

AGENDA
SPECIAL PLANNING, BUILDING AND ZONING COMMITTEE
Village of Hoffman Estates
October 27, 2014

Immediately Following the Finance Committee Meeting

Members:	Karen Mills, Chairperson	Anna Newell, Trustee
	Gayle Vandenberg, Vice Chairperson	Gary Pilafas, Trustee
	Gary Stanton, Trustee	Michael Gaeta, Trustee
		William McLeod, Mayor

I. Roll Call

NEW BUSINESS

1. Request approval of an ordinance approving:
 - a) A Redevelopment Agreement for the Barrington/Higgins Redevelopment Project Area; and
 - b) Issuance of a TIF Note.

II. Adjournment

**COMMITTEE AGENDA ITEM
VILLAGE OF HOFFMAN ESTATES**

SUBJECT: Request approval of an ordinance approving:
A. A Redevelopment Agreement for the Barrington/Higgins
Redevelopment Project Area; and
B. Issuance of a TIF Note

MEETING DATE: October 27, 2014

COMMITTEE: Special Planning, Building and Zoning

FROM: *M.K.* Mark Koplin/Kevin Kramer *WK*

REQUEST: Request approval of an ordinance approving:
A. A Redevelopment Agreement for the Barrington/Higgins
Redevelopment Project Area; and
B. Issuance of a TIF Note.

BACKGROUND: In 1986, the Village Board approved the first TIF in the Village for the 22 acres along Higgins Road, just east of Barrington Road (the Barrington/Higgins TIF). The TIF Redevelopment Plan contemplated an “auto mall”, with approximately six new auto dealers to locate on this site. Ultimately, the geographic restrictions for auto dealers did not allow for any new dealerships on this site, and the owner sought other development and proposed a “restaurant mall” in 1993. The Village Board voted to deny the owner’s request to include the restaurants as contributing to TIF increment. The owner developed the five restaurants between 1994 and 1997. Max & Erma’s was approved in 1994, went out of business in 2008, was replaced by Metropolis in 2010, but Metropolis went out of business after a year or so. Lone Star was approved in 1995, but went out of business in 2007.

Earlier this year, Ala Carte Entertainment, approached the Village with plans to purchase, redevelop, and reopen the two vacant restaurants. Because the sale price was above market value, Ala Carte inquired about incentives to help with the real estate costs. Therefore, in May, the Village Board approved an inducement resolution authorizing up to \$4.7 million of potential TIF expenditures to be reimbursed only if the Village Board amends the TIF Plan and Project (Resolution 1565, May 5, 2014). Later in May and June of 2014, Ala Carte Entertainment purchased both vacant properties, and in July 2014, the Village Board approved redevelopment site plans for both locations to be opened as a Moretti’s Pizzeria and Whiskey River BBQ.

BACKGROUND: (Continued)

The Joint Review Board convened on September 4, to discuss recommendation of approval of the amendment to the TIF and a possible incentive to the developer. The Joint Review Board recommended approval of the amendment and suggested a payback period of five years to the developer. Most recently on October 6, 2014, the Village Board held a public hearing for the proposed amendment to the TIF Redevelopment Plan and Project. The ordinance to approve the amendment will go straight from that public hearing to the Village Board meeting on November 3, 2014, and will not appear before this Committee.

DISCUSSION:

Ordinance Adopting the Redevelopment Agreement and Authorizing Issuance of the TIF Note
Corporation Counsel and Counsel for the developer concurred that a single ordinance approve the Barrington/Higgins TIF Redevelopment Agreement and authorize the issuance of the TIF Note. This is the same approach as with the Barrington Square Town Center TIF Redevelopment Agreement in 2012. The ordinance (attached) accomplishes both and a brief discussion of the pertinent sections of the ordinance follows.

Article I - This first article address general matters. These matters include the recitals which state the relevant facts related to the TIF District, a reference to the attached Redevelopment Agreement, and defined terms. The definition of "Administrative Costs" establishes the Village's ability to take TIF funds for annual staff time spent on the TIF, along with audit costs.

Article II - This article approves the Redevelopment Agreement, attached as Exhibit A.

Article III - This article authorizes the Village to issue a TIF Note related to this project. It sets the form of the TIF Note which was reviewed by staff and Corporation Counsel, and subsequently revised to the Village's satisfaction. The original TIF Note will be set in the amount of \$550,000. The ordinance allows for optional prepayment such that, should the Village desire, the Note could be paid off in whole without penalty. The Note is a special limited obligation and payable only from the available TIF funds. Therefore, if property values do not allow for a positive gain in the TIF fund, the Village is not required to pay the Note from its general fund.

Article IV - This section dives into the details of the TIF Revenues and how the funds will be allocated to repay the TIF Note. The section establishes the flow of TIF funds with three separate accounts being set up. First, \$2,000 is deposited into the Village Account for administrative costs (this number will increase by 5% each year for inflation). Second, \$110,000 will be deposited into the Developer Account (20% of the projected total \$550,000 will be paid each year for 5 years). Thirdly, the remaining balance shall be deposited in the General Account which is tagged as surplus revenue and sent back to the taxing bodies, as has been the custom for the restaurant properties. The projected revenue generated from the two sites being improved will pay the TIF Note. When the Joint Review Board met, they recommended paying the developer back over a five year period, as proposed here, so as to continue receiving a portion of the surplus each year.

Article V - This section establishes the covenants related to the ordinance.

DISCUSSION: (Continued)

Article VI - The section references remedies for defaults.

Article VII - Covers miscellaneous items.

Exhibits - Two exhibits are attached. One is the Form of TIF Note and the other is the Redevelopment agreement, which is outlined in further detail below.

Barrington/Higgins Redevelopment Agreement

The Barrington/Higgins Redevelopment Agreement follows the format of previous Redevelopment Agreements approved for the Barrington Square Town Center TIF, with modifications due to the specific and unique nature of the Barrington/Higgins Redevelopment project. The proposed Redevelopment Agreement, including the nine "articles" or sections contained in the agreement, is summarized below.

Article I - This section includes the Recitals which include, but are not limited to, acknowledgement of Ala Carte purchasing and desiring to redevelop the two restaurant sites, a 'but for' statement, and the incentive amount of \$550,000, as well as defines many of the terms used in the Agreement.

Article II - This section provides for Mutual Assistance between the parties.

Article III - This section describes the redevelopment project, as presented to the Village Board on previous occasions, outlining the different restaurants which will be owned and operated by Ala Carte Entertainment. The section acknowledges the approved building and site plans which will be constructed and opened on or before April 1, 2015. This article also outlines the responsibility of the developer to construct the project to completion to the satisfaction of the Village.

Article IV - This portion of the Redevelopment Agreement is perhaps the most important as it addresses the Village incentive and the TIF Note. Under the proposed incentive, \$500,000 would be reimbursed to the developer for costs of acquiring the sites, while the other \$50,000 would be reimbursed to the developer for professional costs (legal, TIF planning consultants, financial, etc.) to prepare these documents. The article states how a request for reimbursement shall be submitted to the Village and, amongst other items, addresses that only two parties are involved (the Village and the developer) with no third party present.

Article V - Establishes developer responsibilities such as to pay taxes, comply with laws (including the prevailing wage rate law), are certified to do business in Illinois, indemnifies the Village, and stipulates that they must maintain insurance. Further, the developer cannot assign their agreement to anyone outside of the Ala Carte Entertainment family of companies.

Article VI-IX - The remaining sections are boilerplate legal language and include provisions for a default, remedies, representations and warranties, general provisions, and miscellaneous items.

Exhibits - Four exhibits are included and support the agreement.

FINANCIAL IMPACT:

TIF financing is based on the principal that new development or redevelopment will increase the tax base. That increase in tax base, over time, generates additional property taxes. Those property taxes are directed to the TIF increment fund over the 23 year life of the TIF. Thus, the development itself generates a pool of money which can be used to pay for TIF eligible costs, and thus provide an incentive for the developer to redevelop the sites without impact to the Village's general fund.

RECOMMENDATION:

Request approval of an ordinance approving:

- A. A Redevelopment Agreement for the Barrington/Higgins Redevelopment Project Area;
and
- B. Issuance of a TIF Note.

Attachments

cc: Geoff Dickinson (S.B. Friedman & Company)
Bruce Huvad (Cohen, Salk & Huvad, P.C.)

VILLAGE OF HOFFMAN ESTATES

AN ORDINANCE AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT AND THE ISSUANCE OF A TIF NOTE RESPECTING THE BARRINGTON HIGGINS REDEVELOPMENT PROJECT AREA IN THE VILLAGE OF HOFFMAN ESTATES, ILLINOIS (BARRINGTON HIGGINS TIF DISTRICT)

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 "Act"), the President and Board of Trustees of the Village (the "**Corporate Authorities**") are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a "blighted area" or a "conservation area" as defined in Section 11.74.4-3(b) of the Act; and

WHEREAS, in accordance with the Act, the Corporate Authorities adopted the following ordinances on December 22, 1986: (1) Ordinance No. 1806-1986, approving a redevelopment plan (the "**Original Redevelopment Plan**"); (2) Ordinance No. 1807-1986, designating the area known as the Barrington Higgins Tax Increment Financing District (the "**Redevelopment Project Area**"); and (3) Ordinance No. 1808-1986 adopting tax increment allocation financing for the Redevelopment Project Area (the "**TIF Ordinance**"); and

WHEREAS, the Corporate Authorities, in accordance with the Act, adopted the following ordinances approving four amendments to the Original Redevelopment Plan: (1) Ordinance No. 2890-1997 on February 3, 1997; (2) Ordinance No. 3102-1999, on July 6, 1999; and (3) Ordinance No. 4157-2009, on November 23, 2009; and (4) Ordinance No. ____-2014, on November 3, 2014 (the Original Redevelopment Plan, as amended, the "**Redevelopment Plan**"); and

WHEREAS, pursuant to the TIF Ordinance, the Corporate Authorities have applied tax increment allocation financing as a means of financing certain "redevelopment project costs" as defined in the Act; and

WHEREAS, Ala Carte Entertainment Limited Partnership, a Delaware limited partnership (the "**Developer**") has acquired two parcels within the Redevelopment Project Area, each improved with a restaurant building and accessory parking, located within the Redevelopment Project Area (the parcel commonly known as 2475 W. Higgins Road, Hoffman

Estates, IL (PIN 07-07-100-028) is herein referred to as “**Restaurant Parcel A**” and the parcel commonly known as 2525 W. Higgins Road, Hoffman Estates, IL (PIN 07-07-100-029) is herein referred to as “**Restaurant Parcel B**”, and the two parcels collectively are referred to as the “**Site**”); and

WHEREAS, pursuant to the terms of a proposed Redevelopment Agreement with the Village in the form of **Exhibit A** attached hereto (the “**Redevelopment Agreement**”), the Developer proposes to implement the Redevelopment Plan by rehabilitating and redeveloping the restaurant buildings (the “**Restaurants**”) on the Site, along with certain improvements, all as described in more detail in the Redevelopment Agreement (collectively, the “**Project**”); and

WHEREAS, the Corporate Authorities hereby determine that the acceptance of the Developer’s proposal and the implementation of the Project by the Developer and fulfillment generally of the Redevelopment Plan and Redevelopment Agreement are in the best interests of the Village, and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

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

ARTICLE I

General Matters

Section 101. Incorporation of Recitals. The foregoing recitals to this Ordinance are incorporated in this Ordinance as if set out in full by this reference, and the statements and findings contained therein are found to be true and correct, and are hereby adopted as part of this Ordinance.

Section 102. Authority. This Ordinance is adopted pursuant to the provisions of Section 6 of Article VII of the 1970 Constitution of the State of Illinois, as supplemented by Division 74.4 of Article 11 of the Illinois Municipal Code, and all laws amendatory thereof and supplemental thereto, and specifically as supplemented by the Local Government Debt Reform Act, as supplemented and amended, and the Omnibus Bond Acts, as amended. The Corporate Authorities hereby determine that the Village is authorized to issue its tax increment allocation revenue obligation in an aggregate amount not to exceed \$550,000 for the purpose of paying certain "redevelopment project costs" as that term is defined in Section 11-74.4-3(q) of the Act, and that every act, matter or obligation, as to which provision is made in this Ordinance, is necessary to carry out the Redevelopment Plan and to secure the payment of the principal of the TIF Note.

Section 103. Definitions. In this Ordinance, unless a different meaning clearly appears from the context:

“Administrative Costs” means an amount in each calendar year which the Village may subtract from Restricted Incremental Taxes, to pay prospectively for administrative costs relating to the Fund and administration of the Redevelopment Agreement, such amount being limited, however, to \$2,000 in 2015 and escalating by 5% in each subsequent year over the prior year during the term of the Redevelopment Agreement;

“Corporate Authorities” has the meaning given in the recitals;

“Defense Costs” means the legal fees and costs incurred by the Village to defend against any action which is brought to contest the validity or legality of the TIF Ordinances, the Redevelopment Plan, this Agreement, the TIF Note or similar type of action;

“Developer” means the Developer under the Redevelopment Agreement, including approved assignees, under Section 508 of the Redevelopment Agreement;

“Developer Account” means the account so established by Section 301 of this Ordinance;

“Developer Affiliate” has the meaning given in Section 508 of the Redevelopment Agreement.

“Fund” means the special tax allocation fund for the Redevelopment Project Area established pursuant to the TIF Ordinance;

“General Account” means the account so established by Section 301 of this Ordinance;

“Investment Obligations” means any investment that at the time is a legal investment for units of local governmental under the laws of the State of Illinois for the monies held hereunder then proposed to be invested;

“Maturity Date” means December 1, 2021;

“Ordinance” means this Ordinance entitled “An Ordinance Authorizing the Execution of a Redevelopment Agreement and the Issuance of a TIF Note”, as the same may be amended or supplemented by an ordinance adopted and becoming effective in accordance with the terms of Ordinance;

“Original Principal Amount” means the original principal amount of the TIF Note as determined in accordance with Sections 301, 402 and 403 of the Redevelopment Agreement;

“Payment Date” means December 1, 2015 and each December 1 thereafter until and including the Maturity Date, except that when any such date is not a business day on which banks are open for business in the State of Illinois, then the Payment Date shall be the first day following December 1 which is a business day;

“Person” means any individual, trust or legal entity such as a corporation, limited liability company, or partnership;

“Pledged Amount” means all moneys, securities and funds at any time deposited or required to be deposited into the Developer Account;

“Principal Amount” of the TIF Note, means, on any particular date, the Original Principal Amount of the TIF Note, less all prior payments of principal;

“Project” means the Project implementing the Redevelopment Plan as described in Section 301 of the Redevelopment Agreement;

“Redevelopment Agreement” has the meaning given in the recitals;

“Redevelopment Plan” means the Redevelopment Plan described in the recitals, as the same maybe amended from time to time in accordance with the Act;

“Redevelopment Project Area” means the Redevelopment Project Area described in the recitals, as the same maybe amended from time to time in accordance with the Act;

“Registered Owner” means the Person in whose name the TIF Note is registered on the Register as the absolute owner hereof for the purpose of receiving payment of or on account of principal thereof and for all other purposes;

“Restricted Incremental Taxes” means the incremental *ad valorem* taxes generated by the application of tax increment financing to the Redevelopment Project Area in accordance with Section 11-74.4-8a of the Act, but calculated solely by measuring the current equalized assessed value against the initial equalized assessed value (determined in base year 1986) for the two parcels comprising the Site;

“TIF Note” means any note of the Village issued pursuant to this Ordinance and Section 403 of the Redevelopment Agreement;

“TIF Ordinance” has the meaning given in the recitals;

“Village” has the meaning given in the recitals; and

“Village Account” means the account so established by Section 301 of this Ordinance.

ARTICLE II

Approval of Redevelopment Agreement

Section 201. Approval of Redevelopment Agreement. The Redevelopment Agreement is hereby approved. The Corporate Authorities find that the Redevelopment Agreement is in furtherance of the objectives of the Redevelopment Plan and Village has made a public disclosure of the terms of the Redevelopment Agreement. The Village President is hereby authorized and directed to execute and deliver the Redevelopment Agreement on behalf of the Village, and the Village Clerk is authorized and directed to affix the seal thereto and to attest the Redevelopment Agreement.

ARTICLE III

Authorization and Terms of TIF Note

Section 301. Authorization and Terms of TIF Note. There shall be borrowed for and on behalf of the Village an aggregate amount not to exceed \$550,000, to be evidenced by the TIF Note. The TIF Note shall be dated the date of delivery thereof, and shall bear the date of authentication, shall be in fully registered form, shall be issued in the Original Principal Amount,

in any denomination less than or equal to \$550,000, shall be non-interest bearing, and shall become due and payable on the Maturity Date, unless optionally prepaid in full by the Village prior to the Maturity Date. The TIF Note shall be subject to the terms and provisions of this Ordinance.

The Finance Director of the Village is hereby appointed as note registrar and paying agent ("Registrar") for the TIF Note. The principal of the TIF Note shall be payable to the Registered Owner as shown on the registration books of the Village maintained by the Registrar, at the close of business on the fifteenth day of the month immediately prior to the applicable payment, maturity or prepayment date and shall be paid by electronic transfer to the Registered Owner, provided such Registered Owner has given prior written notice to the Registrar, containing the electronic transfer instructions, including the name and address of the bank (which shall be in the continental United States), its ABA routing number and the name and account number to which such Registered Owner wishes to have such transfer directed.

The seal of the Village shall be affixed to or a facsimile thereof printed on the TIF Note, and the TIF Note shall be signed by the Village President of the Village and attested by the Village Clerk of the Village, and in case any officer whose signature shall appear on the TIF Note shall cease to be such officer before the delivery of the TIF Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

The TIF Note shall have thereon a certificate of authentication substantially in the form hereinafter set forth duly executed by the Registrar, as authenticating agent of the Village for the TIF Note, and showing the date of authentication. The TIF Note shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such certificate of authentication shall have been duly executed by the Registrar by manual signature, and such certificate of authentication upon the TIF Note shall be conclusive evidence that the TIF Note has been authenticated and delivered under this Ordinance.

Section 302. Note Register; Surrender for Transfer. The Village shall cause books (the "Register") for the registration of the TIF Note as provided in this Ordinance to be kept at the principal office of the Registrar. The Registrar shall maintain a list of the names and addresses of the Registered Owner from time to time of the TIF Note and upon transfer (but no transfer of the TIF Note is allowed except to the extent such transfer to a Developer Affiliate is expressly permitted under Section 508 of the Redevelopment Agreement) shall add the name and address of the new Registered Owner and eliminate the name and address of the transferor. The Village is authorized to prepare, and the Registrar shall keep custody of, multiple Note blanks executed by the Village for use in the transfer of the TIF Note.

Upon surrender for transfer of the TIF Note authorized under this Ordinance at the principal office of the Registrar, duly endorsed by, or accompanied by: (i) a written instrument or instruments of transfer in form satisfactory to the Registrar; (ii) an investment representation in form satisfactory to the Village and duly executed by the Registered Owner or his attorney duly authorized in writing, (iii) the written consent of the Village evidenced by the signature of the Village President (or his or her designee) on the instrument of transfer, and (iv) any deliveries required under this Ordinance, the Village shall execute and the Registrar shall authenticate, date and deliver in the name of any such authorized transferee or transferees, a new fully registered TIF Note of the same maturity, of authorized denomination, for a like aggregate principal amount. The execution by the Village of a fully registered TIF Note shall constitute full and due authorization of such TIF Note and the Registrar shall thereby be authorized to authenticate, date

and deliver such TIF Note, provided, however, that the principal amount of such TIF Note authenticated by the Registrar shall not exceed the authorized principal amount of the TIF Note less previous retirements. The Registrar shall not be required to transfer or exchange any TIF Note during the period beginning at the close of business on the fifteenth day of the month immediately prior to the maturity date of the TIF Note nor to transfer or exchange the TIF Note after notice calling the TIF Note for redemption has been made, nor during a period of ten (10) days next preceding mailing of a notice for redemption of principal of the TIF Note. No beneficial interests in the TIF Note shall be assigned. The TIF note shall not be encumbered or collaterally assigned for any purpose. No service charge shall be made for any transfer of the TIF Note to a Developer Affiliate, but the Village may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer of the TIF Note.

The Person in whose name the TIF Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of the TIF Note shall be made only to the order of the Registered Owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the TIF Note to the extent of the sum or sums so paid.

Section 303. Form of TIF Note. Subject to the provisions of this Ordinance, the TIF Note shall be in substantially the form attached hereto as **Exhibit B**, with such insertions or variations as to any endorsement or payment provisions and such other insertions or omissions, endorsements and variations as may be required or permitted by this Ordinance.

Section 304. Optional Prepayment. The principal of the TIF Note may be subject to prepayment by the Village, in whole or in part, at any time, without payment of any penalty or premium.

Section 305. Limited Obligation. The TIF Note is a special limited obligation of the Village, and payable solely from the Pledged Amount, and shall be a valid claim of the Registered Owner thereof only against said Pledged Amount. The TIF Note shall not constitute an indebtedness of the Village within the meaning of any constitutional or statutory provision or limitation. If the Pledged Amount is insufficient to pay all the principal due under the TIF Note, the Registered Owner shall have no recourse against the Village. The Registered Owner shall have no right to compel the exercise of the taxing authority of the Village or to use any funds of the Village (other than the Pledged Amount) for payment of the principal of the TIF Note.

ARTICLE IV Tax Increment Revenues

Section 401. Fund and Accounts. Pursuant to the TIF Ordinance, the Village has established the Fund and all incremental ad valorem taxes received by the Village for the Redevelopment Project Area are to be deposited into the Fund. The Treasurer of the Village is hereby directed to maintain the Fund as a segregated account, separate and apart from the General Fund or any other fund of the Village. With respect to the Restricted Incremental Taxes, the Village hereby establishes and creates subaccounts of the Restricted Incremental Taxes consisting of the Village Account, the General Account, and the Developer Account, which shall be special accounts held by the Village.

Section 402. Pledge Securing TIF Note. The Village hereby irrevocably assigns and pledges the Pledged Amount to the payment of the TIF Note. The pledge made pursuant to this

Section shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Village. All moneys on deposit in the Developer Account shall be used to pay the principal of the TIF Note, at maturity or upon payment prior to maturity, in accordance with its respective terms, which payments from the Developer Account are hereby authorized and appropriated by the Village.

Section 403. Deposit and Allocation of Incremental Taxes. In connection with the ongoing administration of the Fund, in each calendar year the Village shall deposit all of the Restricted Incremental Taxes as and when received into the Village Account, the Developer Account and the General Account in the following amounts and order of priority, subject to the terms and conditions set forth below:

FIRST: The Village shall deposit to the Village Account, an amount not to exceed its allowable Administrative Costs for the year, and if the Village shall have incurred Defense Costs, the Village shall deposit such additional amounts to the Village Account as are necessary to reimburse the Village for such Defense Costs.

SECOND: A portion of the Restricted Incremental Taxes shall be credited, allocated and deposited to the Developer Account in such amount as will allow for principal reduction payments on each Payment Date, such that the Principal Amount then remaining, after crediting the principal reduction payment on each such Payment Date, shall equal the following:

<u>Scheduled Payment Date</u>	<u>Principal Amount</u>
December 1, 2015	80% of the Original Principal Amount
December 1, 2016	60% of the Original Principal Amount
December 1, 2017	40% of the Original Principal Amount
December 1, 2018	20% of the Original Principal Amount
December 1, 2019	0% of the Original Principal Amount

However, if any principal of the TIF Note is unpaid after December 1, 2019, the Village shall deposit Restricted Incremental Taxes into the Fund during 2020 and 2021, up to the amount then needed to pay any such unpaid principal of the TIF Note on each Payment Date, including December 1, 2021.

THIRD: The balance of the Restricted Incremental Taxes shall be credited, allocated and deposited to the General Account.

Section 404. General Account. The Village shall withdraw from the General Account for purposes of paying for "redevelopment project costs" as that term is defined in Section 11-74.4-3(q) of the Act or for any lawful purpose permitted under the Act, including but not limited to calculation and distribution of any "surplus" in accordance with Sections 11-74.4-4 and 11.74.4-8a of the Act.

Section 405. Developer Account. In order to make payment of principal on the TIF Note such that the Principal Amount of the Note is reduced on each Payment Date in accordance with Section 303 of this Ordinance, the Village shall withdraw annually from the Developer Account on or before each Payment Date such amounts as are then required and shall make the payment of principal on the TIF Note then due to the Registered Owner. Upon payment of all amounts due under the TIF Note in accordance with its respective terms, any remaining amounts

on deposit in the Developer Account shall be deposited in the General Account, and the Developer Account shall be closed.

Section 406. Investment of Moneys Held in Fund. Moneys held in the Fund may be invested by the Village Treasurer in Investment Obligations or may be deposited by the Village, on demand or time deposit, or with such banks or trust companies which are lawful depositaries as may be designated by the Village. No such moneys shall be deposited with any bank or trust company in excess of the amount guaranteed or insured by the Federal Deposit Insurance Corporation or other Federal agency, unless such bank or trust company shall have lodged as collateral for such deposit, Federal Obligations having a market value (exclusive of accrued interest) at least equal to the amount of such moneys.

Any obligations so purchased with moneys in any account of the Fund shall be deemed at all times to be part of the Fund and the interest thereon and any profit arising on the sale thereof shall be credited to the Fund, and any loss resulting on the sale thereof shall be charged to the Fund. Obligations so purchased as an investment of moneys in the Fund shall be sold at the best price obtainable whenever it shall be necessary to provide any moneys to make any transfer, withdrawal, payment or disbursement from the Fund, or in the case of any required transfer of moneys to an account of the Fund on any date, may be transferred to that account in lieu of the required moneys; provided that each such investment shall mature on a date prior to the date on which said amounts are needed to make any required payments from the Fund. Current and future holders of the TIF Note specifically release and hold harmless the Village from any duties of obligation regarding the investment of moneys from the Fund.

ARTICLE V

Particular Covenants

Section 501. General. The provisions of the Ordinance shall constitute a contract between the Village and the Registered Owner of the TIF Note. All covenants relating to the TIF Note are enforceable solely by the Registered Owner of the TIF Note. The Village shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Village under the provisions of law or the Ordinance in accordance with the terms of such provisions. The Ordinance shall not be modified or amended in any respect without the consent of the Registered Owner, except to adopt an ordinance supplementing the Ordinance (1) to add to the covenants or agreements contained in the Ordinance other than covenants or agreements to be observed by the Village which are not contrary to or inconsistent with the Ordinance as theretofore in effect, (2) to surrender any right, power or privilege reserved to or conferred upon the Village by the Ordinance, (3) to specify, determine or authorize any and all matters and things relative to the TIF Note or the proceeds thereof which are not contrary to or inconsistent with the Ordinance as theretofore in effect, (4) to cure any ambiguity, supply any omission or cure any defect or inconsistent provision in the Ordinance and (5) to insert such provisions clarifying matters or questions arising under the Ordinance as are necessary or desirable and are not contrary or inconsistent with the Ordinance as theretofore in effect.

Section 502. Payment of TIF Note. The Village shall duly and punctually pay or cause to be paid from the Pledged Amount the principal of the TIF Note, at the dates and places and in the manner mentioned in the TIF Note, according to the true intent and meaning thereof.

Section 503. Power to Issue TIF Note and Pledge Revenues. The Village represents that it is duly authorized under all applicable laws to authorize and issue the TIF Note, to adopt

the Ordinance and to pledge the Pledged Amount in the manner and to the extent provided in the Ordinance. The Pledged Amount will be free and clear of any pledge, lien, charge or encumbrance thereon, or with respect thereto prior to, or of equal rank with, the pledge created by the Ordinance, and all corporate or other action on the part of the Village to that end has been and will be duly and validly taken. The TIF Note and the provisions of the Ordinance are and will be the valid and legally enforceable obligations of the Village in accordance with their terms and the terms of the Ordinance. The Village at all times shall, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Amount under the Ordinance and all rights of the Registered Owner under the Ordinance against all claims and demands of all Persons whomsoever.

Section 504. Further Assurances. At any and all times, the Village shall, so far as it may be authorized by law, pass, make, do execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming all and singular its interest in the Pledged Amount pledged hereby for the payment of the principal of the TIF Note. The Village President, the Finance Director, the Village Clerk, and the other officers of the Village are authorized to execute and deliver on behalf of the Village such other documents, agreements and certificates and to do such other things consistent with the terms of this Ordinance as such officers and employees shall deem necessary or appropriate in order to effectuate the intent and purposes of this Ordinance.

Section 505. Consent of Registered Owner. For any amendment of the Ordinance requiring consent of the Registered Owner, the Village shall mail a copy of the amendment together with a request to the Registered Owner for its consent, but failure to mail such copy and request shall not affect the validity of such amendment when consented to as in this Section provided. Such amendment shall not take effect in accordance with its terms, unless and until there shall have been filed with the Village Clerk the written consent of the Registered Owner. Any such consent shall be effective only if accompanied by proof of the ownership, at the date of such consent, of the TIF Note. A certificate of the Village Clerk that such proof is sufficient under the provisions of Section 602 shall be conclusive that such consents have been given by the Registered Owner. Any such consent shall be binding upon the Registered Owner giving such consent and upon any subsequent Registered Owner whether or not the subsequent Registered Owner has notice thereof. Any consent may be delivered or filed prior to any mailing required by this Section and shall not be deemed ineffective by reason of such prior delivery or filing.

ARTICLE VI Remedies on Default

Section 601. Events of Default. Each of the following shall constitute an event of default under the Ordinance and is hereby called an "Event of Default":

(1) a default shall be made in the observance or performance of any covenant or contract or other provision in the Ordinance and such default shall continue for a period of thirty (30) days after written notice to the Village from the Registered Owner specifying any such default and requiring the same to be remedied; or

(2) there shall be filed by the Village a petition seeking an adjustment of indebtedness under any applicable law or statute of the United States of America or of the State of Illinois.

Section 602. Enforcement by Registered Owner. Upon the happening or continuance of an Event of Default or an event which upon sufficient notice may become an Event of Default, the Registered Owner may proceed to protect and enforce any rights of the Registered Owner under the laws of the State of Illinois or under the Ordinance by such suits, actions or proceedings in equity or at law, either for specific performance of any covenant or contract contained herein or in aid or execution of any power granted or for any legal or equitable remedy as the Registered Owner shall deem most effectual to protect and enforce the rights aforesaid. No remedy by the terms of the Ordinance conferred upon or reserved to the Registered Owner is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder now or hereafter existing at law or in equity or by statute. No delay or omission of any Registered Owner to exercise any right or power accruing upon any default shall impair any such right, power or shall be construed to be a waiver of any such default, and every right, power and remedy available to the Registered Owner may be exercised from time to time and as often as may be deemed expedient by the Registered Owner.

Section 603. No Personal Liability. No recourse shall be had for the payment of the principal of the TIF Note or for any claim based thereon or on the Ordinance against any officer of the Village, any one executing the TIF Note; provided however, that nothing herein shall bar recourse in mandamus or otherwise to any such person or officer in his corporate as opposed to individual capacity.

ARTICLE VII Miscellaneous

Section 701. Defeasance. If the Village shall pay or cause to be paid to the Registered Owner or to an account designated by the Registered Owner the principal of the TIF Note at the times and in the manner stipulated therein and in the Ordinance, then the pledge of the Pledged Amount and the covenants, agreements and other obligations of the Village to the Registered Owner shall be discharged and satisfied.

Section 702. Evidence of Ownership. The ownership of the TIF Note, the amount, number and other identification thereof, and the dates owning same, shall be proved by the registry books. The fact and date of the execution by the Registered Owner or his attorney of any instrument may be proved by the certificate of a notary public or other officer authorized to take acknowledgements in the jurisdiction in which the person purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such notary public or other officer. The authority of any person to execute any consent or other instrument executed by or on behalf of a Registered Owner which is a corporation or other entity may be established without further proof if such instrument is signed by a person purporting to be an officer of such corporation and certified resolutions of such corporation or entity authorizing such act are furnished.

Section 703. Invalidity of Any Section. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 704. Publication. The Village Clerk is hereby authorized to publish this ordinance in pamphlet form.

Section 705. Superseder and Effective Date. All ordinances, resolutions, motions or orders in conflict herewith be, and the same hereby are, repealed to the extent of such conflict, and this Ordinance shall be in full force and effect immediately from and after its passage and approval as provided by law.

Passed this 3rd day of November, 2014.

VOTE	AYES	NAYS	ABSENT	ABSTAIN
Trustee Gary G. Stanton	_____	_____	_____	_____
Trustee Michael Gaeta	_____	_____	_____	_____
Trustee Gayle Vandenberg	_____	_____	_____	_____
Trustee Karen V. Mills	_____	_____	_____	_____
Trustee Anna Newell	_____	_____	_____	_____
Trustee Gary J. Pilafas	_____	_____	_____	_____
Mayor William D. McLeod	_____	_____	_____	_____

Approved this 3rd day of November, 2014.

Village President

Attest:

Village Clerk

Published in pamphlet for this 3rd day of November, 2014.

EXHIBIT A
REDEVELOPMENT AGREEMENT

**EXHIBIT B
FORM OF TIF NOTE**

REGISTERED
NO. R-1

UP TO \$ 550,000

**UNITED STATES OF AMERICA
STATE OF ILLINOIS
COUNTIES OF COOK AND KANE
VILLAGE OF HOFFMAN ESTATES
RESTRICTED TAX INCREMENT ALLOCATION REVENUE NOTE
(BARRINGTON HIGGINS PROJECT), SERIES 2014**

REGISTERED OWNER: ALA CARTE ENTERTAINMENT LIMITED PARTNERSHIP

PRINCIPAL AMOUNT: [UP TO \$550,000] NON-INTEREST BEARING

ISSUANCE DATE: _____, 2014

MATURITY DATE: DECEMBER 1, 2021

KNOW ALL PERSONS BY THESE PRESENTS, that the VILLAGE OF HOFFMAN ESTATES, COOK AND KANE COUNTIES, ILLINOIS (the "*Village*"), a municipality, home rule unit and municipal corporation under the laws of the State of Illinois, hereby acknowledges itself to owe and for value received promises to pay from the source and as hereinafter provided to the Registered Owner shown above, or registered assigns as hereinafter provided as the absolute owner thereof, the Principal Amount on the Maturity Date shown above, unless optionally prepaid by the Village prior to the Maturity Date.

This Note is issued by the Village as a non-interest bearing obligation, in fully registered form, in consideration for the payment by the Developer of certain "redevelopment project costs" as that term is defined in Section 11-74.4-3(q) of the Act in connection with the Project for the Barrington Higgins Redevelopment Project Area, as such Project is described in that certain Redevelopment Agreement by and between the Village and Ala Carte Entertainment Limited Partnership, a Delaware limited partnership, dated as of November 3, 2014 (the "*Redevelopment Agreement*").

This Note is issued pursuant to Section 6 of Article VII of the 1970 Constitution of the State of Illinois, as supplemented by Division 74.4 of Article 11 of the Illinois Municipal Code (the "*Act*"), and all laws amendatory thereof and supplemental thereto, and specifically as supplemented by the Local Government Debt Reform Act, as supplemented and amended, and the Omnibus Bond Acts, as amended. This Note has been authorized by Ordinance No. _____ - 2014, entitled "An Ordinance Authorizing the Execution of a Redevelopment Agreement and the issuance of a TIF Note" by the Corporate Authorities (the "*Note Ordinance*"), to all of the provisions of which the Registered Owner, by acceptance of this Note, assents.

Except as otherwise provided, the capitalized terms herein shall have the meanings as provided in the Note Ordinance or the Redevelopment Agreement.

Payment of the principal of this Note shall be made solely as provided in the Note Ordinance, to the Registered Owner hereof as shown on the registration books of the Village maintained by the Finance Director, as note registrar and paying agent (the "*Note Registrar*"), at the close of business on the fifteenth day of the month immediately prior to the applicable payment, maturity or prepayment date ("*Record Date*") and shall be paid by electronic transfer to the Registered Owner, provided such Registered Owner has given prior written notice to the Note Registrar, containing the electronic transfer instructions, including the name and address of the bank (which shall be in the continental United States), its ABA routing number and the name and account number to which such Registered Owner wishes to have such transfer directed.

The Village has assigned and pledged certain rights, and interest of the Village in and to certain Restricted Incremental Taxes which the Village is entitled to receive pursuant to the Act, in order to pay the principal of the Note. Reference is hereby made to the aforesaid Note Ordinance and the Redevelopment Agreement for a description, among others, with respect to the determination, custody and application of said revenues, the nature and extent of such security with respect to the Note, and the terms and conditions under which the Note is issued and secured.

THIS NOTE DOES NOT CONSTITUTE AN INDEBTEDNESS OF THE VILLAGE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION. IF THE PLEDGED AMOUNT IS INSUFFICIENT TO PAY ALL THE PRINCIPAL DUE UNDER THE NOTE, THE REGISTERED OWNER SHALL HAVE NO RECOURSE AGAINST THE VILLAGE, PROVIDED THAT ALL PLEDGED AMOUNTS REQUIRED TO BE DEPOSITED IN THE ACCOUNT FROM TIME TO TIME PURSUANT TO THE TIF ACT AND THE NOTE ORDINANCE HAVE BEEN DEPOSITED INTO THE DEVELOPER ACCOUNT AND THE AMOUNT EQUAL TO THE PLEDGED AMOUNT IN EACH YEAR HAS BEEN USED SOLELY TO PAY AMOUNTS DUE UNDER THE NOTE. THE REGISTERED OWNER SHALL HAVE NO RIGHT TO COMPEL THE EXERCISE OF THE TAXING AUTHORITY OF THE VILLAGE OR TO USE ANY FUNDS OF THE VILLAGE (OTHER THAN THE PLEDGED AMOUNT) FOR PAYMENT OF THE PRINCIPAL OF THE NOTE. ALL AMOUNTS DUE PURSUANT TO THIS NOTE SHALL BE LIMITED TO THE RESTRICTED INCREMENTAL TAXES.

The Village shall have the right to prepay this Note in whole or in part, at any time, without payment of any penalty or premium.

This Note is transferable by the Registered Owner hereof in person or by his attorney duly authorized in writing, at the principal office of the Note Registrar in Hoffman Estates, Illinois, but only in the manner, subject to the limitations provided in the Note Ordinance, and upon surrender and cancellation of this Note. Upon such transfer, a new Note or authorized denomination and for the same aggregate Principal Amount will be delivered to the transferee in exchange therefor.

The Village and the Note Registrar may deem and treat the Person in whose name this Note is registered on the Register as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and for all other purposes, and neither the Village nor the Note Registrar shall be affected by any notice to the contrary. This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Note Registrar. The Note shall not be a collaterally assignable.

The Village hereby expressly finds and determines that the Maturity Date of this Note does not exceed December 1, 2021.

It is hereby certified and recited that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this Note did exist, have happened, been done and performed in regular and due form and time as required by law, and the Village hereby covenants and agrees that it has made provision for the segregation of the Incremental Taxes and the Pledged Amount, and that it will properly account for said taxes and will comply with all the covenants of and maintain the funds and accounts as provided by the Note Ordinance.

Whenever, under the terms hereof, principal hereof shall become due and payable, the holder of this Note may pursue any remedies, legal or equitable, that are available to collect such unpaid principal.

IN WITNESS WHEREOF the Village has caused this Note to be signed by the manual or duly authorized facsimile signatures of its President and by its Village Clerk and its corporate seal or a facsimile thereof to be impressed or reproduced hereon, all as of the date of delivery hereof, to wit, the ____ day of _____, 2014.

[SEAL]

VILLAGE OF HOFFMAN ESTATES, COOK AND KANE COUNTIES, ILLINOIS.

President

Village Clerk

Date of Authentication: _____, 2014

CERTIFICATE
OF
AUTHENTICATION

This Note is the Tax Increment Allocation Revenue Note (Barrington Higgins Project), Series 2014, of the Village of Hoffman Estates, Cook and Kane Counties, Illinois, described in the within-mentioned Note Ordinance.

Village Treasurer
Village of Hoffman Estates, Cook and Kane Counties, Illinois, as Note Registrar

By _____

NOTE REGISTRAR AND PAYING AGENT:
Village Treasurer Village of Hoffman
Estates, Cook and Kane Counties, Illinois

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

Here insert Social Security Number,
Employer Identification Number or
other Identifying Number

(Name and Address of Assignee)

the within Note and does hereby irrevocably constitute and appoint

as attorney to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature to this transfer and assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever.

Signature guaranteed: _____

By: _____

Its: _____

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (“*Agreement*”), dated this 3rd day of November, 2014, is made by and between the **VILLAGE OF HOFFMAN ESTATES**, Cook and Kane Counties, Illinois, an Illinois municipal corporation and home rule unit of local government (the “**Village**”), and **ALA CARTE ENTERTAINMENT LIMITED PARTNERSHIP**, a Delaware limited partnership (the “**Developer**”).

RECITALS

WHEREAS, the Village is a duly constituted and existing municipality within the meaning of Section 1 of Article VII of the 1970 Constitution of the State of Illinois and is a "home rule unit" under Section 6(a) of Article VII of the 1970 Constitution; and

WHEREAS, the Village has the authority to promote the health, safety and welfare of the Village and its inhabitants, to encourage private development in order to enhance the local tax base, create employment and ameliorate blight, and to enter into contractual agreements with third persons to achieve these purposes; 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 "**Act**"), the President and Board of Trustees of the Village (the “**Corporate Authorities**”) are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a “blighted area” or a "conservation area" as defined in Section 11.74.4-3(b) of the Act; and

WHEREAS, in accordance with the Act, the Corporate Authorities adopted the following ordinances on December 22, 1986: (1) Ordinance No. 1806-1986, approving a redevelopment plan (the “**Original Redevelopment Plan**”); (2) Ordinance No. 1807-1986, designating the area legally described in **Exhibit A** hereto as the Barrington Higgins Tax Increment Financing District (the “**Redevelopment Project Area**”); and (3) Ordinance No. 1808-1986 adopting tax increment allocation financing for the Redevelopment Project Area; and

WHEREAS, the Corporate Authorities, in accordance with the Act, adopted the following ordinances approving three previous amendments to the Original Redevelopment Plan: (1) Ordinance No. 2890-1997 on February 3, 1997; (2) Ordinance No. 3102-1999, on July 6, 1999; and (3) Ordinance No. 4157-2009, on November 23, 2009; and

WHEREAS, the Village held and conducted a public hearing with respect to a fourth amendment to the Original Redevelopment Plan (“**Amendment No. 4**”) at a meeting of the Corporate Authorities held on October 6, 2014, which hearing included consideration of the redevelopment project proposed by the Developer; and

WHEREAS, the Corporate Authorities, after giving all notices required by law and after conducting all public hearings required by law, adopted the following ordinances on November 3, 2014: (1) Ordinance No. ____-2014, approving Amendment No. 4 (the Original Redevelopment Plan, as previously amended and as amended by Amendment No. 4, is herein referred to as the “**Redevelopment Plan**”); and (2) Ordinance No. ____-2014, approving and authorizing the execution of this Agreement with the Developer; and

WHEREAS, the Developer has acquired two parcels, each improved with a restaurant building and accessory parking, located within the Redevelopment Project Area (the parcel commonly known as 2475 W. Higgins Road, Hoffman Estates, IL (PIN 07-07-100-028) is herein referred to as “**Restaurant Parcel A**” and the parcel commonly known as 2525 W. Higgins Road, Hoffman Estates, IL (PIN 07-07-100-029) is herein referred to as “**Restaurant Parcel B**”, and the two parcels collectively are referred to as the “**Site**”), the Site being legally described in **Exhibit B** hereto; and

WHEREAS, the Developer desires to rehabilitate and redevelop the restaurant buildings (the “**Restaurants**”) on the Site, along with certain improvements, all as described in more detail in this Agreement (collectively, the “**Project**”), and the Developer has provided plans and specifications to the Village (the “**Project Plans**”) describing the scope and intent of the Project; and

WHEREAS, before acquiring the Site, the Developer advised the Village that such acquisition and the completion of the Project were not feasible without the assistance of tax increment allocation financing, and the Village adopted Resolution No. 1565-2014, on May 5, 2014, “A Resolution Declaring An Intent to Reimburse Certain Project Costs” (the “**Inducement Resolution**”); and

WHEREAS, the Village is desirous of having the Site redeveloped in order to serve the needs of the Village and the community in order to produce increased employment opportunities for area residents and increased tax revenues for the various taxing districts authorized to levy taxes within the Redevelopment Project Area; and

WHEREAS, in order to induce the Developer to rehabilitate and redevelop the Restaurants as described in Project Plans, the President and Board of Trustees of the Village have determined that it is in the best interest of the Village to reimburse the Developer an amount not to exceed Five Hundred Fifty Thousand Dollars (\$550,000) of certain "redevelopment project costs" as that term is defined in Section 11-74.4-3(q) of the Act (collectively, the “**Village Incentive**”), as further described and provided in Article IV below; and

WHEREAS, but for the Village Incentive, the Corporate authorities find that the Developer could not successfully complete the Project in the matter provided in this Agreement; and

WHEREAS, this Agreement has been submitted to the Developer for consideration and review, the Developer has approved this Agreement; and

WHEREAS, to facilitate the redevelopment of the Restaurants and completion of the Project, the Corporate Authorities have adopted Ordinance No. ____-2014, entitled “An Ordinance Authorizing the Execution of a Redevelopment Agreement and the issuance of a TIF Note” (as amended from time to time, the “**Note Ordinance**”), approving and authorizing the execution of this Agreement with the Developer and the execution and delivery to the Developer of a note (the “**TIF Note**”), which shall contain the terms and provisions set forth in this Agreement and in the Note Ordinance; and

WHEREAS, the Corporate Authorities, after due and careful consideration, have determined that the completion of the Project by the Developer and the provision by the Village of the Village Incentive through the issuance of TIF Note described herein, in each case pursuant to this Agreement, will be in furtherance of the Redevelopment Plan and increase employment opportunities, improve the environment of the Village, increase the assessed valuation of the real estate situated within the Village, increase the tax revenues realized by the Village and the various taxing districts authorized to levy taxes within the Redevelopment Project Area, foster increased economic activity within the Village, and otherwise be in the best interests of the Village and the health, safety, morals and welfare of its residents and taxpayers.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants and promises as contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

ARTICLE I INCORPORATION OF RECITALS

The foregoing recitals are material to this Agreement and are incorporated into and made a part of this Agreement as though they were fully set forth in this Article I.

ARTICLE II MUTUAL ASSISTANCE

The Village and Developer (hereinafter each a “**Party**” and collectively the “**Parties**”) agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and in the Village’s case, the adoption of such ordinances or resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

ARTICLE III REDEVELOPMENT PROJECT

Section 301. Redevelopment Project.

(a) The Developer agrees and covenants that the Project will consist of the acquisition of the Site, and the rehabilitation and redevelopment of the Restaurants, including facade, parking lot circulation and pavement, landscaping, and lighting, all on the Site, as provided in the Project Plans and meeting the requirements of this Agreement.

(b) The Developer has prepared final building and construction plans for all building and site improvements (the “**Construction Plans**”) in accordance with the rules, regulations, and ordinances of the Village. The Project Plans and the Construction Plans shall constitute the “**Final Project Documents**”. The Developer shall construct the Project or cause the Project to be constructed in accordance with the Final Project Documents and the terms and conditions of this Agreement. The Village may administratively approve minor modifications to the building and site plans, as provided for by the Village Municipal Code.

(c) The Parties agree and acknowledge that development of the Project is in compliance with the Redevelopment Plan and the Act.

(d) The Final Project Documents shall comply with all applicable federal, state, county, municipal or administrative laws, ordinances, rules, regulations, codes and orders (collectively, the “**Legal Requirements**”) relating in any manner to the Project, including, without limitation, all environmental laws, the Americans With Disabilities Act, and the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*).

Section 302. Construction Commencement and Completion.

(a) The Developer has commenced construction of the Project as of August 1, 2014, and thereafter will diligently pursue completion of the Project. The Developer shall proceed with

commercially reasonable diligence to complete construction of the Project on or before April 1, 2015, which date may be extended by Section 303 or Section 304.

(b) Subject to the terms, conditions and provisions provided below, the Developer has the following general responsibilities (which are not all inclusive) for the planning, design, development, construction and installation of the Project (with the technical assistance of such qualified outside consultants as the Developer, in its discretion, may retain):

(i) securing all authorizations, permits and licenses, including those of a temporary nature, as may be necessary for the construction and intended use of the Project.

(ii) providing, either alone or in conjunction with the Developer's advisers and consultants, the appropriate coordination of all planning and construction of the Project, including the directing and scheduling of construction, all field inspections, tests, surveys and other activities related to the Project.

(iii) providing qualified field personnel for inspecting and reviewing the Project progress and construction of the Project, including final inspection and certification by Developer that, to the best of its knowledge, all work, as constructed, conforms with the approved Final Project Documents;

(vi) providing documentation to the satisfaction of the Village for all expenses to be reimbursed by the Village and of all contractor licenses.

Section 303. Force Majeure. Time is of the essence of this Agreement; however, a Party shall not be deemed in material breach of this Agreement with respect to construction of the Project if such Party fails to timely perform the same and such failure is due in whole or in part to war, acts of God, strikes, labor disputes, inability to procure materials, delay in issuance of necessary permits or authorizations by any governmental body, including but not limited to the Village, through no fault of the Developer 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 same and consult with the Party making such claim regarding the same and the Party to whom such claim is made shall grant an 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 304. Environmental Remediation Delays. Time is of the essence of this Agreement; however, the completion date for the Project may be extended as follows where environmental conditions on the Site are discovered that require significant remediation activities prior to further construction and/or development activities taking place, and the Developer vigorously pursues such remediation. In the event of the discovery of such conditions, the Developer shall, within two (2) weeks of said discovery, inform the Village of the discovery and of the anticipated delay associated with remediation of such conditions. The Board of Trustees shall approve an extension of the completion date by the length of such period of remediation, which approval shall not be unreasonably withheld.

ARTICLE IV VILLAGE INCENTIVE - TIF NOTE

Section 401. Type and Amount of Village Incentive. The Village Incentive shall consist of reimbursement to the Developer of an amount not to exceed Five Hundred Fifty Thousand Dollars

(\$550,000), of which \$500,000 shall be allocated solely to reimburse the Developer for a portion of the actual, documented cost of acquiring Real Estate Parcel B, and of which \$50,000 shall be allocated solely to reimburse the Developer for the professional service costs incurred by the Developer for legal, TIF planning, financial and similar services performed in connection with the Project or this Agreement.

Section 402. Developer's Payment of Total Project Costs.

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

(b) For purposes of this Agreement, "**Total Project Costs**" shall mean the actual documented costs paid to third parties and actually expended by the Developer to fully and totally complete the Project in accordance with the Final Project Documents, or any modification to same agreed to in writing by the Parties.

(c) The Parties agree and acknowledge that the expenditures to be reimbursed pursuant to Section 401 in connection with the Village Incentive qualify as "redevelopment project costs" as that term is defined in Section 11-74.4-3(q) of the Act and are eligible for reimbursement under the Act and under this Agreement.

(d) To establish a right of reimbursement for the Village Incentive, the Developer shall submit to the Village Manager a written request for reimbursement in the form of **Exhibit C** hereto ("**Request for Reimbursement**"), accompanied by copies of the following documents:

- (i) Final certificates of occupancy issued by the Village.
- (ii) Closing escrow disbursement statement, real estate transfer tax declarations and copy of recorded deed to confirm the purchase of Real Estate Parcel B and that the acquisition cost paid at the closing exceeded \$500,000.
- (iii) All final sworn statements and bills of sale from contractors showing payment in full, accompanied by good and sufficient final waivers of lien and lien releases from the general contractor and its subcontractors, with respect to labor and materials incorporated in the Project. In the event of any payment dispute (i.e., a subcontractor refuses to provide a lien waiver to the general contractor), the Developer may furnish the Village proof of payment along with evidence of adequate retention, title indemnity or other assurance posted with the title company sufficient for the title company to insure over such disputed amounts. The documented payments for Total Project Costs paid by the Developer should total less than Two Million Dollars (\$2,000,000), exclusive of the Site acquisition cost.
- (iv) Proof of payment for invoices for legal, TIF planning, financial and similar services performed in connection with the Project or this Agreement, to the extent such fees constitute allowable "redevelopment project costs" as that term is defined in Section 11-74.4-3(q) of the Act ("**Professional Service Fees**").

(e) All records with respect to the administration of the construction of the Project shall be created and maintained in a manner reasonably satisfactory to the Village and which will facilitate a ready determination as to whether or not a particular item of cost is eligible for reimbursement pursuant to the

Act and this Agreement. The Village shall have sixty (60) days after receipt of the Request for Reimbursement from the Developer to approve or disapprove that the items submitted in the Request for Reimbursement.

(f) If the Request for Reimbursement is disapproved, the Village must provide the Developer in writing and in detail with an explanation as to why the expenditures by the Developer to complete acquire the Site and complete the Project were not properly documented.

Section 403. TIF Note. The Village shall issue the TIF Note to the Developer after the Project is completed and the Village's approval of the Request for Reimbursement. The TIF Note shall be in the original principal amount equal to (a) \$500,000, in partial reimbursement of the actual, documented cost of acquiring Restaurant Parcel B, plus (b) the amount of actual, documented Professional Service Fees shown in the Request for Reimbursement, but not to exceed Fifty Thousand Dollars (\$50,000). The TIF Note shall be a non-interest bearing note which is authorized and issued pursuant to the terms and conditions of the Note Ordinance.

Section 404. Maintenance of Fund.

(a) The Village agrees to comply with the provisions of the Note Ordinance. The terms "Incremental Taxes", "Pledged Amount" and "Fund" as used in this Section 404 shall have the meanings given in the Note Ordinance.

(b) The Village agrees that until such time as this Agreement is terminated or all payments due under the TIF Note have been made, (i) the Village will not intentionally take any action or omit to take any action that will affect the continued existence of the Fund or the availability of monies deposited in the Fund to pay the principal amount of the TIF Note, (ii) the Village will take all reasonable actions and submit all documents in a timely manner in order to receive all Incremental Taxes; (iii) the Village will direct the investments of amounts deposited into Fund as provided in the Note Ordinance; and (iv) the Village will comply with all annual reporting requirements set forth in the Act. If any governmental agency having jurisdiction over enforcement of the Act and the subject matter of this Agreement shall determine that this Agreement is contrary to law or if the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the Village will, as at its cost and expense (but subject to reimbursement as Defense Costs) defend the integrity of the Redevelopment Project Area and this Agreement. The Developer will fully cooperate with the Village in connection with the foregoing. If funds are not available in the Fund to reimburse the Village for its defense costs, then, in that event, the Developer and the Village shall share equally in the cost of such defense, which expenses, when paid by the Developer, shall be subject to reimbursement as an Eligible Redevelopment Project Cost.

Section 405. No Individual or Personal Liability. Notwithstanding any other statement in this Agreement, the Parties agree that the representations made by the Village in this Agreement and incentives offered in this Article IV are made on behalf of the Village, and the Village President and Board of Trustees are not making such representations personally, are not parties to this Agreement, and shall incur no personal liability in conjunction with this Agreement. Village liabilities under this Agreement is strictly limited to monies available in this Fund.

Section 406. No Third Party Beneficiaries. This Agreement is made for the benefit of the parties and there are no third party beneficiaries.

ARTICLE V
SPECIAL COVENANTS OF THE DEVELOPER

Section 501. Real Estate Taxes.

(a) The Developer agrees that it shall pay, when due, any and all real estate taxes and special assessments in respect to the Project, together with all improvements on such Parcel. Failure to timely pay said taxes and/or special assessments shall constitute a breach of this Agreement, subject to the Notice and cure provisions set forth in Article VI of this Agreement.

(b) The Developer acknowledges that the Project is within a Tax Increment Redevelopment Project Area and that all reimbursements provided herein shall be paid from tax increment generated within the Redevelopment Project Area (as limited by the provisions of the Note Ordinance). Therefore, the Developer agrees that if any claim or appeal contesting the validity or amount of any real estate property tax assessment for the Site is filed, the Developer shall provide notice of such claim or appeal, (in compliance with Section 903), together with copies of all documents filed in connection with such claim or appeal to the Village within seven (7) days of the date of filing. The Village shall have the right to contest any such claim or appeal.

Section 502. Compliance with Laws. The Developer represents and warrants to the Village, both as of the date of execution and delivery of this Agreement and for the Term of the Agreement, as follows:

(a) The Developer represents and warrants that the Project shall be constructed and fully completed in a good and workmanlike manner in accordance with all applicable federal, state and county laws and regulations and the Village codes, ordinances and regulations, including but not limited to the Village of Hoffman Estates Zoning Ordinance, Subdivision Code, and other regulations, including but not limited to the building, electric, plumbing and fire codes that are applicable to the Project.

(b) The Developer further certifies that:

(i) It is not barred from contracting with any unit of state or local government as a result of violating Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3 and 33E-4).

(ii) It shall comply with the Illinois Drug Free Work Place Act.

(iii) It shall comply with the Equal Opportunity Clause of the Illinois Human Rights Act and the Rules and Regulations of the Illinois Department of Human Rights.

(iv) It shall comply with the Americans with Disabilities Act and Article 2 of the Illinois Human Rights Act (775 ILCS 5/2-101 et seq.).

(v) Any construction contracts entered into by the Developer relating to the construction of the Project shall require all contractors and subcontractors to comply with the Illinois Fair Employment Practices Act.

(vi) The Developer is not delinquent in the payment of any tax administered by the Illinois Department of Revenue nor is delinquent in the payment of any money owed to the Village.

(vii) The Developer shall comply with all applicable federal laws, state laws and regulations including without limitation, such laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors, payment of wages due employees, and health and safety of employees. The Developer agrees to pay its employees, if any, all rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes, and further agrees to make all required withholdings and deposits therefore. The Developer agrees to maintain full compliance with changing government requirements that govern or apply to the construction of the Project. The Developer understands and agrees that the most recent of such federal, county, state, and local laws and regulations will govern the administration of this Agreement at any particular time. Likewise, new federal, county, state and local laws, regulations, policies and administrative practices may be established after the date of the Agreement has been executed and may apply to this Agreement and the Project. Any lawsuit or complaint of violation of laws that is received by the Developer relative to this Agreement or the Project shall be immediately forwarded to the Village Manager.

(viii) The Developer shall be in compliance with the Village's property maintenance regulations. Further, Developer shall remedy any code violations prior to any payment of the incentive to Developer.

Section 503. Indemnification of Village. Developer, its successors and assigns shall defend, indemnify and hold harmless the Village and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees, from and against any and all civil liabilities, actions, responsibilities, obligations, losses, damages and claims, and all costs and expenses, including but not limited to attorney's fees and expenses (collectively, "Losses") pursuant to any federal, state and local laws including the common law), statutes, ordinances, rules, regulations and other requirements relating to or which the Village and/or its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees may incur from or on account of Developer's use of the Site, any tests or surveys conducted by the Developer, and the construction of the Project, including but not limited to any Losses incurred which are based on tort law, wrongful death and/or a personal injury claim, suit or action and/or any Losses relating to environmental investigation, cleanup, or abatement, whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future, and in any manner whatsoever incurred by reason of Developer's or worker's activities at the Site or the Project. It is expressly understood, agreed upon and the specific intent of this Agreement that the Village and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees will at no time assume responsibility or liability for the actions of Developer or any of the workers or other persons on the Site. As between the Village and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees and Developer, Developer shall at all times be held solely responsible to all persons on the Site present there because of the Project and work thereon. Developer and its successors and assigns hereby agree to release, waive, covenant not to sue and forever discharge the Village and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees, for any claim, suit or action, whether or not well founded in fact or in law, which Developer and the workers have, or may have, arising out of the Project, except to the extent that any contamination occurs as a result of actions taken after the date of this Agreement by the Village or any of its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees, and except for any claim or action which Developer, its successors and assigns may have under this Agreement.

Section 504. Insurance.

(a) The Developer, and any successor in interest to the Developer, shall obtain or cause to be obtained and continuously maintained when required during the Term of this Agreement, insurance as set forth below. The Developer shall provide a copy of all policies to the Village with proof that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and continuously maintain. Prior to and during the commencement of construction of any portion of the Project, the Developer shall obtain (or cause its contractor to obtain) and continuously maintain the following:

(i) Workers' compensation insurance with statutory coverage;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with limits against bodily injury and property damage of not less than \$5,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis. The Village shall be named as an "additional insured" with respect to such policy and protected in accordance with a clause in form and content satisfactory to the Village. Developer's Policy shall be primary and non-contributory.

(b) After completion of construction of the Project and for so long as the Developer owns the Site, the Developer shall obtain and continuously maintain the following: (i) fire insurance and extended coverage on a replacement basis for ninety percent (90%) of the insurable value of the Project at the date of completion, and (ii) commercial general liability insurance meeting the requirements of Section 504(a)(ii) above.

(c) All insurance required in this Article shall be obtained and continuously maintained in responsible insurance companies selected by the Developer or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Article, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured and the Village at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Article. In lieu of separate policies, the Developer or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(d) In the event of damage or destruction to the Project by fire or other casualty during construction or thereafter while the TIF Note is outstanding, any insurance proceeds received from such loss (after deducting any expenses incurred in collection thereof) shall be applied to the restoration, reconstruction and repair of the Project to at least the value and substantially the same character as prior to the damage or destruction, subject however to the rights and prior claims of (and subject to the application of such proceeds pursuant to the direction of) any holder of a deed of trust, mortgage or similar encumbrances on the Site securing loans, advances or extension of credit to finance or from time to time refinance all of part of the Project.

Section 505. Developer Responsible for All Utility Relocation and MWRDGC Fees. The Developer agrees that it will pay all utility relocation fees or any fees imposed with respect to the Project by the Metropolitan Water Reclamation District of Greater Chicago.

Section 506. Operation of the Restaurants. The Developer agrees that it will, from and after the date of certification by the Village that the Project has been constructed in accordance with this Agreement, use commercially reasonable efforts to operate the Restaurants for the Term of this Agreement, using the design and brand concepts indicated in the Project Documents (or replacements thereof reasonably acceptable to the Village), but this covenant does not obligate the Developer to increase its equity investment in the Restaurants or operate at a loss or in an uneconomic manner.

Section 507. Signage. All signage to be located upon the Site shall be subject to Village Board approval and in accordance with all applicable Village ordinances and permitting requirements, which approval shall not be unreasonably withheld.

Section 508. Assignment.

(a) The Developer shall not encumber or collaterally assign this agreement for any purpose. The Developer further agrees not to absolutely assign this Agreement to any person or entity except to a Developer Affiliate (as hereafter defined). Any transfer to a Developer Affiliate is subject to the prior written consent of the Village, which consent shall not unreasonably be withheld, subject to the provisions of paragraphs (b) and (c) below; provided, however, that nothing in this Agreement shall preclude the granting of easements, licenses or rights of way to utility companies.

(b) The Village, in its discretion and opinion, may approve any transfer of this Agreement to any trust or legal entity in which Fred Hoffman and/or Mark Hoffmann are at least 51% owners (“**Developer Affiliate**”).

(c) If the Developer requests consent to an assignment, (i) the Developer shall provide such information as may reasonably be requested to indicate that the operation of the Project will continue to be managed and operated in the manner that benefits the goals and objectives of the Redevelopment Plan; (ii) the Developer Affiliate shall have executed and delivered to the Village an instrument stating that such transferee has read this Agreement and agrees to be bound by its terms, including, but not limited to, this Section 508, and, (iii) if such transferee is not a natural person, the Developer Affiliate shall have delivered to the Village written opinion of counsel to such Developer Affiliate covering such matters as the Village may reasonably request with regard to the due authorization, delivery and enforceability of the transferee’s assumption of this Agreement.

(d) Upon consummation of a transfer complying with the provisions of this Section 508, the Developer shall be relieved from all further liability under this Agreement with respect to the interest so transferred.

(e) Each reference to the Developer in this Section 508 shall be deemed to include the successors and permitted assigns of the Developer under this Agreement, including the person or persons acquiring all or a portion of the interest of such members and any shareholders, members or partners of any successor or permitted assign of the Developer.

Section 509. Payment of Taxes and Fees. Except as provided in Section 501 of this Agreement the Developer agrees to promptly pay or cause to be paid as the same become due, any and all fees, rent, taxes and governmental charges of any kind that may at any time be lawfully assessed with respect to the Project or required under this Agreement. The Developer certifies that it is not delinquent in the payment of any tax administered by the Illinois Department of Revenue or any tax or fee administered by the Village. The Developer does not owe the Village any money prior to the execution of this Agreement and knows of no proposed additional tax or assessment against it by any governmental authority, that would

be reasonably likely to have a material adverse effect on the business, condition (financial or otherwise) or operations of the Developer.

Section 510. Environmental Matters. The Developer shall not dispose of or release any hazardous substance, material, contaminant, or pollutant, as defined by any federal or state environmental laws, in, under, on or about the Site. The Developer, at its costs, shall remediate any hazardous substance, contaminant or pollution or other dangerous environmental condition that it (or its employees, agents or contractors) creates or causes with respect to the Project in accordance with all federal, state, county and local applicable laws and regulations. The Developer shall indemnify and hold the Village and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees harmless against any claim, suit, loss, liability or damage, including, attorneys fees and expenses incurred by the Village and/or its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees in defending itself or complying with applicable laws and regulations, arising out of or relating to the disposal or release of any hazardous substance, material, contaminant, or pollutant during performance of the Project in, under, on or about the Site by the Developer.

Section 511. Reimbursement of Village of Hoffman Estates. If at any time a court of competent jurisdiction enters an order requiring the Village to refund, pay or transfer any funds into the Fund as reimbursement for TIF moneys paid to the Developer, the Developer shall reimburse the Village for such amounts. The Village will appeal any such order if the Developer makes a timely written request to the Village to appeal the order and Developer pays all costs and fees associated with the appeal.

ARTICLE VI REMEDIES FOR BREACH OF AGREEMENT

Section 601. Developer Events of Default. The following shall be Events of Default with respect to this Agreement:

(a) If any material representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by a party hereto, in writing and delivered to the Village pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within thirty (30) days after written notice from the Village.

(b) Default by Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant contained in this Agreement, or any other agreement, financing or otherwise, concerning the existence, structure or financial condition of Developer and/or the Project and Property.

(c) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of thirty (30) consecutive days.

(d) The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, (or similar official) of Developer or of any substantial part of the

Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within thirty (30) consecutive days.

(e) Failure to have funds to meet Developer's obligations; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within thirty (30) days after written notice from the Village.

(f) Developer abandons the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than thirty (30) days for any reason other than: (i) Force Majeure or (ii) if Developer is ahead of its planned construction schedule.

(g) Developer materially fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the buildings contemplated by this Agreement; provided, however, that such default shall constitute an Event of Default only if the Developer does not, within thirty (30) days after written notice from the Village, remedy the default.

(h) If the Developer refuses or fails to construct the Project in conformance with the Final Project Documents and consistent with the provisions of this Agreement, the Village may, in its sole discretion, terminate this Agreement and the Village's obligation to make any payment due under this Agreement shall terminate and the Village shall not be obligated to pay any kind of compensation, damages, or penalties to the Developer.

Section 602. Village Events of Default. The following shall be Events of Default with respect to this Agreement:

(a) If any representation made by the Village in this Agreement shall prove to be untrue or incorrect in any material respect as of the date made.

(b) Default by the Village in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; including but not limited to failure by the Village to issue the TIF Note or make any payment due in accordance with the terms thereof, provided, however, that such default shall constitute an Event of Default only if the Village does not remedy the default within thirty (30) days after written notice from the Developer.

Section 603. Remedies for Default. In the case of an Event of Default hereunder:

(a) The defaulting Party shall, upon written notice (in accordance with Section 903) from the non-defaulting party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured within thirty (30) days, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than ninety (90) additional days after receipt of such notice, unless extended by mutual agreement, then the non-defaulting party, may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting party's obligations under this Agreement.

(b) In case the Village shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, Developer and the Village shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the Village shall continue as though no such proceedings had been taken.

(c) In the case of an Event of Default by Developer, and its failure to cure such default after due notice and within the time frames provided for in this Agreement, in addition to any other remedies at law or in equity, the Village shall have the right, thirty (30) days after notice to the Developer indicating its intent to terminate, to terminate this Agreement by action of the Corporate Authorities. Termination of the Agreement shall not cancel any obligations of the Village under the TIF Note to the extent of the principal amount then outstanding.

(d) Any payment required of the Developer under the terms of this Agreement shall be a lien upon the Site which may be foreclosed in the same manner and with the same effect as in the foreclosure of a mortgage upon real estate, subject however to the prior rights and claims of any holder of a deed of trust, mortgage or similar encumbrances on the Site securing loans, advances or extension of credit to finance or from time to time refinance all of part of the Project.

(e) In the case of an Event of Default by the Village and its failure to cure such default after due notice and within the time period provided for in this Agreement, in addition to any other remedies at law or in equity, the Developer shall be relieved, during the entire period of any such ongoing Default, of its obligations under this Agreement if it so elects, and the Developer shall have the right, if it so elects, to terminate this Agreement.

Section 604. No Waiver by Delay or Otherwise. Any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither Party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, or the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

Section 605. Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

Section 701. Developer's Representations and Warranties. The Developer represents and warrants that:

(a) Its general partner is a duly organized and validly existing Illinois corporation under the laws of the State of Illinois. The Developer has all requisite corporate power and authority to enter into

this Agreement and to consummate the transactions contemplated by this Agreement and this Agreement has been duly executed and delivered by authorized members of the Developer and is legally binding upon and enforceable against the Developer in accordance with its terms.

(b) The Developer is not a party to any contract or agreement or subject to any charter, operating agreement, article of organization or other limited liability company restriction which materially and adversely affects its business, property or assets, or financial condition. Neither the execution and delivery of this Agreement nor compliance with the terms of this Agreement will conflict with, or result in any breach of the terms, conditions or restrictions of, or constitute a default under, or result in any violation of, or result in the creation of any liens upon the properties or assets of the Developer pursuant to, the operating agreement or articles of incorporation of the Developer, any award of any arbitrator or any agreement (including any agreement with members), instrument, order, judgment, decree, statute, law, rule or regulation to which the Developer is subject.

(c) There is no action, suit, investigation or proceeding pending, or to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, or before any court, arbitrator, or administrative or governmental body, nor has the Developer received notice in respect of, nor does it have any knowledge of, any default with respect to any judgment, order, writ, injunction, or decree of any court, governmental authority or arbitration board or tribunal, which in either case might reasonably be expected to result in any material adverse change in the business, condition (financial or otherwise) or operations of the Developer or the ability of the Developer to perform its obligations under this Agreement.

(d) The execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action.

(e) The Developer has filed all federal, state and other income tax returns which, to the knowledge of the officers of the Developer, are required to be filed, and each has paid all taxes as shown on such returns and on all assessments received by it to the extent that such taxes have become due, except such taxes as are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with generally accepted accounting principles. The Developer knows of no proposed additional tax or assessment against it by any governmental authority that would be reasonably likely to have a material adverse effect on the business, condition (financial or otherwise) or operations of the Developer.

(f) The Developer has, or is able to obtain, funds in an amount not less than that required to complete construction of the Project.

Section 702. Village Representations and Warranties. The Village represents and warrants that:

(a) The Village is a municipal corporation under the laws of the State of Illinois with power and authority under its home rule powers and the Act to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

(b) To the best of its knowledge and belief, the execution of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any breach of, or constitute a default under, any agreement, contract, lease, mortgage, indenture, deed of trust or other instrument to which the Village is a party, nor violate any federal, state or local ordinance or statute.

(c) There is no action, suit or proceeding pending, or to the knowledge of the Village threatened, against or affecting the Village, at law or in equity, or before any governmental authority

which, if adversely determined, would impair the Village's ability to perform its obligations under this Agreement.

(d) All actions of the President and Board of Trustees of the Village required to be taken to authorize execution of this Agreement have been validly and duly taken in accordance with law and the officers of the Village signing this Agreement have been duly authorized to execute this Agreement on behalf of the Village.

(e) The Project as set forth in this Agreement will not result in the displacement of residents from inhabited units under Section 11-74.4-3(n)(5) of the Act.

Section 703. Disclosure. In accordance with Illinois law, 50 ILCS 105/3.1, simultaneously with the execution of this Agreement by the parties, the Developer or an authorized managing member thereof shall submit a sworn affidavit to the Village disclosing the identity of every owner and beneficiary who shall obtain any interest, real or personal, in the Project, and every shareholder entitled to receive more than 7½% of the total distributable income of any corporation after having obtained such an interest in the Project or, alternatively, if a corporation's stock is publicly traded, a sworn affidavit by an officer of the Developer or its managing agent that there is no readily known individual who shall obtain a greater than 7½% percent interest, real or personal, in the Developer or the Project. The sworn affidavit shall be substantially similar to the one described in **EXHIBIT D** attached hereto and made a part of this Agreement. Said affidavit shall be updated, as necessary.

ARTICLE VIII PROVISIONS PERTAINING TO LENDERS

Section 801. Right to Collaterally Assign. Developer may not collaterally assign this Agreement..

ARTICLE IX GENERAL PROVISIONS

Section 901. Entire Agreement; Successors and Assigns; Amendments. This Agreement, and the Exhibits attached to it contain the entire agreement between the Parties in connection with these transactions, and there are no oral or parole agreements, representations or inducements existing between the parties relating to these transactions which are not expressly set forth in this Agreement and covered by this Agreement. This Agreement may not be modified except by a written agreement signed by all of the parties or their successors in interest, and in the case of the Village, shall require the adoption of an ordinance or resolution by the President and Board of Trustees of the Village approving such amendment. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement, their respective heirs, legal representatives, administrators, successors, successors in interest and assigns.

Section 902. Governing Law; Interpretation; Partial Invalidity. This Agreement shall be governed by the laws of the State of Illinois. The captions, section numbers and article numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope or intent of such paragraphs or articles of this Agreement nor in any way affect this Agreement. The invalidity of any provision of this Agreement or portion of a provision shall not affect the validity of any other provision of this Agreement or the remaining portions of the applicable provision.

Section 903. Notices. All notices, demands, requests, consents, approvals or other instruments required or permitted to be given under this Agreement shall be in writing and shall be executed by the

Party or an officer, agent or attorney of the Party, and shall be deemed to have been effective as of the date of actual delivery, if by messenger delivery, on the date of transmission if transmitted via facsimile during normal business hours (9:00 a.m. to 5:00 p.m.), or as of the third (3rd) day from and including the date of posting, if deposited in the United States mail, postage prepaid, registered or certified mail, addressed as follows (or to such other address as may be designated from time to time by either Party by written notice to the other):

If to the Developer: Mr. Mark Hoffmann, Vice President
Ala Carte Entertainment Limited Partnership
2330 Hammond Dr Ste G
Schaumburg, IL 60173-3869

With a copy to: Bruce K. Huvard, Esq.
Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

If to the Village: Village of Hoffman Estates
1900 Hassell Road
Hoffman Estates, Illinois 60169
Attn: Village Manager

With a copy to: Arthur L. Janura, Jr.
Arnstein & Lehr LLP
120 Riverside Plaza, Suite 1200
Chicago, Illinois 60606

Section 904. Conflict of Interest: Village's Representative Not Individually Liable. No member, official or employee of the Village shall have any personal interest, direct or indirect, in this Agreement; nor shall any such member, official or employee participate in any decision relating to this Agreement which affects such person's interests or the interests of any corporation, partnership, or association in which such person is directly or indirectly interested. No member or employee of the Village has acquired any interest direct, or indirect, in the Site. No member, official, or employee of the Village shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the Village or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement, except as such shall be found to be caused by a violation of Section 4(n) of the Act.

Section 905. Municipal Limitation. All commitments or obligations of the Village undertaken pursuant to this Agreement shall be limited to the extent that such obligations are within its powers as a municipal corporation.

Section 906. Costs. Any cost and expense incurred by either Party with regard to the preparation of this Agreement shall be borne exclusively by such Party with no right to reimbursement from the other except as provided in this Agreement.

Section 907. Recording. The Parties agree that this Agreement will be recorded by the Village, at its cost, with the Cook County Recorder's Office after execution thereof by the Parties.

Section 908. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a joint venture between the Parties. It is understood and agreed that this Agreement does not

provide for the joint exercise by the Parties of any activity, function or service, nor does it create a joint enterprise, nor does it constitute either Party as an agent of the other for any purpose whatsoever.

Section 909. Counterparts. This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute but one and the same instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought.

Section 910. Authority to Execute. Each signatory on behalf of a Party to this Agreement warrants and represents that he or she is a duly authorized representative of that Party, with full power and authority to agree to this Agreement, and all terms herein, on behalf of that Party.

Section 911. Exhibits. The following exhibits are attached hereto and made a part hereof or incorporated herein by reference and made a part hereof:

EXHIBIT A - Legal Description of the Barrington Higgins Tax Increment Financing District

EXHIBIT B - Legal Description of the Site

EXHIBIT C - Form of Request for Reimbursement

EXHIBIT D - Disclosure Affidavit

Section 912. Approvals. The Developer recognizes and agrees that the Village shall exercise reasonable discretion with regard to all approvals and permits as required by ordinance relating to the Project, including, but not limited to, approval of the Final Project Documents, demolition permits, excavation permits, grading permits, building permits, certificates of occupancy and failure on the part of the Village to grant any approval or issue any permit shall not be deemed as the cause of a default by the Developer under this Agreement or give rise to any claim or damages against or liability to the Village pursuant to this Agreement.

Section 913. Effective Date - Term of Agreement. This Agreement shall be deemed dated and become effective on the date the Corporate Authority approves this Agreement and shall remain in effect thereafter.

IN WITNESS WHEREOF, the parties to this Agreement have set their hands and seals to this Agreement on the day and year first above written.

VILLAGE OF HOFFMAN ESTATES

ALA CARTE ENTERTAINMENT LIMITED PARTNERSHIP

By: HOFFMANN ENTERPRISES, INC.
an Illinois corporation, General Partner

By: _____
Name: William D. McLeod
Title: Village President

By: _____
Name: Mark Hoffmann
Title: Vice President

Date: _____

Date: _____

ATTEST:

By: _____
Name: Bev Romanoff
Title: Village Clerk

Date: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On _____, 2014, William D. McLeod, as Village President, and Bev Romanoff, as Village Clerk, of the Village of Hoffman Estates, Cook County, Illinois, a municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of the Village of Hoffman Estates, for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 2014.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On _____, 2014, Mark Hoffmann, personally known to me to be the Vice President of Hoffmann Enterprises, Inc. an Illinois corporation, the General Partner of Ala Carte Entertainment Limited Partnership, a Delaware limited partnership, and the same person whose name is subscribed to the foregoing instrument, appeared before me in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said limited partnership, for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 2014.

Notary Public

EXHIBIT A
Legal Description of the Barrington Higgins Tax Increment Financing District

All that part of the Northwest Fractional 1/4, of Section 7, in Township 41 North, Range 10, East of the Third Principal Meridian, lying southerly of the 240 foot wide right of way of State Route No. 72 and lying northerly of the center line of Old Higgins Road, as it is now constructed and travelled,' (also excepting therefrom the west 50 feet of said Section 7, being the right of way of Barrington Road, as now dedicated), (also excepting therefrom a tract of land heretofore conveyed to Harvey Bierman and described as follows: beginning at the intersection of the north line of Old Higgins Road and the east line of Barrington Road; thence northerly along the east line of Barrington Road 201.20 feet; thence easterly 201.20 feet; thence south 231.76 feet to the north line of Old Higgins Road; thence northwesterly along the north line of Old Higgins Road, 203.51 feet to the place of beginning, in the northwest 1/4, of Section 7, Township 41 North, Range 10, east of the Third Principal Meridian, in Cook County, Illinois, and also excepting that part condemned by the Department of Transportation in Case No. 84 L 052729, and also excepting: beginning at a point 50.0 feet east (as measured at right angles thereto from the west line of said fractional northwest 1/4, said point beginning, lying 404.24 feet south from the north line of said northwest fractional 1/4, and being the intersection of the east right of way line of Barrington Road and the southwesterly right of way line of Higgins Road (Route No. 72); thence southeasterly along the southwesterly right of way line of Higgins Road, 94.36 feet to a point of curvature in said line; thence continuing along said right of way line of a curve to the left having a radius of 9968.18 feet a distance of 160.64 feet; thence southwesterly, a distance of 99.56 feet to a point on a line drawn 130.0 feet east of and at right angles to the east right of way line of Barrington Road at a point lying 240.0 feet south from the point of beginning; thence west 150.0 feet on said line drawn at right angles to the said east right of way line of Barrington Road to said point lying 240.0 feet south from point of beginning; thence north on said east right of way line of Barrington Road, a distance of 240.00 feet to the point of beginning all in Schaumburg Township, in Cook County, Illinois.

EXHIBIT B

LEGAL DESCRIPTION OF THE SITE

PARCEL A:

PARCEL B:

EXHIBIT C

Form of Request for Reimbursement

[Date]

Village of Hoffman Estates
1900 Hassell Road
Hoffman Estates, Illinois 60169
Attention: Village Manager

Re: Redevelopment Agreement, dated _____, 2014 (the "**Agreement**")
By and Between the Village of Hoffman Estates, Illinois and
Ala Carte Entertainment Limited Partnership (the "**Developer**").

The undersigned herewith transmits the following to the Village as required by Section 402(d) of the Agreement:

- (i) Final certificates of occupancy issued by the Village.
- (ii) Closing escrow disbursement statement, real estate transfer tax declarations and copy of recorded deed to confirm the purchase of Real Estate Parcel B and that the acquisition cost paid at the closing exceeded \$500,000.
- (iii) All contracts and sworn statements and bills of sale from contractors showing payment in full, accompanied by good and sufficient final waivers of lien and lien releases from the general contractor and its subcontractors, with respect to labor and materials incorporated in the Project. In the event of any payment dispute (i.e., a subcontractor refuses to provide a lien waiver to the general contractor), the Developer may furnish the Village proof of payment along with evidence of adequate retention, title indemnity or other assurance posted with the title company sufficient for the title company to insure over such disputed amounts.
- (iv) Paid invoices for legal, TIF planning, financial and similar services performed in connection with the Project or this Agreement ("**Professional Service Fees**").

The undersigned hereby certifies to the Village that the above delivered items are true and accurate copies of the original documents and represent accurately in all material respects the cost to acquire Restaurant Parcel B and the Total Project Costs (as summarized in Schedule 1 attached hereto) paid by the undersigned to complete the Project in accordance with the Agreement, as well as the Professional Service Fees in the amount of \$_____ incurred in connection with the preparation of Amendment No. 4, the preparation of studies, projections and analyses in connection therewith, and legal fees incurred in connection with said amendment, the preparation of this Agreement and services rendered in connection with the approval and the issuance of the TIF Note.

The undersigned requests that the TIF Note be issued to the Developer in the principal amount of \$_____, of which \$500,000 will be used to reimburse the Developer for a portion of the cost of acquiring Restaurant Parcel B, and \$_____ will be used to reimburse the Developer for Professional Service Fees.

The undersigned certifies that

(i) The Total Project Costs documented by this Request for Reimbursement were made or incurred or financed and were necessary for the Project and were made or incurred in accordance with the construction contracts, plans and specifications heretofore in effect;

(ii) The expenditures set forth in Schedule 1 attached hereto represent proper Total Project Costs, have been properly recorded on the Developer's books, and are accurately summarized in Schedule 1; and

(iii) The Developer is not in default under the Agreement and nothing has occurred to the knowledge of the Developer that would prevent the performance of its obligations under Agreement.

**ALA CARTE ENTERTAINMENT LIMITED
PARTNERSHIP**, a Delaware limited partnership

By: HOFFMANN ENTERPRISES, INC.
an Illinois corporation, General Partner

By: _____
Mark Hoffmann, Vice President

Date: _____

APPROVED:

VILLAGE OF HOFFMAN ESTATES, ILLINOIS

By: _____
Village Manager

Date: _____

EXHIBIT D

DISCLOSURE AFFIDAVIT

State of Illinois)
)
County of Cook)

THE DEVELOPER MUST SIGN THIS AFFIDAVIT

I, Mark Hoffmann, reside at _____, County of Cook, State of Illinois, being first duly sworn and having personal knowledge of the below facts, swear to the following:

That I am over the age of eighteen and am the vice-president of Hoffmann Enterprises, Inc, the General Partner of the Developer.

That the Redevelopment Site in question includes two parcels with common street addresses as follows: 2475 W. Higgins Road, Hoffman Estates, IL (PIN 07-07-100-028) is herein referred to as "**Restaurant Parcel A**" and the parcel commonly known as 2525 W. Higgins Road, Hoffman Estates, IL (PIN 07-07-100-029) is herein referred to as "**Restaurant Parcel B**", and the two parcels collectively are referred to as the "**Site**").

That I understand that pursuant to 50 ILCS 105/3.1, prior to execution of the Redevelopment Agreement between the Developer and the Village, state law requires the owner, authorized trustee, corporate official or managing agent to submit a sworn affidavit to the Village disclosing the identity of every owner and beneficiary who will obtain any interest, real or personal, in the Redevelopment Site, and every shareholder who will be entitled to receive more than 7.5% of the total distributable income of any corporation having any interest, real or personal, in the Redevelopment Site after this transaction is consummated.

As the corporate official for the Developer, I declare under oath that (choose one):

- (a) The owners, beneficiaries or partners of the Developer are: or
- (b) The shareholders of Hoffmann Enterprise, Inc., with more than 7 1/2% interest are:

This instrument is made to induce the Village to enter into the Redevelopment Agreement and in accordance with 50 ILCS 105/3.1.

Affiant: _____

Subscribed and Sworn to before me this _____ day
of _____, 2014.
