

## DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (the “Agreement”), is made and entered into this, \_\_\_\_\_ day of \_\_\_\_\_ 2020, A.D., by and among the **VILLAGE OF ROMEOVILLE**, a home rule Illinois Municipal Corporation (hereinafter sometimes referred to as “Village” or “Romeoville”), and LDD Properties, LLC (hereinafter referred to as “Developer”). The Village and Developer may sometimes be referred to individually as a “Party” and collectively as the “Parties”.

### WITNESSETH:

**WHEREAS**, Developer owns the three tracts of real property within the corporate limits of the Village respectively legally described in Exhibits A-1, A-2 and A-3 (collectively, the “Subject Property”), copies of which is attached hereto and incorporated herein by this reference; and

**WHEREAS**, Developer is presently undertaking the redevelopment of an existing building on the tract of real property described in Exhibit A-1 (sometimes hereinafter referred to as the “84 Lumber Parcel”); and

**WHEREAS**, Developer is in the process of applying for and receiving necessary approvals for its proposed development of the tract of real property described in Exhibit A-2 (sometimes hereinafter referred to as the “Condo Parcel”), and for its proposed development of the tract of real property described in Exhibit A-3 (sometimes hereinafter referred to as the “Triangle Parcel”); and

**WHEREAS**, the 84 Lumber Parcel is located in a highly visible location along one of the primary entrance corridors to the Village, and the Village has requested the Developer to include upgraded exterior façade elevations in its redevelopment of the 84 Lumber Parcel; and

**WHEREAS**, the upgraded exterior façade elevations requested to be included in the redevelopment of the 84 Lumber Parcel are depicted and described in Group Exhibit B, a copy of which is attached hereto and incorporated herein by reference (sometimes hereinafter referred to as the “Upgraded Elevations”); and

**WHEREAS**, to facilitate Developer's inclusion of the Upgraded Elevations in its redevelopment of the 84 Lumber Parcel, the Village has proposed to provide the Developer with relief from certain Village fees otherwise applicable to the development of the Condo Parcel and the Triangle Parcel, all as more fully hereinafter set forth (such relief sometimes being hereinafter referred to as the "Incentive"); and

**WHEREAS**, the Developer is amenable to including the Upgraded Elevations in connection with its redevelopment of the 84 Lumber Parcel in consideration of the Village's provision to the Developer of the Incentive, as more fully hereinafter set forth; and

**WHEREAS**, pursuant to Article VII, Section 10, of the Constitution of the State of Illinois, which permits Units of Local Government to contract with individuals, associations or corporations in any manner not prohibited by law or by ordinance, the Village and Developer desire to enter into this Development Agreement in order to regulate certain matters pertaining to the development of the Subject Property in the manner and upon the terms and conditions contained in this Agreement; and

**WHEREAS**, the Village acknowledges that this executed Development Agreement will facilitate the orderly growth, planning and development of the Village.

**NOW THEREFORE**, in consideration of the foregoing premises and in further consideration of the mutual covenants, conditions and agreements herein contained, Developer and Village hereby agree as follows:

**SECTION 1: Incorporation of Preambles** - The recitals contained in the Preamble hereto are material and are hereby incorporated as a part of this Agreement. Developer and the Village shall fully cooperate with each other in carrying out the terms of this Agreement. The Parties represent that they have full authority to enter into this Agreement pursuant to law.

**SECTION 2: Upgraded Elevations** – Subject to the terms and provisions of this Agreement, and the applicable ordinances of the Village, the Developer shall construct and include the Upgraded Elevations in its redevelopment of the 84 Lumber Parcel, and acknowledges that the construction and inclusion of the same as part of its redevelopment of the 84 Lumber Parcel shall be a condition to the Village's issuance of a certificate of

occupancy/completion for the building located on the 84 Lumber Parcel upon Developer's completion of the redevelopment thereof. Developer further acknowledges that it shall promptly prepare and submit any necessary revisions to its heretofore approved submittals for the redevelopment of the 84 Lumber Parcel required by the construction of the Upgraded Elevations, and the Village shall review the same without undue delay and approve the same at such time as they shall otherwise comply with the applicable ordinances of the Village.

**SECTION 3: Village Provision of Incentive** – To facilitate the inclusion of the Upgraded Elevations in the redevelopment of the 84 Lumber Parcel as hereinabove contemplated, Village shall, in connection with its review and approval of Developer's submittals for the development of the Condo Parcel and the Triangle Parcel, extend to Developer the Incentive, which shall consist of a credit in the amount of \$75,000.00 toward development fees and costs otherwise payable by Developer to the Village in connection with the development of the Condo Parcel and the Triangle Parcel. The parties acknowledge that the Village shall determine at its discretion all matters pertaining to the timing and application of the Incentive to fees otherwise due and payable by the Developer in connection with the development of the Condo Parcel and the Triangle Parcel. No portion of the Incentive shall be applicable to any fees due and payable in connection with Developer's redevelopment of the 84 Lumber Parcel.

**SECTION 4: Village's Fees and Expenses** - From and after the effective date of this Agreement, and upon demand by Village made by and through its President, Developer from time to time shall promptly reimburse Village for all reasonable expenses and costs incurred by Village for services from third-party providers in (i) the negotiation and administration of this Agreement, including engineering fees, attorneys' fees and out-of-pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder, the negotiation and preparation of financial security for the completion of construction and restoration activities, and (ii) the enforcement of this Agreement or any applicable ordinances of the Village by any administrative proceedings under the ordinances of the Village, or under any state statute or by any court action, including but not limited to prosecutions for violation of this Agreement or any such ordinances, where the Village prevails in such enforcement actions, court proceedings or prosecutions.

## **SECTION 5: General Provisions**

A. Developer's Faithful Performance. It is understood and agreed by the Parties hereto that, in the event that Developer shall assign, convey or otherwise transfer its interest in the Subject Property at any time during the term of this Agreement, all the obligations and responsibilities of the Developer, as herein set forth shall devolve upon and be assumed by such assignee, grantee or transferee, and the Developer shall be released from all obligations which relate to any portion of the Subject Property as may have been sold or conveyed, but only upon the posting of financial security by the proposed assignee, grantee or transferee for any remaining unperformed obligation for which financial security is required under the ordinances of the Village or this Agreement, and the presentation to the Village of a written instrument executed by such proposed assignee, grantee or transferee assuming and agreeing to be bound by the terms and conditions of this Agreement.

B. No Waiver or Relinquishment of Right to Enforce Agreement. The failure of any Party to this Agreement to insist upon strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's rights, to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect. No waiver by the Village shall be valid or binding on the Village unless it is in writing signed by the Village President after being approved by the Village Board and only to the extent therein set forth.

C. Cumulative Remedies. Unless expressly provided otherwise herein, the rights and remedies of the Parties provided for herein shall be cumulative and concurrent and shall include all other rights and remedies available at law or in equity, may be pursued singly, successively or together, at the sole and absolute discretion of either Party and may be exercised as often as occasion therefore shall arise.

D. Other Ordinances, Codes, Rules, Regulations, Resolutions and Applicable Law. Except as expressly provided to the contrary, nothing herein contained is intended to relieve Developer of its obligations under the ordinances, codes, rules, regulations, and/or resolutions of the Village, provided, however, that in the event of any conflict between the terms of this Agreement and the terms of any such ordinance, code, rule regulation or resolution, the terms of this Agreement shall prevail. In addition, wherever this Agreement provides that a particular ordinance, code, rule, regulation or resolution is

applicable, said provisions shall also automatically include any amendments thereto, except as expressly set forth in this Agreement.

E. Singular and Plural. Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.

F. Section Headings and Subheadings. All section headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or applicability of any of the provisions thereunder whether covered by or relevant to such heading or not.

G. Recording. All ordinances, plats, and any other agreements and/or documents contemplated hereunder shall be recorded by the Village at the sole cost and expense of the Developer.

H. Term and Date of Agreement; Termination. The term of this Agreement shall be from the approval of this Agreement by the Village until the Termination Date, including any extension thereof as permitted hereby. The date of this Agreement shall be the date on which the corporate authorities of the Village of Romeoville adopt legislation authorizing the execution of this Agreement. In the event of any default under the provisions of this Agreement, the non-defaulting Party shall give the defaulting Party specific written notice of such default, in the manner provided herein. The alleged defaulting Party shall have thirty (30) days to cure said default. If the defaulting Party does not cure said default during the thirty (30) day period, or is not diligently pursuing the cure of said default, the Agreement may thereafter be terminated by written notice from the non-defaulting party directed to the defaulting party, except that the provisions of Section 5.I. of this Agreement shall survive any such termination (or any expiration) of this Agreement, and provided further, that no such termination of this Agreement shall prejudice or affect the rights of the Parties hereunder to institute, maintain or continue the prosecution of litigation in relation to any breach of this Agreement alleged to have occurred prior to any such termination (or any expiration) of this Agreement.

I. Indemnification. Developer shall indemnify and hold Village (together with Village's officials, officers, employees, agents, servants, successors and assigns the "Village Indemnitees") harmless from any loss, cost, damage, claim, action, proceeding (whether judicial, governmental, regulatory or otherwise), judgment, fine, lien, liability or expense (including but not limited to reasonable attorneys' and other professional consultants' fees) (collectively, "Claims") asserted by any

person or entity arising from or that are claimed to arise or in any way be founded upon Developer's breach of this Agreement or upon Developer's performance of any construction activities, or its performance of activities pursuant to and as may be permitted by this Agreement or the ordinances of the Village, regardless of whether litigation or any like proceeding ensues or not; provided, however, Developer shall not be obligated to indemnify or hold harmless Village Indemnitees for Claims to the extent arising out of or connected with the negligent acts or omissions, willful misconduct or illegal acts of any Village Indemnitees. The foregoing indemnification and hold harmless provisions shall also survive any termination of this Agreement and any declaration of the invalidity of this Agreement as a whole or of any other term or provision of this Agreement.

J. Developer's Construction and Compliance Obligations. All Developer use of any Village public street, road, easement area or other Village-owned property hereunder for any construction activities shall be in conformity with all applicable statutes, ordinances, rules, regulations and orders of all governmental authorities having jurisdiction. Copies of all relevant permits or other required approvals or satisfactory evidence thereof shall be furnished to Village. During any construction or the performance of any other work contemplated hereby, Developer shall not obstruct or interfere with Village's right of access to or use of any Village public street, road, easement area or other Village-owned property. All design, construction, installation, use, operation and maintenance of improvements in any Village public street, road, easement area or other Village-owned property shall be performed in conformity with all applicable statutes, ordinances, rules, regulations and orders of all governmental authorities having jurisdiction. Except in the case of a bona fide emergency where repairs are immediately necessary to protect the health and safety of the public or to comply with regulatory requirements, Developer shall provide Village with not less than thirty (30) days advance notice of any work (including routine maintenance) that requires excavation by means of heavy equipment so that Village may take such actions as Village deems necessary for the protection of Village's facilities in the area of Developer's proposed work. Developer shall postpone the commencement of its work until such time as Village has completed any and all such protective work. Any cost and expenses of such protective work shall be borne by Developer and paid by Developer within thirty (30) days after receipt of a bill for the cost of such work from the Village. If Developer damages any such underground or other facilities of the Village or others in the course of its work, Developer will promptly reimburse Village or the owner of such equipment or facilities for any and all expenses incurred in repairing or replacing such damage. Exclusive of bona fide emergencies as aforesaid or in response to line locates

(i.e., JULIE notices), Developer shall also provide Village with 48 hours' notice of its entry onto any Village public street, road, easement area or other Village-owned property for the performance of any work contemplated hereby. In the event of any emergency repairs necessary for the protection of public health and safety, Developer need not provide advance notice to Village of such work but shall exercise all possible diligence to notify Village of the performance of and circumstances creating the need for such work as soon as possible but in any event within four (4) hours of Developer's becoming aware of the need for such work. Such notice shall be provided by calling the Village Police Non-Emergency line at 815-886-7219 outside of normal business hours, and by calling the Village Department of Public Works during normal business hours at 815-886-1870. As used herein, "normal business hours" shall be from 7:00 a.m. to 3:00 p.m., Monday through Friday, excluding legal holidays. Written notification of the same along with a detailed description of the work performed and the manner of its performance shall be provided to the Village within 48 hours of the performance of such work or on the commencement of the first normal business day thereafter.

K. Law and Venue. This Agreement shall be governed by the laws of the State of Illinois, without reference to the conflicts or choice of laws provisions thereof. The sole and exclusive venue for any litigation arising from this Agreement shall be in the Circuit Court for the 12<sup>th</sup> Judicial Circuit, Will County, Illinois.

L. Actions by Parties/Right to Cure. In the event of an alleged default under all or any provision of this Development Agreement, prior to and as a condition of instituting legal proceedings, the non-defaulting Party shall give the defaulting Party specific written notice of such default, in the manner provided herein. The alleged defaulting Party shall have thirty (30) days to cure said default. If the defaulting Party does not cure said default during the thirty (30) day period, or is not diligently pursuing the cure of said default, the non-defaulting Party may take any and all steps necessary to address such default, including but not limited to the commencement of litigation in relation to the default. Additionally, the non-defaulting Party may exercise its right of termination under Section 6.H. of this Agreement, without prejudice to any litigation commenced, maintained or prosecuted with respect to any default occurring prior to any such termination of this Agreement. Developer shall not have a right to recover a judgment for monetary damages against any elected or appointed official of the Village for any breach of any of the terms of this Development Agreement. The Village reserves the right to maintain an action to recover damages or any sums which Developer has agreed to pay pursuant

to this Agreement and which have become due and remain unpaid. In the event the Village maintains such an action and judgment is entered in favor of the Village or the Village accepts a settlement, then the Village is entitled to repayment of its reasonable attorneys' fees for prosecuting said action.

M. No Personal Liability of Corporate Authorities. The Parties acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the Village are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

N. Notices. Notices or other writings which any Party is required to or may wish to serve upon any other Party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

***If to the Village:***

Village of Romeoville  
1050 W. Romeo Road  
Romeoville, IL 60446  
Attention: Village Clerk

***with a copy to:***

Rich Vogel  
Tracy, Johnson & Wilson  
2801 Black Road, 2d Floor  
Joliet, IL 60435

***If to the Developer:***

LDD PROPERTIES, LLC  
16W020 79TH STREET  
BURR RIDGE, IL 606270000

***with a copy to:***

or to such other address as any Party may from time to time designate in a written notice to the other Party.

O. Amendments. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Developer and the Village relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings,

either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

P. Invalidity of any Provision. If any provision, clause, word or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision, clause, word or designation contained herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute same, the day and year first above written.

**Village:**

**VILLAGE OF ROMEOVILLE,**  
An Illinois Municipal Corporation

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

Name: John D. Noak

Its: Village President

*Attest:*

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

Name: Dr. Bernice Holloway

Its: Village Clerk

**Developer:**

LDD PROPERTIES, LLC

*Attest:*

By: 

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

Name: Vic Dodovsi

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

Its: Manager

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

**Exhibit List**

**Exhibit A-1            Legal Description of 84 Lumber parcel**

**Exhibit A-2            Legal Description of Condo Parcel**

**Exhibit A-3            Legal Description of Triangle Parcel**

**Group Exhibit B-2    Upgraded Elevations, including the following:**

**Rendering Depicting Appearance of Upgraded Elevations,  
including façade product specifications**

**Trespa Meteon Panel Handbook**

**Nichiha Panel Handbook**

**Note: Trespa Meteon Panels and Nichiha Panels referenced in  
rendering are described/included in referenced panel  
handbooks**

