: City Manager
	MYLO RESIDENTIAL GRACELAND PROPERTY, LLC, an Illinois limited liability company
	By: MYLO RESIDENTIAL GRACELAND HOLDINGS LLC, a Florida limited liability company
	By: MYLO RESIDENTIAL GRACELAND MANAGER LLC, a Florida limited liability company
	By: Joseph Z. Taylor III
	Its: Manager

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the date first above

City Council Review Version

	<u>ACKNOWLEDGMEN</u>	NTS
STATE OF ILLINOIS)	00	
COUNTY OF COOK)	SS	
Bartholomew, the City Man		, 2023, by Michael G LANES, an Illinois home rule municipa aid municipal corporation.
		Signature of Notary
SEAL		

City Council Review Version

STATE OF)	
COUNTY OF)	
This instrument was acknowledged before me on, 2023, by Josep III, the Manager of MYLO RESIDENTIAL GRACELAND MANAGER, LLC, a Flo liability company, as manager of MYLO RESIDENTIAL GRACELAND HOLDING Florida limited liability company, as manager of MYLO RESIDENTIAL GRACELAND FROPERTY, LLC, an Illinois limited liability company.	rida limited iS, LLC , a
Signature of Notary	

SEAL

{00131255.8} 35

Exhibit A Page 46 of 81

LIST OF EXHIBITS

Exhibit A Legal Description of Development Property and Component

Parcels

Exhibit B Development Plan (List of Component Plans)

Exhibit C Public Improvements

Exhibit D Development Permitting and Construction Schedule

Exhibit E Form Letter of Credit

Exhibit F Transferee Assumption Agreement

Exhibit G HUD Rider to Development Agreement

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

J&T PARCELS

PARCEL 1: LOTS 35, 36 AND 37 IN BLOCK 1 IN DES PLAINES MANOR, TRACT NO. 1, A IN BLOCK 1 IN DES PLAINES MANOR, TRACT NO. 1, A BLOCK 1 IN DES PLAINES MANOR, TRACT NO. 1, A IN DES PLAINES MANOR, TRACT NO. 1, A DES PLAINES MANOR, TRACT NO. 1, A , A SUBDIVISION OF PART OF SECTIONS 17 AND 20, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 14, 1911 AS DOCUMENT NO. 4793563, IN COOK COUNTY, ILLINOIS.

Consisting of 22,509.41 square feet

Known as 622 Graceland Avenue, Des Plaines, Illinois

P.I.N.09-17-306-036-0000

PARCEL 2: LOT 34 IN BLOCK 1 IN DES PLAINES MANOR, TRACT NO. 1, A SUBDIVISION OF IN BLOCK 1 IN DES PLAINES MANOR, TRACT NO. 1, A SUBDIVISION OF BLOCK 1 IN DES PLAINES MANOR, TRACT NO. 1, A SUBDIVISION OF IN DES PLAINES MANOR, TRACT NO. 1, A SUBDIVISION OF DES PLAINES MANOR, TRACT NO. 1, A SUBDIVISION OF PART OF SECTIONS 17 AND 20, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 14, 1911 AS DOCUMENT NO. 4793563, IN COOK COUNTY, ILLINOIS.

Consisting of 7,503.12 square feet

Known as 1368 Webford Avenue, Des Plaines, Illinois

P.I.N. 09-17-306-038-0000

CITY PARCEL (PARCEL 3)

THE SOUTHEASTERLY 40 FEET OF LOT 32 AND ALL OF LOT 33 IN BLOCK 1 IN DES PLAINES MANOR TRACT NO. 1, A SUBDIVISION OF PART OF SECTIONS 17 AND 20, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED JULY 14, 1911 AS DOCUMENT 4793563, IN COOK COUNTY, ILLINOIS.

Consisting of 13,499.99 square feet

Known as 1332 Webford Ave, Des Plaines, Illinois

P.I.N 09-17-306-040-0000

{00131255.8}

Exhibit A

EXHIBIT B

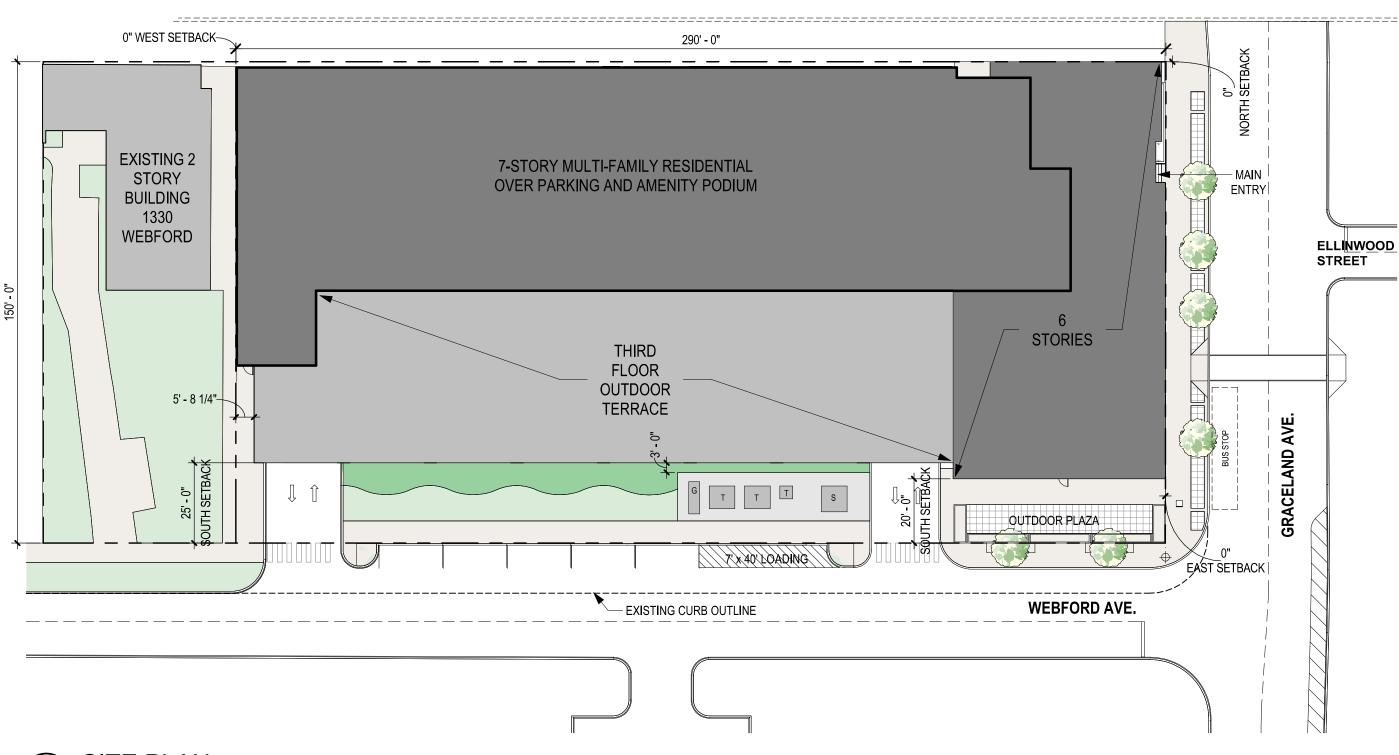
REPLACEMENT DEVELOPMENT PLAN (LIST OF COMPONENT PLANS)

Copies of the plans comprising the Development Plan will be available for review in the Office of the Des Plaines City Clerk. The Developer must submit and have approved the Development Engineering Plan and Final Plat of Subdivision by the City Council.

NOTE: Any modifications to the Plans listed below must be approved by the City's Director of Community and Economic Development or the City's Director of Public Works and Engineering and shall be automatically be considered incorporated into this Agreement without further action of the Corporate Authorities.

Development Site Plan and Elevations	Site Plan and Elevations prepared by OKW Architects, consisting of three sheets, labeled A.10, A.30, and A.5, with a latest revision date of [TO BE UPDATED PRIOR TO RECORDATION]
Development Floor Plans	Floor Plans prepared by OKW Architects, consisting of six sheets, labeled A100-A104 and A107, with a latest revision date of [TO BE UPDATED PRIOR TO RECORDATION]
Development Landscape Plan	 Landscape Plan Prepared by Kathryn Talty Landscape Architecture Consisting of four sheets, labeled L 1.0-2.1 With a latest revision date of [TO BE UPDATED PRIOR TO RECORDATION]
Development Engineering Plan	Development Engineering Plans for 622 Graceland Ave. Apartments [TO BE UPDATED PRIOR TO RECORDATION]
Plat of Subdivision	Tentative and Final Plat of Subdivision Graceland/Webford Subdivision to Consolidate Lots [TO BE UPDATED PRIOR TO RECORDATION]

METRA TRACKS



SITE PLAN

SCALE: 1" = 30'-0"



OKW ARCHITECTS 600 W. Jackson, Suite 250 Chicago, IL 60661





DES PLAINES MULTI-FAMILY

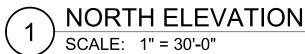
622 GRACELAND AVE.

08/24/2023 Project #: 21084

A.1

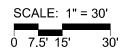








OKW ARCHITECTS 600 W. Jackson, Suite 250 Chicago, IL 60661



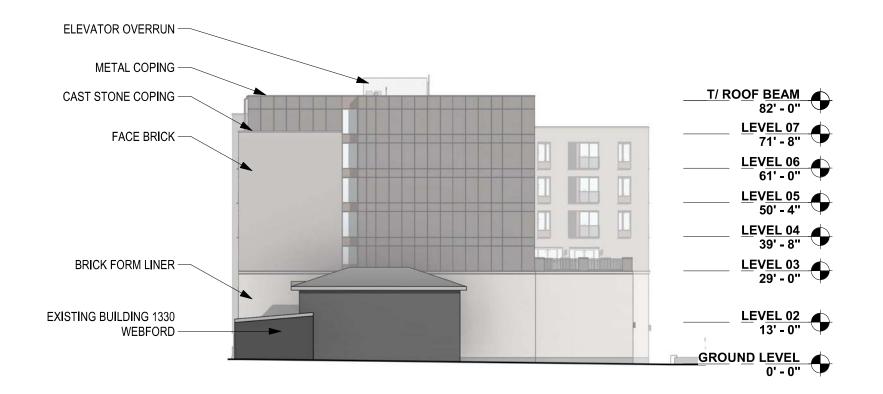


DES PLAINES MULTI-FAMILY

622 GRACELAND AVE.

08/24/2023 Project #: 21084

A.2

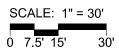








OKW ARCHITECTS 600 W. Jackson, Suite 250 Chicago, IL 60661



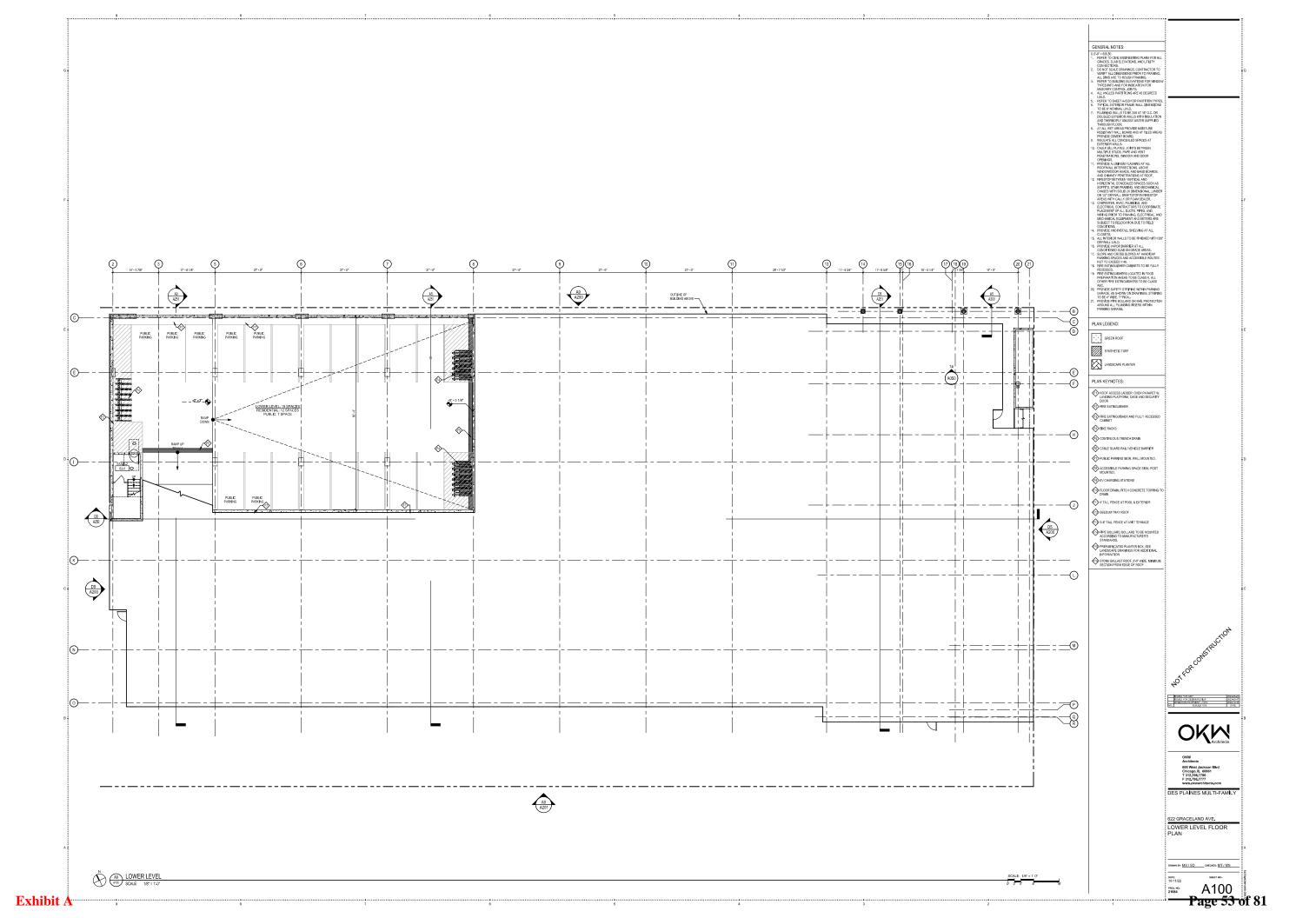


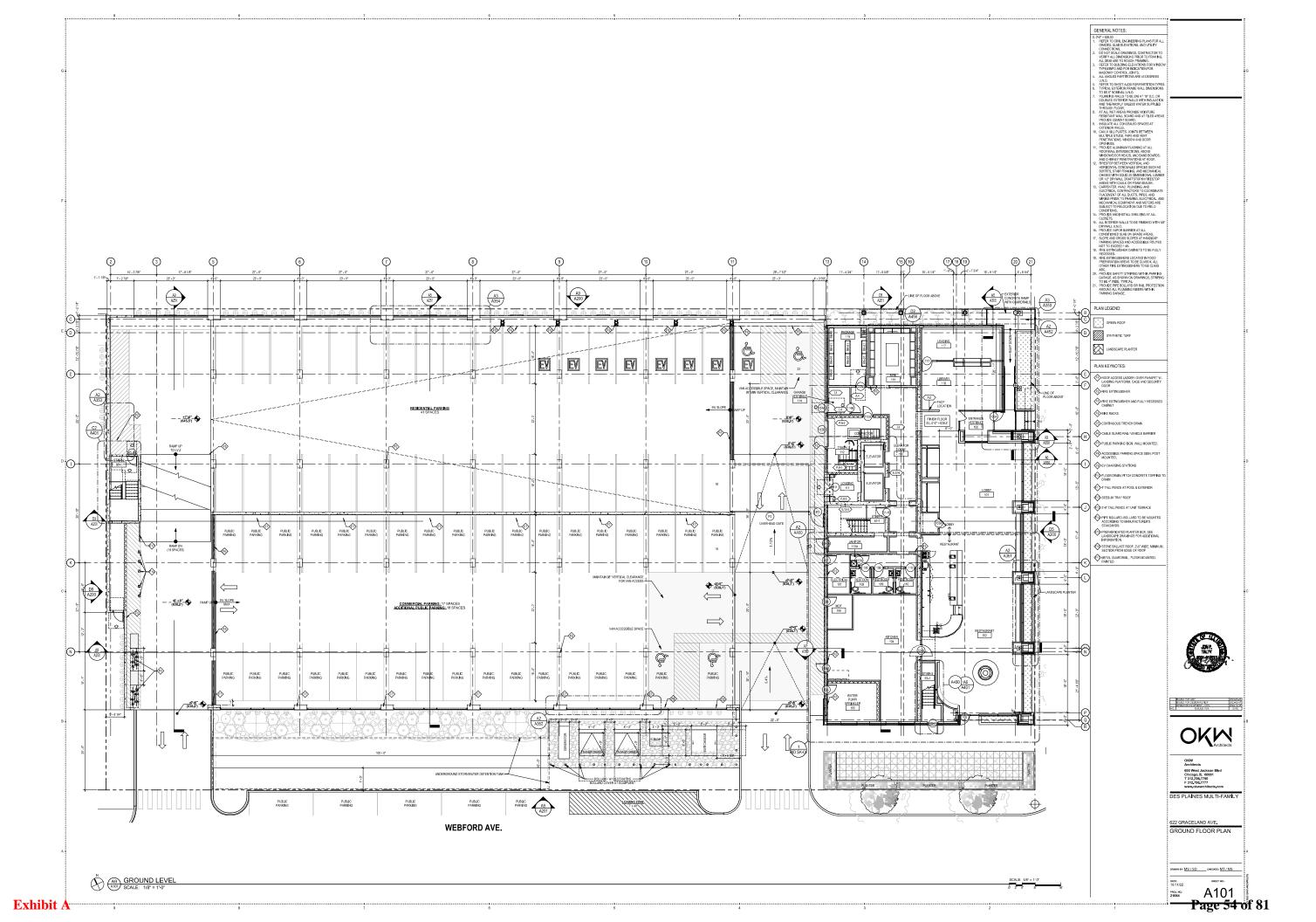
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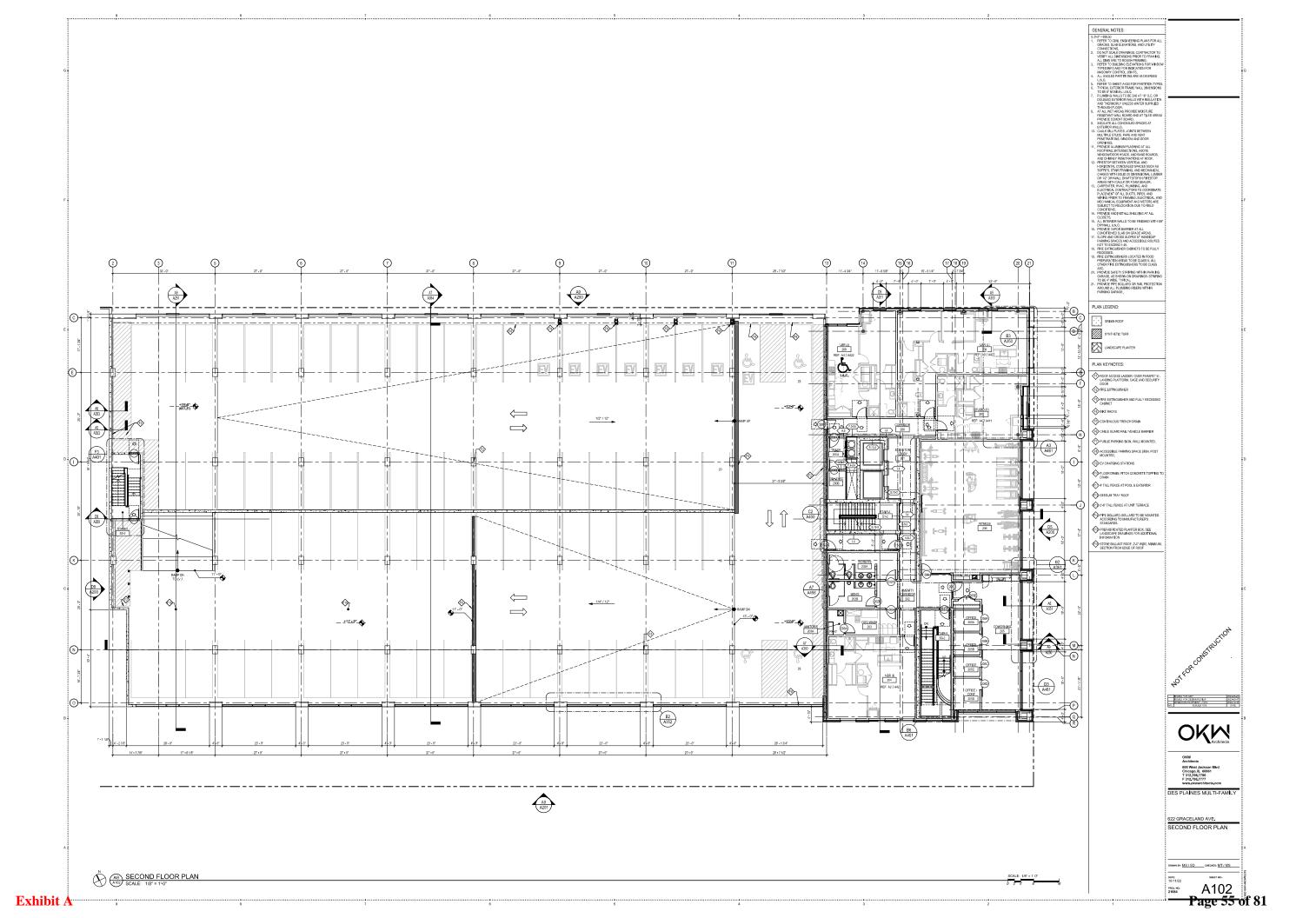
622 GRACELAND AVE.

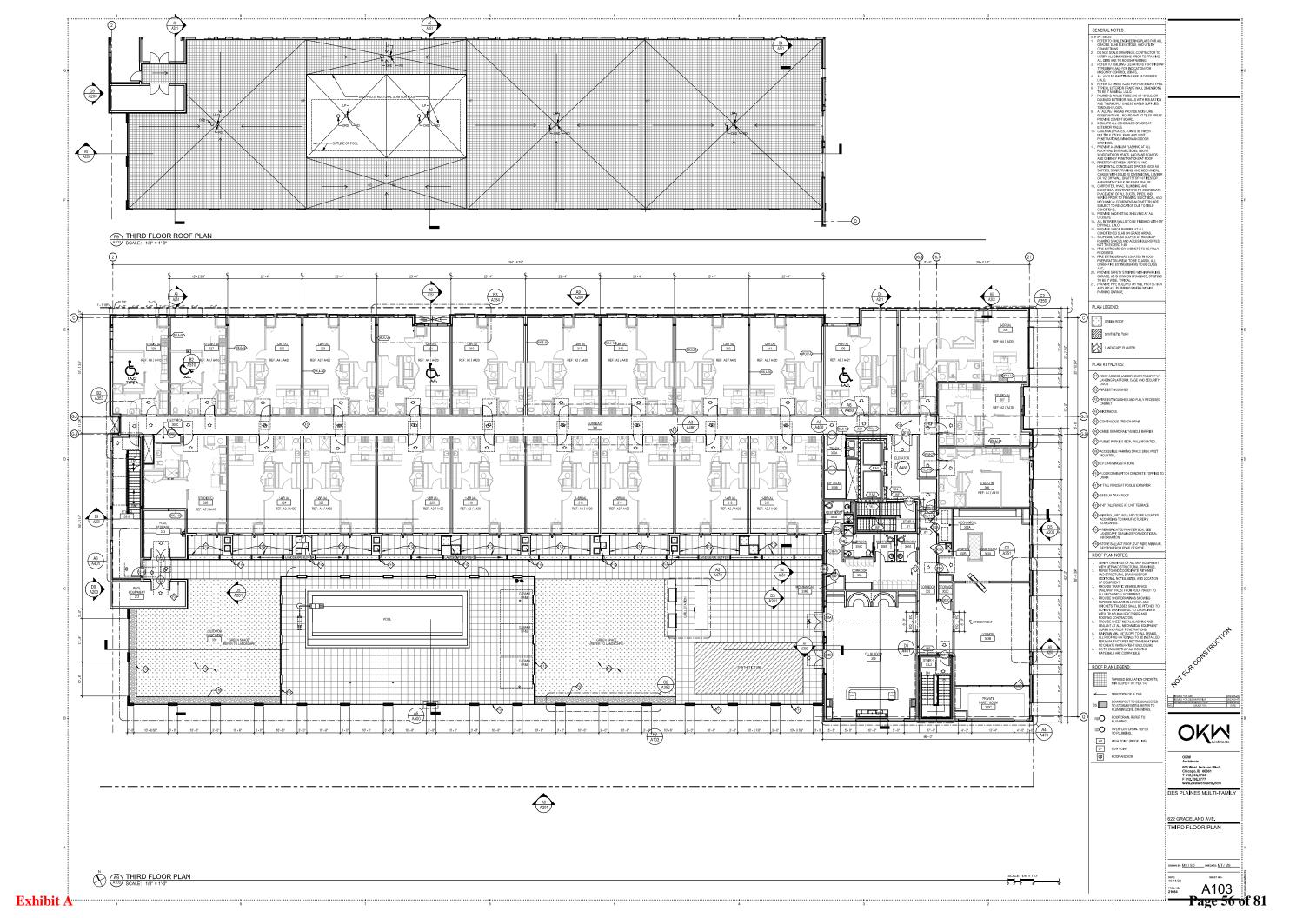
08/24/2023 Project #: 21084

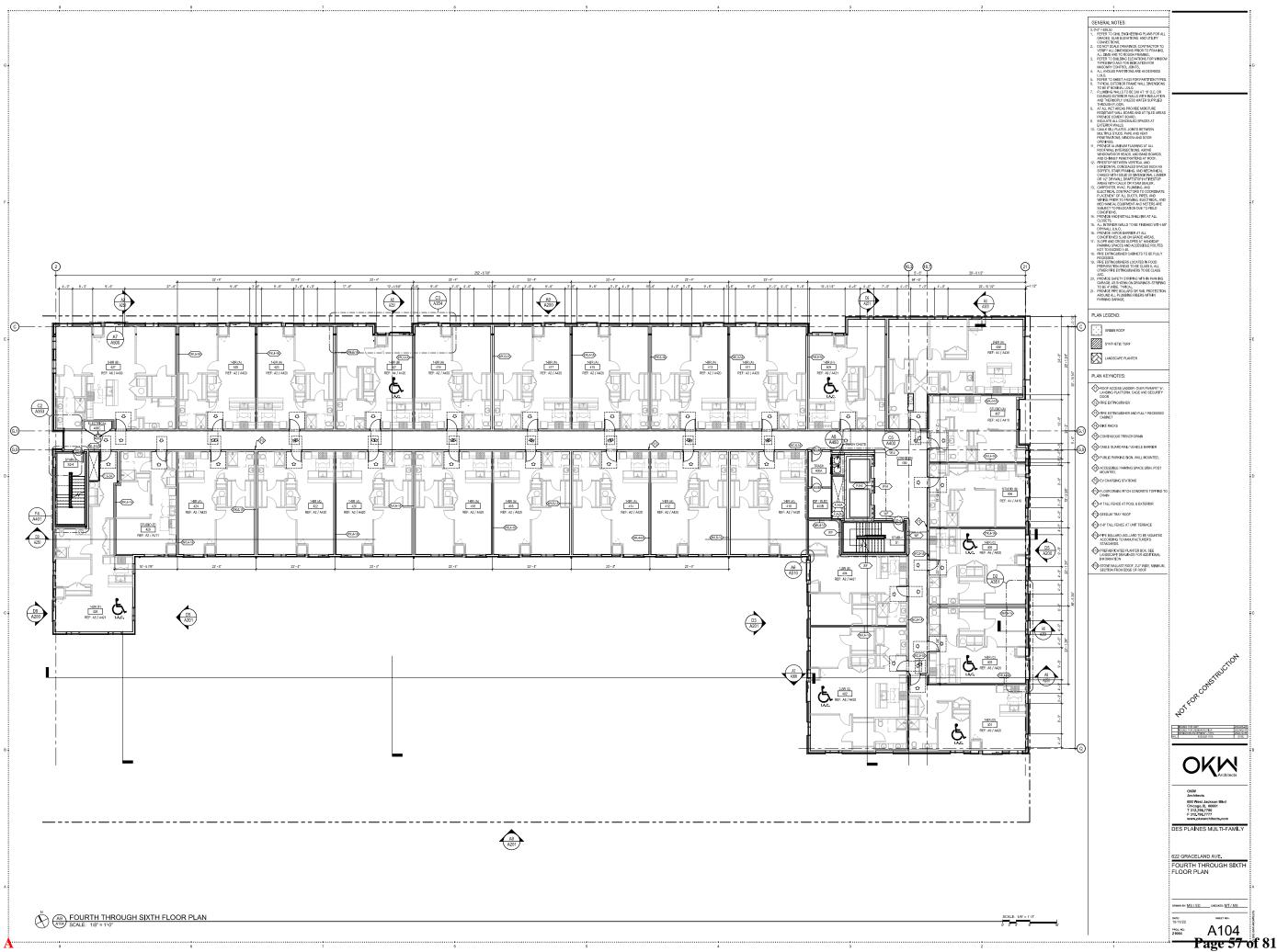
A.3











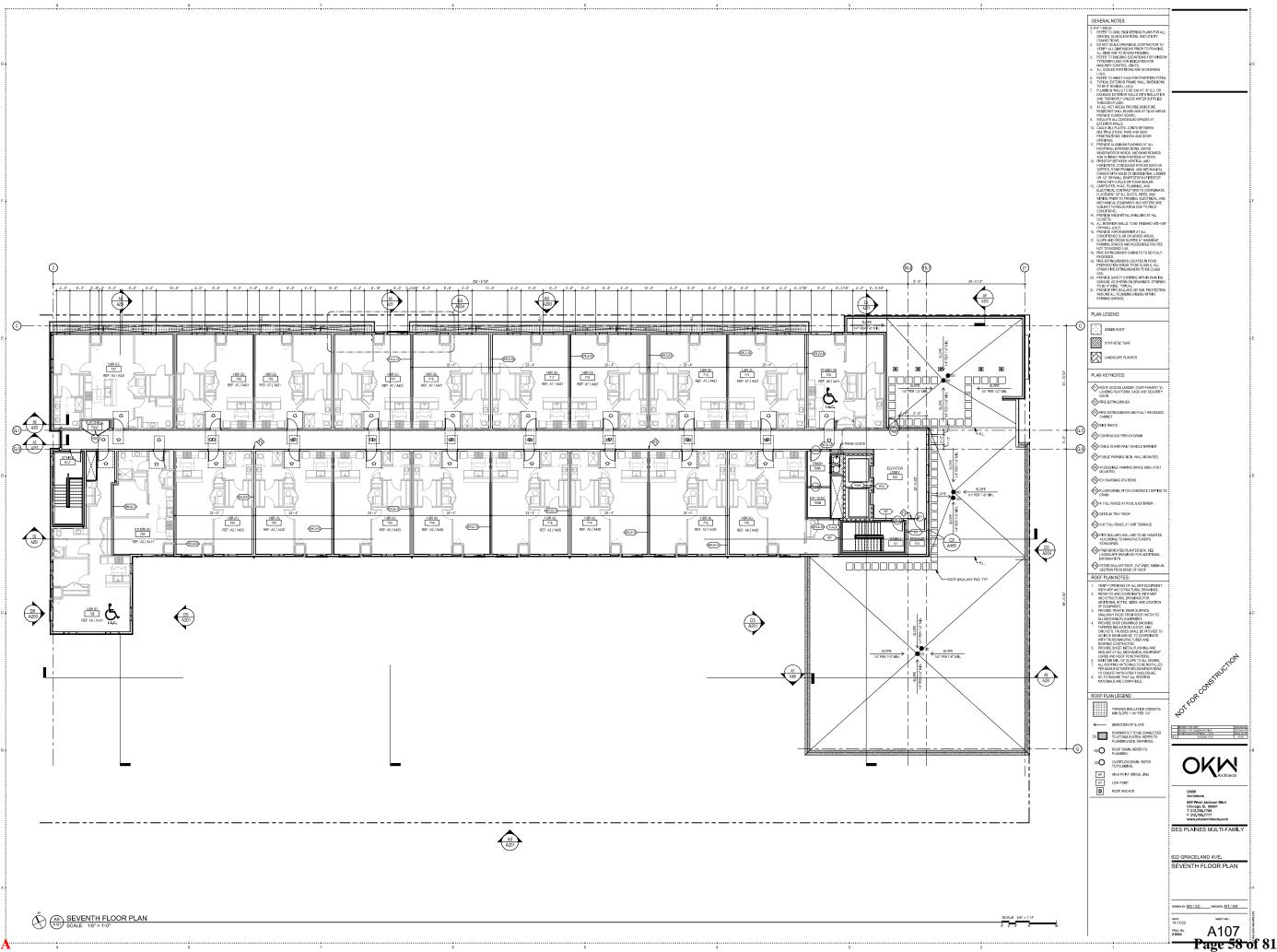
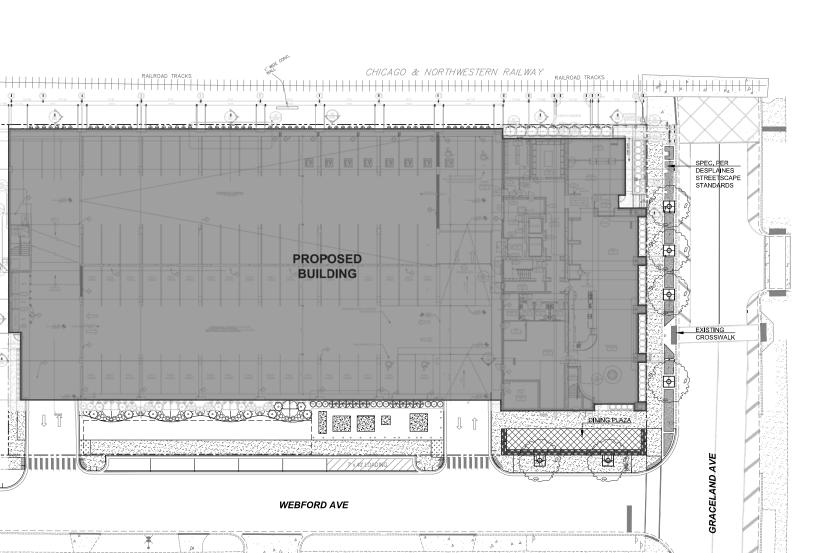


Exhibit A

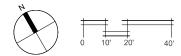
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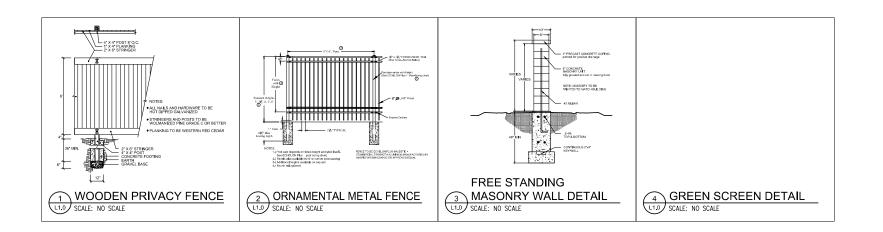
sheet no.



OVERALL LANDSCAPE KEY

SCALE: 1" = 20'-0"





LANDSCAPE REQUIREMENTS TABLE

PARKING AREAS

REQUIREMENT: 5' LANDSCAPE BUFFER BETWEEN PARKING AREA AND PUBLIC SIDEWALK

ROPOSED: PUBLIC WALK LOCATED AS A CARRIAGE WALK TO FRONT-LOADED
PARKING SPACES ADJACENT TO THE ROW 5' LANDSCAPE BUFFER

PARKING SPACES ADJACENT TO THE ROW. 5' LANDSCAPE BUFFER TO BE LOCATED ALONG THE PUBLIC SIDEWALK OPPOSITE OF STALLS.

NOTE: RELIEF REQUESTED FOR LOCATION OF BUFFER

REQUIREMENT: 1 TREE PER 40' OF PARKING AREA LENGTH PROPOSED: 1 TREE PER 40' OF PARKING AREA LENGTH REQUIREMENT: 1 SHRUB PER 3' OF PARKING AREA LENGTH PROPOSED: 1 SHRUB PER 3' OF PARKING AREA LENGTH

REQUIREMENT: LANDSCAPE AREA AROUND 35% OF FOUNDATION

POSED: LANDSCAPE AREA AROUND APPROXIMATELY 50% OF FOUNDATION

STREETSCAPE (GRACELAND AVENUE):

REQUIREMENT: 1 PARKWAY TREE PER 40-60'
PROPOSED: 1 PARKWAY TREE PER 40' MINIMUM

NOTE: CITY STREETSCAPE STANDARDS TO BE IMPLEMENTED

LOADING SCREENING:

REQUIREMENT: LOADING TO BE SCREENED WITH A SOLID WOOD OR MASONRY FENCE

6-8' TALL OR CONTINUOUS EVERGREEN HEDGE.

OSED: LOADING AREA TO BE DISCRETELY INTEGRATED INTO THE LANDSCAPE

AND FINISHED WITH PAVERS A SHADE TREE TO MATCH OTHER

OUTDOOR AREAS ADJACENT TO BUILDING.

NOTE: RELIEF REQUESTED FOR SCREENING METHOD

MECHANICAL EQUIPMENT SCREENING:

REQUIREMENT: MECHANICAL EQUIPMENT TO BE SCREENED WITH

MASONRY WALL ON ALL SIDES

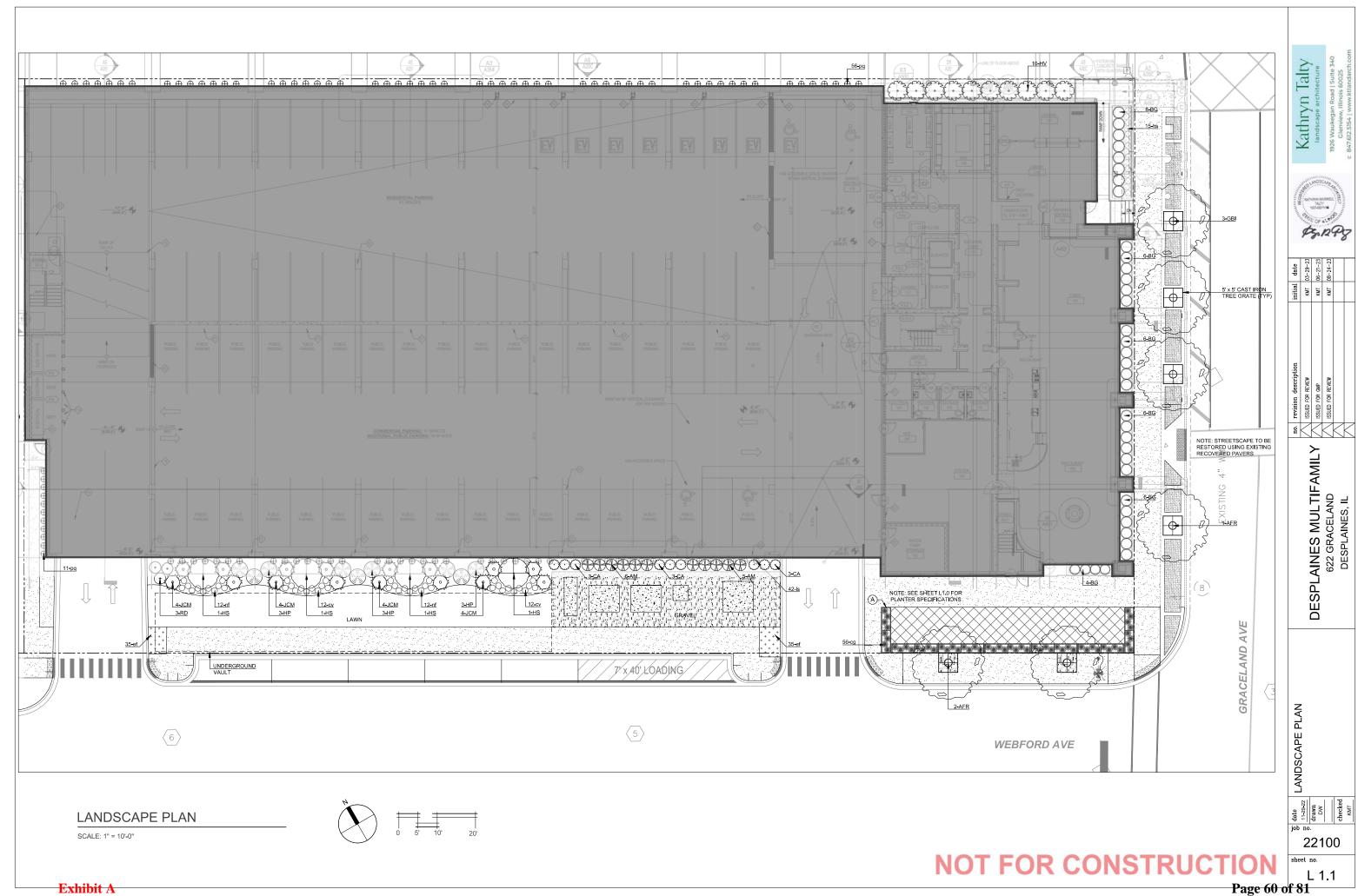
LANDSCAPING TO BE INSTALLED IN AREA ADJACENT TO EQUIPMENT AND THE STREET

NOTE: RELIEF REQUESTED

SYNTHETIC TURF - ROOFTOP

SYMBOL	QTY	SIZE	MANU	MODEL #	MATERIAL	COLO
PERGOLA	1	SEE PLAN FOR DIM. (9' CLEAR.)	TBD.	TBD.	TBD.	
PLANTERS						
A	8	72" L x 30" W x 30" H	TOURNESOL	WCR-723030	GFRC	PEAR
В	10	120" L x 18" W x 36" H	TOURNESOL	WR-1201836	FIBERGLASS	BRON
С	1	96" L x 18" W x 36" H	TOURNESOL	WR-961836	FIBERGLASS	BRON
D	8	24" L x 24" W x 24" H	TOURNESOL	WR-2400F	FIBERGLASS	BRON
E	8	36" L x 36" W x 30" H	TOURNESOL	WR-3600F	FIBERGLASS	BRON

			Master Plant List			
			Shade Trees			
Symbol	Quantity	Botanical Name	Common Name	Size	Origin	Notes
AFR	3	ACER X FREEMANII 'AUTUMN BLAZE'	AUTUMN BLAZE FREEMAN MAPLE	3" BB		MOIST
GBI	3	GINKGO BILOBA	GINKGO	3" BB		URBAN, MALE SPEC. C
			Evergreen Shrubs			
BG	36	BUXUS 'GREEN VELVET'	ROXWOOD	18° BB		T
JCM	16	JUNIPERUS CHINENSIS 'MINT JULIP'	MINT JULIP SPREADING JUNIPER	24° BB		
			Deciduous Shrubs			
AM	11	ARONIA MELANOCARPA 'IROQUOIS BEAUTY'	IROQUOIS BEAUTY BLACK CHOKEBERRY	24" BB	NATIVE	
CA	9	CLETHRA ALNIFOLIA 'HUMMINGBIRD'	HUMMINGBIRD CLETHRA	5 GAL		
HV	10	HAMMAMELIS VERNALIS	VERNAL WITCHHAZEL	48" BB	NATIVE	
HS	4	HIBISCUS SYRIACUS 'ARDENS'	DOUBLE LAVENDER ROSE OF SHARON	48" BB		DOUBLE LAVENDER
HP	9	HYDRANGEA PANICULATA 'TARDIVA'	TARDIVA HYDRANGEA	36" BB		
RD	3	ROSA 'DRIFT SWEET'	GROUNDCOVER ROSE	2 GAL		PINK
			Groundcover			
ef	70	EUONYMOUS FORTUNEI 'COLORATUS'	PURPLELEAF WINTERCREEPER	3" POTS		
			Perennials			
cv	24	COREOPSIS VERTICILLATA 'CRÉME BRULEE'	TICKSEED	1 GAL		18" YELLOW
hs	15	HEMEROCALLIS 'APRICOT SPARKLES'	APRICOT SPARKLES DAYLILY	1 GAL		18" PEACH
nf	24	NEPETA X FAASSENII	FAASSENS CATMINT	1 GAL		12" LAVENDER
			Grasses			
cg	56	CALAMAGROSTIS ACUTIFLORA 'KARL FOERSTER'	FEATHER REED GRASS	3 GAL		3'
			Vines			
ls	42	LONICERA SEMPERVIRENS 'MAJOR WHEELER'	HONEYSUCKLE VINE	2 GAL		6', RED
pq	67	PARTHENOCISSUS QUINQUEFOLIA	VIRGINIA CREEPER	2 GAL		25', SHADE



LANDSCAPE PLAN - 3RD FLOOR

SCALE: 1" = 10'-0"



GREEN ROOF KEY	
	LOW-DEPTH GREEN ROOF AREAS
	Roof areas that are intended to accommodate plant communities for passive viewing and storm water volume control. Use American Hydrotech "Extensive Garden Roof" system or equal.
	EXPANDED DEPTH GREEN ROOF AREAS Roof areas that are intended to accommodate larger scale plant communities for passive viewing, screening and storm water volume control. Use American Hydrotech "Intensive Garden Roof" system or equal.
* * * * * * * * * * * * * * * * * * *	ARTIFICIAL TURF Roof areas that are inlended to be furnished with artificial turf. See Sheet L1.0 for specifications.

3rd Floor Plant List						
			Deciduous Shrubs			
HB	8	HYDRANGEA PANICULATA 'ILVOBO'	BOBO HYDRANGEA	3 GAL		
VC	8	VIBURNUM CARLESII 'COMPACTUM'	DWARF KOREANSPICE VIBURNUM	36" BB		
Perennials						
pk 98 PEROVSKIA ATRIPLICIFOLIA RUSSIAN SAGE 1 GAL 36" PURPLE						
Grasses						
cg	100	CALAMAGROSTIS ACUTIFLORA 'KARL FOERSTER'	FEATHER REED GRASS	3 GAL	3"	

NOT FOR CONSTRUCTION

Kathryn Talty landscape architecture



	ю.	revision description	initial	initial date	
	C	ISSUED FOR REVIEW	KMT	KMT 03-29-23	
_	\leq	ISSUED FOR GMP	KMT	KMT 06-21-23	
	S	ISSUED FOR REVIEW	KMT	KMT 08-24-23	
	K				
	K				

DESPLAINES MULTIFAMILY 622 GRACELAND DESPLAINES, IL

LANDSCAPE PLAN - 3RD FLOOR GREEN ROOF ASSEMBLY DETAIL

sheet no.

BEFORE ANY EXCAVATION ON THE SITE, CALL TO LOCATE ANY EXISTING UTILITIES ON THE SITE. THE CONTRACTOR SHALL FAMILIARIZE HIM/HERSELF WITH THE LOCATIONS OF ALL BURIED UTILITIES IN THE AREAS OF WORK BEFORE STARTING OPERATIONS. THE CONTRACTOR SHALL BE LIABLE FOR THE COST OF REPAIRING OR REPLACING ANY BURIED CONDUITS. CABLES OR PIPING DAMAGED DURING THE INSTALLATION OF THIS WORK.

FOUR FOOT HIGH FENCING OR OTHER RIGID MATERIAL IS TO BE ERECTED AROUND THE DRIP-LINE OF ALL TREES TO BE SAVED.

PLANT QUANTITIES ON PLANT LIST INTENDED TO BE A GUIDE. ALL QUANTITIES SHALL BE CHECKED AND VERIFIED ON PLANTING PLAN. ANY DISCREPANCIES SHALL BE DISCUSSED WITH THE LANDSCAPE ARCHITECT.

ANY DEVIATIONS FROM OR MODIFICATIONS TO THIS PLAN SHALL BE APPROVED BY THE LANDSCAPE ARCHITECT PRIOR TO INSTALLATION.

CONTRACTOR TO NOTIFY LANDSCAPE ARCHITECT UPON DELIVERY OF PLANT MATERIAL TO THE SITE. LANDSCAPE ARCHITECT RESERVES THE RIGHT TO REJECT ANY PLANT MATERIAL THAT DOESN'T MEET STANDARDS OR SPECIFICATIONS OF THE PROJECT.

ALL PLANT MATERIAL TO BE INSTALLED PER THE PLANTING DETAILS PROVIDED ON THIS PLAN SET.

ALL BED EDGES TO BE WELL SHAPED, SPADE CUT, WITH LINES AND CURVES AS SHOWN ON THIS PLAN

9. ALL PLANTING BEDS TO BE PREPARED WITH PLANTING MIX: 50% TOPSOIL, 50% SOIL AMENDMENTS (3 PARTS PEATMOSS, 1 PART COMPOST, 1 PART SAND)

10. ALL PARKING LOT ISLANDS SHALL BE BACKFILLED WITH THE FOLLOWING: 2' OF BLENDED GARDEN SOIL MIX (60% TOPSOIL, 30% COMPOST, 10% SAND) OR 6" OF ONE STEP BY MIDWEST TRADING TOP DRESSED AND TILLED INTO 18" OF TOPSOIL.

11. ALL SPECIFIED LANDSCAPE MATERIAL INDICATED ON THE CONSTRUCTION DOCUMENTS WILL BE REQUIRED TO BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT AND MUST BE REPLACED SHOULD IT DIE OR BECOME DAMAGED

12. ALL PLANT MATERIAL SHALL HAVE A ONE YEAR GUARANTEE FROM SUBSTANTIAL COMPLETION AS DETERMINED BY THE LANDSCAPE ARCHITECT, AND SHALL BE REPLACED SHOULD IT DIE WITHIN THAT PERIOD

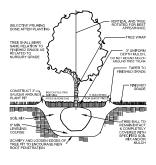
13. PROTECT STRUCTURES, SIDEWALKS, PAVEMENTS AND UTILITIES TO REMAIN FROM DAMAGE CAUSED BY SETTLEMENT, LATERAL MOVEMENT, UNDERMINING, WASHOUTS AND OTHER HAZARDS CAUSED BY SITE IMPROVEMENT OPERATIONS.

14. ALL LAWN AREAS TO BE SEEDED WITH STANDARD TURF GRASS SEED AND COVERED WITH EROSION CONTROL BLANKET. UNLESS OTHERWISE SPECIFIED ON THE PLAN.

15. CAREFULLY MAINTAIN PRESENT GRADE AT BASE OF ALL EXISTING TREES TO REMAIN PREVENT ANY DISTURBANCE OF EXISTING TREES INCLUDING ROOT ZONES. USE TREE PROTECTION BARRICADES WHERE INDICATED. PROTECT EXISTING TREES TO REMAIN AGAINST UNNECESSARY CUTTING, BREAKING OR SKINNING OF ROOTS, BRUISING OF BARK OR SMOTHERING OF TREES. DRIVING. PARKING, DUMPING, STOCKPILING AND/OR STORAGE OF VEHICLES, EQUIPMENT, SUPPLIES, MATERIALS OR DEBRIS ON TOP THE ROOT ZONES AND/OR WITHIN THE DRIPLINE OF EXISTING TREES OR OTHER PLANT MATERIAL TO REMAIN IS STRICTLY PROHIBITED.

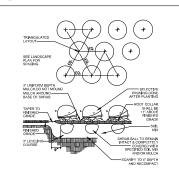
16. THE CONTRACTOR AT ALL TIMES SHALL KEEP THE PREMISES ON WHICH WORK IS BEING DONE, CLEAR OF RUBBISH AND DEBRIS. ALL PAVEMENT AND DEBRIS REMOVED FROM THE SITE SHALL BE DISPOSED OF LEGALLY.

17. ALL WORK AND OPERATIONS SHALL COMPLY WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL CODES AND ORDINANCES.

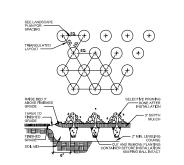


TREE PLANTING DETAIL

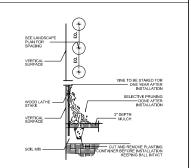
SCALE: NO SCALE



2 SHRUB PLANTING DETAIL
L2.1 SCALE: NO SCALE

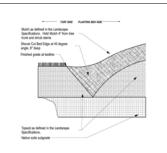


3 GROUNDCOVER DETAIL
L2.1 SCALE: NO SCALE



4 VINE PLANTING DETAIL

SCALE: NO SCALE



SPADED PLANTING 5 BED EDGE
L2.1 SCALE: NO SCALE

LANDSCAPE MAINTENANCE SPECIFICATIONS

LANDSCAPE MAINTENANCE SPECIFICATIONS
The Contractor shall provide as a separate bid, maintenance for a period of 1 year after final acceptance of the project landscaping. The Contractor must be able to provide continued maintenance if requested by the Owner or provide the name of a reputable landscape contractor who can provide maintenance.

= naintenance services shall be performed by trained personnel using current, acceptable horticultural practices,

All work shall be performed in a manner that maintains the original intent of the landscape design.

med in addition to that which is outlined in the contract shall only be done upon written approval by the

The maintenance contractor shall perform soil tests as needed to identify imbalances or deficiencies causing plant material decline. The owner shall be notified of the recommendation for approval, and the necessary corrections made at an

Landscape Trees & Shrubs 5.0-7.0 >2.5% 100+lbs./acre 00+lbs/acre 150+lbs/acre 120+lbs/acre Not to exceed 900ppm/1.9 mmhos/cm Magnesium (Mg) Phosphorus (P2O5) Potassium (K2O) 150+lbs./acre 120+lbs./acre Not to exceed 750ppm/0.75 mmhos/ci in soil; not to exceed 2000 ppm/2.0 mmhos/cm in high organic mix mmhos/cm in high organic mix

For unusual soil conditions, the following optional tests are recommended with levels not to exceed

Manganese Potassium (K2O) 450 pounds per acre 20 pounds per acre

maintenance operations, all areas shall be kept neat and clean. Precautions shall be taken to avoiding structures. All work shall be performed in a safe manner to the operators, the occupants and any

completion of maintenance operations, all debris and waste material shall be cleaned up and removed from the site, s provisions have been granted by the owner to use on-site trash receptacles.

Any damage to the landscape, the structure, or the irrigation system caused by the maintenance contractor, shall be repaired

GENERAL CLEAN UP Prior to mowing, all trash, sticks, and other unwanted debris shall be removed from lawns, plant beds, and paved areas.

Turf grasses, including blue grass, tall fescue, perennial ryegrass, etc., shall be maintained at a height of 2" to 3" in spring and fall. From June through September, mowing height shall be maintained at no less than 3".

The mowing operation includes trimming around all obstacles, raking excessive grass clippings and removing debris from walks, curbs, and parking areas. Caution: Mechanical weeders should NOT be used around trees because of potential

Edging of all sidewalks, curbs and other paved areas shall be performed once every other mowing. Debris from the edging operations shall be removed and the areas swept clean. Caution shall be used to avoid flying debris.

LAWN WEED CONTROL: HERBICIDES
Selection and proper use of herbicides shall be the landscape contractor's responsibility, All chemical applications shall be performed under the supervision of a Licensed Certified Applicator. Read the label prior to applying any chemical.

The contractor shall be responsible for monitoring the site conditions on each visit to determine if any insect pest or disease problems exist. The contractor shall identify the insect pest or disease, as well as the host plant, and then consult the most current edition of the Cooperative Extension Service's "Commercial Insecticide Recommendation for Turf" for control. The licensed applicator shall be familiar with the label provided for the selected product prior to application.

Inspection and treatment to control insect pests shall be included in the contract price.

TREES, SHRUBS, & GROUND COVER

All ornamental trees, shrubs and ground cover shall be pruned when appropriate to remove dead or damaged branches develop the natural shapes. Do not shear trees or shrubs. If previous maintenance practice has been to shear and ball, ther a natural shape will be restored gradually.

ing Guidelines:

Prune plants that flower before the end of June (spring blooming) immediately after flowering. Flower buds develop during the previous growing season, Fall, winter or spring pruning would reduce the spring flowering display. Prune plants that flower in July – September (summer or autumn blooming) in winter or spring before new growth begins, since these plants develop flowers on new growth. Delay pruning plants grown for ormanental fruits, such as Cotoneasters and Viburnums.

Hollies and other evergreens may be pruned during winter in order to use their branches for seasonal decoration. However, severe pruning of evergreens should be done in early spring only.

Breadded evergreen shrubs shall be hand-pruned to maintain their natural appearance after the new growth hardens

off.
Hedges or shrubs that require shearing to maintain a formal appearance shall be pruned as required. Dead wood shall be removed from sheared plants before the first shearing of the season.

Confers shall be pruned, if required, according to their genus.

A, Yews, Junipers, Hembocks and Arbovitiae may be pruned after new growth has hardened off in late summer. If severe pruning is necessary, it must be done in early spring.

B, Firs and spruces may be lightly pruned in late summer, fall, or winter after completing growth. Leave side

buds. Never cut central leader.

C. Pines may be lightly pruned in early June by reducing candles.

Croundcover shall be edged and pruned as needed to contain it within its borders.

Thinning: Remove branches and water sprouts by cutting them back to their point of origin on parent stems. This method results in a more open plant, without stimulating excessive growth. Thinning is used on Crab Apples, Lilacs, Withurums, etc.

Viburnums, etc.
Renewal pruning: Remove oldest branches of shrub at ground, leaving the younger, more vigorous branches. Also
remove week stems. On overgrown plants, this method may be best done over a three-year period. Renewal pruning
may be used on Forsythia, Hydrangea, Spiraea, etc.

Plants overhanging passageways and parking areas and damaged plants shall be pruned as ne-

Shade trees that cannot be adequately pruned from the ground shall not be included in the Maintenance Contract. A certified arborist under a separate contract shall perform this type of work.

Plant beds shall receive a general cleanup before fertilizing and mulching. Cleanup includes removing debris and trash from beds and cutting back herbaceous perennials left standing through winter, e.g. ornamental grasses, Sedum Autumn Joy.

For trees, the rate of fertilization depends on the tree species, tree vigor, area available for fertilization, and growth stage of the tree, Mature specimens benefit from fertilization every 3 to 4 years; younger trees shall be fertilized more often during rapid growth stages.

The current recommendation is based on the rate of 1000 square feet of area under the tree to be fertilized. For deciduous The cultred recommendation is based on line rate of 1000 square feet of area under the user to be refuted. For declodous trees, 2 to 6 pounds of Nitrogen per 1000 square feet, for narrow-leaf evergreens, 1 to 3 pounds of Nitrogen per 1000 square feet, for broadleaf evergreens, 1 to 3 pounds of Nitrogen per 1000 square feet.

Shrubs and groundcover shall be top-dressed with compost 1" deep or fertilized once in March with 10-8-4 analysis fertilizer at the rate of 3 pounds per 100 square feet of bed area. Ericaceous material shall be fertilized with an ericaceous fertilizer at the manufacturer's recommendation rate. If plants are growing poorly, a soil sample should be taken.

TREES, SHRUBS, & GROUND COVER (CONT.)

Annually, all tree and shrub beds will be prepared and mulched, to a minimum depth of 3" with quality mulch to match existing, Bed preparation shall include removing all weeds, cleaning up said bed, edging and cultivating decayed mulch into he soil. Debris from edging is to be removed from beds where applicable. If deemed necessary, a pre-emergent herbicide hay be applied to the soil to inhibit the growth of future weeds.

Organically maintained gardens shall not receive any pre-emergent herbicides. Mulch in excess of 4" will be removed from the bed areas. SPECIAL CARE shall be taken in the mulching operation not to over-mulch or cover the base of trees and shrubs. This can be defirmental to the health of the plants.

Il beds shall be weeded on a continuous basis throughout the growing season to maintain a neat appearance at all times

Pre-emergent (soil-applied) and post-emergent (foliar-applied) herbicides shall be used where and when applicable and in accordance with the product's label.

The maintenance contractor shall be responsible for monitoring the landscape site on a regular basis. The monitoring frequency shall be monthly except for growing season, which will be every other week. Trained personnel shall monitor for plant damaging insect activity, plant pathogenic diseases and potential cultural problems in the landscape. The pest or cultural problem will be identified under the supervision of the contractor.

Plant pathogenic disease problems identified by the contractor that can be resolved by pruning or physical removal of damaged plant parts will be performed as part of the contract. For an additional change, plant pathogenic diseases that can be resolved through properly timed applications of fungicides shall be made when the owner authorizes it.

If the contractor notes an especially insect-or disease-prone plant species in the landscape, he/she will suggest replacement with a more pest-resistant cultivar or species that is consistent with the intent of the landscape design.

NOTE: For identification of plant-damaging insects and mites, a reference textbook that can be used is Insects that feed on Trees and Shrubs by Johnson and Lyon, Comstock Publishing Associates, For plan pathogenic diseases, two references are suggested: Societing and Controlling Woody Ornamental Diseases in Landscapes and Nurseries, authorized by Gary Moorman, published by Penn State College of Agricultural Sciences, and Diseases of Trees and Shrubs by Sinclair and Lyon, published by Comstock Publishing Press.

ce contractor shall remove trash from all shrub and groundcover beds with each visit.

All fallen leaves shall be removed from the site in November and once in December. If requested by the owner, the maintenance contractor, at an additional cost to the owner shall perform supplemental leaf removals.

Clean-up includes:

- Cleaning curbs and parking areas
 Removing all trash and unwanted debris
 Turning mulch where necessary
 Inspection of grounds

SEASONAL COLOR: PERENNIALS, ANNUALS, AND BULBS

The installation of perennials, annuals, and bulbs, unless specified herein, shall be reviewed with the owner, and, if accepted, installed and billed to the owner.

SEASONAL COLOR MAINTENANCE

erennialization of Bulbs:

annialization of Bulbs:
After flowering, cut off spent flower heads.
After flowering, cut off spent flower heads.
Allow leaves of daffodils and hyacinths to remain for six weeks after flowers have faded. Cut off at base.
Allow leaves of other bulbs to yellow naturally and then cut off at base.
Apply fertilizer after flowering in spring, possibly again in fall. Apply 10-10-10 at the rate of 2 pounds per 1000 square feet or top-dress with compost 1" deep. Fall fertilization with a bulb fertilizer or mulching with 1" of compost is optional.

plants if included in contract.

Summer Annuals or Fall Plants:

A. Dead heading: Pinch and remove dead flowers on annuals as necessary.

A. Dead heading: Pinch and remove dead flowers on annuals as necessary.
B. Fertilizing Summer Annuals: Fertilize using one or two methods: Apply a slow-release fertilizer in May following manufacturer's recommendations. A booster such as 10-10-10 may be necessary in late summer. Or, apply liquid Fertilizations of 20-20-20 where-couble fertilizers, not to exceed 2 pounds of 20-20-20 per 100 gallons of water, monthly; or mulch with compost 1" deep.
C. Removat: If fall plants are to be installed, summer annuals shall be left in the ground until the first killing frost and then removed, unless otherwise directed by the owner.

After initial installation, if a time-released fertilizer has been incorporated during plant installation, no more fertilizer need be applied the first growing season.

The following year:

A. Fertilize perennials with a slow-release fertilizer or any 50% organic fertilizer, or mulch perennials with

compost 1" deep.

S. Cut all deciduous perennials flush to the ground by March 1, if this was not done the previous fall, to allow new growth to develop freely.

C. Much the perennial bed once in early spring at 1"-2" depth. If soil is bared in late fall, re-mulch lightly after around is firmen to princip derennials. ground is frozen to protect perennials. Inspect for insect or disease problems on perennials. Monitor and control slugs on hostas and ligularias. Powdery mildew on phlox, monardas, and asters can be prevented with properly timed fungicides or use of

onsease-resistant varieties.
Weed perennial bed as specified in "WEEDING" above.
Prune branching species to increase density. Cut only the flowering stems after blooming. Do not remove the

foliage,
The following fall cut back deteriorating plant parts unless instructed to retain for winter interest, e.g. Sedum Autumn
Joy and ornamental grasses.
Long-term Care

A. Divide plants that overcrowd the space provided. Divide according to the species. Some need frequent

A. Livroe plants that overcrowd the space provided. Divide according to the species. Some need frequent dividing, e.g., asters and yarrow every two years; other rarely, if ever, e.g., peonies, hostas, and astible. B. For detailed information regarding the care of specific perennials, refer to All About Perennials by Ortho; Perennials: How to Select, Grow and Enjoy by Pamela Harper and Frederick McCouty, Hp Books Publisher, Herhaceous Perennial Plants: A Treatise on their Identification, Culture and Garden Attributes by Allan Armitage, Stipes Pub LLC.

SUMMARY OF MAINTENANCE

Soil analysis performed annually to determine pH. If pH does not fall within specified range, adjust according to soil

set recommendations.

Maintain proper fettility and phil levels of the soil to provide an environment conducive to turf vitality for furf grasses.
Mow turf on a regular basis and as season and weather dictates. Remove no more than the top 1/3 of leaf blade.
Clippings on paved and bed areas will be removed.

Aerate warm season furf areas to maintain high standards of furf appearance.

Apply pre-emergent to furf in two applications in early February and early April to extend barrier.

Apply post emergent to use a needed to control weeds.

Mechanically edge curbs and walks.

Apply non-selective herbicide, to mulched bed areas and pavement and remove excess runners to maintain clean defined beds.

TREE, GROUNDCOVER AND SHRUB BED MAINTENANCE

Ex., SUCUNDUCUER AND SHRUB BED MAINTENANCE

Prune shrubs, trees and groundower to encourage healthy growth and create a natural appearance,
Mulch to be applied in February/March with a half rate in late summer to top dress.

Apply pre-mergent herbicides in February and April.

Manual weed control to maintain clean bed appearance,
Apply fungicides and insectides as needed to control insects and disease,
Ornamental shrubs, trees and groundcovers to be fertilized three (3) times per year with a balanced material
(January/February, April/May, and October/November)

Edge all mulched beds,
Remove all little and debris.

Talty Kathryn

KM KMT

ELAND MULTIFAMILY 622 GRACELAND DESPLAINES, IL GRACEL

S TES IFICATION DETAILS LANDSCAPE NOTE PLANTING SPECIF CONSTRUCTION D

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Exhibit A

Page 62 of 81

EXHIBIT C

PUBLIC IMPROVEMENTS

Stormwater Improvements	Storm sewer lines along Webford Avenue to Laurel Avenue (separate storm and sanitary sewers) consisting of 731 feet of concrete pipe with various diameters of 12", 15", 18" and 21" and storm sewer structures"
Sanitary Sewer	Separate combined storm and sanitary sewer services consisting of 25 feet of 10" PVC pipe
Water Mains & Service Lines	 New water service lines consisting of 44 feet of 10" ductile iron pipe Water mains in public right-of-way Hydrants and Standpipes compliance with International Fire Code
Public Right-of-Way Improvements	 Graceland Avenue Frontage Sidewalk consisting of 170 feet Graceland Avenue Streetscape & Lighting matching rest of downtown Widening of Webford Avenue to 28 feet curb to curb, plus an additional seven feet to accommodate five off- street parking spaces, as well as construction of all necessary curbs, gutters, and sidewalks Streetlights on Webford with electrical extending from 1320 Webford to Graceland

EXHIBIT D

<u>DEVELOPMENT PERMITTING AND CONSTRUCTION SCHEDULE</u>

Action	Date
Title Acquisition Date (J&T Parcels)	October 31, 2023
Demolition Permit Issuance	April 15, 2024
Building Permit Application	April 15, 2024
Building Permit Issuance	July 15, 2024
Construction Start	July 30, 2024
Construction Completion	March 31, 2026
Certificate of Occupancy	May 1, 2026
Full Building Lease-Up	May 1, 2027

EXHIBIT E FORM LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NO AMC		AMOU	UNT:	
EXPIRATION DATE: _		DATE OF ISSI	UE:	
	[Name of B	ank]	-	
	[Address	s]		
TO: City of Des Pla 1420 Miner Str Des Plaines, III Attention: City	eet inois 60016			
Credit No. UP TO	ORIZE YOU TO DRAW AT S AN AGGREGATE AMOUNT or account of	OF		
Drafts under this Lette	r of Credit shall bear upon the	eir face the words:		
"Drawn Irrevoca	underable Standby Letter of Credit I	No Dated:		
attached hereto as E	r any portion of the amount of Exhibit 1 and shall be accom Manager or an individual desig	npanied by one of the	following documents	
conditioned upon prop	A written statement on the forer notice to the City Manager ne Customer has failed to deliv_; or	r, Letter of Credit No	will expire within 35	
all or any part of the im Avenue, Des Plaines Development Agreeme Residential Graceland	A written statement on the for a provements required to be constant of the " <i>Property</i> ") and dated [INSERT], 2023 by a discontinuous Property, LLC (the " <i>Agi</i> greement or the City's general	onstructed by the Custon pursuant to the Amand between the City of reement") have not	omer at 622 Graceland lended and Restated f Des Plaines and Mylo been constructed in	

- (c) A written statement on the form attached hereto as *Exhibit 4* stating that all or any part of the costs, payments, permit fees or other fees required to be paid to the City by the Customer in conjunction with the redevelopment of the Development Property pursuant to the Agreement or the City's general ordinances, codes, or regulations, have not been paid in the required time period; or
- (d) A written statement on the form attached hereto as *Exhibit 5* stating that all or any portion of the maintenance, repair, or restoration of the property required to be performed by the Customer pursuant to and in accordance with the Agreement or the City's general ordinances, codes, and regulations has not been performed; or
- (e) A written statement on the form attached hereto as *Exhibit 6* stating that all or any portion of the Customer's undertakings pursuant to the Agreement have not been performed pursuant to and in accordance with the Agreement.

WE HEREBY AGREE with the beneficiary that:

- 1. Site Drafts drawn under this Letter of Credit must specify the number of this Letter of Credit and be presented at the office identified below.
- 2. Any sight draft may be presented to issuer by electronic, reprographic, computerized or automated system, or by carbon copy, but in any event must visibly bear the word "original." If the document is signed, the signature may consist of (or may appear to us as) an original handwritten signature, a facsimile signature or any other mechanical or electronic method of authentication.
- 3. Drafts drawn under and in compliance with this Letter of Credit shall be duly honored immediately upon presentation to us if presented on or before the above-stated Expiration Date or presented at our office together with the original of this Letter of Credit on or before that date. Further, one or more drafts may be presented at 410 Monon Boulevard, 54th Floor, Carmel, Indiana 46032. on or before the Expiration Date.
- 2. If, within three banking days after any draft drawn under this Letter of Credit is presented to us in conformance with the terms of this Letter of Credit, we fail to honor same, we agree to pay all attorneys' fees, court costs and other expenses incurred by the City in enforcing the terms hereof; provided that we will not be responsible for such fees, costs, or expenses arising from limitations or delays imposed by law or orders of courts of competent jurisdiction.
- 3. This Letter of Credit shall expire on ________, 20_____, as stated hereinabove; provided, however, that we shall send notice to the City Manager by certified mail, return receipt requested, or hand-delivered courier at least 35 days prior to said Expiration Date, that this Letter of Credit is about to expire.
- 4. In no event shall this Letter of Credit or the obligations contained herein expire except upon the prior written notice required herein, it being expressly agreed that the above expiration date shall be extended as shall be required to comply with the prior written notice required herein.

- 5. No consent, acknowledgment, or approval of any kind from the Customer shall be necessary or required prior to honoring any draft presented in conformance with the terms of this Letter of Credit.
- 6. The aggregate amount of this Letter of Credit may be reduced only upon receipt by us of a document executed by the City Manager stating that such aggregate amount shall be reduced in an amount permitted by the City's subdivision regulations because of the satisfactory completion of all or part of the improvements required to be constructed pursuant to the Agreement or the City's general ordinances, codes, or regulations.
 - 7. This Letter of Credit is irrevocable.
- 8. This Letter of Credit sets forth in full the terms of our undertaking, and such terms shall not in any way be modified, amended, limited, discharged or terminated, except by written approval signed by the undersigned and an authorized representative of Beneficiary on or before the date upon which this Letter of Credit expires.

This Letter of Credit shall be governed by and construed in accordance with the Uniform Customs and Practices for ISP 98 of the International Chamber of Commerce (the "*Uniform Customs*"). In the event of a conflict between this Letter of Credit and the Uniform Customs, this Letter of Credit shall control. This Letter of Credit shall be deemed to be a contract made under the laws of the State of Illinois, including, without limitation, Article 5 of the Uniform Commercial Code as in effect in the State of Illinois, and shall, as to matters not governed by the Uniform Customs, be governed by and construed in accordance with the laws of the State of Illinois, without regard to principles of conflicts of law.

AS USED HEREIN, THE TERM "BANKING DAY" MEANS ANY DAY OTHER THAN A SATURDAY, SUNDAY, OR A DAY ON WHICH BANKS IN THE STATE OF ILLINOIS ARE AUTHORIZED OR REQUIRED TO BE CLOSED, AND A DAY ON WHICH PAYMENTS CAN BE EFFECTED ON THE FEDWIRE SYSTEM.

[Signature of Bank Officer]	[Signature of Bank Officer]
[Officer's Title]	 [Officer's Title]

EXHIBIT 1 TO FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT FORM OF DRAFT

[To Be Supplied/Revised by Issuing Bank]

Date:

EXHIBIT 2 TO FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

To: Attn:									
Re: Letter of Cr	edit N	lo							
Ladies and Gentle	men:								
This								No will expir	
or less and that _ renewal of Letter o			 _ has						
				Ve	ery truly	your	s,		
				Ci	ty Mana	ger			

EXHIBIT 3 TO FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

To: Attn:	
Re:	Letter of Credit No
Ladies	and Gentlemen:
pursua betwee " <i>Agree</i> "	This is to advise you that all or any part of the improvements required to be ucted by the Customer (as that term is defined in the above-referenced Letter of Credit) and to the Amended and Restated Development Agreement dated [INSERT], 2023 by and en the City of Des Plaines and Mylo Residential Graceland Property, LLC (the ement') have not been constructed in accordance with the Agreement or the City's general nees, codes, and regulations.
	Very truly yours,
	City Manager

EXHIBIT 4 TO FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

To: Attn:	
Re:	Letter of Credit No
Ladies	and Gentlemen:
referer Amend of Des	This is to advise you that all or any part of the costs, payments, permit fees or other equired to be paid to the City by the Customer (as that term is defined in the abovenced Letter of Credit) in conjunction with the redevelopment of property pursuant to the ded and Restated Development Agreement dated [INSERT], 2023 by and between the City's Plaines and Mylo Residential Graceland Property, LLC (the "Agreement") or the City's all ordinances, codes, or regulations, have not been paid in the required time period.
	Very truly yours,
	City Manager

EXHIBIT 5 TO FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

To: Attn:	
Re:	Letter of Credit No
Ladies	and Gentlemen:
of Cred	This is to advise you that all or any part of the maintenance, repair or restoration and to be performed by the Customer (as that term is defined in the above-referenced Letter dit) pursuant to the Amended and Restated Development Agreement dated [INSERT], 2023 between the City of Des Plaines and Mylo Residential Graceland Property, LLC (the ement '), or the City's general ordinances, codes, and regulations, has not been performed
	Very truly yours,
	City Manager

EXHIBIT 6 TO FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

To: Attn:	
Re:	Letter of Credit No
Ladies	and Gentlemen:
Restate and My	This is to advise you that all or any part of the undertakings of the Customer (as m is defined in the above-referenced Letter of Credit) pursuant to the Amended and ed Development Agreement dated [INSERT], 2023 by and between the City of Des Plaines ylo Residential Graceland Property, LLC (the "Agreement") have not been performed int to and in accordance with the Agreement.
	Very truly yours,
	City Manager

EXHIBIT F

TRANSFEREE ASSUMPTION AGREEMENT

THIS TRANSFEREE ASSUMPTION AGREEMENT is made as of this _____ day of

, 20, between the CITY OF DES PLAINES, an Illinois home rule municipal corporation (<i>"City"</i>), MYLO RESIDENTIAL GRACELAND PROPERTY LLC, an Illinois limited liability company (<i>"Developer"</i>), and, a(<i>"Transferee"</i>).
(Transferee).
<u>WITNESETH</u> :
WHEREAS, pursuant to that certain real estate sale contract dated, 20, the Transferee agreed to purchase from Developer certain real property situated in Cook County, Illinois and legally described in Exhibit 1 attached to and, by this reference, made a part of this Agreement ("Property"); and
WHEREAS , following the conveyance of the Development Property by Developer, the Transferee will be the legal owner of the Development Property; and
WHEREAS , as a condition to the conveyance of the Development Property by Developer, the City and Developer require that the Transferee agree to comply with all the terms, requirements, and obligations set forth in that certain Amended and Restated Development Agreement, dated as of, 2023, and recorded in the office of the Cook County Clerk's Recording Division on, 20, as Document No, by and between the City and Developer ("Development Agreement");
NOW, THEREFORE , in consideration of the agreement of Developer to convey the Development Property to the Transferee, and of the City to accept the transfer of obligations as provided herein and to grant the releases granted herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by, between, and among the City, Developer, and the Transferee as follows:
1. Recitals. The foregoing recitals are by this reference incorporated herein and made a part hereof as substantive provisions of this Agreement.
2. Assumption of Obligations. The Transferee, on its behalf and on behalf of its successors, assigns, heirs, executors, and administrators, hereby agrees, at its sole cost and expense, to comply with all of the terms, requirements, and obligations of Developer in the Development Agreement, including all exhibits and attachments, regardless of whether such terms, requirements, and obligations are to be performed and provided by, or are imposed upon, Developer or the Development Property.
3. Payment of City Fees and Costs. In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement, the Development Agreement or by applicable City codes, ordinances, resolutions, rules, or regulations, the Transferee must pay to the City, immediately upon presentation of a written demand or demands therefor, all legal, engineering, and other consulting or administrative fees, costs, and expenses incurred in connection with the negotiation, preparation, consideration, and review of this Agreement.

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4. <u>Acknowledgment and Release of Developer</u>. The City hereby acknowledges its agreement to the Transferee's assumption of the obligation to comply with the terms, requirements, and obligations of Developer in the Development Agreement, including all exhibits and attachments, and the City hereby releases Developer from any personal liability for failure to comply with the terms, requirements, and obligations of Developer in the Development Agreement.

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

ATTEST:	city of des plaines an Illinois home rule municipal corporation
	By:
City Clerk	Its: City Manager
	MYLO RESIDENTIAL GRACELAND PROPERTY, LLC, an Illinois limited liability company
	By: MYLO RESIDENTIAL GRACELAND HOLDINGS LLC, a Florida limited liability company
	By: MYLO RESIDENTIAL GRACELAND MANAGER LLC, a Florida limited liability company
	By: Joseph Z. Taylor III Its: Manager
ATTEST:	[TRANSFEREE], a
Ву:	By:
lts:	Its:

ACKNOWLEDGMENTS

STATE OF ILLINOIS) SS	
COUNTY OF COOK)	
	before me on, 20, by CITY OF DES PLAINES, an Illinois home rule, the City Clerk of said municipal corporation.
	Signature of Notary
SEAL	

STATE OF ILLINOIS)	SS					
COUNTY OF COOK)						
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		Signature of Notary				
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STATE OF ILLINOIS)						
COUNTY OF COOK)	SS					
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		Signature of Notary				
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53

SEAL

EXHIBIT 1 TO TRANSFEREE ASSUMPTION AGREEMENT PROPERTY LEGAL DESCRIPTION

[INSERT UPDATED/CONSOLIDATED DESCRIPTION]

EXHIBIT G

HUD RIDER TO DEVELOPMENT AGREEMENT

Notwithstanding anything to the contrary in the Agreement, from and after the date of that the Department of Housing and Urban Development ("HUD") executes an initial endorsement (the "HUD-Insured Loan Closing Date") of a HUD-insured mortgage loan for the construction of the Development (the "HUD Construction Loan"):

- (i) The City confirms that is not providing any funding for the construction of the Development other than as expressly set forth in the Agreement.
- (ii) No amendment to the Agreement made after the HUD-Insured Loan Closing Date shall have any force or effect until and unless HUD approves such amendment in writing.
- (iii) No indemnity or guarantee obligations in the Agreement shall ever apply to HUD, whether as insurer or holder of the HUD-insured mortgage loan, owner, mortgagee-in-possession or otherwise.
- (iv) No failure on the part of the Developer to comply with the HUD Construction Loan documents shall serve as a basis for the City to declare a default under the Agreement, without the express written approval of HUD. No failure of the Developer to comply with the Agreement shall constitute a default under the HUD Construction Loan documents, unless a default also arises under the HUD Construction Loan documents or related Regulatory Agreement.
- (v) City shall have no liens against the Development Property as of the HUD-Insured Loan Closing Date. Compliance with and enforcement of any indemnity provisions in the Agreement will not and shall not result in any claim or lien against the Development, any asset of the Developer, the proceeds of the HUD Construction Loan, any reserve, or deposit required by HUD in connection with the HUD Construction Loan transaction or the rents or other income from the Development, other than distributable Surplus Cash as defined in the HUD Regulatory Agreement. In the event that any claims or liens arise as a result of City's enforcement of other provisions of the Agreement, City agrees that they shall be subordinate to the HUD Construction Loan documents. The provisions of this paragraph shall not prohibit the City from pursuing action relating to its letter of credit or any guarantors of the obligations of the Developer.
- (vi) In the event that HUD is a party to any such litigation, at its election, to the extent legally permitted, such action may be brought in the United States District Court for the Northern District of Illinois Eastern Division.
- (vii) In the event that HUD or FHA Lender become a successor in interest to the Development, it shall not be responsible for the prior violations or obligations of Developer hereunder, including but not limited any obligation regarding development of the Development Property or the completion thereof, provided that any successor in interest, including but not limited to HUD, shall be entitled, but not obligated, to develop the Development in accordance with the building requirements set forth in Agreement. In addition, any restrictions relating to requirement to pay attorney's fees or litigation costs shall not apply to HUD or FHA Lender but shall apply to their successors and assigns.
- (viii) Any restrictions on transfer of the Development Property set forth in the Agreement shall not apply to FHA Lender or HUD and shall also not apply to the purchaser at foreclosure of

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Exhibit A Page 79 of 81

the HUD Construction Loan documents or transferee of the Development pursuant to a HUD-approved transfer of physical assets provided that such purchaser or transferee executes the Transferee Assumption Agreement.

- (ix) The City agrees to execute the HUD form of lease subordination agreement with regard to the Leaseback Agreement.
- (x) The City shall deliver to FHA Lender copies of any notice of default given by the City to the Developer with respect to the Agreement and, notwithstanding anything to the contrary contained herein, FHA Lender and HUD shall have the right, without any obligation, to cure any default under any of the Agreement as provided for below in this paragraph. All such notices to FHA Lender shall be sent contemporaneously with the sending of such notices to the Developer. The City will allow FHA Lender and HUD (but neither FHA Lender nor HUD will have any obligation) to cure any default occurring under the Agreement, provided such cure is effected within the following time periods:
 - (a) In the case of a default which can be cured by the payment of money, within ten (10) days after the later of (i) the expiration of the grace or cure period (if any) available to the Developer under the Agreement or (ii) FHA Lender's receipt of written notice of such default; and
 - In the case of a default which cannot be cured by the payment of money, within (b) thirty (30) days after FHA Lender's receipt of written notice of such default, provided, however, that if the nature of a default is such that it can be cured by FHA Lender but cannot be cured within the thirty (30) day period provided above or by the payment of money by FHA Lender or HUD, and if FHA Lender or HUD (i) commences efforts to effect such cure within such thirty (30) day period and thereafter diligently proceeds to take such actions as may be reasonably required to effect such cure, including any proceedings necessary to effect an Acquisition (as defined below) and (ii) provides written notice to the City within such thirty (30) day period describing what efforts it has commenced and intends to continue to effect such cure, then the thirty (30) day cure period provided above shall be extended for a period ending the earlier of (i) the date as of which FHA Lender or HUD, as applicable, shall cease the diligent pursuit of such actions as may be reasonably required to effect such cure, or (ii) the date as of which the cure of such default by FHA Lender or HUD, as applicable, shall become impossible. For purposes of this Agreement, an "Acquisition" shall mean the acquisition by either FHA Lender or HUD, as applicable, or its designee of fee simple title to the Development.
 - (c) In the case of a Personal Default (as defined below), within thirty (30) days after FHA Lender's receipt of written notice of such Personal Default, provided, however, if within such thirty (30) day period FHA Lender or HUD (i) commences efforts to exercise its right under the HUD Construction Loan documents for the purpose of acquiring title to the Development and thereafter diligently proceeds to take such actions as may be reasonably required to obtain control of the Development and (ii) provides written notice to the City describing what efforts it has commenced and intends to continue to exercise its right under the HUD Construction Loan documents for the purpose of acquiring title to the Development, then the thirty (30) day cure period provided above shall be extended for a period ending the date as of which FHA Lender or HUD, as applicable, shall cease the diligent pursuit of the exercise of its rights under the HUD Construction Loan

documents for the purpose of acquiring title to the Development. Upon such time as FHA Lender or HUD, as applicable, has obtained control of the Development pursuant to the exercise its rights and remedies with respect to the HUD Construction Loan documents, all outstanding Personal Defaults shall be deemed cured.

For purposes of this Agreement, a "Personal Default" under the Agreement shall mean a default of a non-economic nature relating to a breach of a covenant or default provision contained in the Agreement regarding the constituent ownership of the Development and such similar matters which is not capable of being cured by FHA Lender or HUD without exercising its rights under the HUD Construction Loan documents for the purpose of acquiring title to the Development. It is understood and agreed that whether an event of default under the Agreement is of a nature that it constitutes a Personal Default is subject to interpretation of the circumstances surrounding the event of default and the parties hereto agree that the City shall determine in its reasonable discretion whether any event of default under the Agreement is of a nature that it constitutes a Personal Default. Personal Defaults shall not include, without limitation, any default which (i) can be cured by the payment of money to the City or to any other entity whether relating to any labor, materials, goods, services, expense or any other matter necessary or desirable for the development, construction or operation of the Development or improvements located thereon, (ii) relates to the failure of the Developer to satisfy any covenants of the Agreement which may require that the Development or improvements located thereon be completed pursuant to a certain schedule, (iii) relates to any representation or warranty made by the Developer in the Agreement, (iv) relates to any covenant violation concerning the development or construction of the Development or improvements located thereon, or (v) is capable of being cured by FHA Lender or HUD without exercising its rights under the HUD Construction Loan documents for the purpose of acquiring title to the Development. The City agrees not to initiate any judicial, quasijudicial or similar remedies under the Agreement, unless and until FHA Lender or HUD, as applicable, fails to cure or cause to be cured such defaults within the time periods provided in this paragraph.