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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

**LAKE LATHROP PARTNERS, LLC,** )  
 )  
 **Plaintiffs,** )  
 )  
 **v.** )  
 )  
 **THE VILLAGE OF RIVER FOREST, a** )  
 **Municipal corporation,** )  
 )  
 **Defendant.** )

**Case No. 2024CH06462**

**DEFENDANT VILLAGE OF RIVER FOREST’S 2-619.1 MOTION TO DISMISS  
PLAINTIFF’S VERIFIED COMPLAINT FOR MANDAMUS AND OTHER RELIEF**

NOW COMES the defendant, the Village of River Forest (“Village”), by and through its attorneys, Klein, Thorpe, & Jenkins, Ltd. and Schain, Banks, Kenny & Schwartz, Ltd., and hereby moves this Court to dismiss Plaintiff, Lake Lathrop Partners, LLC’s (“Plaintiff”), Verified Complaint for Issuance of a Writ of Mandamus, Declaratory, and Other Relief in this matter with prejudice pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619.1). In support thereof, the Village states as follows:

**BACKGROUND<sup>1</sup>**

Plaintiff seeks a writ of *mandamus* from this Court commanding the Director of Public Works for the Village to review its recent building permit application for the redevelopment of the Subject Property, permit application 25-0095 (“Permit Application”) and a declaration from this Court that it has a right to submit the Permit Application without entering into a new redevelopment agreement. (*See* Plaintiff’s Verified Complaint, attached hereto as Exhibit 1).

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<sup>1</sup> For the purposes of this Motion only, the Village accepts the factual allegations laid out by Plaintiff and, at times, discusses them herein as though they are true. However, the Village reserves the right to later deny those factual allegations and no statements made herein should be construed as factual admissions. *See O’Fallon v. Ring*, 37 Ill. 2d 84, 88 (1968). Additionally, the Village reserves the right to raise additional defenses in the future.

FILED DATE: 8/16/2024 1:38 PM 2024CH06462

In its complaint, Plaintiff tries to wrongly separate its Permit Application from the Redevelopment Agreement entered into voluntarily by the Parties (attached to Plaintiff's complaint as Exhibit A) (hereinafter "Redevelopment Agreement" or "Agreement") outlining the terms, rights, and obligations of the Parties regarding the redevelopment of the Subject Property and breached by the Plaintiff. However, the two things are intertwined; Plaintiff only received authority to complete the redevelopment of the Subject Property ("Project") for which it is attempting to receive a building permit under the Redevelopment Agreement, and accordingly Plaintiff's right to a building permit for the Project is subject to the terms of the Redevelopment Agreement. This is a matter of private contract law as the Parties defined their rights and obligations regarding the redevelopment of the Subject Property within the Redevelopment Agreement, including the Plaintiff's *limited* right to a building permit for the redevelopment of the Subject Property. Under Sections 6.05, 7.04 and 7.06(E) of the Redevelopment Agreement as amended by the Fourth Amendment thereto, Plaintiff was only entitled to continue to do work on the Project and to a building permit for the Project if it satisfied the conditions for extension of its permit by the deadline set forth in Section 6.05 ("Permit and Permit Fees"). However, Plaintiff failed to satisfy those conditions. Accordingly, due to this breach of the Agreement by Plaintiff it no longer has a right to the Project, and it does not have a right to submit or receive a new building permit for the Project, nor does the Village have a duty to review or approve Plaintiff's building permit application. As such, Plaintiff has failed to state an actionable claim for *mandamus*, and the terms of the agreement are an affirmative matter which defeats Plaintiff's claim for declaratory judgment. Therefore, Counts 1 and 2 must be dismissed.

Count III of Plaintiff's Complaint also raises a claim for tortious interference with Plaintiff's prospective business expectancy and economic advantage. (*See* Ex. 1, pp. 14-17). To

that end, Plaintiff alleges that the Village improperly publicly stated that the Project was “dead” and that the Village “would never issue another building permit” to Plaintiff, which was allegedly false and misleading and impacted Plaintiff’s ability to secure financing for the Project. (Ex. 1, ¶¶ 61-65, 71). Plaintiff also alleges that the Village engaged in tortious conduct by allegedly refusing to accept Plaintiff’s building permit application, which Plaintiff construes as a “ministerial act” which “the Village has no discretion whatsoever[.]” (Ex. 1, ¶¶ 66-68, 71). According to Plaintiff, the Village was aware of its business expectancies with respect to the Project and knew that its public statements and nonaction with respect to Plaintiff’s building permit application would unjustifiably impact Plaintiff’s business expectancies. (Ex. 1, ¶¶ 70-74). As set out below, even setting aside potential defects in Plaintiff’s *prima facie* claim, the Village is immune from Plaintiff’s tortious interference claim under Sections 2-201, 2-109, 2-104, and 2-106 of the Illinois Tort Immunity Act. *See* 745 ILCS 10/2-201, 2-109, 2-104, and 2-106.

### **LEGAL STANDARD**

Section 2-619.1 of the Code allows for combined motions to dismiss under sections 2-615 and 2-619. 735 ILCS 5/2-619.1. Section 2-615 allows for the dismissal of a complaint that is substantially insufficient at law. 735 ILCS 5/2-615. A Section 2-615 motion to dismiss attacks the legal sufficiency of the claim and admits “as true all well-pleaded facts in the complaint and all reasonable inferences which can be drawn therefrom.” *Bryson v. News America Publication*, 174 Ill. 2d 77, 86 (1996). Section 2-619 permits involuntary dismissal for a number of reasons, including when the claims are “barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9). This permits the court to “dispose of issues of law and easily proved issues of fact early in the litigation.” *Czarobski v. Lata*, 227 Ill.2d 364, 369 (2009).

When ruling on such motions, courts must accept all well-pleaded facts and any reasonable inferences that may arise from them as true but cannot accept as true mere conclusions unsupported by specific facts. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31 (internal citations omitted). As Illinois is a fact-pleading jurisdiction, “plaintiff is required to set forth a legally recognized claim and plead facts in support of each element that bring the claim within the cause of action alleged”. *Beauchamp v. Dart*, 2022 IL App (1st) 210091, ¶ 29. When considering a motion to dismiss, courts look to the complaint as well as the exhibits attached thereto, and when there are contradictions between the exhibits and the plaintiff’s allegations, the exhibits will rule. *Bianchi v. Savino Del Bene Int’l Freight Forwarders, Inc.*, 329 Ill. App. 3d 908, 921, (1st Dist. 2002); *Kirchner v. Greene*, 294 Ill. App. 3d 672, 677 (1st Dist. 1998); *Tucker v. Soy Cap. Bank & Tr. Co.*, 2012 IL App (1st) 103303, ¶ 23. Here, Count I as plead must be dismissed with prejudice pursuant to Section 2-615 because the exhibits to Plaintiff’s complaint contradict its allegations and defeat the alleged claim for *mandamus*. Further, Count II must be dismissed with prejudice because the Redevelopment Agreement between the Parties and the legal consequences thereof is an affirmative matter which defeats Plaintiff’s claim for declaratory judgment under Section 2-619.

Additionally, with respect to Count III, a motion brought under Section 2-619 raises an affirmative matter that defeats a claim. *See* 735 ILCS 5/2-619. An “affirmative matter” is something which negates the cause of action completely or refutes critical conclusions of law or material fact contained in or inferred from the complaint. *Smith v. Waukegan Park Dist.*, 231 Ill. 2d 111, 120-121 (2008). Once the defendant satisfies the initial burden of raising an affirmative matter, the burden shifts to the plaintiff to establish that the defense is unfounded or requires the resolution of a material fact. *Kedzie & 103rd Currency Exch., Inc. v. Hodge*, 156 Ill. 2d 112, 116

(1993). However, a Section 2-619 motion permits a court to resolve easily proved issues of fact about the asserted affirmative matter. *Masters v. Murphy*, 2020 IL App (1st) 190908, ¶ 20.

### ARGUMENT

#### **I. Count I Must Be Dismissed Pursuant to Section 2-615 Because the Exhibits Attached to the Complaint Establish That Plaintiff Does Not Have a Clearly Established Right to the Relief Requested.**

Plaintiff's claim for *mandamus* fails under section 2-615 because the Redevelopment Agreement and the amendments thereto, attached to Plaintiff's complaint as Exhibits A-E, establish that Plaintiff does not have a clearly established right to the relief requested. As indicated above, under Sections 6.05, 7.04 and 7.06(E) of the Redevelopment Agreement as amended by the Fourth Amendment thereto, Plaintiff was only entitled to continue to do work on the Project and to a building permit for the Project if it satisfied the conditions for extension of its building permit for the Project by the deadline set forth in Section 6.05 ("Permit and Permit Fees"). However, Plaintiff failed to satisfy those conditions. As a result of this breach, pursuant to the Redevelopment Agreement, Plaintiff no longer has any right to the Project and it does not have a right to submit or receive a new building permit for the Project, nor does the Village have a duty to review or approve Plaintiff's building permit application. Accordingly, Plaintiff has failed to state an actionable claim for *mandamus* and Count 1 must be dismissed.

"Mandamus relief is an extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public official where the official is not exercising discretion." *Mason v. Snyder*, 332 Ill. App. 3d 834, 838 (4th Dist. 2002). A court will not grant a writ of mandamus unless the petitioner can demonstrate: (1) a clear, affirmative right to relief, (2) a clear duty of the official to act, and (3) clear authority in the official to comply with the writ. *Id.* "The writ will not lie when its effect is to substitute the court's judgment or discretion for the official's judgment or discretion. Mandamus relief, therefore, is not appropriate to regulate a course of

official conduct or to enforce the performance of official duties generally.” *Id.* The issuance of a building permit is within the police power of a Village to regulate construction and use of buildings. *Hartman v. City of Chicago*, 282 Ill. 511, 513 (1918). It is generally accepted that parties may contract away rights, even those of constitutional or statutory dimension. *See Gaylor v. Village of Ringwood*, 363 Ill.App.3d 543, 549 (2nd Dist. 2006). A developer’s right to a building permit may be limited pursuant to a redevelopment agreement with a municipality, and in such cases the parties’ rights and obligations to the relevant permit are defined by the terms of the redevelopment agreement. *See generally PML Development LLC v. Village of Hawthorn Woods*, 470 Ill. Dec. 367 (2023). Here, Plaintiff has failed state a claim for *mandamus* as the Redevelopment Agreement attached as an exhibit to the complaint contradicts Plaintiff’s allegations and affirmatively establish that Plaintiff does not have a clear, affirmative right to relief and that the official in question, the Director of Public Works, does not have a duty to act in the manner Plaintiff is asking this Court to compel him to act.

The Parties voluntarily entered a valid Redevelopment Agreement setting forth their rights and obligations regarding the redevelopment of the Subject Property, and Plaintiff has not disputed the validity of that Agreement. Under the Agreement, the Village paid Plaintiff over \$1.9 million for attaining the parcels that together constitute the Subject Property in Plaintiff’s complaint and for environmental remediation of the Subject Property. In exchange, Plaintiff agreed to complete the Project as set forth in the Redevelopment Agreement according to its terms and within the timeline agreed to therein. As part of this Agreement, the Village agreed to issue a building permit for the Project to the Plaintiff, but the Parties agreed to a specific deadline by which the Plaintiff had to apply for all permits necessary for construction of the project (“Permit Application Deadline”). As set forth in Plaintiff’s complaint, this deadline was extended on multiple occasions,

and eventually Plaintiff submitted a building permit application within the extended deadline, which has now passed. As such, the rights of the Plaintiff to submit a building permit application for the Project ended with the permit application deadline. As set forth in Section 6.05 (“Permit and Permit Fees”) of the Redevelopment Agreement, the building permit was set to expire on August 2, 2023. As Plaintiff alleges in his complaint, the Parties agreed to extend the permit expiration date in the Fourth Amendment to the Redevelopment Agreement if the Plaintiff satisfied certain conditions, but Plaintiff failed to meet those conditions so the building permit was not extended and expired on September 15, 2023. As set forth in Section 7.04 of the Agreement as amended by the Fourth Amendment thereto, this failure to abide by the provisions of Section 6.05 (“Permit & Permit Fees”) was a material breach of the Agreement for which the Village terminated the Agreement. Accordingly, in petitioning this Court for a writ of *mandamus* commanding the Village to review Plaintiff’s building application related to the Project and seeking declaratory judgment from the Court declaring that it has a right to submit the building permit and have it reviewed, Plaintiff is asking this Court to subvert the Agreement between the Parties and to restore a right that the Plaintiff signed away under a valid contract. Plaintiff is also asking this Court to command the Director of Public Works to do something he does not have the right to do because he cannot review the building permit for the Project in contravention of the Agreement.

To the extent that Plaintiff is asserting that because it has breached the Redevelopment Agreement by failing to satisfy its terms related to the building permit for the Project, it somehow now has an unencumbered right to get a building permit to complete the Project, this assertion is untenable and flies in the face of the Agreement and the general principles of contract law. Plaintiff and the Village entered into a Redevelopment Agreement for the Project setting forth both Parties’ rights and obligations with regard to the Agreement. As part of the Agreement, the Parties

acknowledge that without the incentives given by the Village pursuant to the Agreement, the Project could not move forward. Pursuant to the Agreement, the Village paid out over \$1.9 million to Plaintiff to purchase the parcels now constituting the Subject Property which Plaintiff accepted and used to acquire the Subject Property. Eventually, after Plaintiff accepted and used this investment and continued time and again to fail to satisfy its obligations under the Agreement, the Village was forced to terminate the Agreement as a result of Plaintiff's material breach. As set forth in Section 7.06(E) of the Agreement, as a result of the termination Plaintiff has no further interest in the Project. Now, the Plaintiff absurdly asserts that as a result of its breach of the Agreement, it can retain the \$1.9 million benefit of the Agreement and enjoy an unencumbered right to a building permit to complete the Project without being subject to the terms or obligations of the Agreement. Such a scenario would circumvent the Agreement between the Parties and unequivocally constitute illegal unjust enrichment of the Plaintiff. In asking the Court to endorse and command this scenario, the Plaintiff is essentially asking this Court to enter an order commanding it to be unjustly enriched. Such a request for relief has no basis in law and is untenable.

Ultimately, the exhibits attached to Plaintiff's own complaint defeat its allegations in Count 1 seeking *mandamus*. The Parties voluntarily entered the Redevelopment Agreement and set forth the terms of the Project therein, which Plaintiff attached to its complaint along with the subsequent amendments thereto. As part of this Agreement, the Parties agreed that all permit applications for the Project had to be submitted by a certain date. Further, the Parties agreed that the permit that was timely submitted was set to expire on August 2, 2023, and that it would not be extended unless certain conditions were met, which Plaintiff failed to meet. As a result, the Village terminated the Agreement, and Plaintiff now has no interest or right to the Project as agreed by the Parties.



Plaintiff now asks this Court to order the Village to review a permit for the Project – which it no longer has any interest in –that was not submitted by the deadline agreed to by the Parties. Under the terms of the Agreement, the Plaintiff has no right to submit a permit application related to the Project after the permit application deadline, and, regardless, the Plaintiff has forfeited its right to the Project under the terms of the Agreement. As such, because the terms of the Agreement establish that Plaintiff has no interest in the Project, it therefore no right to submit a building permit related to the Project. Because this Agreement is attached as an exhibit to the complaint, these terms control and defeat any contradicting allegations asserting that Plaintiff has a right to the permit. Therefore, Plaintiff’s complaint fails to sufficiently plead facts establishing that it has a right to the relief sought in its *mandamus* claim and fails to state a claim for *mandamus*. Accordingly, Count I of Plaintiff’s complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-615.

**II. Counts 1 and 2 Must be Dismissed Pursuant to 2-619 Because the Agreement is an Affirmative Matter which Defeats Plaintiff’s Claims for *Mandamus* and Declaratory Judgment.**

As outlined in detail above, the Agreement between the Parties setting forth their rights and obligations regarding the redevelopment of the Subject Property establishes that the Plaintiff has forfeited its right to the Project by breaching the Agreement and that it does not have a right to submit a permit application to complete the Project. Despite this, Plaintiff’s complaint seeks to circumvent the consequences of the Agreement and its breach thereof by asking this Court to enter an order declaring that it has a right to submit a building permit for the Project for review and commanding the Village to do so. However, in doing so Plaintiff is wrongly asking the Court to restore a right that it has signed away by contract and to void the effects of a valid contract. As indicated above, parties may contract away rights, even those of constitutional or statutory

dimension. *See Gaylor*, 363 Ill.App.3d at 549. A developer's right to a building permit may be limited pursuant to a redevelopment agreement with a municipality, and in such cases the parties' rights and obligations to the relevant permit are defined by the terms of the redevelopment agreement. *See generally PML Development LLC v. Village of Hawthorn Woods*, 470 Ill. Dec. 367 (2023). Here, Plaintiff's right to submit a building permit application for the Project is limited by the terms of the Redevelopment Agreement. As a result, the fact that Plaintiff no longer has a right to submit a building permit application for the Project, or even an interest in the Project at all, under the terms of the Agreement is an affirmative matter which defeats Plaintiff's claims seeking an order to the contrary. Therefore, Counts I and II of Plaintiff's complaint seeking declaratory judgment and *mandamus* establishing and enforcing a right it does not have must be dismissed with prejudice under 735 ILCS 5/2-619.

**III. Count III Must Be Dismissed Pursuant to Sections 2-109, 2-201, 2-104, and 2-106 of the Illinois Tort Immunity Act (Section 2-619).**

Count III of Plaintiff's Complaint also fails as a matter of law pursuant to several sections of the Illinois Tort Immunity Act, including Sections 2-109, 2-201, 2-104, and 2-106, all of which have been applied in cases with highly similar factual scenarios. *See* 745 ILCS 10/2-201, 2-109, 2-104, and 2-106. To prevail on its claim for tortious interference with prospective economic advantage, Plaintiff must establish: (1) Plaintiff's reasonable expectation of entering into a valid business relationship; (2) the Village's knowledge of Plaintiff's expectancy; (3) purposeful interference by the Village that prevented Plaintiff's legitimate expectancy from ripening into a valid business relationship; and (4) damages to Plaintiff resulting from the Village's interference. *See Midwest REM Enterprises, Inc. v. Noonan*, 2015 IL App (1st) 132488, ¶ 70. Regardless of whether Plaintiff has adequately pleaded a *prima facie* claim for tortious interference, the Village is immune from that claim under the statutory provisions cited above. Statutory immunity is an

affirmative matter which can be raised in a Section 2-619 motion. *Wilson v. City of Decatur*, 389 Ill. App. 3d 555, 600 (4th Dist. 2009).

First, Section 2-201 of the Illinois Tort Immunity Act states:

Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of discretion even though abused.

*See* 745 ILCS 10/2-201. Section 2-201 applies to municipal entities and employees. *Bowers v. DuPage Cty. Reg. Bd. of Sch. Trustees Dist. No. 4*, 183 Ill. App. 3d 367, 378 (2d Dist. 1989). *See also* 745 ILCS 10/2-109 (public entity cannot be liable where public employee is not liable).

The application of Section 2-201 is an issue of law to be decided by the Court. *Monson v. City of Danville*, 2018 IL 122486, ¶ 31. For Section 2-201 to apply, the act or omission giving rise to the injury must be a “policy determination” and “an exercise of discretion.” *Harrison v. Hardin Cty. Comm. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 472 (2001). “Policy determinations” are those which require the balancing of competing interests and a judgment call as to what solutions will best serve those interests. *West v. Kirkham*, 147 Ill.2d 1, 11 (1992). “Discretionary acts” are those which are unique to a particular person and involve personal deliberation. *Snyder v. Curran Twp.*, 167 Ill. 2d 466, 473 (1995).

The Illinois Supreme Court recently affirmed the application of Section 2-201 to a highly similar factual scenario. *See Strauss v. City of Chicago*, 2022 IL 127149. In *Strauss*, the plaintiff, the president of a corporation that owned a building in Chicago, evicted a prominent tenant for numerous lease violations despite pressure from the local alderman, who was alleged to have connections to the tenant. *Id.* at ¶¶ 1 & 10. After the plaintiff moved for eviction, the alderman presented to the City’s zoning commission a downzoning amendment that would apply solely to the plaintiff’s building. *Id.* at ¶ 11. The plaintiff alleged that the proposed downzoning amendment

would significantly decrease the value of the building and was introduced by the alderman as a means to pressure him to drop the eviction action against the tenant. *Id.* at ¶¶ 11-12.

Although the downzoning amendment was initially deferred by the zoning commission, after the plaintiff prevailed in its eviction action, the alderman renewed the push for downzoning and told the plaintiff that the zoning process would be long and expensive, the building would be empty for two to five years, and, therefore, he would decide who the building's tenant would be and for what price. *Id.* at ¶¶ 14-15. Further, given the pending downzoning amendment, the plaintiff was unable to rent out the space to someone else or sell the building, and one potential buyer backed out after personally meeting with the alderman. *Id.* at ¶¶ 16-18. After some changes to the alderman's proposed downzoning amendment, it was eventually approved by the City's zoning commission. *Id.* at ¶¶ 19-20. The plaintiff alleged that the City's adoption of the downzoning amendment directed at only his building was motivated by the malice of the alderman for evicting a friend's business. *Id.* at ¶ 21. Based on the foregoing, the plaintiff brought suit for several claims, including tortious interference with contracts and tortious interference with prospective economic advantage, among others. *Id.*

On appeal, the Illinois Supreme Court affirmed the application of discretionary immunity to the plaintiff's claims for tortious interference. *Id.* In so ruling, the court noted that the alderman, regardless of his internal motivation, was ostensibly determining policy by balancing the competing interests of the building owner, the tenant, neighboring businesses, neighboring residents, and the public at large in proposing the downzoning amendment. *Id.* at ¶ 68. Further, the court also determined that the alderman exercised his discretion in determining that policy and undertaking his other allegedly tortious actions, including confronting the plaintiff and meeting with prospective buyers, all of which arguably fell within the scope of his aldermanic duties. *Id.*

at ¶ 74. Per the court, “that [the alderman] may have acted maliciously or corruptly in the process is of no consequence to the application of immunity under section 2-201 of the Act.” *Id.*

In another similar case, the Second District affirmed the application of Section 2-201. *See Kevin’s Towing, Inc. v. Thomas*, 351 Ill. App. 3d 540 (2d Dist. 2004). In *Kevin’s Towing*, a Waukegan-based towing company towed cars from a private parking lot in the City of North Chicago following a nearby Fourth of July celebration and thereafter refused to release those cars to the large group of stranded car owners. *Id.* Thereafter, the mayor of the City got involved in the dispute. *Id.* at 541-42. After the mayor was rebuffed by employees of the towing company, she told the owner of the towing company that she would make sure that he lost the contract for the private parking lot at issue and that she planned to attack his company in the City’s newsletter. *Id.* at 543. She then followed through on her threats and began exerting heavy pressure on the parking lot owner to terminate its contract with the out-of-town towing company by threatening zoning and licensing reprisals against the parking lot owner. *Id.* As a direct result of the mayor’s conduct, the parking lot owner ended its relationship with the towing company. *Id.* at 544. Thereafter, at the suggestion of the mayor, the owner of the parking lot engaged a local towing company with connections to the mayor. *Id.*

The plaintiff in *Kevin’s Towing* brought suit against the mayor for tortious interference with contract. *Id.* The trial court granted summary judgment based on Section 2-201. *Id.* On appeal, the Second District affirmed, finding that the mayor’s decision to pressure the parking lot owner to end its contract with the plaintiff was both a policy determination and a discretionary act in that she balanced the parking lot owner’s interest in prohibiting unauthorized vehicles against the City’s interest in avoiding a repeat of the Fourth of July incident. *Id.* at 549. The court specifically noted that Section 2-201 does not contain any exceptions for “corrupt or malicious

motives.” *Id.* at 545. Therefore, even if the mayor was motivated by vindictiveness and not the public interest, Section 2-201 nonetheless applied. *Id.* at 548.

Here, Plaintiff’s allegations are directly on-point with *Strauss* and *Kevin’s Towing*. Plaintiff alleges that the Village intentionally interfered with the Project by publicly announcing the Project was “dead” and Plaintiff would never be granted a building permit (Ex. 1, ¶¶ 34, 61-65, 71). However, as set out above, the Village’s alleged conduct was guided by its interpretations of the Redevelopment Agreement. Certainly, like the alderman in *Strauss* and the mayor in *Kevin’s Towing*, the Village’s President is in a position which requires the determination of policy and the exercise of discretion such that she is entitled to discretionary immunity where applicable. Further, just like in *Strauss* and *Kevin’s Towing*, the Village President’s alleged public statements were inherently policy determinations and discretionary acts given the Village’s involvement in the Project by way of the Redevelopment Agreement. Accordingly, Plaintiff’s allegations related to intentionally false or misleading statements are unequivocally barred by Section 2-201.

Plaintiff’s Complaint attempts to get ahead of Section 2-201 with regard to the Village’s alleged refusal to grant Plaintiff a second building permit, characterizing the building permit process as ministerial and, therefore, outside of the scope of Section 2-201. However, for the reasons set forth above, the Village’s alleged treatment of Plaintiff’s building permit application is not as routine as Plaintiff contends because, again, it is intertwined with the Village’s interpretations of a contract to which it was a party, and those alleged interpretations and decisions based thereon inherently involved determinations of policy and exercises of discretion.

Moreover, Section 2-104 of the Illinois Tort Immunity Act also provides an independent basis for immunity from Plaintiff’s allegations relating to the building permit, stating:

A local public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or

revoke, any permit, license, certificate, approval, order or similar authorization where the entity or its employee is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

*See* 745 ILCS 10/2-104. By its plain language, Section 2-104 applies to building permit applications like the one at issue here. *Id.* *See also Village of Bloomingdale v. CDG Enterprises, Inc.*, 196 Ill. 2d 484, 487-88, 499-500 (2001) (affirming the application Section 2-104 to a claim for tortious interference based on the allegation that a village improperly denied a meritorious private development proposal because it wished to acquire the subject property itself or funnel it to parties closely aligned with the village as part of a different development plan for a municipal golf course). Through Section 2-104, Illinois legislature intended to protect municipalities from liability in tort for alleged misconduct related to the failure to grant or otherwise resolve a building permit, as other remedies exist in the event of a meritorious claim of right. Here, with respect to the allegation that the Village failed to consider Plaintiff's building permit, the same is true.

Finally, it also must be stated that the Village is immune from any tort liability based on alleged oral statements by any Village official or employee, to which the Complaint seems to be alluding. To that point, Section 2-106 of the Illinois Tort Immunity Act states:

A local public entity is not liable for an injury caused by an oral promise or misrepresentation of its employee, whether or not such promise or misrepresentation is negligent or intentional.

*See* 745 ILCS 10/2-106. By its plain language, Section 2-106 bars any and all liability for oral misrepresentations made by municipal employees, regardless of whether those oral misrepresentations were mistaken or intentional. *See also CDG Enterprises, Inc.*, 196 Ill.2d at 497-98 (finding that the mayor was immune from liability for his assurance that the private development proposal would be approved based on Section 2-106).

In sum, by combination of Sections 2-109 (acts or omissions of agents), 2-201 (discretionary immunity), 2-104 (issuance, denial, suspension, or revocation of permit, etc.), and

2-106 (oral promise or misrepresentation), the Village is wholly immune from Count III of Plaintiff's Complaint and it should be dismissed with prejudice.

**CONCLUSION**

**WHEREFORE**, Defendant VILLAGE OF RIVER FOREST respectfully requests that this Honorable Court grant its motion to dismiss Plaintiff's Complaint and enter an order dismissing the complaint in its entirety with prejudice, and for any other relief this Court deems just and appropriate.

Respectfully submitted,

VILLAGE OF RIVER FOREST

By: Daniel W. Bourgault  
One of its Attorneys

By: Patrick T. Brankin  
One of Its Attorneys

Howard C. Jablecki ([hcjablecki@ktjlaw.com](mailto:hcjablecki@ktjlaw.com))  
Daniel W. Bourgault ([dwbourgault@ktjlaw.com](mailto:dwbourgault@ktjlaw.com))  
KLEIN, THORPE AND JENKINS, LTD.  
120 S. LaSalle Street, Suite 1710  
Chicago, Illinois 60603  
(312) 984-6400  
Atty. No: 90446

Patrick T. Brankin  
Jonathon R. Sommerfeld  
Schain, Banks, Kenny & Schwartz, Ltd.  
70 W. Madison, Ste. 5400  
Chicago, Illinois 60602  
Phone: (312) 345-5700  
Attorney ID 46538  
[pbrankin@schainbanks.com](mailto:pbrankin@schainbanks.com)  
[jsommerfeld@schainbanks.com](mailto:jsommerfeld@schainbanks.com)  
[tmontgomery@schainbanks.com](mailto:tmontgomery@schainbanks.com)



## **EXHIBIT 1**

### **PLAINTIFF'S VERIFIED COMPLAINT**

Lake Lathrop Partners, LLC v. The Village of River Forest  
Case No. 2024CH06462

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

LAKE LATHROP PARTNERS,	)	
LLC,	)	
	)	
Plaintiff,	)	
	)	2024CH06462
vs.	)	
	)	
THE VILLAGE OF RIVER	)	
FOREST, a municipal corporation	)	
	)	
Defendant.	)	

**VERIFIED COMPLAINT FOR THE ISSUANCE OF A  
WRIT OF MANDAMUS, DECLARATORY AND OTHER RELIEF**

Plaintiff Lake Lathrop Partners, LLC (“Plaintiff” or “Lake Lathrop”), pursuant to 735 ILCS 5/2-701 and by and through its attorneys, Landsman Saldinger Carroll, PLLC, for its Verified Complaint for the Issuance of a Writ of Mandamus, Declaratory and Other Relief against Defendant, the Village of River Forest (“Defendant” or the “Village”), states as follows:

**NATURE OF THE ACTION**

1. This case arises out of the Village of River Forest’s refusal to receive and consider in good faith Lake Lathrop’s building permit application in violation of Title IV, Chapter 4, Section 2-2 of the Village’s own Municipal Code of Ordinances. Lake Lathrop owns legal title to the property at issue, and the Village (by its own admission) has no interest in the subject property. Yet, without any legal support, the Village improperly refuses to consider Lake Lathrop’s building permit application without Lake Lathrop first receiving specific approval from the Village’s Board of Trustees and entering into a redevelopment agreement with the Village.

2. As a result, Lake Lathrop respectfully requests this Court to issue a writ of mandamus requiring the Director of Public Works for the Village of River Forest to comply with

FILED DATE 7/11/2024 11:58 AM 2024CH06462

the non-discretionary mandates of the Village’s Code of Ordinances and consider in good faith Lake Lathrop’s construction permit application. Lake Lathrop further seeks a declaration that the Village must consider in good faith the merits of Lake Lathrop’s building permit application without first requiring Lake Lathrop to seek and obtain approval from the Village’s Board of Trustees and/or enter into a redevelopment agreement with the Village.

3. Lastly, Lake Lathrop seeks monetary damages against the Village for intentionally and unjustifiably interfering with its prospective business relationships by refusing to consider Lake Lathrop’s building permit application and publicizing false and misleading statements about Lake Lathrop.

**THE PARTIES**

4. Plaintiff Lake Lathrop Partners, LLC (“Lake Lathrop”) is a limited liability company organized under the laws of the State of Illinois.

5. Defendant Village of River Forest (the “Village”) is a municipal corporation organized under the laws of the State of Illinois and is located in Cook County, Illinois.

**JURISDICTION and VENUE**

6. This Court has personal jurisdiction over the Village because it transacts business in Cook County, Illinois.

7. Venue is proper in Cook County, Illinois, pursuant to 735 ILCS 5/2-101, as Lake Lathrop and the Village transact business in Cook County, Illinois, the property at issue is located in Cook County, Illinois and the transactions out of which this controversy arises occurred in Cook County, Illinois.

## FACTS

8. On or about June 1, 2010, Keystone Ventures, LLC submitted a proposal to the Village for a development project that would lead to the redevelopment of a large area of real property located at 7601-7613 Lake Street and 7617-7621 Lake Street in River Forest, Illinois 60305 (the “Property”). The anticipated redevelopment of the Property would lead to the construction of a mixed-use development containing both residential units and commercial retail space (the “Project”), and it would be highly beneficial to the businesses and residents located in the Village of River Forest.

9. Also in 2010, the Village agreed to commit and set aside an amount equal to \$1.9 million from the Village’s “TIF Fund” established for the TIF District in which the Property was located. The purpose of the TIF Funds committed by the Village was to assist in, among other things, the payment of certain environmental site assessment and remediation costs, the acquisition of parcels of land that would ultimately comprise the Property and the payment of certain other TIF eligible expenses in connection with the Project.

10. On or about March 23, 2016, Lake Lathrop, as the “Developer” and chosen nominee of Keystone Ventures, LLC, entered into the initial and original “Redevelopment Agreement For Lake Street and Lathrop Avenue In The Village of River Forest, Cook County, Illinois,” which called for the redevelopment of the Property by Lake Lathrop. (the “Original RDA”).

11. Following the execution of the Original RDA, the Village and Lake Lathrop entered into multiple amendments for the purpose of extending certain deadlines for Lake Lathrop to, *inter alia*, acquire the Property and perform certain other tasks in connection with the Project.

12. On or about September 22, 2016, Lake Lathrop acquired the real property located at 423 Ashland Avenue in River Forest, Illinois, which was one of the parcels comprising the Property.

13. On or about March 6, 2017, Lake Lathrop acquired the real property located at 7601-7613 Lake Street, which was another one of the parcel that comprises the Property.

14. On or about September 18, 2017, the Village and Lake Lathrop entered into the “Amended and Restated Redevelopment Agreement for Lake Street and Lathrop Avenue In The Village of River Forest, Cook County, Illinois” (the “First Amended RDA”).

15. On or about September 29, 2017, and following the execution of the First Amended RDA, Lake Lathrop acquired the real property located at 7617-7621 Lake Street, which was the remaining parcel comprising the Property. Also following the execution of the First Amended RDA, Lake Lathrop also applied for a planned development permit (which the Village approved) and began to market the Project and obtain contracts for the presale of the anticipated residential units.

16. On or about March 11, 2019, Lake Lathrop and the Village entered the “Second Amended and Restated Redevelopment Agreement For Lake Street and Lathrop Avenue In The Village of River Forest, Cook County, Illinois” (the “Second Amended RDA”). The purpose of the Second Amended RDA was to amend and restate the First Amended RDA pursuant to the terms and provisions outline in the Second Amended RDA. A copy of the Second Amended RDA is attached hereto as Exhibit A.

17. The Second Amended RDA was an “express written agreement in which a private person or entity agree[d] to undertake a development project with [a] blighted area that specifically

details the reasons for which the property or rights in that property are necessary for the development project.”

18. The Second Amended RDA set forth numerous obligations and deadlines for certain obligations to be satisfied by Lake Lathrop as the “Developer” of the Project. *See* Ex. A, generally, at Section 4.

19. Section 7 of the Second Amended RDA is entitled “Performance, Default, Termination, and Other Conditions.” More specifically, Section 7.06 of the Second Amended RDA entitled “Termination/Remedies” provided the Village with certain remedies including termination of the Second Amended RDA if there was an “Event of Default” by Lake Lathrop. Notably, if the Village terminated the Second Amended RDA pursuant to an “Event of Default,” Lake Lathrop would be required to “convey any Parcel acquired by [Lake Lathrop] to the Village within fifteen (15) business days of a written demand from the Village....” *See* Ex. A at Sections 7.06(A)(1) and A(2).

18 Consistent with the requirement that Lake Lathrop would have to convey the Property to the Village in the event of a default by Lake Lathrop, the parties also agreed in Section 7.06(E) that: “If [the Second Amended RDA] is terminated for any reason, [Lake Lathrop] shall have no further interest in the Project, the Committed Funds, or the Additional Village Funding” and Lake Lathrop would have to assign its rights and obligations under the Second Amended RDA to a new developer chosen by the Village. *See* Ex. A at Section 7.06(E).

19. On or about May 13, 2019, Lake Lathrop obtained approval from the Village of its remediation plan for the Project and began the “Remediation Work” in the “Project Area,” as those terms are defined in the Second Amended RDA.

20. On or about October 14, 2019, Lake Lathrop and the Village entered the First Amendment to the Second Amended RDA (the “First Amendment”) which, *inter alia*, extended the deadline for Lake Lathrop to apply for all “permits necessary for construction of the Project” to December 15, 2019. A copy of the First Amendment is attached hereto as Exhibit B.

21. On or about October 28, 2019, Lake Lathrop and the Village entered the Second Amendment to the Second Amended RDA (the “Second Amendment”). The Second Amendment provided, *inter alia*, the Village would agree to subordinate certain of the provisions in the Second Amended RDA to the anticipated “Mortgage Liens” that Lake Lathrop would have to grant to a construction lender providing Lake Lathrop with a construction loan for the purpose of providing Lake Lathrop with the necessary financing for the completion of the Project. A copy of the Second Amendment is attached hereto as Exhibit C.

22. On or about October 25, 2021, Lake Lathrop and the Village entered into the Third Amendment to the Second Amended RDA (the “Third Amendment”). The Third Amendment reflected that Lake Lathrop had, *inter alia*, accomplished the following milestones in connection with the Project: (i) obtained a bridge loan from Old Second National Bank; (ii) substantially completed the Remediation Work (as that term is defined in the Second Amended RDA) and acquired all land parcels comprising the Property; (iii) applied for all permits necessary for the construction of the Project and obtained several of the permits necessary for the construction of the Project and obtained loan terms for the financing necessary for Lake Lathrop to complete construction of the Project. A copy of the Third Amendment to the Second Amended RDA is attached hereto as Exhibit D.

23. Pursuant to the Third Amendment, Lake Lathrop and the Village agreed to extend certain deadlines including the deadline for Lake Lathrop to commence “Bona Fide Construction” (as that term is defined in the Third Amendment) of the Project and complete the Project.

24. Critically, the parties also agreed in the Third Amendment to add the following language to Sections 7.06(A)(1) and (A)(2) of the Second Amended RDA so as to **remove** the Village’s right to demand that Lake Lathrop reconvey the Property back to the Village, even in the “Event of Default” by Lake Lathrop:

“If the Developer commits an Event of Default after the Construction Commencement Date, the Village may terminate this Agreement and/or institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of [Lake Lathrop’s] obligations under this Agreement, **but the Village shall not be entitled to demand or compel [Lake Lathrop] to reconvey any Parcel(s) to the Village.**”

See Ex. D at Section 4 (emphasis added).

25. Following the execution of the Third Amendment, Lake Lathrop continued to provide the Village with updates on construction, residential sales, leases for commercial space, and other updates related to the Project throughout 2021 and 2022.

26. On February 2, 2022, Lake Lathrop closed on a construction loan with Beverly Bank & Trust Company (“Beverly Bank”) to finance the completion of the Project.

27. On or about February 28, 2022, Lake Lathrop obtained a building permit from the Village granting it 18 months to complete the Project. The issuance of the building permit by the Village served, *inter alia*, to confirm that Lake Lathrop had met all of the conditions necessary to accept the benefits of the TIF funds provided by the Village.

28. On April 27, 2023, Beverly Bank filed a Verified Complaint for Breach of Note and Breach of Guaranty in the Cook County Circuit Court, Law Division, as Case No. 2023 L



4422. Shortly thereafter, on May 23, 2023, Beverly Bank filed a Verified Complaint for Foreclosure against Lake Lathrop and other Defendants in the Cook County Circuit Court, Chancery Division, as Case No. 2023 CH 5065. The Chancery Case was consolidated into the Law Division Case, and both Cases are currently pending before the Honorable Catherine Schneider in the Circuit Court of Cook County, Illinois. Beverly Bank's Complaint for Foreclosure did not name the Village as a party with any interest in the Property.

29. On June 30, 2023, Lake Lathrop filed its Counterclaim in the Law Division Case asserting, *inter alia*, that Beverly Bank breached the underlying construction loan agreement and acted in bad faith by declaring that Lake Lathrop had defaulted on its obligations under the subject loan agreement. Through its pending Counterclaim, Lake Lathrop seeks damages and specific performance of Beverly Bank's obligations under the construction loan agreement.

30. On July 26, 2023, Lake Lathrop filed a Counterclaim against Beverly Bank in the Chancery Division Case asserting the same claims and seeking the same relief as set forth in the Counterclaim asserted by Lake Lathrop in the Law Division Case.

31. On or about August 28, 2023, Lake Lathrop and the Village entered into the Fourth Amendment to the Second Amended RDA (the "Fourth Amendment"). Pursuant to the Fourth Amendment, Lake Lathrop and the Village agreed, *inter alia*, that the existing building permit issued by the Village to Lake Lathrop would be extended to August 30, 2024 if certain conditions were met by Lake Lathrop on or before September 15, 2023. A copy of the Fourth Amendment to the Second Amended RDA is attached hereto as Exhibit E.

32. On September 5, 2023, the Court appointed a Receiver for the Property to maintain the status quo pending the resolution of the claims and counterclaims asserted in the underlying consolidated cases. A copy of the Receivership Order is attached hereto as Exhibit F.

33. On or about September 15, 2023, the Village announced that the prior building permit issued to Lake Lathrop had expired and that the Village would not extend the previously issued building permit due to Lake Lathrop's failure to meet certain deadlines set forth in the Fourth Amendment to the Second Amended RDA.

34. In the Village's November 10, 2023 newsletter to its residents, Village President Cathy Adduci publicly and improperly declared that the "Village will not issue another building permit" to Lake Lathrop for the Project.

35. The court-appointed receiver, Ascend Real Estate Group, subsequently marketed the Property for sale through a third-party real estate broker, Jones Lang LaSalle. However, on March 18, 2024, the Court reconsidered its prior Receivership Order and revoked the Receiver's authority to market and sell the Property. A copy of the Court's March 18, 2024 Order is attached hereto as Exhibit G.

36. On or about May 22, 2024, Lake Lathrop, as the sole, legal title owner of the Property, submitted a new, updated application to the Village for a building construction permit as Permit Application 325-0095 (the "Permit Application").

37. In a letter dated May 24, 2024 to Lake Lathrop (the "May 24 Letter"), the Village stated that the Permit Application would not be considered by the Village citing, among other things, the Village's prior termination of the Second Amended RDA due to an alleged breach of that agreement by Lake Lathrop. A copy of the May 24 Letter is attached hereto as Exhibit H.

38. In its May 24 Letter, the Village claimed that it did not have the "authority to review and/or approve" the Permit Application because Lake Lathrop "no longer has the necessary authority to proceed with the redevelopment project." *Id.* Without citing any legal authority or provision in a prior agreement, the Village proclaimed that "[b]efore a new construction permit

can be considered for the redevelopment project, approval must be granted by the Village Board of Trustees and a new redevelopment agreement must be entered into.” *Id.* Thus, the Village refused even to consider the Permit Application.

39. In response, by letter dated June 7, 2024 (the “June 7 Letter”), Lake Lathrop asked the Village to substantiate its position with legal authority and/or citations to contractual provisions in the Second Amended RDA or the amendments to the Second Amended RDA. A copy of the June 7 Letter is attached hereto as Exhibit I.

40. By letter dated June 21, 2024 (the “June 21 Letter”), the Village responded and attempted to support its position, as set forth in the May 24 Letter. However, the June 21 Letter only supported the expiration of Lake Lathrop’s *prior* building permit and the Village’s right to terminate the Second Amended RDA. The Village did not refute that Lake Lathrop, as the legal title owner to the Property, has the right to submit a new building permit application. A copy of the June 21 Letter is attached hereto as Exhibit J.

41. In the June 21 Letter, the Village also cites to Section 7.06(E) of the Second Amended RDA, which suggests that Lake Lathrop “shall have no further interest in the Project, the Committed Funds, or the Additional Village Funding” in the event that the Village terminates the Second Amended RDA. However, there are no provisions in the Second Amended RDA or any other legal authority that the Village can rely upon to support its contention that Lake Lathrop, as the private, legal owner of the Property, must enter into a new redevelopment agreement before the Permit Application can be considered.

42. Still further, the Village has admitted, in a recently entered Court Order, that it does not have any interest in the Property. *See* Exhibit K.

**COUNT I**  
**For a Writ of Mandamus Compelling the Defendants  
to Examine Plaintiff's Permit Application Immediately**

43. Plaintiff realleges the allegations set forth in paragraphs 1 through 42 as if fully set forth herein.

44. Title IV, Chapter 4, Section 2-2 of the Village of River Forest Code of Ordinances (hereinafter the "Ordinance") pertains to "Applications for Permits" and states:

**The director of public works shall examine applications for permits, within a reasonable time after filing.** If, after examination and after written approval, the director of public works finds no objections to the same and it appears that the proposed work will be in compliance with the laws and ordinances applicable thereto and the proposed construction or work will be safe, he shall approve such application, obtain the approval of the fire chief and village administrator, and issue a permit for the proposed work as soon as practicable; provided, that the bonding and insurance requirements of section 3-3-3 of this code have been satisfied. If his examination reveals otherwise, he shall reject such application, note his findings in a written report to be attached to the application and deliver a copy to the applicant.

See Exhibit L (emphasis added).

45. Accordingly and pursuant to the Ordinance, the Village's Director of Public Works must examine applications for permits within a reasonable time after filing.

46. Nothing in the Ordinance permits the Village to refuse or even suggests that the Village can refuse to consider a permit application unless the applicant first obtains approval from the Village Board of Trustees and/or enters into a redevelopment agreement with the Village. However, to date, the Village continues to refuse to consider and examine Lake Lathrop's Permit Application in good faith.

47. Lake Lathrop has made demand on the Village to examine the Permit Application, but the Village has baselessly claimed that the Village does not have the authority to review and/or approve the Permit Application.

48. Lake Lathrop has a clear right and expectation that the Village comply with the Ordinance and examine the Permit Application in good faith and on its merits pursuant to the Ordinance.

49. The Village has a clear, explicit, and non-discretionary duty to comply with the Ordinance and examine applications for permits within a reasonable time after filing as required under the Ordinance.

50. Clear authority and ability exists within the Village to comply with any order granting mandamus relief.

51. Lake Lathrop has suffered significant monetary and other damages and will continue to suffer additional monetary and other damages as a result of the Village's failure to comply with its legal obligations under the Ordinance.

52. By way of example only, and on information and belief, potential new financing sources for Lake Lathrop have chosen not to move forward with their respective due diligence based on their belief that the Village will not issue a building permit to Lake Lathrop under any circumstances. Indeed, in its November 10, 2023 newsletter, the Village of Forest stated that it "will not issue another building permit" to Lake Lathrop.

53. Similarly, multiple purchasers who signed pre-sales contracts with Lake Lathrop have demanded the return of their earnest money from Lake Lathrop. On information and belief, the purchasers' requests are based on their belief that the Project is "dead" due in large part to the Village's public statements.

54. Lake Lathrop has no other adequate remedy available to alleviate its damages or address its claims.

55. Pursuant to its June 7 Letter, Lake Lathrop has demanded that the Village comply with its obligations under the Ordinance, but the Village has refused to do so.

WHEREFORE, Lake Lathrop respectfully requests that this Court:

- a. Issue a Writ of Mandamus compelling the Village to comply with Title IV, Chapter 4, Section 2-2 of the Village of River Forest Code of Ordinances by immediately causing the Director of Public Works to examine in good faith Lake Lathrop’s Permit Application pursuant to Title IV, Chapter 4, Section 2-2;
- b. Issue an order requiring the Village to reimburse Lake Lathrop for the costs and reasonable attorneys’ fees associated with bringing this action; and
- c. Grant Lake Lathrop such other and further relief as this Court deems appropriate.

**COUNT II**  
**Declaratory Judgment**

56. Plaintiff realleges the allegations set forth in paragraphs 1 through 55 as if fully set forth herein.

57. The Village claims that Lake Lathrop must seek and obtain the approval of the Village Board of Trustee *and* enter into a new redevelopment agreement with the Village *before* the Village considers Lake Lathrop’s Permit Application.

58. Lake Lathrop contends that it is the sole and only private legal owner of the Property and that it has the right to submit the Permit Application. Lake Lathrop further contends that the Village must consider Lake Lathrop’s Permit Application in good faith and on its independent merits pursuant to the Ordinance.

59. As a result, an actual controversy exists between the Village and Lake Lathrop regarding the Lake Lathrop’s rights as the legal title owner of the Property to submit its Permit

Application and the Village's obligation to review and consider that Permit Application in good faith and on its merits pursuant to the Ordinance and applicable law.

WHEREFORE, Plaintiff, Lake Lathrop Partners, LLC, respectfully requests that this Court enter a judgment in its favor and against the Village of River Forest declaring: (i) Lake Lathrop has the right as the legal title owner of the Property to submit its Permit Application to the Village for consideration without first obtaining the approval of the Village's Board of Trustees and without first entering into a new redevelopment agreement with the Village; (ii) the Village must consider the Permit Application in good faith and on the merits of the Permit Application pursuant to the Ordinance; and (iii) granting Lake Lathrop such other and further relief as it deems appropriate.

### **COUNT III**

#### **Tortious Interference With Prospective Business Expectancy and Economic Advantage**

60. Plaintiff realleges the allegations set forth in paragraphs 1 through 59 as if fully set forth herein.

61. Following the expiration of Lake Lathrop's original building permit application, which the Village had approved, the Village, on multiple occasions, publicly disseminated that the Project was "dead" and that it would never issue another building permit to Lake Lathrop or any entity affiliated Lake Lathrop, including Sedgwick Properties Development Corporation.

62. Lake Lathrop, as the legal title holder to the Property and pursuant to the Ordinance, has the legal right to submit a new building permit application for the Village's consideration.

63. With the goal of submitting a new building permit application and completing the Project, Lake Lathrop has been actively seeking potential new financing sources to provide the necessary financing for the completion of the Project.

64. However, on information and belief, those potential financing sources have chosen not to proceed with their due diligence based on the statements by the Village that it will not issue a building permit application to Lake Lathrop and the Village's refusal even to consider the Permit Application.

65. Still further, multiple individuals who entered into pre-sale purchase contracts with Lake Lathrop have terminated their respective contracts and/or are seeking the termination of those contracts and the return of their earnest money based again on the Village's negative public statements about Lake Lathrop and the Village's refusal to consider the Permit Application.

66. On several occasions prior to May 22, 2024, Lake Lathrop attempted to upload its Permit Application to the Village's online portal for consideration by the Village. However, the Village's online portal system refused to accept the Permit Application.

67. On May 22, 2024, Lake Lathrop was finally able to upload its Permit Application to the Village's online portal system. However, pursuant to the Village's May 24, 2024 and June 21, 2024 letters, the Village will not even consider the Permit Application.

68. Pursuant to the Ordinance, the Village must perform the ministerial act of accepting and considering the Permit Application. Indeed, the Village has no discretion whatsoever with regard to this mandated ministerial act, as the Ordinance clearly provides that: "The director of public works *shall* examine applications for permits, within a reasonable time after filing." *See* Ex. L (emphasis added).

69. Lake Lathrop as the owner of the Property has a reasonable expectancy of entering into a valid business relationship with a new financing source that can provide the funding necessary for the completion of the Project. Lake Lathrop also has a reasonable expectancy of



entering into a valid business relationship with current and prospective purchasers of the residential units that will be constructed in connection with the Project.

70. On information and belief, the Village is well aware of Lake Lathrop's ongoing efforts to obtain new financing, complete construction of the Project and enter into business relationships with both prospective commercial tenants and prospective purchasers of the residential unit to be constructed in connection with the Project. The Village is also well aware that Lake Lathrop entered into pre-sale contracts with multiple purchasers of the to-be-constructed residential units and that Lake Lathrop's expectancy is to maintain those business relationships.

71. The Village is intentionally and unjustifiably interfering with Lake Lathrop's reasonable expectancy to enter into valid business relationships by, at a minimum: (i) refusing to accept and consider Lake Lathrop's Permit Application in violation of its ministerial duties pursuant to the Ordinance; (ii) publicly disseminating false and misleading information that the Project is "dead"; and (iii) publicly disseminating that it will never again issue a building permit application to Lake Lathrop and/or its affiliates, including Sedgwick Properties Development Corporation. Still further, in its June 21, 2024 letter, even if the Village concedes that there is a scenario whereby it would approve a building permit application submitted by Lake Lathrop. Nevertheless, the Village's public comments are that it will never again issue a building permit application to Lake Lathrop, and the Village has refused to retract those improper and defamatory statements.

72. On information and belief, the Village's intentional and unjustified actions have induced or caused potential financing sources to terminate their due diligence efforts and terminate their discussions with Lake Lathrop regarding providing potential financing for the Project.

73. On information and belief, the Village’s intentional and unjustified actions have also induced or caused the pre-sale contract purchasers of the residential units to terminate (or attempt to terminate) their purchase agreements with Lake Lathrop and demand the return of their earnest money.

74. The Village’s intentional and unjustified actions in refusing to perform mandated ministerial acts pursuant to the Ordinance, as well as its false and misleading public statements, have interfered with Lake Lathrop’s prospective economic advantage and business expectancy with both potential financing sources and current and prospective purchasers of residential units at the Property, as described herein, and have necessarily caused damages to Lake Lathrop.

WHEREFORE, Plaintiff, Lake Lathrop Partners, LLC, respectfully requests that this Court: (i) enter a judgment in its favor and against the Village of River Forest on Count III of this Complaint; (ii) award compensatory damages to Lake Lathrop in an amount to be proven at trial; (iii) award punitive damages to Lake Lathrop, to the extent allowed by law; and (iv) grant Lake Lathrop such other and further relief as the Court deems appropriate.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

Date: July 11, 2024

Respectfully submitted,

Lake Lathrop Partners, LLC

By: /s/ Richard A. Saldinger  
One of Its Attorneys

Richard A. Saldinger  
Robert D. Carroll  
LANDSMAN SALDINGER CARROLL, PLLC  
161 North Clark Street, Suite 1600  
Chicago, Illinois 60601  
Telephone: (312) 291-4650  
Firm No. 99772  
[saldinger@lsclegal.com](mailto:saldinger@lsclegal.com)  
[carroll@lsclegal.com](mailto:carroll@lsclegal.com)

FILED DATE 7/11/2024 1:58 PM 2024CH06462

**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

LAKE LATHROP PARTNERS, LLC



By: Mark McKinney

Its: Authorized Representative

DATE: July 10, 2024