

Ordinance No. 15-42e

**AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT FOR THE REDEVELOPMENT OF 311 BARRINGTON AVENUE, EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS**

**WHEREAS**, the Village of East Dundee, Cook and Kane Counties, Illinois (the “*Village*”) is a home-rule municipality pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and,

**WHEREAS**, pursuant to their powers and in accordance with the requirements of the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the “*TIF Act*”), the President and Board of Trustees of the Village (collectively, the “*Corporate Authorities*”), pursuant to Ordinance Nos. 08-34, 08-35 and 08-36, respectively, adopted by the Corporate Authorities on June 16, 2008, approved a redevelopment plan and project for the Village of East Dundee Downtown Redevelopment Project Area (the “*Redevelopment Project Area*”), which sets forth a plan for the development, redevelopment and revitalization of the Redevelopment Project Area (the “*Redevelopment Plan*”); designated the Redevelopment Project Area as a “redevelopment project area,” as that term is defined under the TIF Act; and adopted tax increment allocation financing for the purpose of implementing the Redevelopment Plan for the Redevelopment Project Area; and,

**WHEREAS**, pursuant to the Business District Development and Redevelopment Law of the State of Illinois, 65 ILCS 5/11-74.3-1, *et seq.*, as from time to time amended (the “*BDD Act*”), on September 29, 2008, the Corporate Authorities, after public hearings, passed Ordinance No. 08-57 designating the Route 25 and Route 72 Business District (the “*BD District*”), which was amended by Ordinance No. 11-19 on April 11, 2011, to add certain properties to this commercial district as described therein, and to impose a retailers’ occupation tax and service occupation tax (the “*BD Taxes*”) in the amount of one-half of one percent (1/2%) on all commercial operations within the boundaries of the amended commercial district to pay costs incurred in connection with the planning, execution and implementation of the Route 25 and Route 72 Development Plan (the “*BD Plan*”); and,

**WHEREAS**, the Corporate Authorities further amended the BD District by Ordinance No. 13-05 on March 18, 2013, adding additional properties to the BD District and changing the name of the BD District to the “Downtown and Dundee Crossing Business Development District”; and,

**WHEREAS**, on March 30, 2015, the Corporate Authorities, after a public hearing, amended the BD District and BD Plan by Ordinance No. 15-16 to increase the rate of the BD Taxes imposed upon all commercial operations within the boundaries of the BD District, as amended in 2011 and 2013, from one-half of one percent (1/2%) to three-fourths of one percent (3/4%); and,

**WHEREAS**, the Village has been informed by 311 Barrington Avenue, LLC, an Illinois limited liability company (the “*Developer*”), that the Developer acquired certain property located within the Redevelopment Project Area, commonly known as 311 Barrington Avenue,

East Dundee, Illinois 60118 (the "*Subject Property*"), and intends to construct a two-story building with 24,500 square feet of residential space consisting of eleven (11) apartments (2 studio units, 7-one bedroom units 4 two-bedroom units), and approximately 13,725 square feet of retail space; and,

**WHEREAS**, the Developer has informed the Village that it is able to proceed with the redevelopment of the Subject Property and undertake the Project only with financial assistance available through the BDD Act and the TIF Act; and,

**WHEREAS**, the Corporate Authorities have determined that the blighting factors now present on the Subject Property are detrimental to the public and impair development and growth in the BD District and the Redevelopment Project Area and will continue to impair growth and development but for the use of the BD Taxes as imposed within the BD District pursuant to the BDD Act and the use of tax increment allocation financing to assist the Developer to pay certain "redevelopment project costs" to be incurred by the Developer to undertake the Project; and,

**WHEREAS**, the Corporate Authorities have determined that such economic development incentives for the benefit of the Developer and the completion of the Project by the Developer pursuant to the Redevelopment Agreement for the Redevelopment of 311 Barrington Avenue, East Dundee, Cook and Kane Counties, Illinois by and between the Village and the Developer are in the best interests of the Village and the health, safety, morals and welfare of its residents and taxpayers and will be in furtherance of the BD Plan and the Redevelopment Plan, thereby providing for economic development, enhancing the tax base of the Village and other taxing districts, and adding to the welfare and prosperity of the Village and its inhabitants.

**NOW, THEREFORE, BE IT ORDAINED** by the Village President and Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, as follows:

*Section 1.* That the Redevelopment Agreement for the Redevelopment of 311 Barrington Avenue, East Dundee, Cook and Kane Counties, Illinois by and between the Village of East Dundee, Cook and Kane Counties, Illinois and 311 Barrington Avenue, LLC, an Illinois limited liability company, attached hereto and made a part hereof, is hereby approved and the Village President and Village Clerk are hereby authorized to execute and deliver said Agreement on behalf of the Village.

*Section 2.* That the Village President and Village Administrator are hereby authorized and directed to undertake any and all actions as may be required to implement the terms of said Agreement.

*Section 3.* That this Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

*Passed* by the Village President and the Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, this 19<sup>th</sup> day of October, A.D. 2015, pursuant to a roll call vote, as follows:

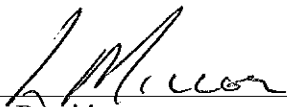
AYES: Trustees Lynam, Selep, Wood and President Miller

NAYS: Trustees Skillicorn and Hall

ABSTAIN: Trustee Gorman

ABSENT: Ø

APPROVED by me, as Village President of the Village of East Dundee, Cook and Kane Counties, Illinois, this 19<sup>th</sup> day of October, A.D. 2015.

  
Village President

Attest:

  
Village Clerk

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*[Faint, illegible text]*

**REDEVELOPMENT AGREEMENT FOR THE REDEVELOPMENT OF  
311 BARRINGTON AVENUE, EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS**

**THIS AGREEMENT** (the "*Agreement*") is made and entered into this 19<sup>th</sup> day of October 2015, by and between the Village of East Dundee, Cook and Kane Counties, Illinois, an Illinois municipal corporation (the "*Village*") and 311 Barrington Avenue, LLC, an Illinois limited liability company (the "*Developer*").

**PREAMBLES**

**WHEREAS**, the Village is a home-rule municipality pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and,

**WHEREAS**, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the "*TIF Act*"), the President and Board of Trustees of the Village (collectively, the "*Corporate Authorities*") are empowered to undertake the development or redevelopment of a designated area within the municipal boundaries of the Village in which existing conditions permit such area to be classified as a "blighted area," as such term is defined in Section 11-74.4-3(a) of the TIF Act; and,

**WHEREAS**, pursuant to its powers and in accordance with the requirements of the TIF Act, the Corporate Authorities, pursuant to Ordinance No. 08-34, adopted by the Corporate Authorities on June 16, 2008, approved a redevelopment plan and project for the Village of East Dundee Downtown Redevelopment Project Area (the "*Redevelopment Project Area*"), which sets forth a plan for the development, redevelopment and revitalization of the Redevelopment Project Area (the "*Redevelopment Plan*"); and,

**WHEREAS**, pursuant to its powers and in accordance with the requirements of the TIF Act, the Corporate Authorities, pursuant to Ordinance Nos. 08-35 and 08-36, respectively, adopted by the Corporate Authorities on June 16, 2008, designated the Redevelopment Project Area as a "redevelopment project area," as that term is defined under the TIF Act, and adopted tax increment allocation financing for the purpose of implementing the Redevelopment Plan for the Redevelopment Project Area; and,

**WHEREAS**, pursuant to the Business District Development and Redevelopment Law of the State of Illinois, 65 ILCS 5/11-74.3-1, *et seq.*, as from time to time amended (the "*BDD Act*"), the Corporate Authorities are empowered to undertake the development or redevelopment of business districts within the municipal boundaries of the Village which are in need of revitalization; and,

**WHEREAS**, pursuant to the BDD Act, on September 29, 2008, the Corporate Authorities, after public hearings, passed Ordinance No. 08-57 designating the Route 25 and Route 72 Business District (the "*BD District*"), which was amended by Ordinance No. 11-19 on

April 11, 2011, to add certain properties to this commercial district as described therein, and to impose a retailers' occupation tax and service occupation tax (the "*BD Taxes*") in the amount of one-half of one percent (1/2%) on all commercial operations within the boundaries of the amended commercial district to pay costs incurred in connection with the planning, execution and implementation of the Route 25 and Route 72 Development Plan (the "*BD Plan*"); and,

**WHEREAS**, the Corporate Authorities further amended the BD District by Ordinance 13-05 on March 18, 2013, adding additional properties and changing the name of the BD District to the "Downtown and Dundee Crossings Business Development District"; and,

**WHEREAS**, on March 30, 2015, the Corporate Authorities, after a public hearing, amended the BD District and BD Plan by Ordinance No. 15-16 to increase the BD Taxes in the amount of one quarter of one percent (1/4%) thereby resulting in BD taxes of three quarters of one percent (3/4%) on all commercial operations within the BD District; and,

**WHEREAS**, the Village has been informed by the Developer that the Developer acquired certain property located within the Redevelopment Project Area, commonly known as 311 Barrington Avenue, East Dundee, Illinois 60118, and legally described on *Exhibit A* attached hereto and made a part hereof (the "*Subject Property*"), and intends to construct a two-story building with 24,500 square feet of residential space consisting of eleven (11) apartments (2 studio units, 7-one bedroom units 4 two-bedroom units), and approximately 13,725 square feet of retail space (the "*Project*"); and,

**WHEREAS**, the Developer has informed the Village that it is able to proceed with the redevelopment of the Subject Property and undertake the Project only with financial assistance available through the BDD Act and the TIF Act; and,

**WHEREAS**, the redevelopment of the Subject Property is consistent with the approved BD Plan and Redevelopment Plan and this Project shall further the goals and objectives of the BD Plan and Redevelopment Plan; and,

**WHEREAS**, the Corporate Authorities have determined that the blighting factors now present on the Subject Property are detrimental to the public and impair development and growth in the BD District and the Redevelopment Project Area and will continue to impair growth and development but for the use of the retailers' occupation tax and service occupation tax as imposed within the BD District pursuant to the BDD Act and the use of tax increment allocation financing to assist the Developer to pay certain "redevelopment project costs" to be incurred by the Developer to undertake the Project; and,

**WHEREAS**, the Corporate Authorities have determined that such economic development incentives for the benefit of the Developer and the completion of the Project by the Developer pursuant to this Agreement are in the best interests of the Village and the health, safety, morals and welfare of its residents and taxpayers and will be in furtherance of the Redevelopment Plan, thereby providing for economic development, enhancing the tax base of the Village and other taxing districts and adding to the welfare and prosperity of the Village

and its inhabitants.

**NOW, THEREFORE**, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

*Section 1. Incorporation of Recitals.* The recitals contained in the Preambles to this Agreement are true and correct and are hereby incorporated into this Agreement as though they were fully set forth in this Section 1.

*Section 2. Term.* Unless earlier terminated pursuant to Section 11 hereof, the term of this Agreement shall commence on the date of execution and terminate on the first to occur of (i) payment to the Developer the lesser of twenty-eight percent (28%) of the total costs of the Project (the “*Project Costs*”), or a maximum of \$971,352.00 and the purchase of the parking lot for \$150,000; or, (ii) December 31, 2031.

*Section 3. Developer’s Obligations.*

(a) The Developer covenants and agrees that upon completion of the acquisition of the Subject Property and the completion of the Project, the Developer shall have invested in the Subject Property and the Project a minimum sum of \$3,469,113.00.

(b) Within 30 days of the execution of this Agreement, the Developer shall have delivered to the Village all of the required plans and specifications for the Project and shall have obtained all permits as may be required from the Village or any other government or agency having jurisdiction over the Project and the Subject Property.

(c) Construction of the Project shall be commenced on or before December 1, 2015 after the Developer has obtained all necessary permits and governmental approvals. The Developer shall complete construction of the Project no later than twenty-four (24) months thereafter, subject to *force majeure*. The Developer shall comply with the Illinois Prevailing Wage Act, 820 ILCS 130/0.01, *et seq.* (the “*Prevailing Wage Act*”), as may be required.

*Section 4. Village Obligations.*

(a) The Village shall permit the Developer to pay all permit fees, license fees, *etc.*, due and owing to the Village over a period of three (3) years, the first payment of one-third (1/3) of the total being due upon approval of the building permit, the second payment of one-third (1/3) of the total being due on the first anniversary of the first payment and the final payment of the balance due and owing to the Village shall be paid on the second anniversary of the date of the first payment.

(b) The Village agrees to purchase from the Developer a lot of approximately \_\_\_\_\_ square feet for a purchase price of \$150,000 and construct a public parking lot which parking lot shall be completed and available for public use on or before the issuance of a certificate of occupancy for any component of the Project. Title to said parking lot shall be conveyed to the Village by a Warranty Deed, free and clear of all encumbrances subject only to

taxes which have accrued but are not yet due and payable for which a credit shall be given to the Village at the time of conveyance.

(c) In consideration of the construction of the Project and the redevelopment by the Developer of the Subject Property in accordance with the terms of this Agreement, so long as no event described in Section 11 of this Agreement shall have occurred and be continuing, and the Developer has satisfied all of its obligations under Section 3 hereof, the Village shall reimburse the Developer for specific costs to be incurred by the Developer for the Project as itemized on *Exhibit B* which qualify as “redevelopment project costs” under the TIF Act and the BDD Act (the “*Redevelopment Project Costs*”) subject to the limitations of this Agreement. The aggregate payments to the Developer shall in no event exceed the lesser of twenty-eight percent (28%) of the total Redevelopment Project Costs or \$971,351 (which includes the purchase price of the parking lot of \$150,000 pursuant to (b) above). For purposes of this Agreement, “Redevelopment Project Costs” shall mean and include all costs defined as “business district project costs” in Section 11-74.3-5 of the BDD Act as from time to time amended and “redevelopment project costs” as defined in Section 11-74.4-3(q) of the TIF Act, as from time to time amended.

(d) The parties acknowledge that the determination of Redevelopment Project Costs and qualification for reimbursement under this Agreement are subject to the BDD Act and the TIF Act, all amendments to the BDD Act and the TIF Act both before and after the date of this Agreement, and administrative rules and judicial interpretations of such Acts rendered during the term of this Agreement. The Village has no obligation to the Developer to attempt to modify said rules or decisions but will cooperate with the Developer in obtaining approval of Redevelopment Project Costs.

(d) The Village shall reimburse the Developer for Redevelopment Project Costs pursuant to this Agreement from amounts on deposit from time to time in the 311 Barrington Avenue Subaccount (hereinafter defined), as follows:

- (i) On December 1 for a period of two (2) years following the receipt of Incremental Taxes reflecting the full assessment of a developed property [or, if later, that date which is ten (10) days following the date upon which the Village receives Incremental Taxes (as defined below) from the second installment of real estate taxes], seventy-five percent (75%) of the monies credited to the Staff Allocation Fund of the Village (the “STAF”) established by the Village pursuant to Ordinance No. 08-36 with respect to the Subject Property shall be transferred and deposited into a special account to be known as the “311 Barrington Avenue Subaccount” (which 311 Barrington Avenue shall be automatically be created by the Ordinance approving this Agreement) and used solely to reimburse the Developer for Redevelopment Project Costs in accordance with this Agreement.
- (ii) On December 1 of each year after two (2) years of full assessment of the Subject Property [or, if later, that date which is ten (10) days following the date upon which the Village receives Incremental Taxes (as defined below)]

from the second installment of real estate taxes], fifty percent (50%) of the monies credited to the STAF with respect to the Subject Property shall be transferred and deposited into the 311 Barrington Avenue Subaccount and used solely to reimburse the Developer for Redevelopment Project Costs in accordance with this Agreement.

- (iii) On December 1 of each year during the term of this Agreement, the Village shall deposit into the 311 Barrington Avenue Subaccount, one hundred percent (100%) of all BD Taxes received by the Village as a result of the operation of any retail business located at the Subject Property.
- (iv) Any Redevelopment Project Costs not reimbursed shall be held over and paid annually in the future as funds in the 311 Barrington Avenue Subaccount become available.
- (v) In the sole discretion of the Village, Incremental Taxes on deposit in the 311 Barrington Avenue Subaccount may be substituted with BD Taxes.

THE VILLAGE'S OBLIGATION TO REIMBURSE THE DEVELOPER UNDER THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE FROM INCREMENTAL REAL ESTATE TAXES AND BD TAXES DEPOSITED IN THE 311 BARRINGTON AVENUE SUBACCOUNT FROM TIME TO TIME AND SHALL NOT BE SECURED BY THE FULL FAITH AND CREDIT OF THE VILLAGE. As used in this Agreement, "Incremental Taxes" shall mean the amount in the STAF equal to the amount of ad valorem taxes, if any, paid in respect of the Subject Property and its improvements, which is attributable to the increase in the equalized assessed value of the Subject Property and its improvements over the initial equalized assessed value of the Subject Property.

*Section 5. Procedures for and Application of Reimbursement to the Developer.*

(a) The Developer shall advance all funds and all costs necessary to construct and complete the Project.

(b) To establish a right of reimbursement for specific Redevelopment Project Costs under this Agreement, the Developer shall submit to the Village Administrator a written statement in the form attached to this Agreement as *Exhibit C* (a "Request for Reimbursement") setting forth the amount of payment and the specific Redevelopment Project Costs for which reimbursement is sought. Each Request for Reimbursement shall be accompanied by such bills, paid receipts, contracts, invoices, lien waivers or other evidence as the Village Administrator shall reasonably require to evidence the right of the Developer to reimbursement in an amount not to exceed the lesser of twenty-eight percent (28%) of the actual Redevelopment Project Costs or \$971,351 (including the purchase price of the parking lot of \$150,000). All receipts shall contain the date of service, type of service, location of service, amount due, name/address/telephone number of the service provider and other information as necessary to establish the identity of the provider, type of service and amount invoiced/paid. The Village Administrator or his designated agent shall have twenty (20) days after receipt of any Request for Reimbursement from the Developer to approve or disapprove any of the expenditures for



which reimbursement is sought. If said Request for Reimbursement is not approved, the Village Administrator shall provide to the Developer a written explanation setting forth the reason or reasons for the denial. Provided, however, the only reasons for disapproval of any expenditure for which reimbursement is sought shall be that (i) such expenditure is not an eligible Redevelopment Project Cost (as defined by this Agreement); (ii) such expenditure is not an expenditure included in the itemized list of costs of the Project set forth on *Exhibit B*; (iii) such expenditure was not incurred and the construction was not completed by the Developer in accordance with the Legal Requirements (as hereinafter defined) and the provisions of this Agreement, including without limitation all permits issued by the Village; or (iv) there is an outstanding notice of default for failure to comply with the Legal Requirements and/or the provisions of this Agreement.

*Section 6. No Liability of Village to Others for Developer's Expenses.*

Except as otherwise provided in this Agreement with respect to economic development incentives, the Village shall have no obligations to pay Project Costs or to make any payments to any person other than the Developer, nor shall the Village be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to the Developer for the Project.

*Section 7. Compliance with Applicable Laws.*

(a) The Developer shall construct the Project in accordance with the approved plans and permits and at all times maintain the Subject Property in conformance with all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, zoning, building codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village (collectively referred to as the "*Legal Requirements*").

(b) The Developer shall pay, when due, all amounts due and owing to the Village, including but not limited to, permit fees, taxes, transfer taxes, licensing fees and any other tax or fee assessed against the Developer by the Village.

(c) The Developer shall abide by all laws of the State of Illinois, the federal government and any agency having jurisdiction over the Developer or the Subject Property.

*Section 8. The Developer's Representations and Warranties.*

In addition to the other representations, warranties, covenants and agreements of the Developer set forth in this Agreement, the Developer represents and warrants as follows:

(a) The Developer is an Illinois limited liability company and is authorized to enter into, and by proper corporate action has been duly authorized to execute, deliver and perform this Agreement. The Developer is now and at all times hereafter shall be solvent, able to pay its debts as they mature and financially able to perform all of the terms of this Agreement. To the Developer's knowledge, there are no actions, suits or similar proceedings

pending or threatened before any court or governmental or administrative body or agency affecting the Developer which would result in any material adverse change to the Developer's financial condition or which would materially and adversely affect the ability of the Developer to complete the Project and operate its Business.

(b) The Developer covenants that no officer, employee or agent of the Developer, or any other person connected with the Developer, has made, offered or given, either directly or indirectly, to the Corporate Authorities or any other person connected with the Village, except for payments for which adequate and fair consideration was received in return, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her official capacity with the Village.

*Section 9. No Discrimination.*

(a) The Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. To the fullest extent permitted by law, the Developer shall take affirmative action to require that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex or national origin. Notwithstanding the foregoing, the Developer may employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

(b) There shall be no discrimination against or segregation of any person or group of persons on account of sex, race, color, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Subject Property or in the construction of the Project. Neither the Developer nor any person claiming under or through the Developer shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of any portion of the Subject Property.

*Section 10. Developer Indemnification.*

The Developer shall indemnify and hold harmless the Village, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorneys' fees) which may arise directly or indirectly from (i) the failure of the Developer or any contractor, subcontractor or agent of employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the Developer) to timely pay any contractor, subcontractor, laborer or materialman or any claim or cause of action whatsoever brought by a third party arising out of the construction of the Project or out of any use of the Subject Property; (ii) any default or breach of the terms of this Agreement by the Developer; (iii) the failure of the Developer or its contractors and subcontractors to comply with the Prevailing Wage Act or any Legal Requirements; or (iv) any negligence or reckless or willful misconduct of the Developer or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the Developer). The Developer

shall, at its own cost and expense, appear, defend and pay all charges of attorneys, costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against the Village, its agents, officers, officials or employees in any such action, the Developer shall, at its own expense, satisfy and discharge the same. This paragraph shall not apply, and the Developer shall have no obligation whatsoever, with respect to any acts of negligence or reckless or willful misconduct on the part of the Village or any of its officers, officials, agents, employees or contractors.

*Section 11. Default – Remedies.*

(a) If the Developer defaults in the performance of any material covenant, warranty, representation or obligation set forth in this Agreement, the Village shall provide the Developer with a written statement setting forth the default of the Developer. Except as required to protect against further damages, the Village may not exercise any remedies against the Developer in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as the Developer is diligently proceeding to cure such default. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Village in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.

(b) If the Developer fails to cure any default after the expiration of the cure period described in subparagraph (a), the Village may terminate this Agreement or seek specific performance; provided however, that if the Developer's failure to cure is with respect to its failure to commence to construct the Project in accordance with Section 3(c), then the Village's sole remedy shall be to terminate this Agreement.

(c) If the Village defaults in the performance of any material covenant, warranty, representation or obligation set forth in this Agreement, the Developer shall provide the Village with a written statement setting forth the default. The Developer may not exercise any remedies against the Village in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as the Village is diligently proceeding to cure such default. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Developer in asserting any of its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach. In the event of a breach of this Agreement by the Village, the Developer may institute legal action for specific performance against the Village and the Developer shall be entitled to recover monetary damages limited to amounts due to the Developer and unpaid under this Agreement.

(d) Upon any dispute between the parties under this Agreement, the prevailing

party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses incurred in contesting such dispute.

(e) Neither party to this Agreement shall be entitled to or shall have liability for consequential or punitive damages under the provisions, terms or conditions of this Agreement

(f) It is hereby agreed by the Developer that no recourse for any claim under or upon any obligation contained in the Agreement shall be had against the Village, its officers, agents, attorneys, representatives, or employees, in any amount in excess of any specific sum agreed to be paid by the Village pursuant to this Agreement; and no liability, right, or claim at law or in equity shall be attached to or incurred by the Village, its officers, agents, attorneys, representatives or employees in any amount in excess of any specific sums agreed by the Village to be paid hereunder, and any such claim is hereby expressly waived and released as a condition of and in consideration for the execution of this Agreement by the Village.

*Section 12. Verification of Tax Increment.*

The Developer shall use its best efforts to cooperate with the Village in obtaining certified copies of all real estate tax bills payable in 2015, and for each subsequent year during the term of this Agreement. The Developer shall deliver to the Village authorization as may be required for the Illinois Department of Revenue to release any sales tax reports attributable to the Developer's business operations.

*Section 13. Notices.*

All notices, demands, requests, consents, approvals or other communications required or permitted by this Agreement shall be given in writing at the addresses set forth below and shall be deemed to have been given (i) on the day of actual delivery if delivered personally, (ii) on the day immediately following deposit with overnight courier, or (iii) as of the third (3<sup>rd</sup>) day from and including the date of posting if mailed by registered or certified first class mail, postage prepaid, return receipt requested. The parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals or other communications shall be sent.

***If to the Village:*** Village of East Dundee  
c/o Village  
Administrator  
120 Barrington  
Avenue  
East Dundee, Illinois 60118

***With a copy to:*** Kathleen Field Orr & Associates  
53 West Jackson Blvd., Suite 964

Chicago, Illinois 60604

*If to the Developer:* 311 Barrington Avenue Lofts, LLC

*With a copy to:*

*Section 14. Time is of the Essence; Force Majeure.*

Time is of the essence of this Agreement; provided, however, a party shall not be deemed in material breach of this Agreement with respect to any obligations of this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("*Force Majeure*"). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate the same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

*Section 15. Counterparts.*

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

*Section 16. Severability.*

If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this

Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

*Section 17. Choice of Law/Venue.*

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois with venue lying in the Circuit Court for Kane County, Illinois.

*Section 18. Amendments.*

This Agreement (together with the Exhibits attached hereto) constitutes the entire agreement between the Village and the Developer and supersedes all prior agreements, negotiations and discussions between them relating to the subject matter hereof. This Agreement may not be modified or amended except by a written instrument executed by all the parties or their permitted successors or assigns.

*Section 19. Third Parties.*

Except as specifically set forth in this Agreement, nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the parties, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party, nor shall any provision give any third parties any rights of subrogation or action over or against any party.

*Section 20. Waiver.*

Any party may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

*Section 21. Assignment.*

The Developer may not assign its rights or obligations under this Agreement without the express written consent of the Village, which approval shall not be unreasonably withheld, conditioned upon demonstration by the Developer of the proposed transferee's or assignee's experience and financial capability to undertake and perform all of the Developer's obligations under this Agreement. Notwithstanding the foregoing, the Village hereby approves, and no prior consent, but with prior notice to the Village, shall be required in connection with the right of the Developer to encumber or collaterally assign its interest in this Agreement to secure loans, advances or extensions of credit, to finance or, from time to time refinance, all or any part of the costs of the Project.

*Section 22. No Joint Venture, Agency or Partnership Created.*

Nothing in this Agreement, nor any actions of the parties, shall be construed by the parties or any third person to create the relationship of a partnership, agency or joint venture between or among such parties.

*Section 23. No Personal Liability of Officials of the Village.*

No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member of the Corporate Authorities or any official, officer, agent, employee or attorney of the Village, in his or her individual capacity, and no official, officer, agent, employee or attorney of the Village shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement.

*Section 24. Actions Contesting the Validity of the Redevelopment Plan or Designation of the Redevelopment Project Area.*

The Village shall not be required to defend any actions contesting the Redevelopment Plan or the designation of the Redevelopment Project Area.

*Section 25. Term.*

The term of this Agreement shall commence upon the execution of the parties and terminate on the earlier of: (i) payment to the Developer of an amount not to exceed the lesser of \$971,251 (including the purchase price of the parking lot of \$150,000) or twenty-eight percent (28%) of the actual costs of the Project; or, (ii) December 31, 2031.

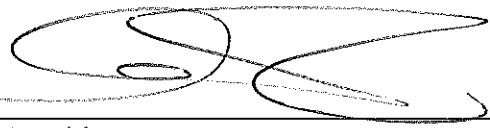
**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at East Dundee, Illinois.

Village of East Dundee, an Illinois municipal corporation

By:   
President

Attest:   
Village Clerk

311 Barrington Avenue, LLC an Illinois limited liability company

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

By: Its President



*Exhibit A*

*Legal Description of the Subject Property*

311 Barrington Avenue, East Dundee, IL 60118

PIN# 03-23-304-007

*Exhibit B*

*Project Costs  
(See attached)*

*Exhibit C*

*Form of Request for Reimbursement*

REQUEST FOR REIMBURSEMENT

[DATE]

Village of East Dundee  
120 Barrington Ave.  
East Dundee, IL 60118  
Attention: Village Administrator

*Re: Redevelopment Agreement, dated \_\_\_\_\_, 2015, by and  
between the Village of East Dundee, Cook and Kane Counties,  
Illinois, and 311 Barrington Avenue, LLC (the "Developer")*

Dear Village Administrator:

You are requested to disburse funds from the 311 Barrington Avenue Subaccount pursuant to Section 5 of the Redevelopment Agreement described above in the amount(s) and for the purpose(s) set forth in this Request for Reimbursement. The terms used in this Request for Reimbursement shall have the meanings given to those terms in the Redevelopment Agreement.

1. REQUEST FOR REIMBURSEMENT NO.: \_\_\_\_\_
2. AMOUNT TO BE DISBURSED: \_\_\_\_\_
3. The amount requested to be disbursed pursuant to this Request for Reimbursement will be used to reimburse the Developer for those Redevelopment Project Costs detailed in Schedule 1 attached to this Request for Reimbursement.
4. The undersigned certifies that:
  - (i) the amounts included in 2 above were made or incurred and were necessary for the construction of the Project and were made or incurred in accordance therewith;
  - (ii) the amounts paid or to be paid, as set forth in this Request for Reimbursement, represents a part of the funds due and payable for Redevelopment Project Costs;

- (iii) the expenditures for which amounts are requisitioned represent proper Redevelopment Project Costs identified in the itemization of Project Costs described in Section 4 of the Redevelopment Agreement, have not been included in any previous Request for Reimbursement, have been properly recorded on the Developer's books and are set forth in Schedule 1, with paid invoices attached for all sums for which reimbursement is requested;
  - (iv) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Developer for its funds actually advanced for Redevelopment Project Costs the total of which requested to date does not exceed the lesser of twenty-eight (28%) of the total redevelopment project costs or \$971,351.00 (including the purchase price of the parking lot of \$150,000); and,
  - (v) the Developer is not in default under the Redevelopment Agreement and nothing has occurred to the knowledge of the Developer that would prevent the performance of its obligations under the Redevelopment Agreement.
5. Attached to this Request for Reimbursement is Schedule 1, together with copies of invoices or bills of sale and Mechanic's Lien Waivers covering all items for which reimbursement is being requested, and a copy of the Eligible Redevelopment Project Cost Schedule on which it has been noted all eligible Redevelopment Project Costs heretofore reimbursed to the Developer.

APPROVED:

VILLAGE OF EAST DUNDEE

By: \_\_\_\_\_  
Village President

311 Barrington Avenue, LLC

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