

MASTER AGREEMENT

This Master Agreement (the “**Agreement**”) is made and entered into this ___ day of March, 2021 (“**Effective Date**”), by and between the Orchard 2020 Revocable Trust, (“**Orchard**”), the Walton 2019 Revocable Trust (“**Walton**” and collectively with Orchard are the “**Trusts**”), and the Winnetka Park District, an Illinois park district (the “**Park District**”). The Park District and the Trusts are sometimes referred to herein as a “**Party**” or collectively as the “**Parties**.”

- A. The Park District and Orchard have entered into a Real Property Exchange Agreement dated October 10, 2020 in which Orchard and the Park District agreed to exchange certain property on Sheridan Road in Winnetka, IL as further described therein (the “**Exchange Agreement**”). The appraised value of the property transferred from Orchard to the Park District (“**261 Sheridan**”) was agreed to have exceeded the appraised value of the property transferred from the Park District to Orchard (the “**Centennial Parcel**”) by \$3,125,000 (the “**Excess Consideration**”).
- B. The Park District owns land immediately to the north of the Centennial Parcel (the “**Park**”).
- C. In order to accomplish the Parties’ development of their respective properties, including the construction of a wall separating the Centennial Parcel from the Park and the construction of a Break Water structure to protect the Park’s lakefront beach, the parties wish to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and undertakings herein contained, as well as in consideration of the Excess Consideration to be delivered to the Park District upon closing of the transactions set forth in the Exchange Agreement, the sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Boundary Wall Design.**

a. The Parties agree that the wall separating the Park from the Centennial Parcel (the “**Boundary Wall**”) shall be constructed in accordance with the drawings attached hereto as **Exhibit A** at the Trusts’ cost and expense. The Trusts have sole discretion with regard to the design, location, dimensions, materials, and methods of construction of the Boundary Wall in the Trusts’ reasonable discretion.

b. The Boundary Wall may run approximately from the west side of the Centennial Parcel to the toe of the bluff, in the location detailed in Exhibit A.

c. The Boundary Wall may consist of a masonry wall and frost depth concrete foundation with the elevation of the top of the Boundary Wall at least _____. At the Trusts’ option, additional decorative features may be added on top of the Boundary Wall.

d. The Trusts shall at all times have the right to modify, repair or replace the Boundary Wall in the Trusts' sole discretion at the Trusts' sole cost and expense.

2. **Break Water and Beach Wall Design.**

a. A wall shall be constructed from the toe of the bluff to the Break Water in accordance with the drawings attached hereto as **Exhibit B** (the "**Beach Wall**") and shall be installed by and at the Park District's cost and expense. The Park District shall provide the Trusts with construction drawings for the Beach Wall prior to construction for the Trusts' approval, which approval shall not be unreasonably withheld or delayed. The Trusts shall have reasonable discretion with regard to the design of the Beach Wall subject to the requirements and limitations herein, and the top of the Beach Wall shall have an elevation of at least _____.

b. The Parties agree that a planting pocket containing vegetation extending at least _____ feet north from the Beach Wall (the "**Planting Pocket**") shall be constructed by the Park District at the Park District's cost and expense. The Trusts shall have reasonable discretion in the design and vegetation in the Planting Pocket. The Park District shall provide the Trusts with construction drawings for the Planting Pocket prior to construction for the Trusts' approval, which approval shall not be unreasonably withheld or delayed.

c. A break water structure (including the structure in and arising from the lakebed of Lake Michigan, and all structures and screens thereon) shall be constructed by the Park District in accordance with the drawings attached hereto as **Exhibit B** (the "**Break Water**" and together with the Beach Wall are collectively the "**Lakefront Barriers**"). The Trusts shall have reasonable discretion with regard to the design of the Break Water subject to the requirements and limitations herein. The Park District shall provide the Trusts with construction drawings for the Break Water prior to construction for the Trusts' approval, which approval shall not be unreasonably withheld or delayed.

d. The Break Water shall run approximately from the eastern side of the Beach Wall curving northeasterly into Lake Michigan, in the location detailed in Exhibit B.

e. The top of the Break Water shall have an elevation of at least _____ at all points.

f. The Park District shall name the Trusts as third-party beneficiaries to all design and construction contracts related to the design and construction of the Lakefront Barriers and shall provide the Trusts with the right to approve or reject the design, location, dimensions, materials, and methods of construction of the Lakefront Barriers in the Trusts' reasonable discretion, subject only to the requirements and limitations of this Agreement. Such contracts shall acknowledge the donation to the Park District is sufficient consideration to support the Trusts' third-party

beneficiary rights. The Trusts shall have the right (but not obligation) to enforce the terms and conditions of any the contracts referenced in or contemplated by Section 2 of this Agreement.

3. Maintenance.

a. The Park District shall at all times be solely responsible for the maintenance, repair, and any reasonably necessary replacements (with all such replacements subject to the Trusts' reasonable approval) of the (i) Planting Pocket (including the vegetation located thereon), (ii) Lakefront Barriers, and (iii) any structures installed upon the Lakefront Barriers (including but not limited to permanent or removable screens). Such obligations shall include the Park District's obligation to maintain the Lakefront Barriers and height of the sand abutting the northern side of the Lakefront Barriers to ensure that at least _____ height of the Beach Wall over the beach surface and Lakefront Barriers over the water's surface is maintained at all time. The Park District shall pay for and maintain a monitoring program at all times to manage the sand on the Park's beach, in the Planting Pocket and other properties potentially impacted as determined by the IDNR, to accomplish these objectives.

b. The Park District agrees to maintain and fix damage to the Boundary Wall, including but not limited to graffiti, on the north side of the Boundary Wall at the Park District's sole cost and expense.

c. In the event all or any portion of (I) the Lakefront Barriers or Planting Pocket at any time fail to function for their intended purposes, as determined in the Trusts' reasonable discretion, of (i) protecting the beach, (ii) providing a barrier to entry from the Park to the Centennial Parcel, (iii) providing privacy to the occupants of the Centennial Parcel, or (iv) maintaining the aesthetic design thereof; or (II) the Lakefront Barriers, Planting Pocket, or Boundary Wall are damaged, defaced, or destroyed by any cause or in any manner, and the Park District fails to commence reasonable steps to cure such failings, damage, or destruction, within ten (10) business days of receipt of written notice from Orchard or Walton, then either or both of the Trusts shall have the right, but not the obligation, to perform any of the obligations of the Park District set forth in this section at the Park District's cost and expense. Such cost and expense, including but not limited to construction and design and engineering costs, shall be reimbursed by the Park District within thirty (30) days of submission of any invoice(s) therefor.

d. In the event of the Park District's default of the provisions of this Section 3, which default continues for ten (10) business days following receipt of written notice, and a governmental agency, court, or third-party lawfully preclude the Trusts from exercising their rights pursuant to Section 3(c), the Excess Consideration shall thereafter be immediately due and owing from the Park District to Orchard and shall be paid within thirty (30) days thereof.

4. Stormwater Pipe. The Lakefront Barriers shall include a stormwater outfall pipe (the "**Stormwater Pipe**") within the south side of the Break Water, extending approximately one hundred (100) to one hundred twenty-five (125) feet from the toe of the bluff on the Centennial

Parcel (or the toe of the bluff of the Trusts' adjoining property) as further set forth in the attached **Exhibit C**. The design, dimensions, and location of the Stormwater Pipe shall be subject to the Trusts' reasonable discretion so long as it does not unreasonably interfere with the Break Water.

5. **Easement.** The Parties shall execute and record with the Cook County Recorder of Deeds a reciprocal easement in the form set forth in the attached **Exhibit D** (the "**Easement**") setting forth the following rights and duties:

a. The Park District's right to enter upon the Centennial Parcel for the limited purpose of performing its inspection, maintenance, repair, and replacement obligations set forth in Section 3 of this Agreement as well;

- b. The Trusts' right to enter upon Park property for the limited purposes of:
- i. inspection and curing Park District breaches of the Park District's maintenance, repair, and replacement obligations at the Park District's cost and expense as set forth in Section 3 of this Agreement;
 - ii. inspection, maintaining, and replacing the Boundary Wall;
 - iii. general and overall repair and replacement;
 - iv. installation and maintenance of safety fencing to establish work zones;
 - v. material and equipment staging;
 - vi. excavation for foundation repairs;
 - vii. cleaning; and
 - viii. root pruning (from trees either on the Park or Centennial Parcel) if roots damage or are threatening to damage the Boundary Wall.

c. The Trusts' right to enter upon the Park and Lakefront Barriers for the limited purposes of inspecting, maintaining, repairing, and replacing the Stormwater Pipe at the Trusts' sole cost and expense; and

d. The Easement shall grant the Trusts the right to assign all rights therein to the Trusts' successors and assigns.

6. **Temporary License.** The Park District shall grant the Trusts a temporary license to access and use the Park in order to construct the Boundary Wall, including, but not limited to the work described in **Exhibit E** hereto.

7. **Support Letters.**

a. Park District agrees to provide letters of support approving the plans presented by the Trusts, in accordance with the terms of this Agreement, for the Lakefront Barriers, Boundary Wall, and/or Planting Pocket. Such letters of support shall be addressed to the Illinois Department of Natural Resources (the “**IDNR**”), Army Corp of Engineers, Village of Winnetka, and such other governmental or quasi-governmental bodies whose approval is required for the Boundary Wall, Lakefront Barriers, and Planting Pocket (the “**Governmental Agencies**”).

b. Park District agrees to request a preliminary meeting with IDNR after design of the Lakefront Barriers is approved by the Parties, but before engineering designs of the Lakefront Barriers are completed in order to obtain early feedback from the IDNR. Additionally, the Park District agrees to affirmatively vocalize its support for the agreed upon Lakefront Barriers design in the meetings with IDNR.

c. In the event all necessary Governmental Agencies fail to approve the designs of the Lakefront Barriers, Boundary Wall, and Planting Pocket approved by the Trusts (the “**Approvals**”), the Trusts shall have a right to terminate this Agreement and exercise its right to cancel the Exchange Agreement, including rescinding the property transfers set forth therein.

8. **Passive Use.**

a. The Park District shall record a perpetual restrictive covenant running with the land against the Park, in the form of **Exhibit F** hereto (the “**Restrictive Covenant**”), in which it agrees that the portion of the Park consisting of Seventy (70) feet directly to the north of the Centennial Parcel, from the east side of the sidewalk abutting Sheridan Road on the west to the edge of the water of Lake Michigan on the east, shall be used solely as passive open space (the “**Open Space**”). The following shall be prohibited in the Open Space:

i. Athletic fields, athletic facilities, bike paths, walkways, restrooms, showers, portable toilets, refuse dumpsters, parking lot, excess lighting in a manner brighter or taller than any lighting in the remainder of the Park, structures overhanging the Centennial Parcel, food or beverage service or preparation stations (whether fixed, partially fixed or portable) including but not limited to food trucks and carts, commercial activity, structures, fixtures (such as benches or tables) or other improvements creating gathering points, grills, which in each case listed above shall apply whether such improvements are temporary or permanent;

ii. No access points or lifts of any kind from the Park to the beach or lakefront shall be installed in the Open Space.

iii. No stairs shall be constructed or installed in the Open Space accessing, abutting, or traversing the Lakefront Barriers in any way.

b. The Restrictive Covenant shall further provide the Trusts a right of first refusal to purchase the Park or any portion of the Park in the event the Park District ever offers the Park or any portion of the Park, for sale (or receives an offer to purchase the Park or any portion thereof), exercisable by either or both of the Trusts by written election to exercise such first refusal rights within thirty (30) days of the Trusts' receipt of written notice of all terms of the Park's (or any portion of the Park's) proposed sale. Following timely exercise of the right of first refusal, the sale to the Trusts shall be on the same material terms and timing as between the proposed third-party purchaser and the Park District, with the exception that the closing date shall not occur earlier than sixty (60) days following the Trusts' exercise of its first refusal rights herein.

c. The Restrictive Covenant shall further prohibit the Park District from modifying all or any portion of the Lakefront Barriers in a manner inconsistent with Exhibit B, including the location, design, or materials thereof.

d. In the event the Park District or Village of Winnetka violate the restrictions in the Open Space, and such violations continue two (2) days after delivery of written notice to the Park District, the Park District shall pay the Trusts the Excess Consideration as liquidated damages.

e. The restrictive covenants described herein shall prohibit the Park District from reconstructing or replacing any portion of the Lakefront Barriers without the Trusts' reasonable approval of the design, location, or materials thereof which shall not be unreasonably withheld or delayed.

9. **Sculpture Transfer.** All right, title, and interest to two sculptures [descriptions or pictures are needed] which are currently located on the Centennial Parcel shall be transferred to the Park District on an AS-IS basis. The Park District shall be solely responsible for the moving and transfer of these sculptures at the Park District's sole cost and expense, and shall move such sculptures prior to March 31, 2021.

10. **Transformer.** The electrical transformer located on the Centennial Parcel as depicted in **Exhibit G** hereto, shall be moved to a mutually agreeable location on to the Park by the Park District at the Trusts' cost and expense by April 15, 2021, or to the extent the relocation of the transformer will be performed by the Village of Winnetka, the Park District will cause the Village of Winnetka to execute on this relocation.

11. **Indemnification.** The Park District acknowledges that the Park District shall be solely liable, and indemnifies, defends, and holds the Trusts and any of their respective beneficiaries harmless for any property damage or personal injury related to any construction, improvement, maintenance, or use of the Lakefront Barriers of Planting Pocket, including but not limited to any personal injury or property damage related to beach users, swimmers, waders, or boaters. Such obligations shall not be reduced due to the Trusts' easement or restrictive covenant rights set forth herein. The Trusts and all beneficiaries of the Trusts shall be named as additional insureds on the Park District's liability policies.

12. **Assignment.** The Trusts shall have the right to assign their respective rights and obligations in this Agreement and/or the Easement to their respective successors and assigns.

13. **Miscellaneous.**

a. Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without regard to such State's choice of law rules.

b. Entire Agreement. Both Parties hereto hereby acknowledge that this Agreement constitutes the entire agreement between the Parties with respect to the terms set forth herein, and that this Agreement shall not be altered, modified or amended except by a written instrument duly executed by both Parties hereto. The above recitals are expressly incorporated herein.

c. No Joint Venture. It is understood and agreed that Grantee and Grantor shall in no event be construed for any purpose to be partners, joint venturers, agents or associates of each other in the performance of their respective obligations hereunder or with respect to the Parcels.

d. Captions. The captions used in connection with the paragraphs of this Agreement are for convenience of reference only and shall not be deemed to construe or limit the meaning or language of this Agreement.

e. Severability. If any provision of this Agreement, or portion thereof, is held by a court to be invalid, void or unenforceable, the remainder of such provision and the remaining provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the invalid or unenforceable provision shall be modified so as to most nearly as possible achieve the intention of this Agreement.

f. Recording. At all times after the Effective Date, neither Party shall record or permit to be recorded this Agreement, a copy of this Agreement, or any memorandum, short form contract or other document summarizing the terms and provisions of this Agreement. In the event of any breach by either Party of the provisions contained in the immediately preceding sentence, the non-breaching Party may terminate this Agreement and pursue any and all legal and equitable remedies.

g. Business Day. In the event that the date for performance of any of the provisions hereof is due on a day that is a Saturday, Sunday, Illinois state or United States national holiday, such due date shall be extended to the immediately succeeding business day.

h. Construction. No provision of this Agreement shall be construed in favor of, or against, any particular Party by reason of any presumption with respect to the drafting of this Agreement; both Parties, being represented by counsel, have fully participated in the negotiation of this Agreement.

i. Counterparts. This Agreement may be executed in several counterparts and such executed counterparts shall be considered an original and, when taken together, shall constitute

one and the same instrument.

j. Electronic Signatures. A facsimile or pdf signature of this Agreement shall be deemed to be an original and shall bind the signing Party(ies).

[Signature Pages Follow]

ORCHARD 2020 REVOCABLE TRUST

WINNETKA PARK DISTRICT

By: Peter Lee
Its: Trustee

By: _____
Its: _____

WALTON 2019 REVOCABLE TRUST

By: Peter Lee
Its: Trustee

Exhibit A
Boundary Wall Design

Exhibit B
Lakefront Barriers Design

Exhibit C
Location of Stormwater Pipe

Exhibit D
Easement

Exhibit E
License

1. Water fountain removal and water line termination by Park District.
2. Root pruning, branch trimming, and tree protection for approximately four (4) trees near the Boundary Wall construction area (previously identified in tree survey as tree numbers 1068, 1065, 1064, 1086) by Park District per Park District's prior request.
3. Removal and relocation of tree #1090 by Park District.
4. Safety fencing to establish construction area, work zones, and material/labor access routes.
5. Demolition of existing walking paths within construction area.
6. Brush and other required landscape clearing.
7. Removal of berm located on western side of the Park and related rough grading.
8. Protection of existing irrigation valve and vault.
9. Excavation along the entire shared property line, a trench approximately 6'-0" wide x 4'-0" deep (relative to existing grade) on the Park.
10. Build the Boundary Wall.
11. Backfill and rough grading of any excavated areas, with final grading by Park District.
12. Removal of fencing, materials, and equipment.

Exhibit F
Restrictive Covenant

Exhibit G
Transformer Location