



12 South Center Street
Bensenville, IL 60106

Office: 630.350.3404
Fax: 630.350.3438
www.bensenville.il.us

VILLAGE BOARD

December 14, 2017

President
Frank DeSimone

Board of Trustees
Rosa Carmona
Ann Franz
Agneszka "Annie" Jaworska
McLane Luma
Nicholas Pancala Jr.
Armando Perez

Village Clerk
Nancy Dunn

Village Manager
Ivan K. Summers

Ms. Missy Quirke
Graham Enterprise, Inc.
750 Bunker Court, Suite 100
Vernon Hills, Illinois 60061

Re: December 12, 2017 FOIA Request

Dear Ms. Quirke

I am pleased to help you with your December 12, 2017 Freedom of Information Act ("FOIA"). The Village of Bensenville received your request on December 12, 2017. You requested copies of the items indicated below:

"Any and all documents regarding development agreement between Village of Bensenville and Thornton's regarding the Thornton's located at 601 N. Route 83, Bensenville, IL."

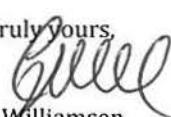
After a search of Village files, the following documents are enclosed to fulfill your request:

- 1) Village of Bensenville Ordinance No. 41-2013. (34 pgs.)

These are all of the documents that can be discovered responsive to your request.

Do not hesitate to contact me if you have any questions or concerns in connection with this response.

Very truly yours,



Corey Williamsen
Freedom of Information Officer
Village of Bensenville

**VILLAGE OF BENSENVILLE
12 S. CENTER STREET
BENSENVILLE, ILLINOIS 60106**

Ordinance No. 41-2013

**An Ordinance Approving the Execution of the Redevelopment Agreement Between
the Village, Thorntons Inc. and Magna Group, LLC, for the Redevelopment of
Property and Certain Incentives, Including Sharing of Retailers' Tax Revenues**

**ADOPTED BY THE
VILLAGE BOARD OF TRUSTEES
OF THE
VILLAGE OF BENSENVILLE
THIS 25th DAY OF June, 2013**

Published in pamphlet form by authority of the President and Board of Trustees of the Village of
Bensenville, DuPage and Cook Counties, Illinois this 26th day of June 2013

STATE OF ILLINOIS)
COUNTIES OF COOK)
SS AND DUPAGE)

I, Corey Williamsen, do hereby certify that I am the duly appointed Deputy Village Clerk of the Village of Bensenville, DuPage and Cook Counties, Illinois, and as such officer, I am the keeper of the records and files of said Village; I do further certify that the foregoing constitutes a full, true and correct copy of Ordinance No. 41-2013 entitled an Ordinance Approving the Execution of the Redevelopment Agreement Between the Village, Thorntons Inc. and Magna Group, LLC, for the Redevelopment of Property and Certain Incentives, Including Sharing of Retailers' Tax Revenues.

IN WITNESS WHEREOF, I have hereunto affixed my official hand and seal on this 26th day of June, 2013.




Corey Williamsen
Deputy Village Clerk

ORDINANCE NO. 41-2013

AN ORDINANCE APPROVING THE EXECUTION OF THE
REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE, THORNTONS
INC. AND MAGNA GROUP, LLC, FOR THE REDEVELOPMENT OF
PROPERTY AND CERTAIN INCENTIVES, INCLUDING SHARING OF
RETAILERS' TAX REVENUES

WHEREAS, the Village of Bensenville ("Village") is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et seq.*; and

WHEREAS, the Illinois Municipal Code, Sections 5/8-11-20, 8-11-21 and 11-74.4.1, *et seq.*, authorizes Illinois municipalities to enter into economic incentive agreements for the development or redevelopment of land within their corporate limits and to share or rebate portions of the retailers' occupation tax received by the municipality attributable to the development or redevelopment of the property; and

WHEREAS, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the Village, to foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village; and

WHEREAS, the Village has previously determined that certain property commonly known as 601 N. IL Route 83, Bensenville, Illinois 60106 (the "Property") located in the Tax Increment Financing District No. 12 within the Village suffers from the following factors: age, obsolescence, depreciation of physical maintenance, deterioration, inadequate utilities, excessive vacancies, deleterious land use or layout, excessive land coverage and lack of community planning; and

WHEREAS, currently, the Property is in tax exempt status and generates no real estate tax revenue for the Village; and

WHEREAS, the Property is located at a signalized intersection along the busiest thoroughfare in the Village which is also one of the highest volume vehicular road systems in the Chicago land region and is located in an area that is considered an important corridor due to the high volume of traffic, both industrial and otherwise; and

WHEREAS, Magna Group, LLC ("Owner") has contracted to purchase the Property and Thorntons Inc. ("Developer") has entered into a lease on the Property and intends to develop the Property for a fuel center and convenience store which will result in bringing the Property into productive sales and real estate tax generating use; and

WHEREAS, the Village finds that Developer and its principals are uniquely skilled in land development and redevelopment and are able to provide to the Village skill, knowledge and expertise as well as input from other experts and consultants in redevelopment projects; and

WHEREAS, the Village finds that Developer cannot successfully and economically develop the Property in a manner satisfactory to the Village but for certain tax increment financing incentives to be provided by the Village in accordance with law which the Village is willing to provide under the terms and conditions contained in the attached Redevelopment Agreement; and

WHEREAS, after due consideration and investigation of the Developer's project proposal, the President and the Village Board of Trustees find that it is in the best interests of the citizens of the Village to finance land acquisition costs of the Property (as defined in the attached Redevelopment Agreement) through Incremental Property Taxes (as defined in the attached Redevelopment Agreement) and to share the retailers' occupation tax from the redevelopment of the Property because the Developer's project will:

1. Create job opportunities within the Village; and
2. Further the development of adjacent areas; and
3. Strengthen the commercial sector of the Village; and
4. Enhance the Village's tax base.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BENSENVILLE, DUPAGE AND COOK COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION ONE: That the recitals set forth above are hereby incorporated herein and made a part hereof.

SECTION TWO: That the upon the findings set forth in the foregoing recitals, the President and the Village Board of Trustees hereby determine that the entry by the Village into the Redevelopment Agreement, attached hereto as Exhibit 1, is appropriate and in the best interests of the residents of the Village.

SECTION THREE: That the Village President is hereby authorized to execute the Redevelopment Agreement on behalf of the Village, and the Village Clerk is authorized to attest thereto.

SECTION FOUR: That the Village President, the Village Manager, the Village Attorney, and such other Village officers and staff are further authorized to

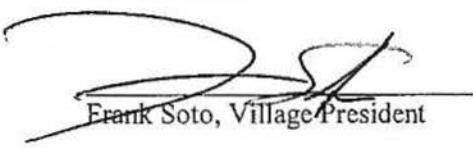
execute all documents and perform all other acts necessary to carry out the Redevelopment Agreement.

SECTION FIVE: That all other ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, expressly repealed.

SECTION SIX: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this 25th day of June 2013.

APPROVED:



Frank Soto, Village President

ATTEST:



Ilsa Rivera-Trujillo, Village Clerk

Ayes: BARTLETT, JANOWIAK, JARECKI, O'CONNELL, RIDDER, WESSELER

Nays: NONE

Absent: NONE

f:\pkb\bensenville\ordinances\thorntons redevelopment agreement.doc

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 25th day of June, 2013 ("Agreement Date") by and between the **VILLAGE OF BENSENVILLE, ILLINOIS**, ("Village") a non-home rule municipality organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and is authorized under Sections 8-11-20, 8-11-21 and 65 ILCS 5/11-74.4-1, *et seq.*, thereof to enter into economic incentive agreements with private persons relating to the redevelopment of land within its corporate limits; **THORNTONS, INC.**, a Delaware Corporation ("Thorntons" or "Developer") and Magna Group, L.L.C. ("Owner"). The Village, the Developer and the Owner are sometimes referred to individually as a "Party" and collectively as the "Parties").

RECITALS

The following Recitals are incorporated herein and made a part hereof.

A. The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village.

B. The Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (the "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act.

C. This Agreement relates to the proposed development of one (1) parcel, which is depicted on and legally described on an ALTA survey for the property **EXHIBIT A** attached hereto and made a part hereof commonly known as 601 N. IL Route 83, Bensenville, IL 60106 ("Property").

D. The Village authorized the preparation of a report, entitled Bensenville North Industrial District Redevelopment Project Plan dated October 2010 (the "Redevelopment Plan") concerning the redevelopment of Tax Increment Financing District No. 12 ("TIF District"), which includes the Property.

E. In accordance with the Act, the Village conducted a public hearing with respect to the Redevelopment Plan and the redevelopment of the TIF District at a meeting of the Village President and the Village Board of Trustees (the "Corporate Authorities") held on January 25, 2011..

F. As part of the study of the redevelopment of the TIF District, the Corporate Authorities found that the improvements in the Redevelopment Area of which the Property is a part suffer from the following factors: age, obsolescence, depreciation of physical maintenance, deterioration, inadequate utilities, excessive vacancies, deleterious land use or layout, excessive

land coverage and lack of community planning.

G. To stimulate and induce redevelopment in the TIF District pursuant to the Act, the Village has adopted the following ordinances,(Ordinance Numbers 28-2011, 29-2011, and 30-2011.) after giving all notices required and after conducting the public hearings required by law (the "Enabling Ordinances"):

H. The Owner has entered into a contract to purchase the Property. Developer has entered into a lease on the Property and intends to establish the Project as defined herein on the Property. The Property is improved with a Church owned by Faith Community United Church of Christ. The property enjoys a real estate tax exemption due to its ownership by a religious organization. The Property has remained under-developed for commercial purposes for a considerable period of time.

I. The Property is located at a signalized intersection along the busiest thoroughfare in the Village and one of the highest volume vehicular road systems in the Chicagoland region. The Property is located in an area that is considered an important corridor due to the high volume of traffic, both industrial and otherwise. The Foster Avenue industrial corridor extends from Illinois Route 83 to York Road. The proposed development will complement the existing uses to provide convenience store, restaurant, and fuel services to the adjacent uses. Although there is residential to the south, the area is predominantly comprised of industrial and commercial uses

J. The Developer desires to develop the Property for a fuel center and convenience store which will result in bringing this property into productive sales and real estate tax generating use.Under its current ownership, the Church-owned property deprives the village of these tax revenues. The development will improve the traffic patterns on Foster Avenue and Illinois Route 83 through proposed off-site improvements. The proposed off-site improvements will mitigate the anticipated traffic generated by the development and improvement the existing traffic pattern on Foster Avenue and Illinois Route 83.

K. The proposed FuelCenter will contain 20 fueling positions for automobiles and 4 fueling positions for commercial diesel vehicles.

L. The proposed convenience store is a newer 5,000 square foot prototype facility for Thorntons with a clean, updated and contemporary look, including four sided architecture, an exaggerated red trimmed entry and a suspended flat canopy covering the entry door area with tie back cables to the main facade.The front western facade also sports a red fabric non-illuminated shed awning over the display windows. The submitted architecture also has a similar suspended flat canopy on the south facade facing a single family home.

M. Developer and its principals are uniquely skilled in land development and redevelopment and are able to provide to the Village skill, knowledge and expertise as well as input from other experts and consultants in redevelopment projects. Thorntons, Inc. is an independent multi-unit convenience store and fuel center operator based in Louisville, KY, marketing throughout the Midwestern United States under the brand name Thorntons. The Corporate Authorities have additionally determined Thorntons meets high standards of credit worthiness and financial strength as demonstrated by one or more of the following

1. Evidence of equity financing of at least ten percent (10%) of the total cost of the Project; or
2. A letter from a financial institution with assets of more than ten million dollars (\$10,000,000), attesting to financial strength; or
3. Corporate debenture ratings of BBB or Higher by Standard & Poor's Corporation, or Baa or higher by Moody's Investor Services, Inc.

N. Developer sought and obtained from the Corporate Authorities certain entitlements, including two conditional use permits to allow a gasoline and diesel fuel service station and associated electronic message center sign with associated variations. That approval was embodied in Ordinance No. 53A-2012.("Ordinance").

O. Developer intends to develop the Property with the Fuel Station and ConvenienceCenter but is unable to unless it receives financial incentives in the form of tax increment financing ("TIF") assistance and sales tax sharing from the Village.

P. It is necessary for the successful completion of the Project (as defined in Article Two below) that the Village enter into this Agreement with Developer and Owner to provide for the redevelopment of the Property, thereby implementing the Redevelopment Plan.

Q. Developer represents and warrants that economic assistance from the Village is necessary to undertake the Project and that without this Agreement, the Project would neither proceed nor be possible. The Village hereby acknowledges based on Developer's representation and warranty, that economic assistance from the Village is necessary to undertake the Project and that without this Agreement, the Project would neither proceed nor be possible.

R. Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Property but for certain TIF incentives to be provided by the Village in accordance with the Act which the Village is willing to provide under the terms and conditions contained herein. The Parties acknowledge and agree that but for the TIF incentives, to be provided by the Village , Developer cannot successfully and economically develop the Property in a manner satisfactory to the Village.

S. The Corporate Authorities have determined that it is desirable and in the Village's best interests to assist Developer in the manner set forth herein and as this Agreement may be supplemented and amended. The Corporate Authorities find that the Project shall: 1) create job opportunities within the Village; 2) further the development of adjacent areas; 3) strengthen the commercial sector of the Village; and 4) enhance the Village's tax base.

T. The Village, in order to stimulate and induce development of the Property, has agreed to finance land acquisition costs (as defined in Article Two below) through Incremental Property Taxes (as defined in Article Two below) and sales tax sharing, all in accordance with the terms and provisions of the Act and this Agreement.

U. This Agreement has been submitted to the Corporate Authorities of the Village for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof, and any and all actions of the Corporate Authorities of the Village precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

V. This Agreement has been submitted to the Developer and Owner for consideration and review, the Developer and Owner have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer and Owner according to the terms hereof, and any and all action of the Developer's Officers and Owner's Members precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE **INCORPORATION OF RECITALS**

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations and agreements of the Village, the Developer and of the Owner according to the tenor and import of the statements in such Recitals.

ARTICLE TWO **DEFINITIONS**

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, including above in the recitals hereto and as follows:

“Act” means the Tax Increment Allocation Redevelopment Act found at 65 ILCS 5-11-74.4-1, *et seq.*, as supplemented by the Local Government Debt Reform Act, as amended, and the home rule powers of the Village.

“Agreement” means this Redevelopment Agreement dated June 25, 2013, between the Village, Thorntons and Magna Group.

“Change in Law” means the occurrence, after the Effective Date, of an event described in Section (a) below, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon:

(a) Change in Law means any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the Village or with respect to those made by the Village, only if they violate the terms of this Agreement); (ii) the order or judgment of any federal or state court, administrative agency or other governmental body; (iii) except as otherwise provided herein, the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the services to be performed under this Agreement; or (iv) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village or with respect to those made by the Village, only if they violate the terms of this Agreement).

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Collector” means the officer or officers of the County of DuPage, Illinois, who is or are at the time obligated under applicable law to collect and pay over to the Village the Incremental Property Taxes pursuant to and in accordance with the Act.

“Corporate Authorities” means the Village President and Village Board members of the Village of Bensenville, Illinois.

“Developer” means Thorntons, Inc., a Delaware Corporation, or any successor in interest thereof.

“Eligible Improvements” means costs of the Project to be paid or reimbursed by the Village as provided in this Agreement and eligible for payment under the Act.

“Gross Receipts” means that which is ascribed to it in the Retailers’ Sales and Occupation Tax Act.

“Incremental Property Taxes” means that portion of the *ad valorem* taxes, if any, arising from the taxes levied upon the Property, which taxes are attributable to the increases in the then current equalized assessed valuation (“EAV”) of the taxable lot, block, tract or parcel of all portions of the Property in the TIF District over and above the total Initial EAV of all of said portions of the Property in the TIF District, all as determined by the County Clerk of the County of DuPage, Illinois, pursuant to and in accordance with the Act, the TIF Ordinances and this Agreement, which are attributable to the Property and includes any replacement, substitute or amended taxes.

“Initial EAV” means the equalized assessed value of the Property for calendar year 2010 certified by the County Clerk of DuPage County as provided in the Act.

“Owner” means Magna Group, LLC an Illinois Limited Liability Corporation.

“Party”means the Village and/or Developer and its successors and/or assigns as permitted herein, as the context requires.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

“Project” means, collectively, the construction of a Fuel Center containing 20 fueling positions for automobiles and 4 fueling positions for commercial diesel vehicles and a convenience store containing 5,000 +/- square feet all generally consistent with the plans submitted and referenced in the Ordinance *to wit*: the Site and Engineering Plans prepared by Marchris Engineering, Ltd, dated 02.13.12, and revised 04.18.13; Signage Plans by Sign On dated 05.23.12; and Landscape Plans by GPD Group dated 06.05.12 with the staff revisions referenced in the Ordinance and consistent with the other conditions contained in the Ordinance.

“Property” means the parcel legally described on **EXHIBIT A**, commonly known as 601 North Route 83, Bensenville, Illinois (Northeast corner of the intersection of Route 83 and Foster Avenue) upon which the Project will be implemented and constructed.

“Redevelopment Plan” means the “Redevelopment Plan” for the TIF District as approved by Village Ordinance No.29-2011.

“Redevelopment Project Costs” means those eligible redevelopment project costs authorized by the Act and this Agreement.

“Replacement Retailers Sales and Occupation Tax” means any tax comparable to the “Retailers’ Sales and Occupation Tax” which is instituted or adopted by the Village to replace the “Retailers’ Sales and Occupation Tax” in the event that the State Legislature either repeals the “Retailers’ Sales and Occupation Tax” or adopts a law that has the effect of no longer sharing the proceeds of the same with the Village.

“Retailers’ Sales and Occupation Tax” or “Sales Tax” mean only the one percent (1%) portion of the tax collected by the State of Illinois pursuant to the Retailers’ Occupation Tax Act, 35 ILCS 120/1 *et seq.*, presently distributed by the State to municipalities, the non-home rule municipal retailers occupation tax provided for in Section 8-11-1.3 of the Illinois Municipal Code, “Non-Home Rule Municipal Retailers’ Occupation Tax Act,” 65 ILCS 5/8-11-1.3; and the non-home rule municipal retailers occupation tax provided for in Section 8-11-1.6 of the Illinois Municipal Code, 65 ILCS 5/8-11-1.6 and *excludes* any increase in the percentage of the said tax which may be distributed to municipalities in the future; and all other sales, use, service, franchise, and license taxes and fees levied or imposed by or distributed to the Village now or in the future.

“State” means the State of Illinois.

“Term” means until the earlier that the Village makes payment of the last of the TIF Contributions and the Sales Tax Contribution or ten (10) years from the Agreement Date.

“Thorntons” means Thorntons Inc., or any successor to or assignee of its corporate business, but not any lessee of the Project Site other than Thorntons Inc., or any sublessee or licensee of Thorntons Inc.

“TIF District” means the TIF No 12 of the Village.

“TIF Ordinances” means Ordinance Numbers 28-2011, 29-2011 and 30-2011 all adopted by the Village on April 19, 2011, .

“Uncontrollable Circumstance” means any event which:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon; and
- (b) is one or more of the following events:
 - (i) a Change in Law;
 - (ii) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, nuclear incident, war or naval blockade;
 - (iii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
 - (iv) governmental condemnation or taking other than by the Village;
 - (v) strikes or labor disputes;
 - (vi) unreasonable delay in the issuance of building or other permits or approvals by the Village or other governmental authority having jurisdiction;
 - (vii) shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement; or
 - (viii) unknown or unforeseeable geo-technical or environmental conditions;

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in b(vii) above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

For each day that the Village, Developer or Owner is delayed by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day.

“Village” means the Village of Bensenville, Illinois, an Illinois municipal corporation.

ARTICLE THREE **CONSTRUCTION**

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) Definitions include both singular and plural.
- (b) Pronouns include both singular and plural and cover all genders.
- (c) The word "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".
- (d) Headings of Articles and Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (e) The exhibit attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between the exhibit and the terms of this Agreement, the terms of this Agreement shall control.
- (f) Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- (g) In connection herewith concerning written directions or authorization in respect of the investment of any funds, notwithstanding any provision hereof to the contrary, such direction or authorization orally by telephone, other telecommunication or otherwise, confirmed in writing, including by telecopier/facsimile transmission, shall be appropriate and is hereby approved. Failure of the investing agent to actually receive such written confirmation shall not render invalid or ineffective any such oral direction or authorization.
- (h) The Village Manager, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. Developer and Owner are entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village.
- (i) In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates Richard Claes of Bluestone Diversified Investments, as its authorized representative who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other

actions required or described in this Agreement for and on behalf of Developer and with the effect of binding Developer in that connection (such individual being an "Authorized Developer Representative"). Owner designates MariannGullo , as its authorized representative who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Owner and with the effect of binding Owner in that connection (such individual being an "Authorized Owner Representative"). Developer and Owner shall have the right to change its authorized Representative by providing the Village with written notice of such change which notice shall be sent in accordance with Section 15.2.

ARTICLE FOUR REDEVELOPMENT PLAN

The Village, Developer and the Owner agree to cooperate in implementing the Project in accordance with the Parties' respective obligations set forth in this Agreement and specific approvals by the Village in the future of the zoning, planned unit development and site plans for the Property and Project. Whenever any Party is required to take any action pursuant to the terms of this Agreement, including but not limited to giving any consent, such action shall not be unreasonably withheld or delayed.

ARTICLE FIVE EXTRAORDINARY DEVELOPER EXPENSES

The following expenses amounting to approximately Two Million Eight Hundred Thousand Dollars (\$2,800,000.00) are eligible for reimbursement under the TIF Act and under a sales tax sharing agreement pursuant to Sections 8-11-20, 8-11-21 and 65 ILCS 5/11-74.4-1, *et seq.*:i) the extraordinary expenses and additional consideration in connection with the acquisition of the Property; ii) Improvements to the Foster Ave/Ill Route 83 intersection; iii) underground stormwater detention; iv) demolition; and v) enhanced landscaping sound-proofing and screening; and vi) interest on all of these expenses. Developer is foregoing reimbursement for those expenses in consideration of the Village's TIF and Sales Tax Contributions set forth below.

ARTICLE SIX VILLAGE COVENANTS AND AGREEMENTS

6.1 Village's Redevelopment Obligations The Village shall have the obligations set forth in this Article Six.

6.2 Reimbursement For Land Acquisition Expense. The Village shall reimburse Developer the amount of One Million Five Hundred and Fifty Thousand Dollars (\$1,550,000) from a combination of Incremental Property Taxes (which amount the Village has currently available on the date of this Agreement to expend); and sales tax receipts generated from the Project.

The Corporate Authorities find that such expenditures from TIF revenues for land

acquisition are eligible Redevelopment Project Costs as defined by the Act (sometimes hereinafter referred to as "TIF Eligible Expenses").

6.3 TIF Contribution. The sum of Seven Hundred and Seventy-Five Thousand Dollars (\$775,000.00) ("TIF Contribution") shall be paid to Developer upon the store opening. The TIF Contribution shall be paid from Incremental Property Taxes currently held by the Village. The Village shall take all necessary actions concurrently with the approval of this Agreement to approve an appropriation for the TIF Contribution. Said appropriation shall provide that within thirty (30) calendar days after the store opening, the Village shall pay to Developer said TIF Contribution.

6.4 Sales Tax Contribution.

A. Amount. From the sales taxes collected by the Village attributable to the Developer's operation on the Project Site the Village shall rebate a total of Seven Hundred and Seventy-Five Thousand Dollars (\$775,000.00) to Developer ("Sales Tax Contribution CAP") payable as follows: For each calendar year during the Term of this Agreement, the Village shall exclusively retain the first Two Hundred Thousand Dollars (\$200,000.00) collected of Sales Taxes received by the Village attributable to the Developer's operation on the Project Site and the Village shall rebate to Developer the next Two Hundred Thousand Dollars (\$200,000.00) collected of Sales Taxes received by the Village attributable to Developer's operation on the Project Site. All remaining amounts collected in any calendar year in excess of Four Hundred Thousand Dollars (\$400,000.00) shall be evenly distributed with 50% of Sales Taxes received by the Village attributable to Developer's operation on the Project Site being retained by the Village and the other 50% rebated to Developer until the Sales Tax contribution Cap is reached. However when the Village has collected Four Hundred and Twenty Five Thousand Dollars (\$425,000.00) in any calendar year all such remaining amounts shall be paid to Developer. The same formula shall apply to each year thereafter until the Sales Tax Contribution CAP of Seven Hundred and Seventy-Five Thousand Dollars (\$775,000.00) is fully satisfied and paid in full. After the Sales Tax Contribution CAP is satisfied, then the Village shall receive and retain 100% of the sales tax rebates. The timing of the payments is detailed in subparagraph B below

B. Village Payments. The Village shall pay Developer the balance percentage amount provided for in subparagraph A four (4) times each calendar year from Sales Tax distributions that the State has paid the Village through April 30, June 30, September 30 and December 31, within sixty (60) days after the Village has received from Developer the required supporting documentation for such periods as specified in subparagraph A, and provided further that the Village has received the Sales Tax distributions for those periods from the State of Illinois. The Parties acknowledge that the agreement to distribute Retailers' Sales and Occupation Tax revenue as herein provided is predicated on existing law and policy in the State of Illinois providing for the payment to Illinois municipalities of one percent (1%) of the Sales Tax generated by businesses within each such municipality. The General Assembly of the State of Illinois has, from time to time, considered modifying or eliminating the distribution of Sale Tax revenues to Illinois municipalities. The Parties desire to make express provision for the effect of such change upon the operation of this Agreement:

- i. The Village shall not, under any circumstance, be required to impose a sales or other tax other for the purposes of providing funds for the payment of the rebate herein contemplated in the event that the distribution to of the Retailers' Sales and Occupation Tax to the Village is eliminated.
- ii. The rebate payments required herein of Village shall not constitute a general obligation of the Village, but be payable solely from the Sales Tax receipts paid by Developer as provided above. Should the Illinois General Assembly hereafter and during the term of this Agreement eliminate or limit the distribution of Sales Tax revenue to Illinois municipalities, or otherwise alter the distribution formula in a manner which prevents the Village and Developer from being able to ascertain with specificity the amount of municipal Sales Tax being received by the Village as a direct result of the retail sales activities of the Project, or should such distribution be limited or eliminated by a legislative enactment, the Village shall not be obligated to find a revenue source to fulfill its obligations hereunder to the Developer.
- iii. The Village shall rebate the payments required herein in the event that the Village adopts a Replacement Retailers' Sales and Occupation Tax.

C. Developer's Obligations.

- i. Developer must provide the Village with certified copies of transmittals of the Illinois Department of Revenue ST-1 and/or ST-2 form on a monthly basis, as well as proof of payment as evidenced by a copy of the check remitted to the State. Said reporting is a material term and condition of this Agreement.
- ii. Also, if requested by the Village, Developer shall execute all required authorizations in favor the Village necessary for the Village to receive directly from the Illinois Department of Revenue any information possessed by the Department relating to Developer's collection and payment of taxes.

D. Eligibility for Sales Tax Payments. Only Developer, its successors or assigns, as provided in Section 14.16 shall be entitled to the Sales Tax payments provided for herein. Sales Tax payments shall be made only from Sales Taxes generated on the Project Site from the retail convenience store, fuel center and restaurant businesses (if any) conducted by Developer, its successors and assigns, or its sub-lessees and by no other person and from no other business. The Corporate Authorities find that such a reimbursement from sales tax revenues for land acquisition are eligible Redevelopment Project Costs as defined by statute.

E. Termination of Sales Tax Contribution. The Village, on its own volition, subject to the notice of default provisions in Article Twelve, may terminate the Sales Tax Contribution only during its Term upon the occurrence of any of the following:

- a. The cessation of Developer's retail convenience store or fuel center business operations on the Project Site for a consecutive period of sixty (60) days or

more. However, if the cessation of either the retail convenience store or fuel center business occurs after the Developer applies to and is issued a building permit by the Village for a remodel, this subparagraph shall not apply.

- b. Failure of Developer to maintain the standards of credit worthiness and financial strength set forth in subparagraph M of the Preamble of this Agreement.
- c. Change in ownership or brand to any person or entity not authorized to operate under the Thorntons brand name without prior authorization from the Village., which authorization shall not be unreasonably withheld
- d. Any submitted liquor license application to the Village, unless the Village has previously amended its Village Code to allow such licenses for other Fuel Centers..
- e. Conviction for noncompliance with any ordinance, rule, or regulation of the Village or other unit of local government or with any state or federal law which poses an imminent threat to the public welfare and the failure to cure such within sixty (60) days after said conviction by the Village or other governmental body.

Should the Village terminate this Agreement pursuant to this section, Developer shall be entitled to a rebate payment of Sales Taxes prorated to the date of termination, and the Village shall have no further obligation to Developer under this Agreement. In the event the Developer, Owner or any person, company or entity on their behalf shall cease operation on the Property for a period in excess of sixty (60) days, the Developer and Owner shall each reimburse the Village fifty percent (50%) of the \$775,000 in TIF monies paid out by the Village under this Agreement less any amounts received by the Village through sales tax sharing under this Agreement. Any monies remaining unpaid after said demand shall be immediately due and payable and shall serve as a basis for a lien against the developed property in such amount as shall be remaining outstanding as of the date of said demand.

6.5 Village Cooperation. The Village agrees to cooperate with Developer, and shall affirmatively support, Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the Village and upon request of Developer, will promptly execute any applications or other documents which Developer intends to file with such other governmental or quasi-governmental entities in respect of the Project. The Village shall further promptly process, and not unreasonably withhold its approval of requests of Developer for: applicable demolition permits, building permits; driveway permits; curb cuts or other permits necessary for the construction of the Project.

ARTICLE SEVEN **DEVELOPER'S COVENANTS AND AGREEMENTS**

7.1 Developer's Redevelopment Obligations. Developer shall have the obligations set forth in this Article for the development, construction, financing, completion and furtherance of the Project.

7.2 Developer's Commitments.

- (a) Demolition – Site demolition, tree clearing and soil balancing for the Property and Project shall be performed by the Developer.
- (b) Developers shall grant, dedicate or convey all rights-of-way and easements on the Property in order to provide for all required improvements, including but not limited to roadway widening, streetlights, bikepaths, water mains, storm and sanitary sewer mains, detention or retention ponds, gas, electricity and cable television. Such easements shall be in such locations as may be mutually agreed upon and/or as approved by the Village in the final plat(s) of subdivision for the Property.
- (c) Developer shall install all necessary water mains, sanitary sewer mains and storm sewers necessary to serve the Project in accordance with final engineering plans approved by the Village. The Developer shall install any storm water retention/detention systems that may be required by any other governmental body having applicable jurisdiction thereof or, alternatively, pay any required fee in lieu thereof.
- (d) The Developer shall pay all Village fees and, in addition, any recaptures due to the Village. The Village has determined that no recaptures are due and owing.
- (e) To the extent required by Illinois law (820 ILCS 130/0.01 et seq.), Developer shall pay any applicable “Prevailing Wage Rates” to any of its workers on the Project. Further, Developer shall give consideration to Village residents and businesses to vendor, employment and subcontractor opportunities for the construction of the Project.

7.3 Compliance with Applicable Laws. Developer shall at all times acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment, and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder), life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village in effect from time to time during the course of construction of the Project, unless the same conflicts with an express term of this Agreement.

7.4 Progress Meetings. Developer shall meet with the Corporate Authorities and Village staff and make presentations to the Corporate Authorities and Village staff as reasonably requested by the Village Manager in order to keep the Village apprised of the progress of the Project.

7.5 Fees and Expenses. Developer shall pay Village the customary permit, inspection review and tap-on fees for the Project in effect at the date of execution of this Agreement, unless such fees are subsequently reduced by the Village, in which case the Developer shall only be required to pay the amount of such reduced fees.

7.6 Village Named as Co-Beneficiary on Security. The Village shall be named as a beneficiary on all performance, labor, and material bonds for public improvements and completion guarantees required by Developer's Lender or any other entity providing labor and/or material relative to the Project. Duplicate originals of said bonds and/or completion guarantees naming the Village as a beneficiary shall be provided to the Village within sixty (60) days of the Developer having obtained a commitment for financing as stated herein.

ARTICLE EIGHT ADDITIONAL COVENANTS OF DEVELOPER

8.1 Developer Existence. Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as a Delaware corporation, so long as Developer maintains an interest in the Property or has any other remaining obligation pursuant to the terms of this Agreement.

8.2 Construction of Project. Developer shall diligently pursue obtaining all required permits and Developer shall cause construction of the Project on the Property to be prosecuted and completed pursuant to the terms hereof with due diligence, in good faith and without delay, subject to Uncontrollable Circumstances and the other provisions of this Agreement.

8.3 Further Assistance and Corrective Instruments. The Village and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the Village's sound legal discretion.

8.4 Disclosure. Concurrently with execution of this Agreement, Developer shall disclose to the Village the names, addresses and ownership interests of all Persons that comprise in excess of 5% of Developer.

ARTICLE NINE ADHERENCE TO VILLAGE CODES AND ORDINANCES

All development and construction of the Project shall comply in all respects with the provisions in the Building, Plumbing, Mechanical, Electrical, Storm Water Management, Fire Prevention, Property Maintenance, Zoning and Subdivision Codes of the Village and all other germane codes and ordinances of the Village in effect on the date that an application for a

building permit and/or earth moving permit for such development or construction is filed, and from time to time during construction that are applicable, except as otherwise provided herein and to the extent all such codes and ordinances are of general applicability to property within the Village. Developer has examined and is familiar with all the covenants, conditions, restrictions, building regulations, zoning ordinances, property maintenance regulations, environmental laws and land use regulations, codes, ordinances, federal, state and local ordinances, and the like, and represents and warrants that the Project will be developed in accordance with same.

ARTICLE TEN REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Developer represents, warrants and agrees as the basis for the undertakings on its part herein contained that as of the date hereof and until completion of the Project:

10.1 Organization and Authorization. Developer is a Delaware corporation duly organized and existing under the laws of the State of Delaware, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.

Owner is an Illinois Limited Liability Company duly organized and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement.

10.2 Non-Conflict or Breach. Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its partners or venturers is now a party or by which Developer or any of its partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party or any of its venturers is bound.

10.3 Financial Resources. Developer has sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement. The Corporate Authorities have additionally determined Thorntons meets high standards of credit worthiness and financial strength based upon having one of the following:

1. Evidence of equity financing of at least ten percent (10%) of the total cost of the Project; or
2. A letter from a financial institution with assets of more than ten million dollars (\$10,000,000), attesting to financial strength; or
3. Corporate debenture ratings of BBB or Higher by Standard & Poor's Corporation, or Baa or higher by Moody's Investor Services, Inc.

10.4 Real Estate Tax Assessments. Owner covenants that it shall not challenge any real estate tax assessments on taxes levied against the Property either the earlier of during the term of this Agreement; or until the Reimbursement for Land Acquisition is paid in full as set forth in Sections 6.2 and 6.3.

10.5 Limited Obligations of Owner. Owner shall only be liable for compliance with the obligations contained in Sections 7.2b, 10.4 and 11.4 and none other.

ARTICLE ELEVEN REPRESENTATIONS AND WARRANTIES OF THE VILLAGE

The Village represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

11.1 Organization and Authority. The Village is a municipal corporation duly organized and validly existing under the law of the State of Illinois, is a home rule unit of government, and has all requisite corporate power and authority to enter into this Agreement.

11.2 Authorization. The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement (i) have been duly authorized by all necessary corporate action on the part of the Village, (ii) require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement, and (iii) shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the Village is subject.

11.3 Litigation. To the best of the Village's knowledge, there are no proceedings pending or threatened against or affecting the Village or the TIF District in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement.

11.4 Connections. The Owner shall grant or cause to be granted utility easements in favor of the Village as may be necessary or appropriate to accommodate the utilities shown on the Final Plans.

ARTICLE TWELVE EVENTS OF DEFAULT AND REMEDIES

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

- (a) If any 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 concerning the existence, structure or financial condition of Developer; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and Developer within said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within ninety (90) days after such notice.
- (c) Default by Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and the Developer, within said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within ninety (90) days after such notice, subject to Uncontrollable Circumstances.
- (d) 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, sequestrator (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 that is not stayed and in effect for a period of sixty (60) consecutive days.
- (e) 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, sequestrator (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 sixty (60) consecutive days.

- (f) 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.
- (g) Developer abandons the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than ninety (90) days for any reason other than: (i) Uncontrollable Circumstances or (ii) if Developer is ahead of its planned construction schedule.
- (h) 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 ninety (90) days after written notice from the Village, remedy the default.

12.2 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, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to Developer 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 the Village does not remedy the default, within thirty (30) days after written notice from Developer.
- (b) Default by the Village in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the Village; provided, however, that such default or breach shall constitute an Event of Default only if the Village does not, within thirty (30) days after written notice from Developer, initiate and diligently pursue appropriate measures to remedy the default.
- (c) Default by the Village in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the Village commences cure within thirty (30) days after written notice from Developer and in any event cures such default within ninety (90) days after such notice, subject to Uncontrollable Circumstances.
- (d) Failure to have funds to meet the Village's obligations, within thirty (30) days after written notice from Developer of such failure.

12.3 Remedies for Default.

In the case of an Event of Default hereunder:

- (a) The defaulting Party shall, upon written notice as provided in Sections 13.1 and 13.2 above 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 after receipt of the above notice, 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) days from the receipt of notice as provided above in Sections 13.1 and 13.2 unless extended by mutual agreement, 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 administrative proceedings, by suits or actions for mandamus, or any other proceeding, in law or in equity, including specific performance to enforce or compel the 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 periods provided in Sections 13.1, 13.2 and this Section 13.3, in addition to any other remedies at law or in equity, the Village shall be relieved of its obligations under this Agreement provided. However, the cancellation or termination of this Agreement shall have no effect on the construction permits already issued by the Village for the Property (unless and only to the extent that any such permits are not the basis for any litigation) and authorizations granted to Developer for buildings permitted and under construction to the extent permitted by said Court order; and the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded document.
- (d) 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 periods provided in Sections 13.1, 13.2 and this Section 13.3, in addition to any other remedies at law or inequity, the Developer shall be relieved 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.
- (e) The prevailing Party shall be entitled to recovery of reasonable attorneys' fees and costs.

12.4 DEFENSE OF THIS AGREEMENT. If, during the term of this Agreement, any lawsuits or other proceedings are filed or initiated against a Party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of either party to perform its obligations under, or otherwise to comply with, this Agreement ("Litigation"), the Party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other Parties and shall thereafter keep the other Parties fully informed concerning all aspects of the Litigation. Each Party shall, to the extent necessary, cooperate with the other party. In such event the Developer, on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

- (a) Neither Party shall make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, which would impose any liability on the other Party, without the prior approval of that Party; and
- (b) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and the Developer, on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Developer shall reimburse the Village from time to time on written demand from the Mayor of the Village and notice of the amount due for any expenses, including but not limited to court costs, attorneys' fees and witnesses' fees, and other expenses of litigation, incurred by the Village in connection therewith.

The Village and Developer each agree to use their respective best efforts to defend the validity of this Agreement, and all ordinances and resolutions adopted and agreements executed pursuant to this Agreement, including every portion thereof and every approval given, and every action taken, pursuant thereto.

12.5 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, nor 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.

12.6 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 THIRTEEN **EQUAL EMPLOYMENT OPPORTUNITY**

13.1 No Discrimination. Developer will comply with all federal, state and local laws relating to equal employment opportunity. To the extent permitted by law, Developer will use reasonable efforts to employ qualified residents of the Village.

13.2 Advertisements. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

13.3 Contractors. Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in Section 13.1 and 13.2 above.

ARTICLE FOURTEEN **MISCELLANEOUS PROVISIONS**

14.1 Cancellation. In the event Developer or the Village shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the Redevelopment Plan, including Developer's duty to build the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the Village in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Redevelopment Plan or the covenants and agreements or rights and privileges of Developer or the Village, then and in any such event, the Party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other within sixty (60) days after such final decision or amendment. If the Village cancels this Agreement pursuant to this Section 14.1, to the extent it is then appropriate, the Village, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided. Further, the cancellation or termination of this Agreement shall have no effect on the permits issued by the Village for the Property and authorizations granted to Developer for buildings permitted and under construction to the extent permitted by said Court order; and the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded document.

14.2 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b) electronic communications, whether by telex, telegram or telecopy, (c) overnight courier, or (d) registered or certified first class mail, postage prepaid, return receipt requested.

If to Village:	Village of Bensenville 12 S. Center Street Bensenville, IL 60106 Attention: Michael Cassady, Village Manager
With a copy to:	Patrick K. Bond Corporation Counsel 400 S. Knoll Street, Unit C Wheaton, IL 60187
If to Thorntons, Inc.:	Thorntons, Inc. c/o General Counsel 10101 Linn Station Road Suite 200 Louisville, Kentucky 40223
If to Magna Group, LLC ("Owner")	Magna Group, L.L.C. c/o Gullo International 1000 Landmeier Rd. Elk Grove, IL 60007

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

14.3 Time of the Essence. Time is of the essence of this Agreement.

14.4 Integration. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

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

14.6 Recordation of Agreement. The Parties agree to record a memorandum of this Agreement in form and content mutually agreeable to the Village and the Developer, and executed by the Owner upon its acquisition of the Property in the DuPage County Recorder's Office. Developer shall pay the recording charges.

14.7 Severability. If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

14.8 Choice of Law; Venue. This Agreement shall be governed by the laws of the State of Illinois and the venue for any action shall be in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Wheaton, Illinois.

14.9 Entire Contract and Amendments. This Agreement (together with the exhibit attached hereto) is the entire contract between the Village and Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and Developer, and may not be modified or amended except by a written instrument executed by the Parties hereto.

14.10 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the Village, Developer and Owner nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village, the Developer or Owner, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village, Developer or Owner. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

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

14.12 Cooperation and Further Assurances. The Village, Developer and Owner each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village, Developer or Owner or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

14.13 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective authorized successors and assigns.

14.14 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

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

14.16 No Assignment. The Developer may not assign this Agreement without the express written consent of the Corporate Authorities of the Village. Notwithstanding any provision of this Agreement to the contrary, the Developer shall at all times during the term of this Agreement remain liable to the Village for the faithful performance of all obligations imposed upon Developer by this Agreement until such obligations have been fully performed or until the Village, at its sole option, has otherwise released Developer from any or all of such obligations. Nothing contained herein shall prohibit the Developer from selling or leasing fully constructed and completed portions of the Project/Property from time to time to affiliates or third parties, nor shall anything contained herein prohibit the Developer from selling or assigning uncompleted portions of the Project/Property from time to time to its parent or subsidiary corporations or otherwise legal (not contractual) affiliates of the Developer. The Village acknowledges that Developer's lease requires Developer to pay to its landlord additional rent in the event that Developer is granted an economic incentive from the Village concurrent with Developer's receipt of the proceeds of any incentive. Such benefits shall accrue to the members, managers and partners of Owner.

14.17 Repealer. To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

14.18 Term. This Agreement shall remain in full force and effect until the earlier that the Village makes payment of the last of the TIF Contributions and the Sales Tax Contribution or ten (10) years from the Agreement Date provided, however, the Developer's construction obligations hereunder shall terminate pursuant to certificates of completion issued by the Village.

14.19 Estoppe Certificates. Each of the Parties hereto agrees to provide the other, upon not less than ten (10) business days prior request, a certificate ("Estoppe Certificate") certifying that this Agreement is in full force and effect (unless such is not the case, in which such Parties shall specify the basis for such claim), that the requesting Party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party. If either Party fails to comply with this provision within the time limit specified, it shall be deemed to have appointed the other as its attorney-in-fact for execution of same on its behalf as to that specific request only.

ARTICLE FIFTEEN
EFFECTIVE DATE

The Effective Date for this Agreement shall be the day on which this Agreement is fully executed pursuant to duly enacted Village ordinance authorizing the execution of and adoption this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

VILLAGE OF BENSENVILLE,
an Illinois municipal corporation

By: 

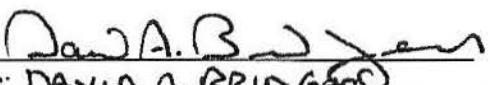
Frank Soto, President

ATTEST:

By: 
Ilsa Rivera-Trujillo, Village Clerk

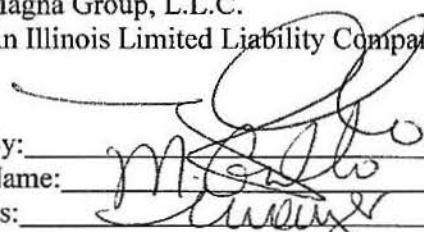
DEVELOPER:

THORNTONS, INC.,
A Delaware corporation

By: 
Name: DAVID A. BRINDLEY
Its: Vice President / General Counsel

OWNER

Magna Group, L.L.C.
An Illinois Limited Liability Company

By: 
Name: MICHAEL J. DUNNING
Its: President

Kentucky
STATE OF ~~ILLINOIS~~)
) SS
COUNTY OF Jefferson)

I, Michelle R. Reed, a Notary Public in the State and County aforesaid, do hereby certify that DAVID A. BRIDGERS, the VP/General Counsel of THORNTON'S, INC. a Delawarecorporation, personally known to me to be the person whose name is subscribed to the foregoing Developer Note, appeared before me this day in person and acknowledged that s/he signed and delivered said Agreement as her/his 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 Notarial Seal this 25 day of July, 2013.

Michelle R Reed
Notary Public

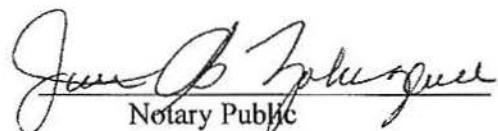
My Commission Expires:

Michelle R. Reed
Notary Public, State at Large, KY
My commission expires 5/15/2017

STATE OF ILLINOIS)
COUNTY OF COOK) SS

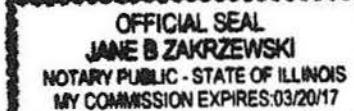
I, JANE B ZAKRZEWSKI, a Notary Public in the State and County aforesaid, do hereby certify that MARIAN CALLO, the MANAGER of **MAGNA GROUP, LLC** an Illinois limited liability corporation, personally known to me to be the person whose name is subscribed to the foregoing Developer Note, appeared before me this day in person and acknowledged that s/he signed and delivered said Agreement as her/his 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 Notarial Seal this 29TH day of July, 2013.



Jane B. Zakrzewski
Notary Public

My Commission Expires:



OFFICIAL SEAL
JANE B ZAKRZEWSKI
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 03/20/17

STATE OF ILLINOIS

3

) ss

COUNTY OF DuPAGE

1

I, Peggy L. Walberg, a Notary Public in and for said County, in the State aforesaid, do hereby certify that FRANK SOTO, the President of the Village of Bensenville, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5th day of AUGUST, 2013.

Notary Publ

My Commission Expires: 07.12.2014

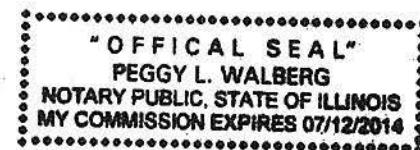


EXHIBIT A

Legal Description

THE SOUTH 396 FEET, AS MEASURED ON THE WEST LINE OF THE 660 FEET, AS
MEASURED ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE
NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 40 NORTH, RANGE 11 EAST OF
THE THIRD PRINCIPAL MERIDIAN. (EXCEPT THAT PART TAKEN OR DEDICATED
FOR ROADWAY PURPOSES) IN DUPAGE COUNTY, ILLINOIS, CONTAINING
APPROXIMATELY 200,290 SQUARE FEET.