

**Ordinance No. 10- 15**

**AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS AND DMYTERKO & WRIGHT DEVELOPMENT, LTD.**

**WHEREAS**, the Village of East Dundee, Illinois (the "*Village*") is a home-rule municipality pursuant to Article VII, Section 6(a) of the Illinois Constitution of 1970 and thereby empowered to exercise any power and perform any function pertaining to its government and affairs; and,

**WHEREAS**, pursuant to the Business District Development and Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.3-1, *et seq.*, as from time to time amended (the "*BDD Act*"), the President and Board of Trustees of the Village (collectively, the "*Corporate Authorities*") are empowered to undertake the development and redevelopment of business districts within its municipal limits which are in need of revitalization if such business districts are deemed to be "blighted," as defined in the BDD Act; and,

**WHEREAS**, pursuant to the BDD Act, on October 19, 2009, the Corporate Authorities, after public hearings, passed Ordinance No. 09-30 designating the Dundee Gateway Business District (the "*Dundee Gateway BD*") and imposed a retailers occupation tax and service occupation tax in the amount of one-half of one percent (1/2%) on all commercial operations; and,

**WHEREAS**, the Developer owns property located at the southeast corner of Route 25 and Route 68 (the "*Subject Property*"), which property is also located within the boundaries of the Dundee Gateway BD, however, in order to develop the Subject

Property significant infrastructure improvements are required at an estimated cost in excess of \$900,000; and,

**WHEREAS**, the Corporate Authorities desire all required infrastructure improvements to be constructed and the Subject Property to be developed in order to induce economic development in the Village thereby enhancing the tax base of the Village and the affected taxing districts and adding to the welfare and prosperity of the Village and its residents.

**NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:**

Section One. The Development Agreement by and between the Village of East Dundee, Cook and Kane Counties, Illinois and Dmyterko & Wright Development, Ltd., an Illinois limited liability company as attached hereto and presented to the meeting is hereby approved and the Village President and the Village Clerk are hereby authorized to execute and deliver said Development Agreement and undertake any and all actions as required to implement all of the provisions thereof.

Section Two. This Ordinance shall be in full force and effect from its passage, approval and publication as provided by law.

AYES: 7-Justices Ruffalo, Gorman, Lynam, Miller, Cichowski, VanOstenbridge  
NAYES: 0 #President Bartels  
ABSENT: 0

Approved by me this 19<sup>th</sup> day of April, 2010.

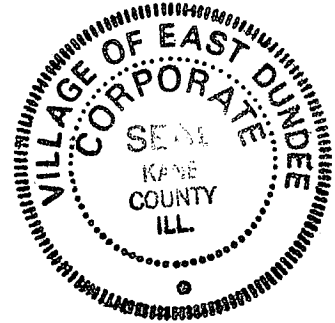
Jerald Bartels  
JERALD BARTELS, President

Published in pamphlet form this 21<sup>st</sup> day of April, 2010, under the authority of the President and Board of Trustees.

ATTEST:

Jennifer Rehberg  
JENNIFER REHBERG, Village Clerk

Recorded in the Village Records on April 21<sup>st</sup>, 2010.



**DEVELOPMENT AGREEMENT**  
*by and between*  
**THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS**  
*and*  
**DMYTERKO & WRIGHT DEVELOPMENT, LTD.**

THIS DEVELOPMENT AGREEMENT is entered into this 19<sup>th</sup> day of April 2010, by and between the Village of East Dundee, Illinois, an Illinois municipal corporation (the "*Village*"), and Dmyterko & Wright Development, Ltd., an Illinois limited liability company (the "*Developer*");

**PREAMBLES**

**WHEREAS**, the Village is a home-rule municipality pursuant to Article VII, Section 6(a) of the Illinois Constitution of 1970 and thereby empowered to exercise any power and perform any function pertaining to its government and affairs; and,

**WHEREAS**, pursuant to the Business District Development and Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.3-1, *et seq.*, as from time to time amended (the "*BDD Act*"), the President and Board of Trustees of the Village (collectively, the "*Corporate Authorities*") are empowered to undertake the development and redevelopment of business districts within its municipal limits which are in need of revitalization if such business districts are deemed to be "blighted," as defined in the BDD Act; and,

**WHEREAS**, pursuant to its powers and in accordance with the requirements of the BDD Act, the Corporate Authorities authorized Vandewalle and Associates to review the eligibility of a vacant area annexed to the Village and zoned for commercial use in

order to determine whether such vacant area could be benefitted by the BDD Act in order to eliminate those blighting factors which inhibit development; and,

**WHEREAS**, after a review of the requirements under the BDD Act and the conditions of the properties within the proposed district, Vandewalle and Associates identified the presence of blighting conditions sufficient to designate the proposed area as identified on *Exhibit A* attached hereto and made a part hereof as a “Business District” under the BDD Act; and,

**WHEREAS**, upon the findings of eligibility for the proposed Business District, the Corporate Authorities authorized the preparation of a Business District Development Plan setting forth the goals and objects, proposed projects, estimated budget and the potential sources of funds to implement said Plan for the proposed Business District; and,

**WHEREAS**, pursuant to the BDD Act, once a Business District is designated, the Corporate Authorities may impose a retailers occupation tax and a service occupation tax in an amount not to exceed one percent (1%) for the planning, execution and implementation of business district plans and to pay for the estimated costs as set forth in the proposed plan and has, in fact, imposed a retailer’s occupation tax and service occupation tax of .5%; and,

**WHEREAS**, pursuant to the BDD Act, on October 19, 2009, the Corporate Authorities, after public hearings, passed Ordinance No. 09-30 designating the Dundee Gateway Business District to include the property legally described on *Exhibit A* (the “*Dundee Gateway BD*”) and imposed a retailers occupation tax and service occupation tax in the amount of one-half of one percent (1/2%) on all commercial operations within

its boundaries for the planning, execution and implementation of the Gateway Business District Plan (the "*BD Plan*"); and,

**WHEREAS**, the Developer owns property located at the southeast corner of Route 25 and Route 68, legally described on *Exhibit B* attached hereto and made a part hereof (the "*Subject Property*"), which property is also located within the boundaries of the Dundee Gateway BD; and,

**WHEREAS**, the Developer was informed by the Illinois Department of Transportation ("*IDOT*") that, in order to develop the Subject Property, significant Right of Way and infrastructure improvements are required at the intersection of Route 25 and Route 68, at an estimated cost in excess of \$900,000; and,

**WHEREAS**, the Developer sold a portion of the Subject Property for development as a gas station ("*Thornton Oil Gas Station*"), which development has proceeded, it being understood that no further development may occur without the Right of Way improvements deemed necessary by IDOT (the "*Right of Way Improvements*"); and,

**WHEREAS**, the construction of the required Right of Way Improvements by the Developer shall eliminate a blighting factor which impairs the development of the Subject Property and its elimination would be in the best interest of the Village and the health and welfare of its residents and taxpayers and would be in furtherance of the BD Plan; and,

**WHEREAS**, the Corporate Authorities desire the Right of Way Improvements to be constructed and the Subject Property to be developed in order to induce economic development in the Village thereby enhancing the tax base of the Village and the affected

taxing districts and adding to the welfare and prosperity of the Village and its residents;  
and,

**WHEREAS**, in order to induce the Developer to construct the Right of Way Improvements, the Corporate Authorities have determined that it is in the best interests of the Village and the residents of the Village, for the Village to reimburse the Developer for the costs of such Right of Way Improvements conditioned upon the terms hereinafter set forth.

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

***Section 1. Incorporation of Recitals.***

All of the recitals contained in the Preambles to the Agreement are true and correct and are hereby incorporated into this Agreement as though restated in this Section.

***Section 2. Project.***

The "Project" shall consist of the Right of Way Improvements as specifically identified on *Exhibit C* attached hereto and made a part hereof (the "*Project Cost Schedule*").

***Section 3. Construction of the Project.***

On or before July 1, 2010, but subject to delay caused by Force Majeure (as described in Section 8 below), the Developer shall commence construction of the Right of Way Improvements in good workmanlike manner in accordance with the standards set forth in the Village Code; plans and specs as approved by IDOT; and, all applicable laws of the State of Illinois. The Developer shall continue with the construction of the Right

of Way Improvements until completion. The Developer warrants that, subject to delay caused by Force Majeure (as described in Section 8 below), by Developer, completion of the Project shall have occurred on or before December 31, 2009.

*Section 4. Village's Obligations to Reimburse Project Costs.*

(a) In consideration for the completion of construction of the Right of Way Improvements by the Developer in accordance with the terms hereof, and so long as no event described in Section 17 of this Agreement shall have occurred and be continuing, the Village shall reimburse the Developer for the costs of the Right of Way Improvements incurred by the Developer (the "*Project Costs*") and as set forth in *Exhibit C* subject to the limitations of the BDD Act and this Agreement. The Developer shall have the right to reallocate items among the line items set out in *Exhibit C* when seeking reimbursement therefor. The aggregate payments to the Developer pursuant to this Agreement shall in no event exceed \$900,000.00.

(b) In connection with the establishment and ongoing administration of the Dundee Gateway BD, the Village has established a special fund pursuant to the requirements of the BDD Act, to be known as the Dundee Gateway Business District Tax Allocation Fund ("*DGBD Fund*") into which the Village shall deposit all sales tax revenues imposed at a rate of .5% and generated by businesses operating on the Subject Property as a result of adoption of the BDD Act and Ordinance No. 09-30 ("*BD Taxes*"). The Village shall reimburse the Developer for Project Costs, pursuant to this Agreement, from BD Taxes imposed at the rate of .5% on deposit from time to time in the DGBD Fund, as described below:



- (i) Within five (5) business days following the date upon which the Village receives a distribution of BD Taxes imposed at the rate of .5% from the Illinois Department of Revenue (the “DOR”), all such BD Taxes deposited by the Village into the DGBD Fund shall be used solely to reimburse the Developer for Project Costs but only if the Developer has submitted a request for reimbursement of costs itemized on the Project Cost Schedule, pursuant to Sections 5(b) and 5(c). Upon approval of the request for reimbursement, whether or not the Village is in receipt of the distribution of BD Taxes, payments in the amount \$8,333.33 shall be made monthly for as many months as required until the Developer has been reimbursed a total of \$200,000, said payments being made from the DGBD Fund to the extent funds are available. In the event sufficient monies are not available to make said monthly payments, the Village shall advance such amounts from the Home Rule Sales Tax Fund (“HRST Fund”) as deemed necessary to make the monthly payments until the said \$200,000 in reimbursement has been made to the Developer. The advanced amounts shall be deemed a loan to the DGBD Fund. Any amount remaining in the DGBD Fund from the .5% BD Tax, in excess of the amount required to reimburse the Developer for Project Costs each month, shall be used to pay back the HRST Fund loan with any balance to remain in the DGBD Fund and applied to the future payments.
- (ii) After the Village has reimbursed the Developer the total of \$200,000, the Village shall reimburse the Developer solely from monies in the DGBD

Fund an amount equal to \$4,166.67 per month for a maximum annual payment of \$50,000.00. In the event monies in the DGBD Fund are insufficient to make this monthly payment, payments shall be made to the extent funds are available but in no event more than \$50,000 per year. Any amount remaining in the DGBD Fund as a result of the .5% BD Taxes, in excess of \$4,166.67 shall be used to reimburse the HRST Fund for any loan from the initial payment described in (i) and the balance is to remain in the DGBD Fund and applied to the future annual payments as hereinafter provided.

- (iii) Commencing March 31, 2012, the Village shall calculate the total sales tax revenue derived from the Subject Property as a result of the imposition of a 1.5% home rule sales tax, 1% state sales tax, and 0.5% BD Tax for the prior calendar year 2012, less all sales taxes (including home rule, state and BDD) derived from the Thornton Oil Gas Station for said calendar year (Maximum Sales Tax Revenue). On or before April 30, 2013, the Village shall pay to the Developer for reimbursement of Project Costs an amount equal to seventy-five percent (75%) of the Maximum Sales Tax Revenue received by the Village from the Subject Property other than the Thornton Oil Gas Station (the "Annual Reimbursement") in addition to the monthly payments of \$4,166.67. To the extent the amounts in the DGBD Fund are insufficient to reimburse the Developer the Annual Reimbursement for Project Costs which have been approved, as hereinafter provided, the Village, pursuant to its powers as a home-rule

municipality, shall transfer such other additional sales taxes and service taxes as received from businesses operating on the Subject Property into the DGBD Fund to permit payment of the Annual Reimbursement. Thereafter, reimbursement shall be made annually first from all BD Taxes imposed at the rate of .5% and derived from all businesses on the Subject Property and deposited into the DGBD Fund an amount equal to seventy-five percent (75%) of the Maximum Sales Tax Revenue received by the Village from the DOR for business operations on the Subject Property other than the Thornton Oil Gas Station and to the extent monies in the DGBD are insufficient, shall transfer from the DGBD Fund such additional sales and service taxes generated by the Subject Property as required to pay said seventy-five percent (75%) until the Developer has received from all reimbursements pursuant to (i), (ii) and (iii) of this Agreement, the lesser of: the total of the actual Project Costs; or, \$900,000. Once the Developer has been reimbursed in an amount equal to the lesser of: the Project Costs, or \$900,000, all distributions of BD Taxes from the DOR shall be deposited into the BD Fund and, thereafter, transferred to the Village's General Fund until said General Fund has received repayment of any prior transfers to the DGBD Fund as required pursuant to Section 4(b) of this Agreement to reimburse the Developer.

- (iv) Notwithstanding the foregoing obligation on the part of the Village to reimburse the Developer for Project Costs as itemized in (i), (ii) and (iii) above, such obligations are contingent upon written authorization from

every retailer operating a business located on the Subject Property throughout the term of this Agreement to the Illinois Department of Revenue to release any and all information regarding the payment of sales taxes and service taxes collected by such business as a result of state law, home-rule authority or the service and sales tax imposition authorized pursuant to the BDD Act. Failure on the part of any business to provide such written authorization shall result in a cancellation and waiver of the Village's obligation to reimburse the Developer for any tax receipts attributable to such business.

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

(a) The Developer shall advance all funds and all costs necessary to undertake the Right of Way Improvements and those costs itemized on *Exhibit C* eligible for reimbursement pursuant to this Agreement in connection with the Right of Way Improvements.

(b) To establish a right of reimbursement for a specific Redevelopment Project Cost under this Agreement, the Developer shall submit to the Village Administrator a written statement in the form attached to this Agreement as *Exhibit D* (a "Request for Reimbursement") setting forth the amount of reimbursement requested and the specific costs from the Project Cost Schedule for which reimbursement is sought. Each Request for Reimbursement shall be accompanied by such bills, contracts, invoices, lien waivers, or other evidence as the Village Administrator shall reasonably require to evidence the right of the Developer to reimbursement under this Agreement. The Village or its designee shall have twenty (20) days after receipt of any Request for

Reimbursement from the Developer to recommend approval or disapproval of such Request and, if disapproved, to provide the Developer in writing and in detail with an explanation as to why it is not prepared to recommend such reimbursement. The only reasons for disapproval of any expenditure for which reimbursement is sought shall be that such expenditure is not an eligible Project Cost, that it is not contained in the Project Costs Schedule, or that it was not incurred and completed by the Developer in accordance with all applicable Village Code requirements, permits and the provisions of this Agreement, and, all plans and specifications submitted to and pre-approved by the Village and IDOT. The Developer has the right to reallocate the Project Costs as listed on *Exhibit C*, so long as the maximum amount to be reimbursed does not exceed \$900,000.00.

***Section 6. Term.***

Unless earlier terminated pursuant to Section 16, the term of this Agreement shall commence on the date of execution and end the earlier of payment to the Developer of Project Costs in the principal amount not to exceed \$900,000.00 or December 31, 2032 (the "*Termination Date*").

***Section 7. No Liability of Village to Others for Developer's Expenses.***

The Village shall have no obligations to pay costs of the Right of Way Improvements or to make any payments to any person other than the Developer, or its successors or assigns (subject to Section 10 below), nor shall the Village be obligated to

pay any contractor, subcontractor, mechanic, or materialman providing services or materials to the Developer for the development of the Project.

***Section 8. Time; Force Majeure.***

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

***Section 9. Assignment.***

This Agreement may not be assigned by the Developer without the prior written consent of the Village, which consent shall not be unreasonably withheld.

***Section 10. Developer Indemnification.***

The Developer shall indemnify and hold harmless the Village, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs, and expenses (including any liabilities, judgments, costs and expenses and reasonable attorney's fees) which may arise directly or indirectly from the failure of the Developer, or any contractor, subcontractor, agent, or employee thereof (so long as such contractor, subcontractor, agent, or employee thereof is hired by the Developer) to timely pay any contractor, subcontractor, laborer, or materialman; from any default or breach of the terms of this Agreement by the Developer; or from any negligence or reckless or willful misconduct of the Developer or any contractor, subcontractor, agent, or employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the Developer). The Developer shall, at its own cost and expense, appear, defend, and pay all charges of attorneys, costs, and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against the Village, its agents, officers, officials, or employees in any such action, the Developer shall have no obligation whatsoever, with respect to any acts of negligence or reckless or willful misconduct on the part of the Village or any of its officers, agents, employees, or contractors.

***Section 11. Waiver.***

Any party to this Agreement may elect to waive any remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless the party waiving such right or remedy does so in writing. No such waiver shall obligate such party to

waive any right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided said party pursuant to this Agreement.

***Section 12. Severability.***

If any section, subsection, term, or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term, or provision of this Agreement, or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

***Section 13. Notices.***

All notices, demands, requests, consents, approvals, or other instruments required or permitted by 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 delivered personally, or as of the third (3<sup>rd</sup>) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

***To the Developer:***                    Dmyterko & Wright Development, Ltd.

*With a copy to :*

***To the Village:***                    Village of East Dundee  
120 Barrington Avenue  
East Dundee, Illinois 60118

*With a copy to:*                    Kathleen Field Orr  
Kathleen Field Orr & Associates  
180 North Michigan Avenue  
Suite 1040



Chicago, Illinois 60601

***Section 14. Successors in Interest.***

This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns.

***Section 15. No Joint Venture, Agency, or Partnership Created.***

Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a Development, Ltd.ship, agency, or joint venture between or among such parties.

***Section 16. No Discrimination – Construction.***

The Developer, or its successors or assigns, agrees that with respect to the development of the Project it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Developer shall take affirmative action to require that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising and solicitations or advertisements for employees; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices, which may be provided by the Village, setting forth the provisions of this nondiscrimination clause.

***Section 17. Remedies – Liability.***

(a) If, in the Village's judgment, the Developer is in material default of this Agreement, the Village shall provide the Developer with a written statement indicating any failure on the Developer's part to fulfill its obligations under this Agreement. Except as required to protect against further damages, the Village may not exercise any remedies against the Developer in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Developer diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Village in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(b) If the Developer materially fails to fulfill its obligations under this Agreement after notice is given by the Village and any cure periods described in paragraph (a) above have expired, the Village may elect to terminate this Agreement or exercise any right or remedy it may have at law or in equity, including the right to specifically enforce the terms and conditions of this Agreement.

(c) If prior to completion of the Project, any voluntary or involuntary petition or similar pleading under any section of any bankruptcy or insolvency act shall be filed by or against the Developer; or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Developer insolvent or unable to pay the

Developer's debts; or the Developer makes an assignment for the benefit of its creditors; or a trustee or receiver is appointed for the Developer or for the major part of the Developer's property; the Village may elect, but is not required to, terminate this Agreement with or without notice, to the extent permitted by law and enforceable under applicable federal bankruptcy laws. In order to terminate this Agreement for any reason described in this sub-section (c), the Village's sole obligation shall be to record a Certificate of Default with the Kane Recorder's Office, executed by the Village President or a Village designee, stating that this Agreement is terminated pursuant to the provisions of this Section 16(b), in which event this Agreement shall *ipso facto* automatically become null and void and of no further force and effect.

(d) If, in the Developer's judgment, the Village is in material default of this Agreement, the Developer shall provide the Village with a written statement indicating in adequate detail any failure on the Village's part to fulfill its obligations under this Agreement. The Developer may not exercise any remedies against the Village in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Village diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. Any failure or delay by the Developer in asserting any of its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(e) In addition to any other rights or remedies, a party may institute legal action against the other party to cure, correct, or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to, the equitable remedy of an action for specific performance; provided, however, no recourse for any claim under or upon any obligation contained in this Agreement shall be had against the Village, its officers, agents, attorneys, representatives, or employees, in any amount or in excess of any specific sum agreed to be paid by the Village pursuant to this Agreement; and no liability, right, or claim at law or in equity shall be attached to or incurred by the Village, its officers, agents, attorneys, representatives, or employees in any amount in excess of any specific sums agreed by the Village to be paid hereunder, and any such claim is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

(f) The rights and remedies of the parties are cumulative and the exercise by a party of one or more such rights or remedies shall not preclude the exercise, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other party.

***Section 18. Amendment.***

This Agreement, and any exhibits attached to this Agreement, may be amended only in a writing signed by all parties with the adoption of any ordinance or resolution of the Village approving the amendment, as provided by law, and by execution of the amendment by the parties or their successors in interest. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations, and discussions relative to the Project.

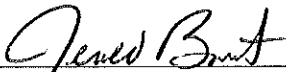
*Section 19. Counterparts.*

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


**[SIGNATURE PAGE FOLLOWS]**

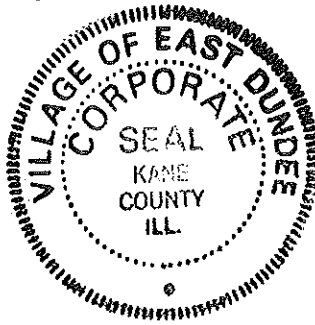
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at East Dundee, Illinois.

Village of East Dundee, Kane County, an Illinois municipal corporation

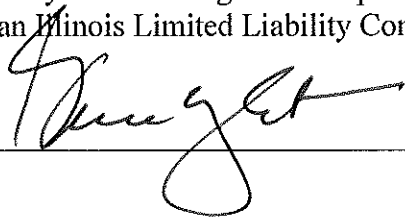
By:   
Village President

Attest:

  
Village Clerk



Dmyterko & Wright Development, Ltd.,  
an Illinois Limited Liability Company



*Exhibit A*

*Legal Description of Dundee Gateway Business District*

*Exhibit B*

*Legal Description of the Subject Property*



*Exhibit C*  
*Schedule of Project Costs*

*Exhibit D*

**REQUEST FOR REIMBURSEMENT**

Village of East Dundee  
P.O. Box 236  
East Dundee, Illinois 61028

*Re: Development Agreement, dated \_\_\_\_\_, 2010, by and between the Village of East Dundee, Kane County, Illinois, and Dmyterko & Wright Development, Ltd., an Illinois Limited Liability Company*

Dear Sir:

You are requested to disburse funds from the Dundee Gateway Business District Fund pursuant to Section 4(b) of the Development Agreement described above in the amount(s), to the person(s) and for the purpose(s) set forth in this Request for Reimbursement. The terms used in this Request for Reimbursement shall have the meanings given to those terms in the Development Agreement.

1. Request for Reimbursement No.: \_\_\_\_\_
2. Amount to be Disbursed: \_\_\_\_\_
3. The amount requested to be disbursed pursuant to this Request for Reimbursement will be used to reimburse the Developer for those Project Costs detailed in Schedule 1 attached to this Request for Reimbursement.
4. The undersigned certifies that:
  - (i) the amounts included in 3 above were made or incurred or financed and were made or incurred in accordance with the construction contracts, plans and specifications heretofore in effect;
  - (ii) the amounts paid or to be paid, as set forth in this Request for Reimbursement, represent a part of the funds due and payable for Project Costs, plus interest;
  - (iii) the expenditures for which amounts are requisitioned represent proper Project Costs identified in the Project Costs Schedule attached to the Agreement as *Exhibit C*, have not been included in any previous Request for Reimbursement, have been properly recorded on the Developer's books and are set forth on the attached Schedule 1, with paid invoices attached for all sums for which reimbursement is requested;
  - (iv) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Developer for its funds actually advanced for Project Costs, plus interest;
  - (v) the amount of Project Costs to be reimbursed in accordance with this Request for Reimbursement, together with all amounts reimbursed to the Developer pursuant to the Section of the Agreement is not in excess of the principal amount of \$900,000.00.

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

6. Attached to this Request for Reimbursement is Schedule 1, together with copies of invoices or bills of sale and Mechanic's Lien Waivers covering all items for which reimbursement is being requested, and a copy of the Project Cost Schedule on which it has been noted all Project Costs heretofore reimbursed to the Developer.

Dmyterko & Wright Development, Ltd.,  
an Illinois Limited Liability Company

*Date:* \_\_\_\_\_

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

APPROVED:

Village of East Dundee, an Illinois municipal  
corporation

*Date:* \_\_\_\_\_

\_\_\_\_\_