

Prepared by:
Kathleen T. Henn
On behalf of the Village of Orland Park
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Drive
Chicago, IL 60606

For Recorder's Use Only

**AMENDMENT TO DEVELOPMENT AGREEMENT
(FOUNTAIN VILLAGE – 179TH STREET, EAST OF WOLF ROAD)**

THIS AMENDMENT, made and entered into this _____ day of _____, 2013, by and between the VILLAGE OF ORLAND PARK, Cook and Will Counties, Illinois, an Illinois municipal corporation (hereinafter referred to as "Village"), and STATE BANK OF COUNTRYSIDE, as Trustee under Trust Agreement dated November 26, 2003 and known as Trust Number 03-2595 and GBS ENTERPRISES, Inc., an Illinois corporation (hereinafter collectively referred to as "Owner").

W I T N E S S E T H:

WHEREAS, on April 24, 2006, a certain Development Agreement (hereinafter referred to as the "Agreement") between the Village and Standard Bank and Trust, as Trustee under Trust Agreement dated January 15, 2005 and known as Trust Number 18646 and Fountain Square Development, LLC, an Illinois limited liability company was executed for a term of seven years; and

WHEREAS, said Agreement related to the real estate, consisting of approximately 10.8 acres located at the southeast corner of 179th Street and Wolf Road, and legally described as follows:

THAT PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 32,
DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION; THENCE S - 00 DEGREES 15 MINUTES 09 SECONDS -W ALONG THE WEST LINE OF SAID WEST HALF, A DISTANCE OF 820.00 FEET; THENCE S- 89 DEGREES 44 MINUTES 51 SECONDS – E, A DISTANCE OF 412.00 FEET; THENCE N- 00 DEGREES 15 MINUTES 09 SECONDS – E, A DISTANCE OF 238.00 FEET; THENCE S – 89 DEGREES 44 MINUTES 51 SECONDS – E, A DISTANCE OF 266.00 FEET; THENCE N – 00 DEGREES 21 MINUTES 12 SECONDS – E, A DISTANCE OF 43.83 FEET TO THE POINT OF BEGINNING; THENCE N – 00 DEGREES 21 MINUTES 12 SECONDS – E, A DISTANCE OF 170.17 FEET; THENCE N – 42 DEGREES 56 MINUTES 39 SECONDS – E, A DISTANCE OF 81.24 FEET; THENCE N – 00 DEGREES 21 MINUTES 12 SECONDS – E, A DISTANCE OF 248.00 FEET TO A POINT 50 FEET SOUTHERLY OF THE NORTH LINE OF SAID SOUTHWEST QUARTER AS MEASURED PERPENDICULAR THERETO; THENCE S – 89 DEGREES 38 MINUTES 48 SECONDS – E, PARALLEL TO SAID NORTH LINE A DISTANCE OF 596.82 FEET TO A POINT ON THE EAST LINE OF SAID WEST HALF; THENCE S – 00 DEGREES 11 MINUTES 26 SECONDS – W A DISTANCE OF 1002.18 FEET; THENCE N – 51 DEGREES 26 MINUTES 39 SECONDS – W A DISTANCE OF 833.06 FEET TO THE POINT OF BEGINNING, CONTAINING 470,731 SQ. FT., OR, 10.8065 ACRES, ALL IN TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

P.I.N.: 27-32-300-014-0000

WHEREAS, the property described above has subsequently been subdivided and a bank building and retail building were constructed on part of the property and twenty-five of the proposed thirty-five townhomes have been constructed and are owned by private owners who are not parties to this Amendment;

WHEREAS, the legal description of the Property, excluding the units that are owned by those not parties to this Agreement, is hereinafter referred to as “Real Estate”:

LOTS 3, 4, 5 (EXCEPT THE SOUTHEASTERLY 64.26 FEET OF THE NORTHWESTERLY 107.69 FEET THEREOF), LOT 7 (EXCEPT THE NORTH 129.23 FEET THEREOF), AND ALL OF LOTS 9 AND 10 IN FOUNTAIN VILLAGE SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTHWEST QUARTER 1/4 OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 30, 2006 AS DOCUMENT NUMBER 0618134138, AND AMENDED BY PLAT RECORDED JUNE 15, 2007 AS DOCUMENT NUMBER 0716660013, IN COOK COUNTY, ILLINOIS.

PINs: 27-32-302-014, 27-32-302-015, 27-32-302-033, 27-32-302-034,
27-32-302-038, 27-32-302-039, 27-32-302-040, 27-32-302-041
27-32-302-028, 27-32-314-001, and 27-32-302-013

WHEREAS, STATE BANK OF COUNTRYSIDE, as Trustee under Trust Agreement dated November 26, 2003 and known as Trust Number 03-2595 and GBS ENTERPRISES, Inc., an Illinois corporation are the legal titleholders of record of the Real Estate; and

WHEREAS, Village and Owner desire that said Agreement be amended with respect to the term of the Agreement as set forth in SECTION 10 to provide that the Agreement, as amended, be in place for a period of 9 years from the date of execution of the Agreement; and

WHEREAS, there are public improvements left to be completed in accordance with the Agreement; and

WHEREAS, the Corporate Authorities of the Village have considered this Amendment and have determined that the best interests of the Village will be served by authorizing this Second Amendment.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

SECTION 1:

The preambles set forth above are hereby incorporated into and made a part of this Amendment.

SECTION 2:

The first paragraph of SECTION 10 of said Agreement shall be amended to read as follows:

"SECTION TEN: Binding Effect and Term and Covenants Running with the Land.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, the successor owners of record of the Subject Property or any portion thereof, assignees, lessees and upon any successor municipal authorities of said Village and successor municipalities, for a period of nine (9) years from the date of execution hereof and any extended time that may be agreed to by amendment."

SECTION 3:

A new Section 29 shall be added to the Agreement, which shall read as follows:

Section 29: PUBLIC IMPROVEMENTS – NOT A JOINT VENTURE OR MUNICIPAL PROJECT/CONTRACT.

It is understood that Owner has to install certain public improvements under the Village's ordinances, including but not limited to streets, sidewalks, water mains, sanitary and storm sewer lines, street trees and landscaping (the "Public Improvements"). The Owner is further required to provide to the Village adequate security that the Public Improvements will be satisfactorily completed with such security being in a form of a letter of credit from an approved bank or financial institution which provides that if the public improvements are not satisfactorily completed the Village can draw on the letter of credit such amount that is necessary to complete the Public Improvements.

It is understood and acknowledged that the Public Improvements are to be installed by the Owner for the benefit of the future residents/occupants of the Owner's project and are not a "public works" project of the Village and the Village will NOT require the Owner to provide performance and/or payment bonds for the protection of the Owner's contractors, subcontractors or material suppliers. There shall be no implied or express contract between the Village and any contractor(s) hired by the Owner to construct and install the Public Improvements.

It is further acknowledged and understood that the Village is neither a party to nor a joint venturer or partner with the Owner in any contract entered into between the Owner and any contractor(s) ("Contractor(s)") it hires to construct and install the Public Improvements. Such contracts are strictly private contracts between the Owner and the Contractor(s) it hires (the "Contracts"). It is further acknowledged that the Village is neither an expressed or implied "third party beneficiary" in any such Contracts, nor can any recourse be had against the Village under any of the terms of the Contracts and/or any bonds required by Owner of the Contractor(s) under such Contracts.

Furthermore, it is also understood and acknowledged that any such Contractor(s) are neither express or implied third party beneficiaries under the letter of credit provided by Owner to Village, such letter of credit being intended to solely protect the public by ensuring satisfactory completion of the Public Improvements, nor shall the Contractor(s) have any recourse against the issuer of the letter of credit, such letter of credit being solely a contract between the Village and the issuer of the letter of credit.

SECTION 4:

All of the other terms, covenants and conditions of said Agreement, not deleted or amended herein shall remain in full force and effect during the effective term of said Agreement.

SECTION 5:

This Amendment shall be binding upon and inure to the benefit of the parties hereto, successor owners of record of the Real Estate, and their assignees, lessees and

upon any successor municipal authorities of said Village and successor municipalities, as provided in the April 24, 2006 Development Agreement.

SECTION 6:

Notwithstanding any provision of this Amendment to the contrary, the Owner shall at all times during the term of this Amendment remain liable to the Village for the faithful performance of all obligations imposed upon Owner by this Amendment and all obligations in the Development Agreement until such obligations have been fully performed or until Village, at its sole option, has otherwise released Owner from any or all of such obligations as provided elsewhere in the Agreement, as amended.

SECTION 7:

It is understood and agreed to by the parties that, except as expressly set forth herein, the Village is not relinquishing any available rights or remedies under the previously entered into Agreement, as amended, and that a violation of this Amendment shall constitute a violation of the Agreement, as amended, as fully as if the violation was a violation of one of the original terms of the Agreement. Also, regardless of whether the Owner is in default hereunder, nothing herein shall be construed to excuse the Owner from any or all of their obligations under the Agreement except as specifically set forth herein.

SECTION 8:

Failure of any party to this Amendment to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

SECTION 9:

A copy of this Amendment or a memorandum of this Amendment shall be recorded by the Village.

SECTION 10:

The officers of the Owner executing this Amendment warrant that they have been lawfully authorized by their Board of Directors to execute this Amendment on behalf of said Owner. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Amendment. The Owner and Village shall, upon request, deliver to each other at the respective time such entities cause their authorized agents to affix their signatures hereto copies of all bylaws, resolutions, letters of direction, ordinances or other documents required to legally evidence the authority to so execute this Amendment on behalf of the respective entities.

SECTION 11:

This Amendment may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

SECTION 12:

This Amendment shall be signed last by the Village, and the President of the Village shall affix the date on which he signs this Amendment, which date shall be the effective date of this Amendment.

IN WITNESS WHEREOF, the parties hereto, pursuant to the authority in each vested according to law and pursuant to duly enacted ordinances and resolutions of the Corporate Authorities or Board of Directors, respectively, have hereunto caused this document to be signed by its duly authorized officers and the corporate seals to be properly affixed hereto.

VILLAGE OF ORLAND PARK,
an Illinois municipal corporation

By: _____
Village President

ATTEST:

By: _____
Village Clerk

OWNERS

GBS ENTERPRISES, an Illinois
corporation

By: _____

Its: _____

ATTEST:

By: _____

STATE BANK OF COUNTRYSIDE, as Trustee
under Trust Agreement dated November 26,
2003 and known as Trust Number 03-2595

By: _____

Its: _____

ATTEST:

By: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO
HEREBY CERTIFY that the above-named _____ and
_____, personally known to me to be _____ and
_____ of GBS ENTERPRISES, an Illinois corporation, and the same
persons whose names are subscribed to the foregoing instrument as said _____
and _____ of GBS ENTERPRISES, an Illinois corporation, appeared before
me this day in person and acknowledged that they signed and delivered the said
instrument as their own free and voluntary act and as the free and voluntary act of said
_____ for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____,
2013.

My commission expires _____

Notary Public

