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15010 S. Ravinia Ave., Suite 10  
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For Recorder's Use Only

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## **RECAPTURE AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between **THE VILLAGE OF ORLAND PARK**, an Illinois home rule municipal corporation (the "**VILLAGE**"), and **AMERICAN TECHNICAL PUBLISHERS, INC.**, an Illinois corporation, (the "**OWNER**"),

### **W I T N E S S E T H:**

**WHEREAS**, the VILLAGE is a home rule municipal corporation of the State of Illinois and has in full force and effect various ordinances and amendments thereto relating to the development of real estate including but not limited to a Land Development Code and a Building Code; and

**WHEREAS**, the VILLAGE and the OWNER are parties to a Development Agreement with the VILLAGE dated \_\_\_\_\_, 200\_\_\_\_, which authorizes the construction of a commercial development, including a 45,000 square foot three story office building, on property in the Village of Orland Park and legally described as follows (the "Subject Property"):

That Part of the Northwest ¼ of Section 4, Township 35 North, Range 12 East of the Third Principal Meridian, described as follows: Commencing at the intersection of the East line of said Northwest ¼ and the North line of Orland Parkway as dedicated per Document Number R2001-106365; thence North 89

degrees 38 minutes 27 seconds West, along the North line of said Orland Parkway, 764.74 feet to the Point of Beginning; thence continuing along the North line of said Orland Parkway, North 89 degrees 38 minute 27 seconds West, 575.00 feet; thence North 00 degrees 21 minutes 33 seconds East, perpendicular to the North line of said Orland Parkway 337.67 feet; thence South 89 degrees 38 minutes 27 seconds East, 575.00 feet; thence South 00 degrees 21 minutes 33 seconds West, 337.67 feet to the Point of Beginning, all in Will County, Illinois.

Part of 19-09-04-100-018 and commonly known as 10130 West Orland Parkway, Orland Park, Illinois

**WHEREAS**, Illinois Compiled Statutes, Chapter 65, Act 5, Section 9-5-1 et seq., and Article VII, Section 10 of the Illinois Constitution authorize municipalities to enter into contracts with a subdivider, developer or building permittee of property such as the OWNER, and agree that the subdivider may be reimbursed for a portion of the cost of certain improvements beneficial to property not in the subdivision or development; and

**WHEREAS**, the Development Agreement requires the OWNER to construct a thirty-six foot (36') roadway within a seventy foot (70') right-of-way on the west side of the Subject Property extending north from Orland Parkway to the north boundary of the Subject Property, including the base, final asphalt lift, lighting, sidewalk (on the east side only), curb and gutter (including engineering) (the "PROJECT") in accordance with the standards established by VILLAGE Ordinance and including a twelve (12") inch watermain along the limits of the PROJECT and storm sewer serving only the PROJECT itself or any other utilities or other public facilities as well as required earthwork, erosion control and engineering related to these described improvements; and

**WHEREAS**, the OWNER is entitled to, and the Development Agreement provides that the OWNER shall, recover a pro rata and equitable portion (but not to exceed \$219,213.00, or such other amount as the VILLAGE has approved and certified, plus interest as hereinafter

provided) of the cost of constructing the PROJECT, inclusive of engineering fees, which cost recovery is to be paid by the owner(s) of the 18.588 acre parcel north of and west of and adjoining the Subject Property and whose property is described in **EXHIBIT A**, attached (the “Service Area”); and

**WHEREAS**, the VILLAGE agrees the OWNER may recover the costs attributable to construct the PROJECT by means of recapture fees to be paid by the owner(s) of the Service Area; and

**WHEREAS**, the OWNER agrees that OWNER's property must bear its share of the PROJECT costs; and

**WHEREAS**, the VILLAGE hereby agrees to use reasonable efforts to collect the amount attributable to the Service Area; and

**WHEREAS**, the VILLAGE hereby agrees to permit the OWNER to construct the PROJECT and to recover the pro rata and equitable portion (not exceeding \$219,213.00 or such other amount as the VILLAGE has approved and certified, plus interest as hereinafter provided) of the costs thereof subject to the terms and provisions contained in this Agreement.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants and agreements herein contained, the VILLAGE and OWNER agree as follows:

## **SECTION 1**

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

## **SECTION 2**

The OWNER expects to complete the construction of the PROJECT in accordance with the requirements of the Development Agreement and as approved by the Village Engineer. The

OWNER has provided the Village Engineer with the contractual cost of construction, inclusive of engineering fees, as set forth in **EXHIBIT B**.

The VILLAGE has defined the recapture costs for the Service Area and has incorporated the recapture costs for said parcel in **EXHIBIT B**. In determining the costs for recapture, the VILLAGE has determined that the said PROJECT costs shall be borne by the OWNER of the Subject Property and the owner(s) of the Service Area, the maximum cost hereunder to the owner(s) of the Service Area to be \$219,213.00 or such other amount as the VILLAGE has approved and certified.

Any deviation from the recapture costs listed in **EXHIBIT B** requested by the OWNER resulting from engineering changes shall be subject to the reasonable approval of the VILLAGE.

The VILLAGE agrees that in order to provide for reimbursement to the OWNER of a portion of the cost of the construction of the PROJECT (which cost of construction, as documented by the OWNER to the VILLAGE is estimated to be \$219,213.00 with \$170,015.00 being the portion subject to recapture hereunder), as a result of benefits to the property located in the Service Area (as described on Exhibit "B"), the VILLAGE will, to the extent the same is permitted by law, require, as a condition to the VILLAGE's approval of any plat of subdivision or building permit or notice to proceed or to the VILLAGE's permitting any connection to and use of the PROJECT benefitting any properties lying within the Service Area, the owner or owners of said properties in the Service Area to pay to the OWNER a recapture fee when and as collected, in the current amount of \$.21 per square foot in the Service Area and, further, such recapture fee shall include interest applied annually at a rate equal to the average (based on a 12 month calendar basis) interest rate paid on investments in the Public Treasurer's Investment Pool created under Section 505/17 of Chapter 15 of the Illinois Compiled

Statutes. Such interest shall be compounded as of October 31, 2008, and annually thereafter as of October 31 of each year. Such interest shall commence accruing as of October 31, 2008 and shall be added annually, or prorated with a per diem interest factor for payments received during the year, as of January 1 of each year. Such interest shall accrue for a maximum period of 5 years, and thereafter no further interest will accrue.

### **SECTION 3**

It is further understood and agreed that if this Recapture Agreement or the recapture fee to be established pursuant to this Agreement are challenged by legal action, that the OWNER may, at its option, assume the defense of such litigation and pay for all costs and expenses, including witness fees and attorney's fees and expenses, and the OWNER shall indemnify and hold harmless the VILLAGE for any judgment or settlement, and all other costs and expenses of any kind whatsoever charged against or incurred by the VILLAGE in any way directly or indirectly related to any claim, cause of action or lawsuit so brought.

If this Recapture Agreement and/or the recapture fees are held invalid by a court of competent jurisdiction, the OWNER agrees that the VILLAGE need not appeal such decision (unless the Owner, at its option, assumes the costs of an appeal) and shall not have any further obligation to try in any manner to recapture any costs hereunder or under any separate agreement or ordinance, and shall not be obligated to pay any further monies to the OWNER for any reason connected with the PROJECT, this Recapture Agreement or said recapture fees.

### **SECTION 4**

This Agreement may be recorded, at the expense of the OWNER, with the office of the Recorder of Deeds of Will County, Illinois.

## **SECTION 5**

The VILLAGE agrees that it will provide for the payment of the appropriate recapture amounts, including interest, required hereunder in any development agreement involving any property(ies) within the Service Area and developing within the VILLAGE.

## **SECTION 6**

The VILLAGE agrees that it will require the payment of all recapture amounts, including interest, required hereunder, under the following procedures. When a benefitted property owner seeks approval of development of the property of the benefitted property owner and/or connection to the PROJECT, as set forth in the fourth paragraph of Section 2 hereof, the VILLAGE shall notify the party seeking such approval and/or connection that there is a recapture due, the amount of the recapture, and require the petitioner to arrange for a direct payment of the recapture amount to the VILLAGE, which in turn will promptly forward such amount to the OWNER. It is agreed that the VILLAGE will use its best efforts to collect all such recapture amounts due and owing, but it is further agreed that the VILLAGE need not take any legal action to collect the same. The VILLAGE agrees that the OWNER may take such legal action in its own name and/or in the name of the VILLAGE, but the OWNER must pay all court costs, expenses, attorney fees and all other costs relating to the same. It is agreed that the OWNER is an express third party beneficiary under this Agreement.

## **SECTION 7**

The amount of recapture provided for herein shall be in addition to any and all fees customarily required by VILLAGE ordinances and/or development agreements from any benefited property within the Service Area.

## **SECTION 8**

This Agreement is entered into by the VILLAGE pursuant to its home rule authority under the Constitution of the State of Illinois and all other laws hereunto enabling, including but not limited to Illinois Compiled Statutes, Chapter 65, Act 5, Section 9-5-1, et seq.

**IN WITNESS WHEREOF**, the parties hereto, pursuant to the authority vested in each according to law and pursuant to duly enacted Ordinances and Resolutions of the corporate authorities or Board of Directors, as the case may be, have caused this document to be signed by their duly authorized officers and to have their corporate seals properly affixed hereto, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

VILLAGE OF ORLAND PARK, an  
Illinois Municipal Corporation

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

ATTEST:

By: \_\_\_\_\_  
Village Clerk

OWNER:

AMERICAN TECHNICAL PUBLISHERS,  
INC., an Illinois corporation

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

Attest:

\_\_\_\_\_  
Secretary

ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
                    ) SS  
COUNTY OF C O O K )

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

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

Commission expires \_\_\_\_\_

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Notary Public

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 \_\_\_\_\_, \_\_\_\_\_ President and \_\_\_\_\_ Secretary of AMERICAN TECHNICAL PUBLISHERS, INC., an Illinois corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ President and \_\_\_\_\_ Secretary, respectively, 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 corporation for the uses and purposes therein set forth; and the said \_\_\_\_\_ then and there acknowledged that said \_\_\_\_\_, as custodian of the corporate seal of said corporation, caused the corporate seal of said corporation to be affixed to said instrument as said \_\_\_\_\_ own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this \_\_\_\_\_ day of \_\_\_\_\_,  
200\_\_\_\_.

Commission expires \_\_\_\_\_

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Notary Public