



**AGENDA ITEM # 14F**

**AGENDA ITEM EXECUTIVE SUMMARY**

**Village Board Meeting**

**January 11, 2021**

**Item Title: Parking Garage Lease, Operating, and Maintenance Agreement**

**Staff Contact: Jeffrey D. O'Dell, Village Administrator**

**VILLAGE BOARD ACTION**

**Adopt a Resolution Authorizing the Mayor to Sign and the Village Clerk to Attest to the Parking Garage Lease, Operating, and Maintenance Agreement between the Village of Roselle and 400 Roselle, LLC.**

**Executive Summary:**

As noted in the redevelopment agreement between the Village of Roselle and 400 Roselle, LLC, the developer will finance and construct a parking garage containing 547 parking spaces as part of its Metro 19 redevelopment project. Once construction of the parking garage is completed, the developer has agreed to sell to the Village, the real estate and all improvements comprising the parking garage component of the redevelopment project. After a certificate of occupancy of the parking garage is issued by the Village, the Village and developer will enter into a purchase and sale agreement for the Village to purchase the garage subject to all terms and conditions outlined in the redevelopment agreement.

After the sale of the parking garage is made to the Village, the developer has agreed to lease a portion of the parking garage from the Village on a long-term basis for its Metro 19 apartment residential users. The remaining portion of the garage is reserved for daily commuters of the Metra Rail System. The attached Parking Garage Lease, Operating, and Maintenance Agreement between the Village and 400 Roselle LLC outlines the terms and conditions for the developer to lease a portion of the parking garage, including parking space allocation, lease rates for parking spaces, and certain maintenance costs related to the operation and use of the parking garage. A summary of those primary terms and conditions of the lease agreement are as follows:

1. The initial term of the lease shall be for 75 years, with a renewal option for up to two additional successive 10 year periods.
2. The Village will lease 391 of the 547 spaces in the parking garage to the developer to serve residents and their guests. The remaining 156 parking spaces will be used by Metra train riders.

3. During the first year of the initial five year term of the lease, the developer will pay the Village a base rent of \$50 per space/per month for all apartment units that have received occupancy permits from the Village. No later than one year after the commencement date of the lease, the developer shall pay the Village rent on all 293 parking spaces dedicated to residents of the 293 unit apartment building complex regardless of the status of construction completion or occupancy. For the second year and remaining years of the first five year term of the lease, the developer shall pay the Village a minimum payment of \$175,800 for each of the remaining four years of the initial term. The developer will also pay the Village an additional parking rent of \$85 per space/per month or \$1.75 per day for use of any of the additional 98 parking spaces available to the developer.
4. The Village will apply a rent escalation fee of 5% every five years from commencement date on added to the developer's parking rent for base and additional parking space rentals.
5. The Village will be responsible for completing all preventive, routine, and other appropriate maintenance of the parking garage, elevator lobbies, and all systems necessary to operate the elevator system for public use of the parking garage. The developer will pay a percent share of the elevator lobby preventive, routine, and other appropriate maintenance costs based on its percentage of parking spaces rented from the Village, i.e. 72%. Exhibit C of the Parking Garage Lease, Operating, and Maintenance Agreement identifies the annual preventive, routine, and other appropriate maintenance costs of the parking garage. This was prepared by Walker Consultants on behalf of the Village and shared with SB Friedman Development Advisors for their completion of its analysis of the developer's TIF financial request and projected TIF increment and other revenue sources to support the developer's request.

**Implications:**

**Is this item budgeted?** No, the Village will establish a new enterprise fund or use its existing parking lots operating fund in the budget to record all garage parking space rental fee revenue and all preventive, routine, or other appropriate maintenance expenditures.

**Any other implications to be considered?** Yes, as noted in the redevelopment agreement between the Village and developer, the developer will pay the Village a stormwater use recapture fee of \$100,000 once the Village purchases the garage from the developer. These funds will be reserved for future maintenance of the stormwater vault located under the parking garage.

**Attachments:**

Resolution

Parking Garage Lease, Operations, and Maintenance Agreement

**RESOLUTION NO. 2021-**

**RESOLUTION AUTHORIZING THE MAYOR TO SIGN, AND DIRECTING THE VILLAGE CLERK TO ATTEST, TO THE PARKING GARAGE LEASE, OPERATING, AND MAINTENANCE AGREEMENT BETWEEN THE VILLAGE OF ROSELLE AND 400 ROSELLE, LLC.**

Whereas, the Village of Roselle “Village” and 400 Roselle LLC “Developer” entered into a Redevelopment Agreement (“Agreement”) for the redevelopment project of land pursuant to the Roselle Illinois East Irving Park Road Tax Increment Redevelopment Plan; and

Whereas, as part of the Agreement, the Developer will finance and construct a parking garage containing 547 parking spaces, at 525 Lawrence Avenue as part of its Metro 19 redevelopment project; and

Whereas, subject to the terms and conditions of the Agreement, the Developer has agreed to sell to the Village, the real estate and all improvements comprising the parking garage component of the redevelopment project; and

Whereas, once the construction of the parking garage is completed and the Developer receives a certificate of occupancy from the Village, the Village and Developer will enter into a Purchase and Sale Agreement for the Village to purchase the garage subject to the terms and conditions of the Agreement; and

Whereas, the Developer has agreed to lease a portion of the parking garage from the Village on a long-term basis for its Metro 19 apartment residential users; and

Whereas, after it takes ownership, the Village will use some of the parking garage spaces for the daily commuters of the Metra Rail System; and

Whereas, the Village and Developer wish to enter into a Parking Garage Lease, Operating, and Maintenance Agreement concerning terms including parking space allocation, lease rates for parking spaces, and certain maintenance costs related to the operation and use of the parking garage.

NOW, Therefore, be it resolved by the President and Board of Trustees of the Village of Roselle, DuPage and Cook Counties, Illinois, that:

Section 1: The Mayor is hereby authorized to sign and the Village Clerk is hereby directed to attest to the Parking Garage Lease, Operating, and Maintenance Agreement between the Village and Developer which is attached hereto and incorporated herein by reference as if fully set forth as Exhibit "A".

Section 2: Village staff is directed to undertake any and all acts and procedures reasonably necessary to implement and administer the Agreement.

Section 3: This resolution shall become effective upon its adoption.

ADOPTED this 11<sup>th</sup> day of January. 2021.

AYES:

NAYS:

ABSENT:

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Andrew J. Maglio, Mayor

ATTEST:

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Patty Burns, Village Clerk

**PARKING GARAGE LEASE, OPERATING, AND MAINTENANCE AGREEMENT**  
(Operation of Lawrence Avenue Garage)

THIS PARKING GARAGE LEASE, OPERATING, AND MAINTENANCE AGREEMENT ("Lease") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the Village of Roselle, an Illinois municipal corporation, the address of which is 31 South Prospect Street, Roselle, IL 60133 (the "Village" or the "Lessor"), and 400 Roselle, LLC, limited liability company (the "Lessee"), at 2500 S. Highland Ave., Suite 103, Lombard, IL 60148.

**WITNESSTH**

**WHEREAS**, the Village is the owner of certain land described on Exhibit A, attached hereto (the "Land") the Lessee initially financed the construction of a parking garage, containing 547 automobile parking spaces (the "Garage") on the Land. The Land and the Garage are located at 525 Lawrence Avenue and sometimes are collectively referred to herein as the ("Garage Site"); and

**WHEREAS**, Lessee has agreed to lease a portion of the Garage Site from the Village on a long-term basis for its Metro 19 Apartments residents use; and

**WHEREAS**, Village is, and will be, also utilizing some of the Garage spaces for the daily use of commuters of the Metra Rail System; and

**WHEREAS**, Lessor and Lessee desire to enter into a lease but in no manner shall the lease constitute an amendment of any zoning ordinances, property maintenance, ordinances, or codes applicable to the property and the 400 Roselle PUD (as hereinafter defined); and

**WHEREAS**, the Garage Site shall at all times contain a total of no less than five hundred forty seven (547) automobile parking spaces in conformance with Ordinance Number \_\_\_\_\_. An Ordinance Authorizing the Issuance of a Special Use and Planned Unit Development for the parcel of property commonly called the (the "400 Roselle PUD"), subject to the rights of the Village set forth herein; and

**WHEREAS**, Lessee wishes to enter into an agreement concerning terms including lease rates and maintenance of the Garage; and

**WHEREAS**, pursuant to this Lease, the Village is leasing a portion of the Garage Site to Lessee for an initial term of seventy-five (75) years, with two (2) successive renewal options of ten (10) years each.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## 1. RECITALS

The foregoing recitals are incorporated herein as fully set forth as representing the intent of the parties and as substantive provisions.

## 2. LEASE OF GARAGE SITE

(A) As-Is Condition. The Village has not made any representations or warranties concerning the condition or characteristics of the Garage Site or the suitability or fitness of the Garage Site for the operation of the Garage, and Lessee acknowledges and agrees that Lessee is not relying upon any such representations or warranties from the Village. On the Commencement Date (as defined in Section 3 below), Lessee shall accept the leased portion of Garage Site and common drive aisles, elevators, gates, stairwells, stairs, and other appurtenances in "as is" condition.

(B) Title Matters. The rights herein granted to Lessee are subject and subordinate to the rights of utility providers and others to enter upon the Garage Site from time to time pursuant to recorded easements, and the like affecting, the Garage Site (if any). Lessee shall not take any actions that would violate any easements, covenants, restrictions or other matters of record affecting the Garage Site. Lessee shall not have the right to grant any easements or otherwise encumber the Village's title to the Garage Site without the Village's prior written consent, and Lessee acknowledges that any further encumbrances may require written approval of Village Board. The Village shall have the right to grant easements to third parties affecting the Garage Site as may be deemed reasonably necessary by the Village so long as (1) such actions do not unreasonably impair the rights granted to Lessee under this Lease or reduce the number of parking spaces by more than five (5) spaces in the aggregate over the Term (as hereinafter defined) or result in the Residential Parcel (as hereinafter defined) not being in compliance with applicable zoning requirements or unreasonably increasing the cost of operating and maintaining the Garage Site, and (2) any damage to the Garage Site due to the exercise of such Right by the Village shall be repaired by or on behalf of the Village at no expense to Lessee and to a condition in compliance with applicable Village Codes. The foregoing notwithstanding, the Village represents to Lessee that (i) it owns the Garage Site in fee simple and that the same is free and clear of all liens, encumbrances and exceptions to title except those disclosed to Lessee on or prior to the date hereof or those created by Lessee, (ii) other than the 293 spaces leased to Lessee, leases to Metra commuters, Metra area business owners for their personal business parking but not for the parking of their customers, clients or guests, (iii) there is no litigation, pending or to the best of its knowledge threatened, that would affect the Village's performance under this Lease or impair Lessee's rights hereunder. The Village will have the right in its sole discretion to lease available parking spaces in the Garage Site to others, including the Lessee.

### 3. TERM RENEWAL OPTIONS

(A) Initial Term. The term ("Term") of this Lease shall commence on the Effective Date, as defined on the signature page hereof (also referred to herein as the "Commencement Date"), and, unless extended or sooner terminated in accordance with the provisions of this Lease, shall expire on the date that is seventy-five (75) years after the Commencement Date. All obligations of Lessee under this Lease that have accrued but have not been fully performed as of the end of the Term, including without limitation indemnity obligations, shall survive the expiration or termination of the Term until fully performed.

(B) Renewal Options. Provided that, at the time that Lessee does not exercise its right to elect to terminate each renewal option and on the commencement date of the applicable renewal period, provided Lessee is not in default under this Lease beyond any applicable notice or cure period provided for herein, the Term of this Lease shall automatically renew for up to two (2) successive renewal periods of ten (10) years each (each, a "Renewal Period"), on the same terms and conditions as set forth in this Lease except that, after the second Renewal Period, Lessee shall have no further renewal options (unless otherwise agreed in writing by the parties at that time). To exercise the right to terminate either or both renewal options, Lessee shall give the Village written notice thereof no less than twelve (12) months (but no sooner than 18 months) prior to the date that the initial Term (or, if applicable, the first Renewal Period) would otherwise have expired. As used herein, the "Term" of this Lease means the initial Term and, if applicable, the first Renewal Period and second Renewal Period.

### 4. PERMITTED USE

(A) Legal Requirements. Lessee shall use the portion of the Garage Site containing (293) contiguous vehicle parking spaces in the area depicted on Exhibit A which is attached hereto and incorporated herein as if fully set forth as Exhibit (insert ) solely for the operation of the vehicular Parking Garage and uses incidental thereto.

(B) Parking Use. The Lessor recognizes the parking spaces in the Garage are necessary for Lessee to meet the 400 Roselle LLC PUD parking requirements. Garage therefore shall at all times contain a total of no less than 547 automobile parking stalls, subject to the exercise of the Village's rights under Section 2(B) hereof. Lessor shall use reasonable efforts to create and enforce an operational plan that, in Lessor's reasonable discretion, reasonably accommodates parking spaces for both residential tenants of the Residential Parcel and commuters of the Metra Rail System ("Commuters") at all times taking into consideration the needs of Commuters to have no less than 156 commuter parking spaces in the Metra Easement areas depicted in "Exhibit B".

## 5. RENT

Beginning on the Commencement Date, for the first year of the initial five year term of this lease, Lessee shall pay the Village gross rent ("Gross Rent") in the amount of Fifty Dollars (\$50.00) per space per month for all legally occupiable units that have obtained their occupancy permits. The days in a month shall not be prorated. Lessee no later than one year after the Commencement Date shall pay rent on all 293 parking stalls regardless of the status of construction completion and occupancy permits. For the second year and remaining years in the first 5 year term, the lessee shall pay the Lessor a minimum payment for two hundred ninety three (293) parking spaces with one dedicated space per residential rental unit, of One Hundred Seventy Eight Thousand Eight Hundred Dollars (\$175,800.00) per year for each of the remaining four years of the initial five year term (Five Year Term equals first year payments plus \$175,800 x's 4 = \$703,200.00). Rent for the last four years of the Initial Term shall be the minimum per year payment regardless of whether the apartment units or parking spaces are occupied or not. Additional parking rent ("Additional Parking Rent") in the amount Eighty Five Dollars (\$85.00) per space per month or One Dollar and Seventy Five Cents (\$1.75) per day shall be paid by the Lessee for any additional parking spaces the Village deems available for residential tenants. The Village will apply a rent escalation fee of five percent (5%) every five years from the Commencement Date on added to the most recent years parking rent for Base and Additional Parking Rents.

## 6. REAL ESTATE TAXES

Lessee shall not reimburse the Village for all real estate taxes and assessments levied against the portion of the Garage Site leased by the lessee that become due and are paid by the Village during the Term. This is a Gross Lease and Lessor shall be responsible for any and all real estate taxes and assessments levied against the Garage Site.

## 7. OPERATION AND MAINTENANCE OF THE GARAGE

(A) Maintenance and Repair Services. Throughout the Term, Lessor shall keep the Garage Site and the Garage Elevator Lobbies and all of their mechanical systems in good, clean and safe condition and repair and for the good of the general public. The Lessor shall be responsible for coordinating all preventive, routine, and other appropriate maintenance and repairs for the Garage Site and Garage Elevator Lobbies. In regards to, just the Garage Site, this is a Gross Lease and Lessor shall be responsible for any and all Maintenance and Repair Services and Costs to maintain the Garage Site. However, in regards to the Garage Elevator Lobbies, the Lessee shall pay to the Lessor a percentage of the actual out of pocket annual costs the Lessor incurs to provide for all preventive, routine, and other appropriate maintenance and repairs of the Garage Elevator Lobbies and all of

the systems necessary to operate a code compliant and safe elevator system for public use. ("Elevator Lobby Costs"). The Lessee's percent share of the Elevator Lobby Costs shall be 71.48% (293 stalls + 98 additional stalls / 547 total parking stalls) and the Lessor's percent share of the Elevator Lobby Costs shall be 28.52% (156 stalls / 547 total parking stalls). A description and cost of all those preventive, routine, and other appropriate maintenance and repair tasks is attached as Exhibit C.

(B) Reporting of Accidents and Other Significant Occurrences. Lessee shall keep the Village informed of all reported accidents and other significant, unanticipated occurrences at or otherwise affecting the Garage that involve public health or safety issues or that Lessee reasonably believes could lead to negative publicity.

(C) Parking Rates. Lessor shall set commercially reasonable parking rates for Commuters and any other users of the Garage throughout the Term, which shall be subject to final approval by the Village Administrator.

(D) Third Party Contracts. Lessor shall have authority to enter into contracts with third parties for all labor, materials, and services required in connection with the operation of the Garage.

## 8. ALTERATIONS, SIGNS, AND NO LIENS

(A) Alterations. Lessee shall not make any material alterations, additions, or other changes to the Garage Site without the prior written consent of the Village.

(B) Signs. Lessee shall not install directional, informational, and other signs at the Garage Site unless they have been reviewed and approved in writing by the Village Zoning Administrator. Lessee shall, at its expense, keep all approved signs in good condition and repair.

(C) No Liens. If any mechanics' lien or other similar lien is filed against the Garage Site as a result of labor or material furnished at Lessee's request, Lessee shall cause the lien to be released or bonded off within thirty (30) days following the filing of such lien. If the Lessee fails to diligently secure release or bonding of a lien within a reasonable time, the Village, after providing no less than 90 days prior written notice to Lessee, may undertake legal action to accomplish the same and shall be entitled to reimbursement from the Lessee of its reasonable attorney's fees and costs for such undertaking.

## 9. PERMITTED LEASEHOLD MORTGAGES

Lessee shall have the right, at any time and from time to time, to enter into and grant a Leasehold Mortgage to the Lessee's Mortgagee that shall grant the Lessee's Mortgagee the same rights the Lessee has with regard to the Parking site under this Agreement.

(A) If Lessor intends, by reason of any Lessee's default, to terminate this Lease prior to the stated expiration of the Lease Term, Lessor shall notify every Leasehold Mortgagee of record or which Lessor has received written notice of, such intention (and the reasons therefore) at least fifteen (15) business days in advance of the proposed effective date for such termination.

(B) Each Leasehold Mortgagee, in addition to any and all rights hereunder that it may have, shall have the right to postpone the date on which this Lease would so terminate for a period of not more than sixty (60) days, unless a longer period of time shall be needed to obtain possession from Lessee and cure such default, in which event the date of termination shall be postponed for such longer period, provided such Leasehold Mortgagee, prior to the expiration of such sixty (60) days following receipt of Lessor's notice of intention to terminate, shall have (1) given to Lessor written notice of its intention to cure all defaults by such Leasehold Mortgagee other than an Insolvency Event (as hereinafter defined), (2) cured all defaults, if any, then existing which may be cured by the payment of a sum of money (excepting obligations of Lessee to discharge liens, charges or encumbrances against Lessee's Leasehold Estate), and (3) initiated, and be diligently pursuing, steps to acquire the Leasehold Estate by foreclosure of its Leasehold Mortgage or otherwise. If (a) a Leasehold Mortgagee or other person shall obtain possession of the Leased Premises or shall have acquired Lessee's Leasehold Estate by foreclosure or other enforcement proceeding under any Leasehold Mortgage or by obtaining an assignment of the Leasehold Estate in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding (any of the foregoing being referred to as an "Enforcement Proceeding") (b) a lease assumption agreement shall be delivered to Lessor by such Leasehold Mortgagee in possession or its designee, regarding covenants and conditions contained in this Lease on Lessee's part to be performed, and (c) such Leasehold Mortgagee shall have complied with all obligations on Lessee's part to be performed under this Lease, including the curing of all defaults other than an Insolvency Event, then (x) a default related to an Insolvency Event shall be deemed waived and all rights of Lessee under this Lease shall be deemed reinstated, (y) such Leasehold Mortgagee or other person shall be deemed to be the Lessee under the Lease, and (z) notwithstanding any provision in this Lease to the contrary, such Leasehold Mortgagee or other person or any of their respective designees or nominees and their respective successors and assigns shall have the further right to assign, from time to time, the Leasehold Estate without Lessor's consent. No Leasehold Mortgagee shall be required to continue to proceed to obtain possession, continue in possession of the Leased Premises as Leasehold Mortgagee or to continue to prosecute any Enforcement

Proceedings or other remedies, including, without limitation, at any time any such defaults which were the basis for the termination of this Lease shall be cured. If more than one Leasehold Mortgagee shall seek to exercise the rights provided for in this subsection, the Leasehold Mortgagee with the most senior lien priority shall be entitled, as against the others, to priority in the exercise of such rights.

(C) If this Lease is terminated or cancelled prior to the stated expiration of the Lease Term for any reason, including, without limitation, as a result of any Lessee's default or Lessee's rejection of this Lease in any bankruptcy proceeding, Lessor will promptly notify each Leasehold Mortgagee of such termination (including, without limitation, any such rejection) and Lessor shall, within sixty (60) days after request by the Leasehold Mortgagee having the most senior lien priority (or such other Leasehold Mortgagee, in order of lien priority, if the Leasehold Mortgagee having the most senior lien shall not have made such request), enter into a replacement lease for the Leased Premises with said Leasehold Mortgagee or its nominee or designee, which lease shall have the same priority as this Lease, be for the remainder of the Lease Term, have the same terms and conditions contained in this Lease (but shall exclude any Personal Covenant), and grant to or confirm in such Leasehold Mortgagee or its nominee or designee the same interest (as a tenant) in and to the improvements as previously held by Lessee under this Lease; provided, however, that the foregoing right to obtain a replacement lease is contingent upon a request therefor being made within sixty (60) days after receipt of Lessor's notice of termination (including, without limitation, any such rejection), and such Leasehold Mortgagee, at the time of execution and delivery of said replacement lease, paying to Lessor any and all sums then due under this Lease. In no event, however, shall such Leasehold Mortgagee or its nominee or designee be required to cure a default under this Lease due to an Insolvency Event in order to obtain a replacement lease.

(D) Any Leasehold Mortgagee or equitable owner of Lessee's Leasehold Estate shall have the right, in the event of any default under its Leasehold Mortgage or any of the other documents executed in connection with such Leasehold Mortgage and if allowed by law or its agreements with Lessee, to take possession of the Leased Premises and manage the same and collect rents subject to paying the rent required pursuant to the terms of this Lease.

1. No Leasehold Mortgagee or other person succeeding to the Leasehold Estate through or subsequent to an Enforcement Proceeding shall be liable under this Lease, unless and until such time as it becomes the owner of the Leasehold Estate, and then only for such obligations of Lessee which accrue during the period while it remains the owner of the Leasehold Estate.

2. Notwithstanding any provision in this Lease to the contrary, in the event of any casualty to or condemnation of the Leased Premises or

any portion thereof and if allowed by law or its agreements with Lessee, the most senior Leasehold Mortgagee (or such other Leasehold Mortgagee, in order of lien priority, if the Leasehold Mortgagee having the most senior lien shall not request or shall not be permitted by law or its agreements with Lessee to do so) shall be permitted to receive insurance proceeds and/or condemnation awards otherwise payable to Lessee.

(E) Lessor, upon the request of Lessee or any Leasehold Mortgagee, shall otherwise reasonably cooperate with Lessee in allowing any Leasehold Mortgagee from time to time to request reasonable modifications to the provisions of this Section 9, if such modifications or amendments do not, materially affect Lessee's obligations or materially affect Lessor's rights under this Lease.

(F) Any notices to be sent to any Leasehold Mortgagee shall be sent to the addressees and at the addresses designated by such Leasehold Mortgagee from time to time, by any method permitted for notices under Section 16 of this Lease.

#### 10. INSURANCE INDEMNITY.

(A) Insurance. Lessee shall maintain, or cause to be maintained, not less than the following insurance coverages: Lessee shall furnish the Village with a certificate of insurance and, upon the Village's request, copies of all insurance policies and endorsements thereto evidencing the coverages stated below. The insurance certificates and policies shall provide that no cancellation or modification of the policies shall occur without at least 30 days' written notice to the Village. Lessor shall not commence any services under this Agreement until evidence of the required insurance is received and approved by the Village. The Village shall be named on the policies required by sections (b) and (d) as additional insured as follows: "The Village of Roselle, its corporate authorities, officers, boards, commissions, employees, attorneys, agents, volunteers, and representatives are made additional insured with respect to any and all claims which arise out of, or are in any way related to, the operations of the insured." No policy shall require contribution by the Village's insurance.

(a) Worker's Compensation insurance with limits as required by the applicable statutes of the State of Illinois. The Employer's Liability coverage under the Worker's Compensation policy shall have limits of not less than \$500,000 each accident/injury; \$500,000 each employee/disease; \$500,000 policy limit.

(b) Commercial general liability insurance protecting Lessor against any and all public liability claims which may arise in the course of performance of this Agreement. The limits of liability shall be not less than \$2,000,000 each occurrence bodily injury/property damage combined single limit and \$4,000,000 aggregate bodily injury/property damage combined single limit. The policy of commercial liability insurance shall include contractual liability coverage and an endorsement naming the Village as an additional insured as well as special peril (formerly known as "all-risk") full replacement

cost insurance, including coverage for explosion and collapse, on the Garage, naming the Village and Lessee as their interests may appear;

(c) Commercial automobile liability insurance covering Lessee's owned, non-owned and leased vehicles which protects Lessee against automobile liability claims whether on or off of the Village's premises with coverage limits of not less than \$1,000,000 per accident bodily injury/property damage combined single limit. The policy of commercial liability insurance shall include contractual liability coverage and an endorsement naming the Village as an additional insured.

(d) Umbrella or Excess liability insurance with limits of not less than \$1,000,000 per occurrence bodily injury/property damage combined single limit. The Umbrella or Excess coverage shall apply in excess of the limits stated in subparagraphs (B) and (C) above, and shall either include an endorsement naming the Village as an additional insured or provide "following form" coverage for the primary insurance.

(e) Lessee shall require its tenants sign a release and agreement to defend, indemnify and hold the Village of Roselle, its corporate authorities, officers, employees, attorneys, agents, and representatives, harmless from any and all liabilities, claims, injuries or damages of whatever nature, arising from, as a result on account of, directly or indirectly, while parking in the garage and that any liabilities, claims, injuries, or damages that may occur to their vehicle(s) or its contents are the tenant's sole responsibility.

(f) Indemnity. The Village assumes no responsibility for any acts, errors or omissions of Lessee or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Lessee. Lessee shall defend, indemnify and hold the Village, its employees, agents, contractors and subcontractors ("Indemnified Parties") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Lessee, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Lessee in connection with Lessee's activities at or with respect to the Garage Site or in connection with any breach by Lessee under this Lease; excluding, however, any of the foregoing caused by the negligence or willful misconduct of the Indemnified Parties.

(g) Insurance Escalator. The foregoing minimum insurance requirements may be increased by the Village in its reasonable discretion to reflect insurance industry or unit of government insurance trends at the time of the increase.

## 11. DEFAULT REMEDIES

(A) Default. Each of the following shall constitute an event of default by Lessee under this Lease:

(i) If Lessee fails to pay rent or any other sum payable to the Village hereunder when due, and such failure to pay continues for longer than thirty (30) days after Lessee receives written notice thereof from the Village;

(ii) If Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than thirty (30) days after written notice thereof from the Village; provided, however, that if such failure is not reasonably susceptible of being cured within such thirty (30) day period, an event of default shall not be deemed to have occurred if Lessee commences to cure such failure within such thirty (30) day period and proceeds to remedy the cure with reasonable diligence. The foregoing notwithstanding, if the failure creates a threat of imminent harm to persons or property or otherwise constitutes an emergency as reasonably determined by the Village, an event of default shall be deemed to have occurred if Lessee fails to address such condition immediately upon receipt of written notice from Lessor of such imminent harm or emergency (an "Emergency Situation Default"); and

(iii) The commencement of levy, execution or attachment proceedings against Lessee, or any of the assets of Lessee, or the application for or appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer; or the insolvency in the bankruptcy or equity sense, of Lessee; or the assignment for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due, or the ordering of the winding-up or liquidation of the affairs of Lessee; or the commencement of a case by or against Lessee under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by any of them to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequester or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings with respect to any of the proceedings set forth in this subsection (iii), the same shall be dismissed within ninety (90) days after institution) (individually and collectively, "Insolvency Event").

Notwithstanding the foregoing or anything to the contrary contained herein, Lessee shall not be in default of any obligation hereunder if and for so long as Lessee is unable to perform such obligation due to one or more events of Force Majeure.

(B) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for under Section 11(A) above, the Village shall be entitled to (i) terminate this Lease by giving Lessee written notice thereof except in connection with an Emergency Situation Default, (ii) take such actions in the way of "self-help" as the Village determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Lessee, and (iii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such

rights and remedies being cumulative. Lessee shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the Village as a result of a default of Lessee under this Lease or the Village's enforcement or termination of this Lease. Lessee shall pay all such costs and damages within thirty (30) days after receiving documentation from the Village of the amount due. The failure of the Village to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

(C) Rights of Leasehold Mortgagees. Notwithstanding the Village's termination rights provided or in Section 11(B) above, prior to exercising such termination rights the Village shall provide each Leasehold Mortgagee with notice and an opportunity to cure as described in Section 9(B) above.

## 12. ASSIGNMENT AND SUBLETTING.

Lessee shall have the right, with prior written consent of the Village, to sell, assign, convey or otherwise transfer its interest in the Lease to any person, corporation or other entity provided that the transferee shall assume all of the obligations and covenants to be performed by Lessee under this Lease, at the time of the transfer of the Lease, and in the event of such transfer the transferor shall be relieved of its obligations hereunder from and after the date of such assignment and assumption provided that the Lessee's successor is a commercially reasonable successor.

## 13. ESTOPPEL CERTIFICATES

Within fifteen (15) days after written request from the other party, each party shall execute and deliver to the requesting party an estoppel certificate (i) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) stating, to the best of such party's knowledge, whether or not the requesting party is in default under this Lease, and, if so, specifying the nature of such default, and (iii) covering such other matters pertaining to this Lease as the requesting party may reasonably request. The estoppel certificate shall not constitute a warranty but shall be based on the party's actual knowledge.

14. SURRENDER' HOLDOVER

(A) Holdover. If Lessee fails to surrender possession of the Garage Site to the Village at the end of the Term, or upon an event of default such holdover shall be deemed as creating a holdover tenancy on all of the same terms and conditions as set forth herein (except for the duration of the Term) and shall be subject to any enhanced rent due as a result of Illinois law at the time, and shall be terminable by the Village at any time by giving written notice thereof to Lessee. Lessee shall also be liable for all costs and damages suffered or incurred by the Village as a result of Lessee's holding over.

15. NOTICES

All notices required to be given to any party under this Lease shall be in writing and (i) personally delivered, (ii) deposited in the United States mail, first class, postage prepaid, or (iii) delivered by a nationally recognized overnight courier service, or by electronic transmission to the e address set forth below or as may be changed by a party but only with the other parties acknowledgement of the change to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt or twenty four (24) business hours after delivery, whichever occurs first.

If intended for Village:

Attn: Village Administrator  
Village of Roselle  
31 S. Prospect Street  
Roselle, IL 60172

If intended for Lessee:

Metro19, LLC

16. COVENANT OF QUIET ENJOYMENT

The Village covenants and agrees that Lessee shall, during the Term, peaceably and quietly have, hold and enjoy the portion of the Garage Site subject to the terms, covenants, conditions, provisions and agreements hereof.

17. GENERAL PROVISIONS

(A) Entire Agreement. This Lease (including the exhibits hereto and the other agreements referred to herein) contains the entire agreement between the parties with respect to the subject matter hereof and from and after the Commencement Date supersedes any prior lease of agreement and any and all prior amendments discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof, and from and after the Commencement Date, the parties hereto need only refer to this Lease for their respective rights and obligations.

(B) Amendments. This Lease may be amended only by a written amendment legally authorized and signed by both parties.

(C) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Illinois. All actions regarding this Lease shall be brought in the 18<sup>th</sup> Judicial Circuit Court, DuPage County, Illinois and Lessee agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Lease.

(D) Binding Agreement. This Lease shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(E) Captions. The captions of the various Sections of this Lease are not part of the context hereof and are only guides to assist in locating such sections and Sections and shall be ignored in construing this Lease.

(F) Severability. If any part of this Lease is held to be void, illegal or unenforceable by a court of law, such part shall be deemed severed from this Lease, and the balance of this Lease shall remain in full force and effect.

(G) Recording. This Lease shall be recorded in the DuPage County Recorder's office.

(H) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Lease.

(I) No Third Party Beneficiaries. The parties hereby agree that, except for the rights of Leasehold Mortgagees under Section 9 hereof, no third party beneficiary rights are intended to be created by this Lease

(J) No Brokers. The Village and Lessee represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Lease.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the Village under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the Village in other than his or her official capacity. No official executing or approving the Village's participation in this Lease shall be personally liable under this Lease.

(L) Representation as to Authority. The Village and Lessee each represents to the other that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease have been duly authorized by all necessary actions on the part of the performing party.

(M) Good Faith Fair Dealing and Reasonableness. Lessee and Village acknowledge their duty to exercise their rights and remedies and perform their obligations reasonably and in good faith. Wherever a party's consent or approval is required, unless this Lease expressly provides, otherwise, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Whenever the provisions of this Lease allow Village or Lessee to perform or not perform some act at its option, in its judgment, or to its satisfaction, the decision of Village and Lessee to perform or not perform such act must be commercially reasonable unless this Lease expressly provides otherwise.

(N) Limitations on Liability.

(i) Village's Liability. Notwithstanding anything contained in this Lease to the contrary, the liability of Village (and its predecessors or successors) to Lessee (or any person or entity claiming by, through or under Lessee) shall be solely for the specific performance of all terms and conditions of this Lease.

(ii) Lessee's Liability. Notwithstanding anything contained in this Lease to the contrary, the liability of Lessee (and its predecessors or successors) to Village (or any person or entity claiming by, through or under Village for any monetary damages arising from any default by Lessee under the terms of this Lease or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Project shall be limited to Village's actual direct, but not consequential, punitive or incidental damages therefor.

(O) Village's Lien. Village hereby forever waives and releases any and all landlord's liens and any and all other statutory or other rights of a landlord to encumber any property of Lessee on account of this Lease. Notwithstanding the foregoing, in no event shall Village be deemed to have waived or released any judgment lien that may be hereafter obtained.

(P) Exhibits. The following Exhibits are attached hereto and made a part hereof:

- Exhibit A: Legal Description of Land
- Exhibit B: Garage Parking Rates, First Year
- Exhibit C: Garage Maintenance Tasks and Costs

SIGNATURES ON FOLLOWING PAGE



STATE OF ILLINOIS

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this    day of \_\_\_\_\_, 2021.

\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

## EXHIBIT A

### LAND

WHEREAS, as a further condition to Lender consenting to Lessee entering into the Lease, Lender is requiring that Lessor deliver this Certificate and Notice to Lender.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby certify and agree as follows:

1. Recitals. The foregoing recitals are true and correct.
2. Terms of Lease. Based on information and belief, the Lease is valid, presently in full force and effect, and is enforceable against Lessor and Lessee in accordance with its terms. There has been no amendment, modification, supplement or notice of any kind or nature changing or varying the stated terms and conditions of the Lease.
3. Events of Default under Lease. All base rent, percentage rent, reimbursables, charges and other fees owed as of the date of this Certificate and Notice under the terms of the Lease have been paid in full through the date of this Certificate and Notice. Based on information and belief, no event of default currently exists under the terms of the Lease on the part of either Lessor or Lessee; and no act or omission has occurred nor does any condition exist that would constitute an event of default by Lessor or Lessee under the terms of the Lease after the passage of time or the giving of notice or both. Lessor has not given Lessee any notice of a default under the Lease that has not been cured.
4. Assignment and Subletting. Neither Lessor nor, to Lessor's knowledge, Lessee has assigned any rights under the Lease, as security or otherwise except by Lessee to Lender in accordance with the Modification Agreement.
5. Authority. Lessor has full right and authority to enter into and execute this Certificate and Notice.
6. Consent and Duty. Lessor's consent to the assignment of the Lease by Lessee or the mortgage by Lessee of its interest in the Lease is not required. The Lessor has no legal obligation or duty under the Lease to provide this Certificate and Notice.

7. Reliance. In rendering this Certificate and Notice, Lessor's staff has examined the records of the Lessor and, to the best of the Lessor's knowledge and belief, the information contained herein is true and accurate. Lender may rely upon the information contained in this Certificate and Notice; provided, however, that this Certificate and Notice shall not be construed to constitute a covenant, guarantee, warranty, promise or representation of the Lessor upon which a claim of any nature may be asserted against the Lessor by any person or entity based on the representations made herein and is provided by the Lessor as a courtesy based on its best knowledge. Nothing in this Certificate and Notice shall constitute or be interpreted to constitute a waiver or release of any and all rights of the Lessor under the Lease which are specifically reserved by the Lessor in every respect.

8. Notice to Lender. This Certificate and Notice shall serve as (i) confirmation that Lender is a "Leasehold IV Mortgage" and the Mortgage is a "Leasehold Mortgage" under the Lease and (ii) notice to Lessor of the identity of Lender and of Lender's notice address. Pursuant to the terms of the Lease, Lessor shall hereafter send copies of all notices sent to Lessee to Lender as follows:  
with a copy to:

IN WITNESS THEREOF, Lessor and Lender have executed this Certificate and Notice as of the \_\_\_ day of \_\_\_\_\_, 2021.

Name:  
Title: Village Clerk

By:  
Name:  
Title: Village Administrator

ATTEST:

VILLAGE OF ROSELLE , COOK AND  
DU PAGE COUNTIES, ILLINOIS













## Annual Parking Garage Maintenance Costs

Item Description	Quantity	Unit Price	Total Cost	Time	Cost/Year	Total Cars	Total SF
						547	180304
						Cost/Car/Yr	Cost/SF/Yr
<b>Preventative Maintenance</b>							
Sealants Floor Slab	12,200	9.00	109,800	5	21,960.00	40.15	0.12
Cove Sealant	5,000	9.00	45,000	7	6,428.57	11.75	0.04
Architectural Sealants	1,800	9.00	16,200	10	1,620.00	2.96	0.01
Expansion Joints	100	120.00	12,000	10	1,200.00	2.19	0.01
Penetrating Sealer	147,600	0.50	73,800	5	14,760.00	26.98	0.08
Traffic Topping	600	6.00	3,600	15	240.00	0.44	0.00
				<b>Total</b>	<b>46,208.57</b>	<b>84.48</b>	<b>0.26</b>
<b>Routine Maintenance</b>							
Maintain Joint Sealants	1	5,500.00	5,500	1	5,500.00	10.05	0.03
Maintain Arch Sealants	1	1,000.00	1,000	1	1,000.00	1.83	0.01
Maintain Traffic Topping	1	1,000.00	1,000	10	100.00	0.18	0.00
Interim Connection Painting/Repair	1	6,000.00	6,000	5	1,200.00	2.19	0.01
Maintain Drainage System	1	1,500.00	1,500	1	1,500.00	2.74	0.01
Maintain Lighting	1	7,000.00	7,000	1	7,000.00	12.80	0.04
Maintain Sprinklers and Ventilation	1	5,000.00	5,000	1	5,000.00	9.14	0.03
Inspections	1	6,000.00	6,000	3	2,000.00	3.66	0.01
Maintain Elevators	2	1,000.00	2,000	1	2,000.00	3.66	0.01
Miscellaneous	1	6,000.00	6,000	1	6,000.00	10.97	0.03
				<b>Total</b>	<b>31,300.00</b>	<b>57.22</b>	<b>0.17</b>
<b>Other Items</b>							
Wash Down *	2	1,283.20	2,566	1	2,566.40	4.69	0.01
Trash Removal **	52	80.20	4,170	1	4,170.40	7.62	0.02
				<b>Total</b>	<b>6,736.80</b>	<b>12.32</b>	<b>0.04</b>
				<b>Grand Total</b>	<b>84,245.37</b>	<b>154.01</b>	<b>0.47</b>

\* Spring and Fall - 2 employees, 2 days, 2 times - Avg 2020 Street Maint. Billable Rate

\*\* 1 employee, 2 hours, 1 time a week - Avg 2020 Street Maint. Billable Rate