

# UNOFFICIAL COPY



This instrument was prepared by and, after recording, return to:

Linsey N. Cohen  
Gould & Ratner LLP  
222 North LaSalle Street - Suite 800  
Chicago, Illinois 60601

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Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 01/21/2014 02:31 PM Pg: 1 of 27

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## SECOND LOAN MODIFICATION AGREEMENT

THIS **SECOND LOAN MODIFICATION AGREEMENT** (this "Modification") is entered into as of the 16<sup>th</sup> day of December 2013 ("Effective Date") by and among **POPLAR CREEK, L.L.C.**, an Illinois limited liability company ("Borrower"), **DOUGLAS C. ALTENBERGER**, individually, **GEORGE A. MOSER**, individually, **GEORGE M. MOSER**, individually, and **MARTIN R. WALSH**, individually (each, individually, a "Guarantor" and collectively, the "Guarantors") and **FIRST AMERICAN BANK**, an Illinois banking corporation ("Lender").

### RECITALS:

A. On February 27, 2004, Borrower borrowed from Lender the sum of \$8,100,000.00 (the "Original Loan").

B. The Original Loan was evidenced by a Term Note of even date therewith made by Borrower to Lender in the principal amount of \$8,100,000.00, as amended by a First Amendment to Term Note dated November 1, 2004 (collectively, the "Original Note"). The Original Note was evidenced and secured, among other things, by the following described documents (said security documents and any other document or instrument securing the Original Note are hereinafter collectively referred to as the "Original Loan Documents"):

1. Mortgage (the "Original Mortgage") dated February 27, 2004 and recorded February 27, 2004 in the Office of the Cook County Recorder as Document No. 0405826116 placing a first mortgage lien on the property legally described on Exhibit A attached hereto and made a part hereof.

**FIDELITY NATIONAL TITLE** 999101262 NW

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2. Assignment of Leases and Rents (the "ALR") made by Borrower in favor of Lender, dated February 27, 2004 and recorded February 27, 2004 in the Office of the Cook County Recorder as Document No. 0405826117.

3. Loan Agreement made by Borrower and Lender dated February 27, 2004, as amended by a certain First Amendment to Loan Agreement dated November 1, 2004 (the "Original Loan Agreement").

4. Guaranty from Guarantors to Lender (the "Original Guaranty").

5. UCC-1 Financing Statement filed with the Illinois Secretary of State dated May 20, 2004 (Initial Filing Number 8715254), as continued by Continuation filed December 2, 2008 (Amendment Number 08958911) (collectively, the "UCC").

C. On November 1, 2009, Borrower and Lender agreed to revise, amend and re-state certain of the terms of the Original Loan (the "First Loan Modification"), reducing the principal amount of the Original Loan to the sum of \$7,892,406.23 (herein called the "Revised Loan").

D. The Revised Loan is evidenced by an Amended and Restated Term Note (amending and restating the Original Note) dated November 1, 2009 made by Borrower to Lender in the principal amount of \$7,892,406.23, as amended by a First Amendment to Amended and Restated Term Note (collectively, the "Revised Note"). The Revised Note is evidenced and secured, among other things, by the following described documents (said security documents and any other document or instrument securing the Revised Note are hereinafter collectively referred to as the "Revised Loan Documents"):

1. The Original Mortgage, as amended by a certain First Amendment to Mortgage dated November 1, 2009 and recorded on February 1, 2010 in the Office of the Cook County Recorder as Document No. 1003218021 (collectively, the "Revised Mortgage").

2. The ALR.

3. Amended and Restated Loan Agreement (amending and restating the Original Loan Agreement) made by Borrower and Lender dated November 1, 2009, as amended by a certain letter agreement dated January 26, 2010, and as further amended by a certain First Amendment to Amended and Restated Loan Agreement dated June 1, 2011 (collectively, the "Revised Loan Agreement").

4. Guaranty documents, each dated November 1, 2009 from each of the Guarantors to Lender (each a "Revised Guaranty" and collectively, the "Revised Guaranties") (superseding and replacing the Original Guaranty).

5. The UCC.

6. Pledge and Security Agreement dated November 1, 2009 made by Barrington Venture Partnership in favor of Lender collaterally assigning certain collateral as more fully set forth therein.

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7. Pledge and Security Agreement ("TIF Pledge") dated November 30, 2010 made by Borrower in favor of Lender collaterally assigning the TIF Note (as defined in the TIF Pledge) and the proceeds received under Tax Increment Allocation Act adopted by the Village of Hoffman Estates pursuant to the Barrington Higgins District Increment Redevelopment Plan and Project ("TIF").

**NOW, THEREFORE**, for and in consideration of the promises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into and made a part of this Modification.

2. Capitalized Terms. Capitalized terms contained in this Modification shall retain the meaning given under the Revised Note or the Revised Loan Documents.

3. Extension of Maturity of the Loan. The Revised Loan under the Revised Note, the Revised Loan Agreement and the Revised Loan Documents shall be due and payable on **December 1, 2014**.

4. Loan Balance. Borrower hereby acknowledges that as of the Effective Date of this Modification, the outstanding principal balance of the Revised Loan is **\$ 7,243,406.23**, not including accrued interest and late charges (the above loan balance being reflective of a principal payment of \$150,000.00 made by Borrower to Lender in connection with this Modification (the "\$150,000 Principal Payment").

5. Consent of Guarantors. Guarantors expressly consent to the terms, provisions and conditions of this Modification and acknowledge that their liability shall continue under the Revised Guaranties notwithstanding any change in the terms of the Revised Loan under this Modification. Guarantors acknowledge and ratify all other terms of each of their respective Revised Guaranty documents.

6. Payments. Notwithstanding anything contained in the Revised Loan Documents or the Revised Note to the contrary, the outstanding principal sum and the accrued interest thereon shall continue to be payable in monthly installments of accrued interest on the first (1<sup>st</sup>) day of each month, and all outstanding principal, accrued interest and other sums due from Borrower to Lender on **December 1, 2014**; provided, however, that in addition to the continuation of such regularly scheduled payments, and in addition to the \$150,000 Principal Payment to be made pursuant to the terms hereof, Borrower shall make nine (9) additional monthly payments of principal in the sum of \$5,555.56 each, to be paid monthly on each interest payment date commencing on February 1, 2014, for a total of \$50,000.04 in additional principal payments to be made no later than October 1, 2014).

7. Conditions Precedent. Borrower and Guarantors acknowledge and agree that this Modification shall be of no force or effect unless and until:

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(a) This Modification has been executed by Borrower and Guarantors and delivered to and accepted and executed by Lender and recorded with the Cook County Recorder of Deeds.

(b) Fidelity National Title Insurance Company shall have delivered to Lender an endorsement, dated no earlier than the recording date of this Modification, to its Policy No. 5412-3468003 dated February 27, 2004, which endorsement shall (i) insure the validity and first priority of each of the recorded Revised Loan Documents as securing the Revised Note, as the same are amended by this Modification; (ii) disclose no Schedule B-1 exceptions other than those set forth in said Policy or as approved in writing by Lender's counsel; and (iii) insure that Borrower is owner in fee simple of title to the Premises.

(c) Lender has received from Borrower on or before December 31, 2013, via certified funds the \$150,000 Principal Payment.

(d) Lender has received from Borrower on or before December 31, 2013, via certified funds, the sum of \$24,026.79 representing: (x) \$5,000.00 in legal fees (relating solely to the documentation of this Modification and not any other matters, including, without limitation, any litigation or enforcement costs); (y) \$2,125.00 in title fees and costs; and (z) \$16,901.79 for the December tax escrow payment.

(e) Borrower has delivered an executed copy, with a signature guaranty, of the TIF Note Assignment (as defined herein and shown on Exhibit B) and an executed copy of the Pledge and Security Agreement (as herein defined and shown on Exhibit D).

8. Documents to Remain in Effect; Confirmation of Obligations. The Revised Note and the Revised Loan Documents shall remain in full force and effect as originally executed and delivered by the parties, except as expressly modified and amended herein. The Revised Loan Documents shall include this Modification, and all references in the Revised Note and the Revised Loan Documents to such documents shall be deemed to refer to the Revised Note and Revised Loan Documents as modified herein. Borrower and Guarantors hereby confirm and reaffirm all of their obligations under the Revised Note and the Revised Loan Documents, as modified and amended herein, and confirm and reaffirm that the Revised Loan Documents secure the Revised Note. To induce Lender to enter into this Modification, Borrower and Guarantors hereby represent, acknowledge and agree that the Revised Note and Revised Loan Documents are in full force and effect, that they are not in default under the Revised Note and Revised Loan Documents, and that they do not now have or hold any defense to the performance of any of their respective obligations under the Revised Note or the Revised Loan Documents, nor do Borrower or Guarantors have any claim against Lender which might be set off, discounted, or credited against any payments due under any of the Revised Note or Revised Loan Documents. Borrower and Guarantors further represent, acknowledge and agree that, as of the date hereof, they do not have any actual or potential actions, claims, suits or defenses arising from any letters of intent, correspondence or other communications (oral or written) between Borrower, Guarantors, and Lender. Upon an Event of Default under any of the Revised Loan Documents or the Revised Note, all amounts due under the Revised Loan Documents shall be accelerated and immediately due and payable to Lender without notice.

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9. Certifications, Representations and Warranties. In order to induce Lender to enter into this modification, Borrower and Guarantors hereby certify, represent and warrant to Lender that all certifications, representations and warranties contained in the Revised Note and the Revised Loan Documents and in all certificates heretofore delivered to Lender are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Modification.

10. Additional Certificates, Representations and Warranties. In addition to the certifications, representations and warranties set forth in the Revised Note and the Revised Loan Documents, Borrower and Guarantors hereby certify, represent and warrant to Lender that:

(a) Borrower and Guarantors have all necessary power to carry on their present businesses, and have full right, power and authority to enter into and execute and deliver this Modification and to otherwise perform and consummate the transactions contemplated hereby.

(b) Guarantors are under no legal disability and have full right, power and authority to enter into and execute and deliver this Modification and to otherwise perform and consummate the transactions contemplated hereby.

(c) This Modification has been duly authorized, executed and delivered by Borrower and Guarantors and constitutes valid and legally binding obligations enforceable against each such party in accordance with their terms. The execution and delivery of this Modification and compliance with the provisions hereof and thereof under the circumstances contemplated herein and therein do not and will not conflict with or constitute a breach or violation of or default under the agreement creating Borrower or any agreement or other instrument to which Borrower, Guarantors, or both, is a party, or by which any one of them is bound, or to which any of their properties are subject, or any existing law, administrative regulation, court order or consent decree to which any one of them is subject.

(d) There is no litigation or administrative proceeding pending or threatened to restrain or enjoin the transactions contemplated by this Modification or questioning the validity hereof, or in any way contesting the existence or powers of Borrower or Guarantors, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Modification.

11. TIF Pledge. In connection with the TIF Pledge, Borrower hereby re-affirms said collateral assignment of the TIF Note, and acknowledges Lender's continued rights thereunder. In connection therewith, Borrower agrees to deliver to Lender, simultaneously with this Modification, an executed copy of the Assignment (with a signature guaranty specified therein) set forth on Exhibit B attached hereto and incorporated herein by this reference ("TIF Note Assignment").

12. Pledge of Redevelopment Agreement. As collateral security for the full and timely payment, performance and observation of all indebtedness, obligations, liabilities and agreement of any kind by Borrower under the Revised Loan Documents, Borrower pledges to

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Lender, and grants to Lender, a pledge and security interest in the collateral described on Exhibit C attached hereto and incorporated herein (the "DA Pledged Property"). In connection with such DA Pledged Property, Borrower shall, simultaneously with this Modification, deliver to Lender an executed copy of the Pledge and Security Agreement set forth on Exhibit D attached hereto and incorporated herein by this reference (the "Pledge and Security Agreement").

13. Not a Novation. Borrower, Guarantors, and Lender expressly state, declare and acknowledge that this Modification is intended only to modify Borrower's and Guarantors' continuing obligations under the Revised Note and the Revised Loan Documents in the manner set forth herein and is not intended as a novation.

14. Fees. Borrower acknowledges that the Lender charges fees for services it provides in connection with administering its loans including but not limited to, release fees, insurance verification fees and inspection fees. These may or may not differ substantially from fees charged by other institutions. Borrower hereby acknowledges and agrees to pay such Lender's fees and authorizes the Lender to charge said fees directly to the loan balance at the discretion of the Lender.

15. Entire Agreement. This Modification sets forth all of the covenants, provisions, agreements, conditions and understandings of the parties relating to the subject matter of this Modification, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. The parties hereto hereby agree that the terms of this Modification supersede all of the terms, conditions and obligations of Lender set forth in all prior commitment letters, correspondence or other commitments (oral or written) between Borrower, Guarantors and Lender relating to this Modification.

16. Additional Documents. Borrower and Guarantors agree to execute and deliver such other and further documents requested by Lender or its counsel to achieve the objectives of this Modification, provided such other and further documents do not obligate Borrower to provide additional collateral for or materially increase Borrower's or Guarantors' obligations related to the Revised Loan.

17. Successors. This Modification shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives. In no event shall Borrower or Guarantors assign, pledge, transfer or otherwise encumber their interests in the Revised Loan Documents or the Revised Note.

18. Severability. In the event any provision of this Modification shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

19. Amendments, Changes and Modifications. This Modification may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

20. Construction.

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(a) The words "hereof", "herein", and "hereunder", and other words of a similar import refer to this Modification as a whole and not to the individual sections in which such terms are used.

(b) The headings of this Second Loan Modification Agreement are for convenience only and shall not define or limit the provisions hereof.

(c) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

21. Execution of Counterparts. This Modification may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

22. Governing Law. This Modification is prepared and entered into with the intention that the law of the State of Illinois, without regard to conflicts of law principles, shall govern its construction and enforcement.

23. Effective Date. The effective date of this Modification shall be as of the date hereof.

[signatures contained on the following page]





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IN WITNESS WHEREOF, the parties have executed this Second Loan Modification Agreement as of the date first above written.

**BORROWER:**

**POPLAR CREEK, L.L.C.,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: George A. Moser  
Title: Manager

**LENDER:**

**FIRST AMERICAN BANK,**  
an Illinois banking corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GUARANTORS:**

  
\_\_\_\_\_  
**DOUGLAS C. ALTENBERGER, individually,**

\_\_\_\_\_  
**GEORGE A. MOSER, individually,**

\_\_\_\_\_  
**GEORGE M. MOSER, individually,**

\_\_\_\_\_  
**MARTIN R. WALSH, individually**

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IN WITNESS WHEREOF, the parties have executed this Second Loan Modification Agreement as of the date first above written.

**BORROWER:**

**POPLAR CREEK, L.L.C.,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

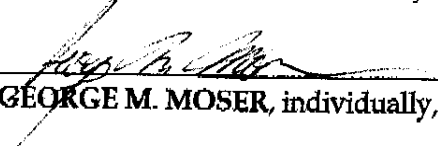
**FIRST AMERICAN BANK,**  
an Illinois banking corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GUARANTORS:**

\_\_\_\_\_  
**DOUGLAS C. ALTENBERGER, individually,**

\_\_\_\_\_  
**GEORGE A. MOSER, individually,**

  
\_\_\_\_\_  
**GEORGE M. MOSER, individually,**

\_\_\_\_\_  
**MARTIN R. WALSH, individually**

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IN WITNESS WHEREOF, the parties have executed this Second Loan Modification Agreement as of the date first above written.

**BORROWER:**

**POPLAR CREEK, L.L.C.,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: George A. Moser  
Title: Manager

**LENDER:**

**FIRST AMERICAN BANK,**  
an Illinois banking corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GUARANTORS:**

\_\_\_\_\_  
**DOUGLAS C. ALTENBERGER**, individually,

\_\_\_\_\_  
**GEORGE A. MOSER**, individually,

\_\_\_\_\_  
**GEORGE M. MOSER**, individually,

  
\_\_\_\_\_  
**MARTIN R. WALSH**, individually

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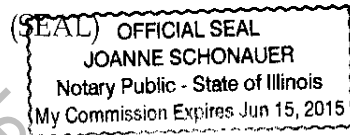
BORROWER NOTARY:

STATE OF ILLINOIS            )  
   )        SS.  
 COUNTY OF COOK            )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that George A. Moser, the Manager of **POPLAR CREEK, L.L.C.**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 8<sup>th</sup> day of January 2014.

*Joanne Schonauer*  
 NOTARY PUBLIC



My Commission expires:

June 15, 2015



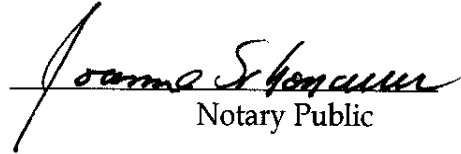
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GUARANTORS NOTARY (cont.)

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF   Cook              )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Douglas C. Altenberger who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

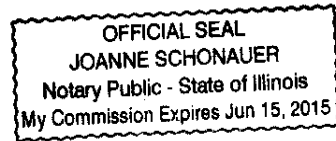
GIVEN under my hand and notarial seal this   30   day of December 2013

  
Notary Public

(SEAL)

My Commission Expires:

  June 15 2015  



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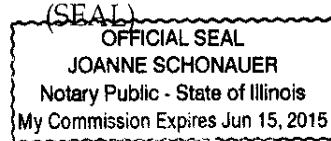
GUARANTORS NOTARY:

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF COOK    )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that George A. Moser, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8th day of January 2014

*Joanne Schonauer*  
Notary Public



My Commission Expires:

June 15, 2015

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GUARANTORS NOTARY (cont.)

STATE OF ILLINOIS            )  
   ) SS.  
 COUNTY OF   Cook              )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that George M. Moser, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

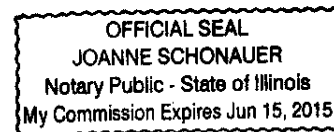
GIVEN under my hand and notarial seal this 30 day of December 2013

*Joanne Schonauer*  
 \_\_\_\_\_  
 Notary Public

(SEAL)

My Commission Expires:

June 15 2015



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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 6 IN RESTAURANT MALL BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 04016244, IN COOK COUNTY, ILLINOIS.

PIN: 07-07-100-036-0000 and  
07-07-100-037-0000

2401 W. Higgins Road  
HOFFMAN ESTATES, IL 60195

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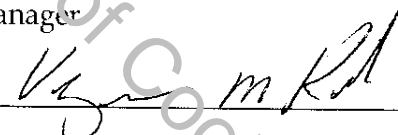
## EXHIBIT B

### TIF NOTE ASSIGNMENT

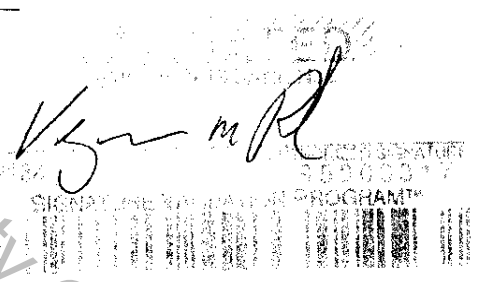
FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto First American Bank, an Illinois banking corporation, 1650 Louis Avenue, Elk Grove Village, IL 60007, the Second Amended and Restated Development Note (Barrington Higgins Project), Series 1997A of the Village of Hoffman Estates, Cook and Kane Counties dated April 30, 1997 in the original principal amount of \$3,584,840.00 (the "Note") and does hereby irrevocably constitute and appoint the Village of Hoffman Estates, Illinois or its successor as attorney to transfer the said Note on the books for registration thereof with full power of substitution in the premises.

Poplar Creek, L.L.C.

By:   
George A. Moser, Manager

Signature Guaranty: 

Date: 1-8-14



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## ACKNOWLEDGEMENT

1. The undersigned hereby acknowledges (i) this assignment of the Note by Poplar Creek, L.L.C. to First American Bank and (ii) deems First American Bank as the registered holder of the Note for the purpose of receiving payment of all principal and interest on the Note and for all other purposes.
2. All payments will be made by wire to First American Bank, 700 Busse Road, Elk Grove Village, IL 60007, Routing Number 071922777, Poplar Creek, L.L.C. Account No. 25010281155, Attention \_\_\_\_\_ . The undersigned will deduct its customary administrative fees and expenses from any payment made.
3. The undersigned is only liable as paying agent under the Note and is not otherwise liable under the Note. The Note, together with the interest and other moneys due therein, are payable solely from the Pledged Taxes.

Village of Hoffman Estates Cook and Kane Counties, as Note Registrar and Paying Agent

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Its: Village Treasurer  
 Date: \_\_\_\_\_

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## EXHIBIT C

### DA PLEDGED PROPERTY

Redevelopment Agreement dated March 17, 1997 executed by and between the Pledgor (as successor in interest to Barrington Venture, Partnership, a general partnership) and the Village of Hoffman Estates,

Amended Redevelopment Agreement dated May 1, 2000 between the Pledgor and the Village of Hoffman Estates, and

Second Amended Redevelopment Agreement dated November 23, 2009 between the Pledgor and the Village of Hoffman Estates.

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## EXHIBIT D

### FORM OF PLEDGE AND SECURITY AGREEMENT

#### PLEDGE AND SECURITY AGREEMENT

**THIS AGREEMENT** is made as of 16<sup>th</sup> day of December 2013, between **Poplar Creek, L.L.C.**, an Illinois limited liability company (the "Pledgor"), and **First American Bank**, an Illinois banking corporation (the "Bank").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. As collateral security for the full and timely payment, performance and observance of all indebtedness, obligations, liabilities, and agreements of any kind of the Pledgor, now existing or hereafter arising, pursuant to those certain "Revised Loan Documents" (as such term and documents are defined in a certain Second Loan Modification Agreement dated December 16, 2013 made between the Pledgor and the Bank (the "Loan Agreement")) and the obligations arising thereunder (collectively, the "Indebtedness"), the Pledgor pledges with the Bank and grants to the Bank a pledge and security interest in, the collateral described on Exhibit A hereto (the "Development Agreement").

2. The Pledgor represents and warrants that the Development Agreement is duly and validly pledged with the Bank in accordance with law, and the Pledgor will defend the Bank's right, lien, and security interest in and to the Development Agreement against the claims and demands of all persons whomsoever. The Pledgor further represents and warrants that it has and will have good title to the Development Agreement, free and clear of all claims, mortgages, pledges, liens, encumbrances, and security interests of every nature whatsoever and that no consent or approval of any governmental or regulatory authority was or is necessary to the validity of the pledge of the Development Agreement.

3. So long as there shall exist no condition, event, or act which constitutes, or with notice or lapse of time, or both would constitute, an Event of Default (as such term as defined in any of the instruments evidencing or securing the Indebtedness), the Pledgor shall be entitled to exercise, as it shall think fit, its rights with respect to the Development Agreement.

4. In case of any distributions made under the Development Agreement, any sum shall be paid upon or with respect to the Development Agreement, such sum shall be paid over to be held by the Bank as additional collateral hereunder. In case any distribution occurs, the proceeds shall be delivered to the Bank, to be held by it as additional collateral hereunder.

5. So long as there shall exist a condition, event, or act which constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default, the Bank shall be entitled to exercise all rights with respect to the Development Agreement and to receive and retain, as additional collateral hereunder, any and all distributions at any time and from time to time declared or paid upon any of the Development Agreement.

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6. Any cash received and retained by the Bank as additional collateral hereunder may at any time and from time to time be applied (in whole or in part) by the Bank to the payment of the Indebtedness.

7. If an Event of Default shall occur, the Bank, without obligation to resort to any other security, shall have the right at any time and from time to time to sell, resell, assign, and deliver, in its discretion, all or any of the Development Agreement, and all right, title, and interest, claim, and demand therein and right of redemption thereof. In no event shall the Pledgor be credited with any part of the distributions of any Development Agreement until cash payment thereof has actually been received by the Bank.

8. No demand, advertisement, or notice, all of which are hereby expressly waived, shall be required in connection with any sale or other disposition of any part of the Development Agreement which threatens to decline speedily in value or which is of a type customarily sold on a recognized market; otherwise, the Bank shall give the Pledgor at least 10 business days' prior notice of the time and place of any public sale and of the time after which any private sale or other disposition is to be made, which notice the Pledgor agrees is reasonable, all other demands, advertisements, and notices being hereby waived. The Bank shall not be obligated to make any sale of the Development Agreement if it shall determine not to do so, regardless of the fact that notice of sale may have been given. The Bank may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place affixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each private sale of Development Agreement of a type customarily sold in a recognized market, and upon each public sale, the Bank or any holder of the Indebtedness may purchase all or any of the Development Agreement being sold, and may make payment therefor (by endorsement without recourse) in the Indebtedness in lieu of cash to the amount then due thereon, which the Pledgor hereby agrees to accept. In the case of all sales of the Development Agreement, public or private, the Pledgor shall pay all costs and expenses of every kind for sale or delivery, including brokers' and attorneys' fees, and after deducting such costs and expenses from proceeds of sale, the Bank shall apply any residue to the payment of the Indebtedness, and the Pledgor shall continue to be liable for any deficiency. The balance, if any, remaining after payment in full of all of the Indebtedness shall be paid to the Pledgor subject to any duty of the Bank imposed by law to the holder of any subordinate security interest in the Development Agreement known to the Bank or a direction by a court of competent jurisdiction to pay such balance elsewhere.

9. The Pledgor recognizes that the Bank may be unable to effect a public sale of all or a part of the Development Agreement by reason of certain prohibitions contained in the Securities Act of 1933, as amended, as now or hereafter in effect, or in applicable Blue Sky or other state securities laws, as now or hereafter in effect, but may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Development Agreement for their own account, for investment, and not with a view to the distribution or resale thereof. The Pledgor agrees that private sales so made may be at prices and other terms less favorable to the seller than if such Development Agreement were sold at public sale, and that the Bank has no obligation to delay sale of any such Development Agreement for the period of time necessary to permit the issuer of such

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Development Agreement, even if such issuer agrees to do so, to register such Development Agreement for public sale under such applicable securities laws. The Pledgor agrees that private sales made under the foregoing circumstances shall be deemed to have been made in a commercially reasonable manner, unless the terms thereof are manifestly unreasonable.

10. The remedies provided herein in favor of the Bank shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in favor of the Bank existing at law or in equity.

11. The Bank shall have the right, for and in the name, place and stead of the Pledgor, in connection with the exercise of its rights or remedies hereunder to execute endorsements, assignments or other instruments of conveyance or transfer with respect to all or any of the Development Agreement.

12. The Bank shall have no duty as to the collection or protection of the Development Agreement or any income thereon or as to the preservation of any rights pertaining thereto, beyond the exercise of reasonable care in the custody and preservation thereof to the extent actually in possession of the Bank. The Bank's duties shall be fully satisfied if, in the exercise of its sole discretion, the Bank endeavors to take such action with respect to the Development Agreement as the Pledgor may reasonably and specifically request in writing in sufficient time for such action to be evaluated and taken or if the Bank determines that the action requested might adversely affect the value of the Development Agreement as collateral, the collection of the Indebtedness, or otherwise prejudice the interest of the Bank, the Bank gives reasonable notice to the Pledgor that any such requested action will not be taken and if the Bank makes such determination or if the Pledgor fails to make such timely request, the Bank takes such other action as it deems advisable in the circumstances. Except as hereinabove specifically set forth, the Bank shall have no further obligation to ascertain the occurrence of or to notify the Pledgor with respect to, any maturities, calls, conversions, exchanges, redemptions, offers, tenders, or similar matters relating to any of the Development Agreement and shall not be deemed to assume any such further obligation as a result of the establishment by the Bank of any internal procedures with respect to any securities in its possession. The Pledgor releases the Bank from any claims, causes of action, and demands at any time arising out of or with respect to this Agreement, the Development Agreement, and/or any actions taken or omitted to be taken by the Bank with respect thereto, and the Pledgor hereby agrees to hold the Bank harmless from and with respect to any and all such claims, causes of actions, and demands.

13. The Pledgor hereby irrevocably appoints the Bank as the Borrower's attorney-in-fact with the power to receive, endorse, and collect all checks and other orders for the payment of money made payable to the Pledgor representing any dividend or other distribution payable with respect to the Development Agreement or any part thereof and to give full discharge for the same and to take any other action and execute any other instrument necessary or advisable in the sole discretion of the Bank to carry out and enforce this Agreement.

14. No delay on the part of the Bank or any holder of the Indebtedness in exercising any of its powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof.



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15. Upon payment in full of the Indebtedness, the Pledgor shall be entitled to the return of all of the Development Agreement and of all other property and cash that may not have been used or applied toward the payment of such Indebtedness. The assignment by the Bank to the Pledgor of the Development Agreement and other property shall be without representation or warranty of any nature and shall be wholly without recourse.

16. All notices, consents, requests, instructions, approvals, and other communications provided for herein shall be validly given or made if in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, if:

**To the Pledgor:** Poplar Creek, L.L.C.  
2500 West Higgins Road  
Hoffman Estates, IL 60195  
Attention: George A. Moser, Manager

**To the Bank:** First American Bank  
1650 Louis Avenue  
Elk Grove Village, IL 60007  
Attention: John Olsen, Executive Vice President

or to such other address as any party hereto may, from time to time, designate in writing in a like manner. Notice given by mail as set forth above shall be deemed given at the time and on the date the same is postmarked, except that notices of change of address shall be effective only upon receipt by the party to which it is directed.


17. This Agreement and the rights and obligations of the Bank and the Pledgor hereunder shall be construed in accordance with and governed by the laws of the State of Illinois, cannot be changed orally, and shall bind and inure to the benefit of the Pledgor and the Bank and their respective successors and assigns, and all subsequent holders of the Indebtedness.

18. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.


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IN WITNESS WHEREOF, the Pledgor and the Bank have caused this Agreement to be duly executed as of the day and year first written above.

**Poplar Creek, L.L.C.**

By:   
Name: George A. Moser  
Its: Manager

**First American Bank**

By:   
Name: Marwan H. Prochenski  
Its: Senior Vice President

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## EXHIBIT A to Pledge and Security Agreement

Redevelopment Agreement dated March 17, 1997 executed by and between the Pledgor (as successor in interest to Barrington Venture, Partnership, a general partnership) and the Village of Hoffman Estates,

Amended Redevelopment Agreement dated May 1, 2000 between the Pledgor and the Village of Hoffman Estates, and

Second Amended Redevelopment Agreement dated November 23, 2009 between the Pledgor and the Village of Hoffman Estates.

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