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Doc#: 1119622096 Fee: \$74.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/15/2011 03:06 PM Pg: 1 of 20

Prepared by and after recording
return to:

Scott Gudmundson
Meltzer, Purtil & Stelle LLC
1515 East Woodfield Road
Second Floor
Schaumburg, Illinois 60173-5431

[Above space for Recorder's Office]

COOK COUNTY, ILLINOIS RECORDING COVER SHEET

FOR

**"ASSIGNMENT OF AND FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT - 183RD & TINLEY, LLC"**

P.I.N.S: 31-06-100-032-0000; and
31-06-100-026-0000 (A PART OF)

ADDRESS: 183rd & Convention Center Tinley Park, IL 60477
PROPERTY LOCATED GENERALLY SOUTH
OF 183RD STREET AND ADJACENT TO THE
EAST SIDE OF CONVENTION CENTER DRIVE
AND TWO OUTLOTS LOCATED WEST OF THE
CONVENTION CENTER AND EAST OF
HARLEM AVENUE, TINLEY PARK, COOK
COUNTY, ILLINOIS

NCS-482746
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ASSIGNMENT OF AND FIRST AMENDMENT TO DEVELOPMENT AGREEMENT - 183RD & TINLEY, LLC

THIS ASSIGNMENT OF AND FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "**Assignment and Amendment**") is made and executed as of June __, 2011 (the "**Effective Date**") by and between 183rd & TINLEY, LLC, an Illinois limited liability company ("**Assignor**"), the VILLAGE OF TINLEY PARK, Cook and Will Counties, Illinois, an Illinois municipal corporation (the "**Village**"), and DK TINLEY PARK, LLC, a Florida limited liability company, its successors and assigns ("**Developer**" or "**Assignee**" and, collectively, with Assignor and Village, the "**Parties**").

RECITALS

A. Assignor and Village entered into that certain Development Agreement dated as of December 2, 2009 and recorded with the Cook County, Illinois Recorder of Deeds on December 14, 2009 as Document No. 0914818075 (the "**Agreement**") pursuant to which Assignor agreed to acquire and develop certain Parcels, as defined in the Agreement, in accordance with the terms and conditions contained in the Agreement and Village agreed to provide certain financial assistance to Assignor in relation to said development in the form of making available to Assignor \$1,000,000 in Tax Increment Financing ("**T.I.F.**"). Unless otherwise defined herein, all capitalized terms shall have the same meanings set forth in the Agreement.

B. Pursuant to and in accordance with the terms of the Agreement, Assignor has acquired the Swap Parcel and the Outlot Parcels from the Village.

C. Pursuant to the terms of a certain Real Estate Purchase and Sale Agreement by and between Assignor and DeBartolo Development, LLC ("**DeBartolo**") dated March 30, 2011 (as amended, the "**Sale Agreement**"), Assignor has agreed to sell and convey to Assignee, and Assignee has agreed to purchase from Assignor, Assignor's fee simple interest in the Drive Parcel, including the Swap Parcel, and the Outlot Parcels, along with all of Assignor's right, title and interest in and to all tangible and intangible personal property associated with the Drive Parcel and Outlot Parcels.

D. Closing of such sale ("**Closing**") under the Sale Agreement is conditioned upon concurrent: (a) assignment by Assignor of all of the benefits under and pursuant to the Agreement to Assignee, (b) consent to such assignment by Village, and (c) amendment of certain terms and conditions contained in the Agreement as provided herein.

E. Closing is taking place simultaneously with the delivery of this Assignment and Assumption by Village, Assignor has conveyed its fee simple interest in the Drive Parcel and the Outlot Parcels, along with all of Assignor's right, title and interest in and to all tangible and intangible personal property associated with the Drive Parcel and Outlot Parcels, to Assignee, and Assignor now desires to assign all of the benefits under and pursuant to the Agreement to Assignee, and Assignee desires to assume all of Assignor's duties and obligations under and pursuant to the Agreement.

F. Village desires to provide its consent to the assignment and the Parties desire to amend certain other terms and conditions contained in the Agreement pursuant to this Assignment and Amendment.

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AGREEMENT

NOW THEREFORE, in consideration of the terms of this Assignment and Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Article I – Assignment and Assumption

1. **Assignment.** As of the Closing: (a) Assignor hereby assigns, conveys, transfers and sets over unto Assignee any and all right, title and interest of Assignor, in and to the benefits under and pursuant to the Agreement including, without limitation, all rights under the Agreement to receive the \$1,000,000 in T.I.F. incentives from the Village, and (b) Assignor hereby represents and warrants that Assignee shall be entitled to the benefit of and may enforce Village's covenants, representations and warranties under the Agreement as if Assignee was the original party to the Agreement. Village hereby consents to the assignment of the Agreement by Assignor to Assignee and agrees that Assignee shall be entitled to the benefit of and may enforce Village's covenants, representations and warranties under the Agreement and that Village shall be bound to Assignee as if Assignee was the original party to the Agreement.

2. **Assumption.** From and after the Closing, Assignee hereby assumes all of Assignor's duties and obligations under and pursuant to the Agreement, including, without limitation, any obligations which have accrued, or which may exist from acts or failures to act, on or prior to the Effective Date. Notwithstanding anything contained herein to the contrary, nothing contained in this Assignment and Amendment shall be construed as to release Assignor from any obligations under the Agreement arising prior to the Effective Date of this Agreement, including, but not limited to Assignor's obligation to reimburse Village for legal and other fees and expenses under Section X of the Agreement. As of the Effective Date, such unreimbursed legal and other fees and expenses under Section X of the Agreement total \$63,182.54. Such amount shall be paid by Assignor and Assignee to Village, in full, upon Closing.

3. **Indemnification by Assignor.** Assignor hereby agrees to protect, defend, indemnify and hold Assignee free and harmless from and against any and all claims, costs, demands, losses, damages, liabilities, lawsuits, actions and other proceedings in law or in equity or otherwise, judgments, awards and expenses of every kind and nature whatsoever including, without limitation, attorneys' fees and costs, arising out of or relating to, directly or indirectly, in whole or in part, the Agreement prior to the Effective Date.

4. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to Assignee as follows: (a) with the exception of the failure of Assignor to timely pay the 2009 second installment and the 2010 first installment real estate taxes against the Drive Parcel when due and the Outstanding Reimbursement Obligations (as defined below), Assignor has complied with the obligations under the Agreement required of it to be performed as of the date hereof, and no default by Assignor and/or Village exists thereunder; (b) the Agreement is unmodified and is in full force and effect; and (c) Assignor has not previously transferred its interest in and to the Agreement to any other person or entity. Assignor shall pay the 2009 second installment and the 2010 first installment real estate taxes against the Drive Parcel on or before Closing.

5. **Representations and Warranties of Village.** Village hereby represents and warrants to Assignee as follows: (a) Village has complied with the obligations under the Agreement required of it to be performed as of the date hereof, no default by Village exists thereunder, and, with the exception of the failure of Assignor to timely pay the 2009 second installment and the 2010 first installment real estate taxes against the Drive Parcel when due and the Outstanding Reimbursement Obligations, no default by

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Assignor exists thereunder; (b) the Agreement is unmodified and is in full force and effect; and (c) Village has not previously consented to any transfer by Assignor of its interest in and to the Agreement to any other person or entity, and, to the knowledge of Village, Assignor has not previously transferred its interest in and to the Agreement to any other person or entity. Village hereby ratifies and affirms the Agreement, as assigned and amended hereby, and agrees that the Agreement, from and after Closing, is and remains in full force and effect, enforceable by Assignee against Village in accordance with its terms, as assigned and amended hereby. For purposes of this Assignment and Amendment, "Outstanding Reimbursement Obligations" shall mean: (a) the obligation of Assignor to reimburse Village for the \$74,252.21 construction cost of the Access Openings and the Access Drive across the Developer Parcel and for 50% of the \$95,499.40 construction cost of the Access Openings and the Access Drive across the Bank Parcel, and (b) the obligation of Assignor to reimburse Village for legal and other fees and expenses totaling \$63,182.54 under Section X of the Agreement. The amount described in clause (a) above shall be paid to Village as provided in Paragraph 15 below, and the amount described in clause (b) above shall be paid to Village by Assignor and Assignee at Closing as provided in Paragraph 2 above. In addition, the 2009 second installment and the 2010 first installment real estate taxes against the Drive Parcel shall be paid by Assignor on or before Closing as provided in Paragraph 4 above. The VILLAGE hereby acknowledges and agrees that payment of the Outstanding Reimbursement Obligations as provided above and payment of the 2009 second installment and the 2010 first installment real estate taxes against the Drive Parcel as provided in Paragraph 4 above shall cure all pending defaults by Assignor under the Agreement to the satisfaction of the VILLAGE, the VILLAGE shall not terminate the Agreement based on such pending defaults, DEVELOPER shall not forfeit any rights under the Agreement based on such pending defaults and the VILLAGE shall not be entitled to enforce any remedies arising from such pending defaults if they are cured as described in this Paragraph 5.

Article II – Amendments to the Agreement

6. **References to LLC.** The Agreement is hereby amended such that, as of the Closing: (a) any reference to "LLC" in the Agreement is hereby deleted and replaced with "DEVELOPER", and (b) any reference to "LLC PARCEL" in the Agreement is hereby deleted and replaced with "DEVELOPER PARCEL".

7. **DRIVE PROJECT.** The third, fourth and fifth sentences of Section III.G. of the Agreement are hereby deleted in their entirety and replaced with the following:

"DEVELOPER shall commence construction of one or more of the PROJECTS no later than thirty-four (34) months after the Effective Date of this Agreement as defined in Section XI. Any PROJECT commenced by DEVELOPER shall be constructed in accordance with the plans approved by the VILLAGE and substantially completed within twelve (12) months of receipt of all VILLAGE approvals necessary for the commencement of construction thereof."

8. **Reimbursement of T.I.F. Expenses; Financial Assurances.** The last sentence of Section III.G. of the Agreement is hereby deleted in its entirety and replaced with the following:

"DEVELOPER's commencement of such PHASE II construction prior to commencement of PHASE I construction shall in no way jeopardize DEVELOPER's eligibility for reimbursement of any T.I.F. eligible expenses hereunder (provided that such T.I.F. eligible expenses are documented and a formal request for reimbursement is submitted therefore by DEVELOPER as provided in Section IV. of this Agreement), it being understood however, that no reimbursement of eligible T.I.F. expenses for either PHASE shall be made until

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substantial completion of construction of a PROJECT in such PHASE has occurred.”

9. **Prohibited Uses.** Section III.M. of the Agreement is hereby deleted in its entirety and replaced with the following:

“The OUTLOT PARCELS are currently zoned B-3 General Business and Commercial. Notwithstanding the current zoning classification of the OUTLOT PARCELS, DEVELOPER acknowledges and agrees that the OUTLOT PARCELS shall not be developed for any of the uses set forth in EXHIBIT 5. Such uses are prohibited, absent specific approval by the VILLAGE Board, which approval may be withheld in its sole discretion. DEVELOPER shall not, during the term of this Agreement, permit any portion of the OUTLOT PARCELS to be used for a prohibited use, absent specific approval by the VILLAGE President and Board of Trustees. For purposes of this Agreement, the term “tavern” shall mean a bar or other establishment serving only alcoholic beverages, with no meal service. The prohibition of taverns shall in no event prohibit or restrict use of any of the PARCELS as a restaurant, as such term is defined in Section 112.01 of the VILLAGE Code.”

10. **Notice and Cure.** Section IV.D. of the Agreement is hereby deleted in its entirety and replaced with the following:

“Notwithstanding any of the foregoing, or any other provision contained herein, if DEVELOPER or its grantees, successors, administrators, permitted assignees and/or lessees fails in any year to timely pay any or all of the real estate taxes on the PARCELS when they become due, which failure is not cured within five (5) days following written notice of such failure from the VILLAGE to DEVELOPER, the VILLAGE may, at its sole discretion, immediately terminate this Agreement, and DEVELOPER shall forfeit (and such forfeiture shall not be subject to any cure period) all rights due hereunder. DEVELOPER shall provide evidence to the VILLAGE that such taxes were paid when due within thirty (30) days after the date when due. Notwithstanding the foregoing, DEVELOPER shall have the right to contest in good faith the assessed valuation of the PARCELS and the improvements thereon from time to time without affecting this Agreement.”

11. **Undertakings on the Part of the Village.** Section IV.B. and IV.E. of the Agreement are hereby deleted in their entirety. Further, Section IV.A. of the Agreement is hereby deleted in its entirety and replaced with the following:

“VILLAGE shall provide a total sum of up to One Million (\$1,000,000) Dollars, to be paid solely from Convention Center T.I.F. District funds, for the PROJECTS. Until such time as DEVELOPER has constructed and obtained substantial completion for no less than two buildings to be constructed on the PARCELS, DEVELOPER shall receive no more than \$500,000.00 of the total \$1,000,000.00 T.I.F. incentive upon completion of each building constructed on the PARCELS. Upon completion of at least two buildings, the total \$1,000,000.00 T.I.F. incentive shall be available to DEVELOPER. Upon substantial completion of construction of the first PROJECT to be constructed by DEVELOPER, DEVELOPER shall be eligible for, and the VILLAGE shall provide, a sum of up to Five Hundred Thousand (\$500,000) Dollars of T.I.F. incentive. Upon substantial completion of construction of each subsequent PROJECT, DEVELOPER shall be eligible for, and the VILLAGE shall provide, a sum not to exceed the remaining

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amount of the total \$1,000,000.00 T.I.F. incentive. Payment of any T.I.F. incentive by the VILLAGE to DEVELOPER shall be paid solely from Convention Center T.I.F. District funds. Such funds shall be provided to DEVELOPER upon DEVELOPER'S request for reimbursement of eligible T.I.F. expenses on such PROJECT, pursuant to the terms and conditions set forth herein:

1. The VILLAGE shall pay only amounts that reimburse DEVELOPER for valid T.I.F. expenses authorized by state law, including, but not limited to, parking lot construction and improvements, underground utilities, and lighting and landscaping improvements. Such payment shall not be due and payable until after all required zoning and planning approvals for the applicable PROJECT are obtained from the VILLAGE. Any then remaining T.I.F. incentive shall be reduced at the rate of 33.33% per month for any PROJECT not substantially completed on or before July 2, 2013. In addition, the right to any further reimbursement for T.I.F. expenses shall terminate if substantial completion of such PROJECT is not complete within twelve (12) months of receipt of all VILLAGE approvals necessary for the commencement of construction thereof, or if construction has not commenced within thirty four (34) months after the Effective Date of this Agreement, or, in either case, by such later time as may be mutually agreed to in writing between the VILLAGE and DEVELOPER, as required by Section III.G. Payment is further subject to the review and approval of the VILLAGE as to whether payment is appropriate, complete and warranted.
2. DEVELOPER shall have delivered to the VILLAGE no less than twenty (20) days prior to the payment, a certificate dated within fifteen (15) days of receipt by the VILLAGE that all representations and warranties of DEVELOPER contained in this Agreement are true and correct. The VILLAGE retains the right to waive any or all of these certifications in writing if, in the reasonable discretion of the VILLAGE, the applicable PROJECT has been completed in a manner satisfactory to the VILLAGE.
3. The VILLAGE has received no notice from DEVELOPER or from any other source that there exists any material default beyond applicable cure periods under the terms, conditions or provisions of any loan documents under which DEVELOPER financing was obtained for the applicable PROJECT, if any, that materially affects or that may materially affect DEVELOPER'S ability to operate and maintain such PROJECT. DEVELOPER shall provide the VILLAGE with any notices received throughout the term of this Agreement relating to the applicable PARCEL which may have a material adverse impact on such PROJECT, specifically including any notices regarding any tax or loan payment delinquencies. If, however, the VILLAGE receives evidence satisfactory to it that any such default has been cured, then the VILLAGE'S obligation to pay T.I.F. Funds to DEVELOPER as required hereunder shall begin or resume, as the case may be, if all other requirements contained in this Agreement have been met.
4. In the event that DEVELOPER fails to deliver to the VILLAGE any or all of the foregoing certifications within the time periods set forth above, or otherwise violates any term or provision of this Agreement, whether or not specifically related to a particular PARCEL, then in such event, the

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VILLAGE shall have no obligation to make any payment of T.I.F. Funds to DEVELOPER until such time as any such failure or violation is corrected to the satisfaction of the VILLAGE, and all rights of DEVELOPER to demand any payment from the VILLAGE shall be deemed suspended until such failure or violation is so corrected, and all other obligations on the part of the VILLAGE arising pursuant to this Agreement shall be deemed suspended and without any further force and effect unless and until such failure or violation is so corrected within the applicable cure period set forth in this Agreement. Where this Agreement provides for forfeiture of any such payment, the VILLAGE may in that event cancel this entire Agreement immediately and permanently with no obligation to make any further payment.”

T.I.F. expenses to be paid by the VILLAGE shall only include valid T.I.F. expenses incurred from and after the Effective Date of this Assignment and Amendment that relate to the development and construction of the PROJECTS, and shall not include DEVELOPER’s costs to acquire the PARCELS.

12. **Reconfiguration of Adjacent Parking Areas.** The following sentence is hereby added at the end of Section IV.H.: “The parties agree to work together to create efficiencies in any such reconfiguration of the adjacent parking areas to the benefit of the VILLAGE and DEVELOPER.”

13. **Representations and Warranties.** The following paragraphs of Section V are hereby deleted in their entirety and replaced with the following:

“A. DEVELOPER hereby represents and warrants that it is a Florida limited liability company in good standing with proper authority to enter into and execute this Agreement, including any and all amendments thereto, and that its member signing the Agreement, including any and all amendments thereto have been duly authorized by all of the DEVELOPER’s members to do so.”

“F. DEVELOPER hereby agrees to allow the VILLAGE to inspect its books and records pertaining to the PROJECT not more frequently than once a year during normal business hours at its regular place of business and represents and warrants that its books and records pertaining to the PROJECT shall at such times be available for inspection by representatives of the VILLAGE at its regular place of business. Upon the request of the VILLAGE, such books and records pertaining to the PROJECT shall either be made available for inspection in the Chicago, Illinois metropolitan area, or DEVELOPER shall deliver copies thereof to the VILLAGE.”

14. **Curing Default and Other Remedies.** Section VIII.A. of the Agreement is hereby deleted in its entirety and replaced with the following:

“In the event of any default under or violation of this Agreement, the party not in default or violation shall service written notice upon the party or parties in default or violation, which notice shall be in writing and shall specify the particular violation or default. Except as provided below with respect to any failure of DEVELOPER to timely pay real estate taxes, the parties reserve the right to cure any violations of this Agreement or default hereunder within thirty (30) days

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following written notice of such default. If such default is so cured within said thirty (30) day period, all terms and conditions of this Agreement shall remain in full force and effect. If the parties cannot cure a default or violation hereof, within said thirty (30) day period, then the other party shall grant a reasonable extension of the cure period, said extension not to exceed sixty (60) days, provided that the party in default or violation is diligently pursuing completion and/or cure and tenders proof of such diligence to the non-defaulting party upon request. The non-defaulting party may, at its sole discretion, grant such additional extensions beyond the aforementioned sixty (60) day extension period as may, in the sole discretion of the non-defaulting party, be reasonably necessary to cure said default. No extension of any applicable cure period shall be permitted for failure to cure a monetary default within the initial thirty (30) day cure period, unless the non-defaulting party agrees to such extension in its sole and absolute discretion. The notice and cure period described above does not apply to a failure to timely pay any real estate taxes. The notice and cure period for a failure to timely pay any real estate taxes shall be five (5) days following written notice of such failure, and said five (5) day period shall not be subject to extension as provided above. If a failure to timely pay any real estate taxes is cured within said five (5) day period, all terms and conditions of this Agreement shall remain in full force and effect. If a failure to timely pay any real estate taxes is not timely cured, the VILLAGE shall be relieved of any and all of its obligations arising hereunder, including, but not limited to, any obligations to pay any further incentive amounts to DEVELOPER.”

15. **Notices.** Section XI.F. is hereby amended such that all notices to be provided to DEVELOPER under the Agreement shall be addressed as follows:

If to Developer: c/o: DeBartolo Development, LLC
 Attention: Edward M. Kobel
 4401 W. Kennedy Boulevard, Third Floor
 Tampa, Florida 33609

With copy to: Gray Robinson, P.A.
 Attention: Michael Nolan, Esquire
 201 North Franklin Street, Suite 2200
 Tampa, Florida 33601

16. **Reimbursement of Village T.I.F. Expenses.** A new Section XII is hereby added to the Agreement, to read in its entirety as follows:

“XII. **REIMBURSEMENT OF VILLAGE T.I.F. EXPENSES.**

Notwithstanding anything contained in this Agreement to the contrary, DEVELOPER agrees that the \$1,000,000.00 T.I.F. incentive to be paid to DEVELOPER as reimbursement for valid T.I.F. expenses shall be reduced by any costs and expenses incurred by the VILLAGE for valid T.I.F. expenses authorized by state law, including but not limited to, parking lots construction and improvements, underground utilities, and lighting and landscape improvements constructed by VILLAGE on the Drive Parcel (the “**Village Improvements**”), which Village Improvements benefit the Drive Parcel. VILLAGE shall be entitled to receive and retain reimbursement from the T.I.F. for the Village Improvements

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and any such reimbursement shall reduce T.I.F. amounts available for reimbursement to Developer pursuant to this Agreement. As of the Effective Date, VILLAGE has completed: (i) the Access Openings and the Access Drive across the DEVELOPER PARCEL, at a total construction cost of \$74,252.21, and (ii) the Access Openings and the Access Drive across the BANK PARCEL, at a total construction cost of \$95,499.40, each as further described in that certain letter from the VILLAGE to Assignor dated April 12, 2011, a copy of which is attached hereto and made a part hereof as Exhibit A. Pursuant to Section 4(e) of the North Parcel Covenants Agreement, Assignor was obligated to reimburse VILLAGE for 100% of the construction cost of the Access Openings and the Access Drive across the DEVELOPER PARCEL, and pursuant to Section 4(g) of the North Parcel Covenants Agreement, Assignor was obligated to reimburse VILLAGE for 50% of the construction cost of the Access Openings and the Access Drive across the BANK PARCEL, which obligation is hereby released by VILLAGE. Instead, the parties agree that VILLAGE shall reimburse itself for \$122,001.91 from the T.I.F. for such Village Improvements, and the T.I.F. amounts available for reimbursement to DEVELOPER upon completion of the first two (2) buildings will thereby each reduce by one-half (1/2) of such amount, from \$500,000.00 to \$438,999.05, resulting in an aggregate reduction in said \$1,000,000.00 T.I.F. amount, to \$877,998.09. Such reimbursement to VILLAGE shall take place at such time as: (i) DEVELOPER has satisfied the conditions for reimbursement for the costs of T.I.F. eligible expenses incurred by DEVELOPER for any building on the DRIVE PARCEL as provided in Section IV.A. of this Agreement, and (ii) such building on the DRIVE PARCEL is occupied. If the two (2) conditions in the preceding sentence are not satisfied by DEVELOPER on or before October 2, 2013, DEVELOPER shall be obligated to reimburse Village for such \$122,001.91 not later than December 31, 2013, and, from and after October 2, 2013, no further occupancy permits shall be issued for any building on the Drive Parcel until such payment is made. For purposes of this Assignment and Amendment, occupancy of: (i) the DRIVE PROJECT shall mean actual occupancy by a user of not less than 50% of the net leasable space within the DRIVE PROJECT or a fully executed lease, letter of intent or other written agreement between DEVELOPER and a user for not less than 50% of the net leasable space within the DRIVE PROJECT, with occupancy thereof by such user to take place not later than three (3) months following substantial completion of the DRIVE PROJECT; and (ii) any other building on the DRIVE PARCEL shall mean actual occupancy by a user of 100% of the net leasable space within such building on the DRIVE PARCEL or a fully executed lease, letter of intent or other written agreement between DEVELOPER and a user for 100% of the net leasable space within such building on the DRIVE PARCEL, with occupancy thereof by such user to take place not later than three (3) months following substantial completion of such building.”

17. **Village Option to Purchase Outlot Parcel B.** A new Section XIII is hereby added to the Agreement, to read in its entirety as follows:

“XIII. **VILLAGE OPTION TO PURCHASE OUTLOT PARCEL B.**

DEVELOPER hereby grants the VILLAGE an exclusive option (the “**Option**”) to purchase OUTLOT PARCEL B upon the terms and subject to the conditions set forth in this Section XIII. The VILLAGE shall have a period of time beginning on

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the date hereof and ending on August 12, 2011 (such period is referred to as the “**Option Term**”) during which the Option may be exercised by the VILLAGE. Any exercise of the Option by the VILLAGE shall be in writing and delivered to DEVELOPER as provided in Section XI.F of this Agreement. If the VILLAGE does not exercise the Option during the Option Term, the Option shall automatically terminate on August 22, 2011 and shall thereafter be of no further force or effect. If the Village timely exercises the Option, the purchase price (the “**Purchase Price**”) to be paid by the VILLAGE to DEVELOPER for OUTLOT PARCEL B is One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00), and the purchase and sale of OUTLOT PARCEL B shall close on a date to be agreed on by DEVELOPER and the VILLAGE, but in no event later than thirty (30) days following the expiration of the Option Term. At closing, DEVELOPER shall convey OUTLOT PARCEL B to the VILLAGE in “as-is, where-is” condition, without any representations or warranties, either express or implied. Closing costs and prorations shall be allocated between and paid by DEVELOPER and the VILLAGE as is customary in commercial property transactions in Chicago, Illinois. During the Option Term, the VILLAGE shall, at its sole cost and expense, use good faith reasonable efforts to obtain an appraisal (the “**Appraisal**”) of OUTLOT PARCEL B. The Appraisal shall be prepared by a licensed appraiser in compliance with MAI standards, and shall provide a market value of OUTLOT PARCEL B for commercial use. The VILLAGE shall provide a copy of the Appraisal to DEVELOPER promptly upon receipt. Regardless of the value of OUTLOT PARCEL B set forth in the Appraisal, if the VILLAGE timely exercises the Option, the Purchase Price for OUTLOT PARCEL B shall be One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00). If OUTLOT PARCEL B is purchased by the VILLAGE, the \$1,000,000.00 T.I.F. incentive shall not run with such sale, but shall remain with the DRIVE PARCEL and the remaining OUTLOT PARCEL.

18. **Right of First Offer.** A new Section XIV is hereby added to the Agreement, to read in its entirety as follows:

“XIV. **VILLAGE RIGHT OF FIRST OFFER.**

In the event that (i) DEVELOPER desires to sell OUTLOT PARCEL A, or (ii) should the VILLAGE elect not to exercise the Option, DEVELOPER desires to sell OUTLOT PARCEL B, DEVELOPER will first offer to sell such OUTLOT PARCEL(S) to the VILLAGE. DEVELOPER’S offer shall identify the OUTLOT PARCEL(S) to be sold and a sale price acceptable to DEVELOPER. The VILLAGE shall have a period of ten (10) days to accept or reject such offer. If the VILLAGE accepts DEVELOPER’s offer, the purchase and sale of such OUTLOT PARCEL(S) shall close within thirty (30) days following acceptance of DEVELOPER’s offer by the VILLAGE. At closing, DEVELOPER shall convey the applicable OUTLOT PARCEL(S) to the VILLAGE in “as-is, where-is” condition, without any representations or warranties, either express or implied. Closing costs and prorations shall be allocated between and paid by DEVELOPER and the VILLAGE as is customary in commercial property transactions in Chicago, Illinois. If the VILLAGE does not timely accept DEVELOPER’S offer, DEVELOPER shall be free for a period of six (6) months to sell the identified OUTLOT PARCEL(S) upon terms and conditions substantially similar to those offered to the VILLAGE. If DEVELOPER does not

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sell the identified OUTLOT PARCEL(S) within such timeframe, this right of first offer shall once again be applicable to the OUTLOT PARCEL(S) not sold. In all events, the right of first offer granted hereby shall terminate automatically on December 31, 2011 and shall thereafter be of no further force or effect. Should the VILLAGE fail to timely accept DEVELOPER'S offer to sell either or both of the OUTLOT PARCELS, and at any time after December 31, 2011, upon the request of DEVELOPER, the VILLAGE shall promptly execute and deliver to DEVELOPER an acknowledgement of the termination of the right of first offer granted pursuant to this Section XIV, in recordable form and sufficient to clear such right of first offer from title to the OUTLOT PARCEL(S) not purchased by the VILLAGE. If both of the OUTLOT PARCELS are sold to the VILLAGE, the \$1,000,000.00 T.I.F. incentive shall not run with such sale, but shall remain with the DRIVE PARCEL. If one of the OUTLOT PARCELS is sold to the VILLAGE, the \$1,000,000.00 T.I.F. incentive shall not run with such sale, but shall remain with the DRIVE PARCEL and the remaining OUTLOT PARCEL. Any offer, acceptance, rejection or other notice to be delivered by one party to the other under this Section XIV shall be in writing and delivered to the other party as provided in Section XI.F of this Agreement.

19. **Village Right of First Refusal.** A new Section XV is hereby added to the Agreement, to read in its entirety as follows:

“XV. **VILLAGE RIGHT OF FIRST REFUSAL.**

In the event that (i) DEVELOPER obtains an offer from a third party to purchase OUTLOT PARCEL A, or (ii) should the VILLAGE elect not to exercise the Option, DEVELOPER obtains an offer from a third party to purchase OUTLOT PARCEL B, DEVELOPER shall provide the VILLAGE with notice of such third party offer. DEVELOPER'S notice shall identify the OUTLOT PARCEL(S) to be sold, the sale price, and any other pertinent terms of such offer. The VILLAGE shall have a period of ten (10) days to match or reject such offer. If the VILLAGE matches such third party offer, the purchase and sale of such OUTLOT PARCEL(S) shall close as provided in the third party offer within thirty (30) days following notice from the VILLAGE that it has elected to match such third party offer. If the VILLAGE does not timely match the third party offer, DEVELOPER shall be free for a period of six (6) months to sell the identified OUTLOT PARCEL(S) on the terms and conditions set forth in the third party offer. If DEVELOPER does not sell the identified OUTLOT PARCEL(S) within such timeframe, this right of first refusal shall once again be applicable to the OUTLOT PARCEL(S) not sold. In all events, the right of first refusal granted hereby shall terminate automatically on December 31, 2011 and shall thereafter be of no further force or effect. Should the VILLAGE fail to timely match any third party offer to purchase either or both of the OUTLOT PARCELS, and at any time after December 31, 2011, upon the request of DEVELOPER, the VILLAGE shall promptly execute and deliver to DEVELOPER an acknowledgement of the termination of the right of first refusal granted pursuant to this Section XV, in recordable form and sufficient to clear such right of first offer from title to the OUTLOT PARCEL(S) not purchased by the VILLAGE. If both of the OUTLOT PARCELS are sold to the VILLAGE, the \$1,000,000.00 T.I.F. incentive shall not run with such sale, but shall remain with the DRIVE PARCEL. If one of the OUTLOT PARCELS is sold to the VILLAGE, the \$1,000,000.00 T.I.F. incentive

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shall not run with such sale, but shall remain with the DRIVE PARCEL and the remaining OUTLOT PARCEL. Any offer, acceptance, rejection or other notice to be delivered by one party to the other under this Section XV shall be in writing and delivered to the other party as provided in Section XI.F of this Agreement.

20. **Assignment.** Notwithstanding anything contained in the Agreement to the contrary, DEVELOPER shall be permitted to assign the Agreement, without the consent of the VILLAGE, to any entity in which DEVELOPER, DeBartolo, or a wholly-owned subsidiary of DEVELOPER or DeBartolo, owns at least a fifty percent (50%) equity interest and has decision making authority over major decisions of the entity.

Article III – General Provisions

21. **Further Assurances.** The parties hereto each agree to execute and deliver to the other party, upon demand, such further documents, instruments and conveyances, and shall take such further actions, as are necessary or desirable to effectuate this assignment of the Agreement from Assignor to Assignee.

22. **Attorneys' Fees; Costs.** Upon the bringing of any action, suit or arbitration by any party against the others arising out of this Assignment and Amendment or the subject matter hereof, the party in whose favor final judgment shall be entered shall be entitled to recover from the other parties all costs and expenses of suit including, without limitation, reasonable attorneys' fees and costs.

23. **Successors and Assigns.** This Assignment and Amendment shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of the parties hereto.

24. **Full Force and Effect/Conflict.** All provisions of the Agreement not amended hereby shall be and remain in full force and effect; provided, however, that such provisions are hereby modified, as necessary, to conform to the terms hereof. In the event of a conflict between the terms of the Agreement and the terms of this Assignment and Amendment, the terms of this Assignment and Amendment shall supersede and control over the conflicting provision(s) in the Agreement.

25. **Prior Development Agreements.** The Parcels are a portion of the subject property described in that certain Development Agreement between Village, Standard Bank and Trust Company, as Trustee under Trust No. 3746, and Hartz Construction Co., Inc. dated June 2, 1998 and recorded with the Cook County, Illinois Recorder of Deeds on April 27, 1999 as Document No. 9939898966 (the "**Hartz Development Agreement**"). The Outlot Parcels are a portion of the subject property described in the following Development Agreements: (a) Development Agreement – Holiday Inn – I-80 and Harlem Avenue, between Village, Tinley Park Hotel and Convention Center, L.L.C. and Mid-Continent Development and Construction Co., dated June 2, 1998 and recorded with the Cook County, Illinois Recorder of Deeds on May 21, 1999 as Document No. 99494675, (b), Hotel Addition Development Agreement – I-80 and Harlem Avenue, between Village, Tinley Park Hotel and Convention Center, L.L.C. and Mid-Continent Development and Construction Co., dated December 3, 2008 and recorded with the Cook County, Illinois Recorder of Deeds on June 30, 2011 as Document No. 1118118062 and (c) Amendment to Development Agreement – I-80, and Harlem Avenue, between Village, Tinley Park Hotel and Convention Center, L.L.C. and Mid-Continent Development and Construction Co., dated January 19, 2009 and recorded with the Cook County, Illinois Recorder of Deeds on June 30, 2011 as Document No. 1118118063 (collectively, the "**Hotel and Convention Center Development Agreement**"). As between Village and Developer, the development and use of the Parcels shall not be restricted or governed by the

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Hartz Development Agreement or the Hotel and Convention Center Development Agreement, but the development and use of the Parcels shall be governed solely by: (a) the Agreement, as assigned and amended hereby, (b) the Amended and Restated Covenants, Conditions, Easements and Restrictions Agreement by and between the VILLAGE, Assignor and George Washington Savings Bank dated December 2, 2009 and recorded with the Cook County, Illinois Recorder of Deeds on December 14, 2009 as Document No. 0934818074, as amended by First Amendment thereto dated February 1, 2010 and recorded with the Cook County, Illinois Recorder of Deeds on February 4, 2010 as Document No. 1003529104 (as so amended, the "**North Parcel Covenants Agreement**"), (c) the Covenants, Conditions, Easements and Restrictions Agreement by and between the VILLAGE and Assignor dated February 1, 2010 and recorded with the Cook County, Illinois Recorder of Deeds on February 4, 2010 as Document No. 1003529100 (the "**South Parcel Covenants Agreement**"), (d) the other documents described in, and/or executed and delivered by Assignor and/or Village in connection with, the Agreement and said Covenants Agreements, including the Convention Center PUD and, in particular, the Substantial Deviation to the Convention Center PUD approved as Village of Tinley Park Ordinance 2009-O-052 on October 20, 2009; and (e) the laws, rules, regulations, codes and ordinances of the VILLAGE and of any other local, county, state, and/or federal government having jurisdiction over the Parcels, or any department or agency thereof.

26. **Authority.** Each party to this Assignment and Amendment hereby represents to the other parties hereto that execution and delivery of this Assignment and Amendment have been authorized by such party, and that the signatory(s) hereto have all necessary power and authority to execute this Assignment and Amendment.

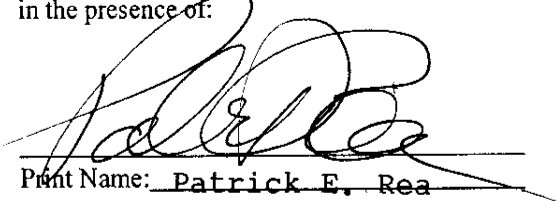
27. **Counterparts.** This Assignment and Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall constitute one and the same instrument. Counterparts exchanged by facsimile transmission shall be valid as original counterparts.

[Signature Pages to Follow]

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IN WITNESS WHEREOF, the parties have executed this Assignment and Amendment as of the day set forth below.

Signed, sealed and delivered
in the presence of:

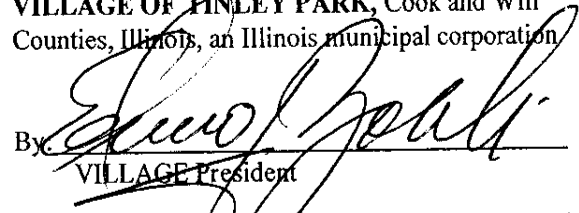


Print Name: Patrick E. Rea

Print Name: _____

VILLAGE:

VILLAGE OF TINLEY PARK, Cook and Will
Counties, Illinois, an Illinois municipal corporation



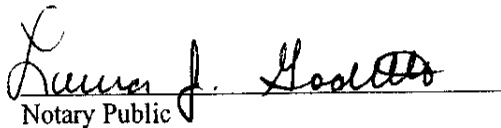
By: _____
VILLAGE President

Date of execution: June 28, 2011

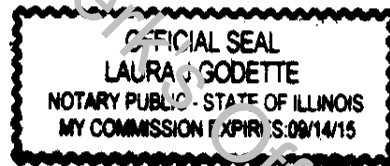
STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Edward Zabrocki, personally known to me to be the President of the VILLAGE of Tinley Park, an Illinois municipal corporation, and Patrick E. Rea, personally known to me to the VILLAGE Clerk of said municipal corporation, and personally known to me to the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such VILLAGE President and VILLAGE Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the VILLAGE Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 28 day of June, 2011.


Notary Public

Commission expires: Sept. 14, 2015



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IN WITNESS WHEREOF, the parties have executed this Assignment and Amendment as of the day set forth below.

Signed, sealed and delivered
in the presence of:

ASSIGNOR:

183RD & TINLEY LLC, an Illinois limited liability
company

Print Name: _____

By: *[Signature]*
Its Manager/Member

Print Name: _____

Date of execution: 7/1/11

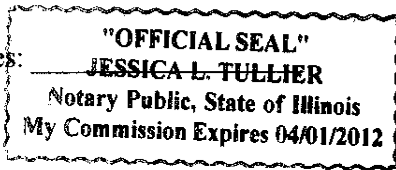
STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Martin J. Wynne and _____, personally known to me to be the manager/member and member, respectively of 183RD & TINLEY LLC, an Illinois limited liability company, and personally known to me to the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such manager/member and member, they signed and delivered the said instrument to be affixed thereto, as the free and voluntary act, and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 1st day of July, 2011.

Jessica L. Tullier
Notary Public

Commission expires: _____



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IN WITNESS WHEREOF, the parties have executed this Assignment and Amendment as of the day set forth below.

Signed, sealed and delivered
in the presence of:

DEVELOPER/ASSIGNEE:

DK TINLEY PARK, LLC, a Florida limited liability company

Carolyn Rapuzzi
Print Name: CAROLYN RAPUZZI

By: DeBartolo Development, LLC, a Delaware limited liability company, its Manager

Eda Mullendorfe
Print Name: Eda Mullendorfe

By: [Signature]
Edward M. Kobel, President

Date of execution: 6/29/11

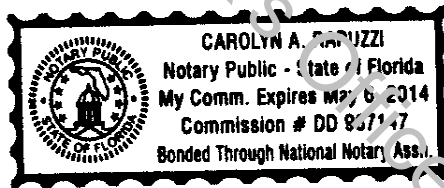
STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Edward M. Kobel, personally known to me to be the President of DeBartolo Development, LLC, a Delaware limited liability company, the Manager of **DK TINLEY PARK, LLC**, a Florida limited liability company, and personally known to me to the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as President, he signed and delivered the said instrument to be affixed thereto, as the free and voluntary act, and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 29th day of June, 2011.

Carolyn A. Rapuzzi
Notary Public

Commission expires: 5/6/14



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EXHIBIT A

LETTER FROM THE VILLAGE TO 183rd & TINLEY, LLC DATED APRIL 12, 2011

(copy attached)

Property of Cook County Clerk's Office



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April 12, 2011

Village President

Edward J. Zabrocki

Village Clerk

Patrick E. Rea

Village Trustees

David G. Seaman

Gregory J. Hannon

Brian S. Maher

Thomas J. Staunton, Jr.

Patricia A. Leoni

T. J. Grady

Via Certified Mail, Return Receipt Requested183rd & Tinley LLC

c/o InterState Commercial Real Estate, Inc.

13101 W. 22nd Street, Suite 201

Oak Brook, Illinois 60523

Attn: Martin J. Wynne

Village Hall

16250 S. Oak Park Ave.

Tinley Park, IL 60477

Administration

(708) 444-5000

Fax: (708) 444-5099

Building & Planning

(708) 444-5100

Fax: (708) 444-5199

Public Works

(708) 444-5500

Police Department7850 W. 183rd St.

Tinley Park, IL 60477

(708) 444-5300/Non-emergency

Fax: (708) 444-5399

John T. Dunn**Public Safety Building**17355 S. 68th Court

Tinley Park, IL 60477

Fire Department & Prevention

(708) 444-5200/Non-emergency

Fax: (708) 444-5299

EMA

(708) 444-5600

Fax: (708) 444-5699

Senior**Community Center**

(708) 444-5150

www.tinleypark.org**Re: Demand for Prompt Repayment - Construction of Access Openings and Access Drives on LLC Parcel by Village of Tinley Park**

Dear Mr. Wynne:

Please be advised that pursuant to Sections 4(e) and 4(g) of the Amended and Restated Covenants, Conditions Easements and Restrictions Agreement (the "Agreement") entered into between the Village of Tinley Park ("Village"), 183rd & Tinley LLC ("LLC"), and George Washington Savings Bank, and recorded on December 14, 2009 as Document No. 0934818074, the Village is now demanding 100% reimbursement for the cost of constructing Access Openings and Access Drives from Convention Center Drive across the LLC Parcel to the Village Parcel and 50% reimbursement for the cost of constructing Access Openings and an Access Drive across the Bank Parcel to the Village Parcel.

As you will recall, Section 4(e) of the Agreement provides that should the Village perform the construction of the Access Openings and Access Drive across the LLC Parcel between Convention Center Drive and the Village Parcel, the LLC shall promptly reimburse the Village in the full amount of the construction costs incurred by the Village or in the amount of the contract awarded for performance of the work (exclusive of profit to the contractor, if done by a contractor), upon receipt of invoices from the Village evidencing the contract costs associated with such construction. Attached are documents in support of the Village's request for reimbursement, including a document detailing unit costs of construction of the entire parking area and access drive construction project, and a depiction of the Convention Center area showing the square footage of the Access Drive and Openings from Convention Center Drive in red and yellow as Areas 1 and 2.



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As you will also recall, Section 4(g) of the Agreement authorizes the Village to construct Access Openings and an Access Drive across the Bank Parcel. Having exercised that right, Section 4(g) further provides for prompt reimbursement by LLC to the Village of 50% of the costs of construction for performance of such work upon receipt of invoices from the Village evidencing such contract costs. Attached are documents in support of our request for prompt reimbursement, including a document detailing unit costs of construction of the parking area and access drive construction project and a depiction of the Convention Center area showing the location of the Access Drive and Openings across the Bank Parcel in blue as Area 3.

Please submit payment to the Village for these costs by forwarding checks in the amount of \$74,252.21 (LLC repayment of Access Openings and Access Drives from Convention Center Drive) and \$47,749.70 (50% LLC repayment of Access Drive and Access Openings across the Bank Parcel) to my attention at the Village Hall within the next thirty (30) days. Should you wish to arrange for a meeting with your engineer to review our calculations, please contact Michael Mertens at 708-444-5040 to make arrangements to do so.

Please feel free to contact me with any questions.

Sincerely,


Scott Niehaus
Village Manager

SRN:jc

cc: Mike Mertens, Assistant Village Manager
Michael Marrs, Village Attorney

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AREAS			
Village	136,115.9 SF	86.5 %	
Area 1	4,789.5 SF	3.1 %	
Area 2	5,091 SF	3.2 %	
Area 3	11,289.6 SF	7.2 %	
Total	157,286.2 SF	100 %	

