



12 South Center Street
Bensenville, IL 60106
Office: 630.350.3404
Fax: 630.350.3438
www.bensenville.il.us

VILLAGE BOARD

June 29, 2018

President
Frank DeSimone

Board of Trustees
Rosa Carrasco
Ann Franz
Agneszka "Annie" Jaworska
McLain Lomax
Nicholas Pannella Jr.
Amanda Perez

Village Clerk
Nancy Dunn

Village Manager
Evan K. Summers

Mr. Jake Griffin
Daily Herald Media Group
155 East Algonquin Road
Arlington Heights, Illinois 60005-4617

Re: June 25, 2018 FOIA Request

Dear Mr. Griffin:

I am pleased to help you with your June 25, 2018 Freedom of Information Act ("FOIA"). The Village of Bensenville received your request on June 25, 2018. You requested copies of the items indicated below:

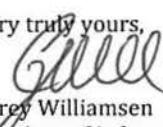
- *Copies of all active sales tax rebate/sharing agreements, preferably with authorizing ordinance showing votes of elected officials.*
- *Amount of sales tax rebates/sharing each commercial recipient (business owner, developer, etc.) was given annually or by fiscal year since the inception of the agreement. (We are seeking a year-by-year breakdown for each agreement, not a total. We can do the math ourselves.)*

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

- 1) Village of Bensenville Resolution No. R-74-2012. (26 pgs.)
- 2) Village of Bensenville Ordinance No. 41-2013. (34 pgs.)
- 3) Village of Bensenville Resolution No. R-150-2015. (17 pgs.)
- 4) Village of Bensenville Resolution No. R-28-2015. (19 pgs.)
- 5) Village of Bensenville Resolution No. R-51-2015. (24 pgs.)
- 6) Village of Bensenville Resolution No. R-102-2015. (23 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

RESOLUTION NO. R-74-2012

**A RESOLUTION APPROVING EXECUTION OF
THE FIRST AMENDED ECONOMIC INCENTIVE AGREEMENT
WITH BCR AUTOMOTIVE GROUP, LLC, D.B.A. ROESCH FORD
IN BENSENVILLE, 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, *et seq.*; and

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/8-11-20, authorizes Illinois municipalities to enter into economic incentive agreements for the development or redevelopment of land within their corporate limits and, pursuant thereto, 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, pursuant to its statutory authority, the Village adopted Resolution No. 73-2011, authorizing the execution of an Economic Incentive Agreement with BCR Automotive Group, LLC, an Illinois limited liability company, d.b.a. Roesch Ford in Bensenville ("BCR"); and

WHEREAS, the Economic Incentive Agreement encouraged BCR to approach the Village should it have the opportunity to expand its business and its expansion would qualify for economic incentive payments; and

WHEREAS, BCR has communicated its desire to open and operate the Roesch Ford Commercial Truck Center at 303 West Grand Avenue in Bensenville, the former location of a Mitsubishi dealership; and

WHEREAS, BCR has proposed to the Village that it amend the existing Economic Incentive Agreement as set forth in the First Amended Economic Incentive Agreement, attached hereto and incorporated herein by reference as Exhibit 1, to include funding for this new expansion, and for the sharing of the municipal retailers' occupation tax received attributable to the redevelopment of the property at 303 West Grand; and

WHEREAS, BCR has further represented to the Village that the sharing of municipal retailers' occupation tax revenue for use as collateral is essential for BCR to secure proper financing for the redevelopment of the Property, and that BCR would not be able to redevelop the Property without such tax revenue sharing; and

WHEREAS, after due consideration and investigation of BCR's proposal, the President and the Village Board of Trustees find that the proposed sharing of the retailers' occupation tax from the redevelopment of the property at 303 West Grand is

appropriate and meets the all of requirements of Section 8-11-20 of the Illinois Municipal Code therefor as follows:

1. That the Property contains a building on site which no longer complies with current building codes; and
2. That the redevelopment of the Property with a new Roesch Ford Commercial Truck Center will create job opportunities within the Village; and
3. That the redevelopment project will serve to stimulate further development of properties adjacent to the Property and along the West Grand Avenue "automobile sales corridor"; and
4. That, based upon representations by and information from BCR, without the Economic Incentive Agreement for this Property, the redevelopment of the Property as a Roesch Ford Commercial Truck Center would not be possible; and
5. That BCR meets high standards of creditworthiness and financial strength, as demonstrated by specific evidence of equity financing for not less than 10% of the total project costs; and
6. That the redevelopment project will strengthen the commercial sector of the municipality by contributing to the maintenance and improvement of West Grand Avenue "automobile sales corridor"; and
7. That the project will enhance the tax base of the municipality by generation of additional retailers' occupation tax revenues; and
8. That entering into the Economic Incentive Agreement is in the best interest of the Village; and

WHEREAS, the Village has developed a strategic plan which includes as two of its primary goals the creation and maintenance of a financially sound Village and vibrant major corridors; and

WHEREAS, the creation of jobs, generation of additional retailers' occupation taxes, and the maintenance and improvement of West Grand Avenue "automobile sales corridor," which will result from the Village's entry into the First Amended Economic Incentive Agreement, will also contribute to the Village's strategic goals of a financially sound village and vibrant major corridors; and

NOW, THEREFORE, BE IT RESOLVED 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 of the Village into the First Amended Economic Incentive Agreement, attached hereto as Exhibit 1, is appropriate and for the best interests of the residents of the Village.

SECTION THREE: That the Village President is hereby authorized to execute the First Amended Economic Incentive Agreement on behalf of the Village, and the Village Clerk 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 First Amended Economic Incentive 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: That this Resolution shall take effect immediately upon its passage and approval as provided by law.

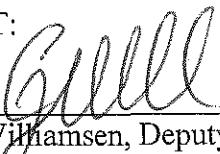
PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this 24th day of July 2012.

APPROVED:



Frank Soto, Village President

ATTEST:


Corey Williamsen, Deputy Village Clerk

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

Nays: NONE

Absent: NONE

**VILLAGE OF BENSENVILLE
FIRST AMENDED ECONOMIC INCENTIVE AGREEMENT
VILLAGE OF BENSENVILLE AND BCR AUTOMOTIVE GROUP, LLC**

THIS FIRST AMENDED ECONOMIC INCENTIVE AGREEMENT ("Agreement") is made and entered into as of the 22nd day of May 2012 by and between the VILLAGE OF BENSENVILLE, DuPage and Cook Counties, Illinois, an Illinois municipal corporation (the "Village"), and BCR AUTOMOTIVE GROUP, LLC, an Illinois limited liability company, d.b.a. Roesch Ford in Bensenville ("BCR"), with its principal office at 333 West Grand Avenue in the Village of Bensenville, County of DuPage, Illinois.

WITNESSETH

WHEREAS, on June 28, 2011, the Village Board of the Village adopted Resolution R-73-2011 captioned "A Resolution Approving An Economic Incentive Agreement with BCR Automotive Group, LLC, D.B.A. Roesch Ford in Bensenville, for the Redevelopment of 333 West Grand Avenue and Certain Incentives, Including Sharing of Retailers' Tax Revenues" providing for execution of an Economic Incentive Agreement with BCR Automotive Group, LLC (hereinafter "BCR"); and

WHEREAS, in execution of the Economic Incentive Agreement, the Village determined that it is essential to the economic and social welfare of the Village to promote the economic vitality of the community by assuring opportunities for development and sound and stable commercial growth within the Village's corporate limits; and

MEMBER DAN ROESCH 

WHEREAS, Resolution No. 73-2001 was adopted to provide economic assistance to BCR, which had operated the Larry Roesch Chevrolet motor vehicle dealership within the boundaries of the Village from 1981 through 2009, when it was forced to close because of the Franchise reduction resulting from General Motors' reorganization; and

WHEREAS, BCR was in final negotiations to purchase the Elmhurst Ford dealership Franchise, located at 678 North York Road in Elmhurst, Illinois, and had received approval from the Ford Motor Company to relocate that Franchise to the former Larry ~~Roesch~~ Chevrolet dealership property at 303 West Grand Avenue in the Village, as more fully described herein ("Property"), which had been unoccupied for over a year prior to the adoption of Resolution No. 73-2011; and

WHEREAS, as a condition of the relocation of the Elmhurst Ford Dealership Franchise to the Property, the Ford Motor Company required BCR to redevelop the Property, including razing of the existing showroom, office, and repair facility on the site and to replace it with the Ford Trustmark Image facility and required Ford-approved signage, as more fully described herein (the "Project"); and

WHEREAS, BCR estimated that redevelopment of the Property as required by Ford Motor Company will cost in range of \$2,700,000 to \$3,000,000, and will require financing by BCR; and

WHEREAS, the laws of the State of Illinois authorize the Corporate Authorities of a municipality to enter into economic incentive agreements relating to the development or

redevelopment of land within the corporate limits of the municipality; and

WHEREAS, the Corporate Authorities of the Village desire to improve the social and economic welfare of the Village and enhance the tax base of the Village to the benefit of the Village and other governmental entities by exercising the authority provided by law and entering into economic incentive agreements that are in the furtherance of and essential to the public interest; and

WHEREAS, the Village authorized and executed the Economic Incentive Agreement to assist BCR in locating and operating the Ford Dealership on the Property; and

WHEREAS, the Economic Incentive Agreement adopted pursuant to Resolution No. 73-2011 encouraged BCR to approach the Village for amendment of the Economic Incentive Agreement should it be in position to expand its business within the Village at a location or locations not included in the Economic Incentive Agreement; and

WHEREAS, BCR has approached the Village relative to its proposal to assume ownership and control of property located at 303 West Grand Avenue (hereinafter Property #2) for purposes of operation of a Roesch Ford Commercial Truck Center; and

WHEREAS, Property #2 was formerly the site of a Mitsubishi dealership, which has a building on the site which no longer complies with the current building code; and

WHEREAS, as a condition for the operation and opening of the Roesch Ford Commercial Truck Center, BCR must incur expenses as set forth on Exhibit F that will allow Property #2 to be used for a Commercial Truck Center (hereinafter Project #2); and

WHEREAS, BCR estimates that the redevelopment of Property #2 will cost more than Eight Hundred Thousand Dollars, and will require financing by BCR; and

WHEREAS, BCR has represented to the Village that sales tax revenue sharing for use as collateral is essential for BCR to secure proper financing for the redevelopment of the Property and Property #2 and BCR would not be able to redevelop the Property and Property #2 without sales tax revenue sharing; and

WHEREAS, the redevelopment of the Property and Property #2 will generate increased real estate tax and sales tax revenues and employment opportunities for the Village and stimulate the revitalization and redevelopment of the West Grand Avenue automobile sales corridor; and

WHEREAS, the Village desires to make it more economically feasible for BCR to redevelop the Property and Property #2 by entering into the First Amended Economic Incentive Agreement with BCR pursuant to the authority set forth in Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, and other law; and

WHEREAS, as set forth in its Resolution approving the First Amended Economic Incentive Agreement and authorizing its execution and delivery, the Village has made the requisite findings, in accordance with 65 ILCS 5/8-11-20, that the building on the Property #2 no longer complies with current building codes; that the Project #2 is expected to create or retain job opportunities within the Village, will serve to further develop adjacent areas, will strengthen the commercial sector and enhance the tax base of the Village, and would not be possible without this First Amended Agreement; that BCR meets high standards of credit worthiness and strength;

and that this First Amended Agreement is in the best interests of the Village.

IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, BCR and the Village hereby agree as follows:

SECTION 1. RECITALS

The recitals hereinabove set forth are hereby incorporated by this reference into the body of this First Amended Agreement to the same extent as if each such recital had been set forth in full in the body of this First Amended Agreement.

SECTION 2. DEFINITIONS

Whenever used in this First Amended Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

“Automotive or Truck Sales Franchise” or “Franchise”: The sale of a specified brand or brands of new automobiles and/or trucks and servicing of those brands pursuant to a dealership Franchise agreement with a motor vehicle manufacturing business, together with subsidiary sales and servicing of used motor vehicles.

“BCR”: BCR Automotive Group, LLC, an Illinois limited liability company, d.b.a. Roesch Ford in Bensenville, or any successor or assign as permitted under this Agreement.

“Commencement Date”: The date established pursuant to Section 3 of the original Agreement, and, for purposes of the amendment, the First Amended Agreement.

“Corporate Authorities”: The President and Board of Trustees of the Village.

“Effective Date of this Agreement” or “Effective Date”: The date referenced in the first paragraph on Page 1 of this First Amended Agreement.

“Economic Incentive Payment” or “EIP”: The amounts payable to the BCR pursuant to Section 4 of the First Amended Agreement.

“Force Majeure”: Shall include but not be limited to an Act of God or other event or cause not reasonably within the control of BCR or the Village including, without limitation, fire, strikes, lockouts, war, insurrection, earthquakes, casualties, acts of the public enemy, respective governmental laws and regulations, epidemics, quarantine, restrictions, or lack of transportation, building material supply shortages, vendor problems not caused by BCR, embargoes, civil riot, floods or natural catastrophe, as further described in Section 6 of this First Amended Agreement.

“Property”: The property commonly known as 303 West Grand Avenue, Bensenville, DuPage County, Illinois and legally described in Exhibit A, which is attached hereto and incorporated herein by reference as if fully set forth.

“Property #2”: The Property commonly known as 333 West Grant Avenue, Bensenville, DuPage County, Illinois and legally described in Exhibit D, which is attached hereto and

incorporated herein by reference as if fully set forth.

"Maximum Sharing Amount": Shall mean the not-to-exceed cumulative amount of Two Million Eight Hundred Fifty Thousand and 00/100ths Dollars (\$2,850,000.00) to be paid to BCR as set forth in Exhibits B and E, which are attached hereto and incorporated herein by reference as if fully set forth.

"Project": The redevelopment of the Property, including the razing and/or alteration of the existing structures thereon, with the Ford Trustmark Image automobile dealership facility as set out and described in Exhibit C, which is attached hereto and incorporated herein by reference as if fully set forth, and the relocation and operation of the Elmhurst Ford dealership there by BCR or its successors.

"Project #2": The redevelopment of Property #2, is set out and described in Exhibit F, which is attached hereto and incorporated herein by reference as if fully set forth,

"Party" or "Parties": The Village and/or BCR and/or their successors or assigns as permitted under this Agreement.

"Sales Taxes": The portion (presently one [1] percent) of any and all taxes distributed to and actually received by Village which are imposed and collected by the State pursuant to the Retailer's Occupation Tax Act, 35 ILCS 120/1 *et seq.*, the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, and the Use Tax Act, 35 ILCS 105/1 *et seq.*, from sales and service transactions occurring on the Property, including internet generated by sales of vehicles and parts from which Illinois sales tax receipts are derived, but not including any portion of the Use Tax which is distributed on the basis of population (per capita distribution) and not included in the term "Sales Taxes," and further excluding any portion of a tax imposed or that may be imposed under the Non-Home Rule Retailer's Occupation Tax Act, 65 ILCS 8-11-1.3, *et seq.*; Non-Home Rule Service Occupation Tax Act, 65 ILCS 8-11-1.4, *et seq.*; Non-Home Rule Use Tax Act, 65 ILCS 8-11-1.5, *et seq.*; and any other retailer's occupation tax, service occupation tax, use tax, or sales, except as expressly authorized by this definition.

"Sales Tax Year": For purposes of this First Amended Agreement, "Sales Tax Year" shall mean each twelve month period during the Term hereof, commencing April 1st of a given calendar year and ending March 31st of the following calendar year (e.g., the "2012 Sales Tax Year" would be from April 1, 2012, through March 31, 2013).

"State": The State of Illinois.

"Term": The period for which this First Amended Agreement shall be enforced, commencing from April 1, 2011 through March 31, 2026

"Village Minimal Annual Allocation": Shall mean the One Hundred Thousand Dollar (\$100,000) annual minimum 50% sales tax allocation to the Village effective in Sales Tax Year 2014 as set forth in Exhibit B, which is attached hereto and incorporated herein by reference as if fully set forth. If total sales tax receipts in any Sales Tax Year is less than \$100,000 then the Village minimum annual allocation shall be equal to said total. In no case shall BCR be required to cover the differential between the \$100,000 and the total if the total is less than the \$100,000 minimum allocation.

SECTION 3. COMMENCEMENT OF CALCULATION OF ECONOMIC INCENTIVE PAYMENTS

The Commencement Date under the Agreement for the calculation of the EIP is hereby declared to be April 1, 2011 for the Project, and April 1, 2012 for Project #2.

SECTION 4. DETERMINATION OF AMOUNT OF ECONOMIC INCENTIVE PAYMENT

A. Amount of Economic Incentive Payment (“EIP”). Commencing on the Commencement Date, and for each Sales Tax Year during the Term hereof, BCR shall be entitled to an Economic Incentive Payment (“EIP”) as follows:

1. For each of the Sales Tax Years commencing in 2011 (for the Project), 2012, and 2013, the Village shall pay BCR seventy five percent (75%) of the Sales Taxes up to and including but not exceeding the Maximum Sharing Amount.
2. For each of the Sales Tax Years 2014 through and including 2025, the Village shall pay BCR fifty percent (50%) of the Sales Taxes, subject to adjustment in any Sales Tax Year that the Village Minimum Allocation is not met, up to and including but not exceeding the Maximum Sharing Amount. Provided, however, once BCR has received an amount equal to the Maximum Sharing Amount, the Village shall have no further obligation to make any EIP’s to BCR.

EIPs shall be made only from proceeds of Sales Taxes imposed and collected by the State, generated by sales and service transaction occurring on the Property, including internet generated sales of vehicles and parts from which Illinois local sales tax receipts are derived, and distributed to and actually received by Village. All EIPs shall be based on the records of the Illinois Department of Revenue for BCR.

B. Village Payment. The Village shall make the EIP payments in the amounts provided for in Section 4.A. from the proceeds of Sales Tax distributions actually received by the Village within 120 days of the completion of the Sales Tax Year in which the revenues are recorded and subject to the receipt of the Illinois Department of Revenues Certification of the Sales Tax disbursements to the Village and Village receipt of the required supporting documentation for such Sales Taxes as specified in Sections 5D and 9. If, for any reason, the State of Illinois fails to distribute the Sales Tax receipts to the Village in sufficient time for the Village to make such annual payments, then the Village shall provide notice of such fact to BCR. In such event, the Village shall make the required EIP payment within 60 days after the date on which the Village actually receives the Sales Tax Receipts due to the Village for the applicable Sales Tax Year. If at the end of any Sales Tax Year there is a need to adjust and reconcile the amount of any EIP to account for any provision of this Agreement or to account for the amount of Sales Tax actually paid by the State of Illinois, then the Village and BCR do hereby agree to cooperate with each other to accomplish such reconciliation.

C. Change in the Law. The Village and BCR acknowledge and agree that the Village’s obligation to pay the EIP to BCR is predicated on existing State law, including, without

limitation, the Retailer's Occupation Tax Act and Section 8-11-20 of the Illinois Municipal Code. The Village and BCR further acknowledge that the General Assembly of the State has from time to time, considered proposals to modify or eliminate the distribution of Local Sales Tax receipts to Illinois municipalities. In the event that the State of Illinois amends or repeals the applicable state statutes or makes any other promulgation, enactment or change in law ("Change in Law"), and such Change in Law results in replacement taxes for all or a portion of the Sales Tax receipts generated by BCR as contemplated hereunder, then, for purposes of this Agreement, the revenue from such replacement taxes shall be used to calculate the Local Sales Tax Receipts, subject in all respects to the Village's actual receipt of its portion of such replacement taxes as well as the Village's authority under state law to provide for the sharing of such replacement taxes, as contemplated herein.

D. Limited Liability. Notwithstanding any other provision of the First Amended Agreement to the contrary, the Village's obligation to pay the EIP shall not be a general debt of the Village on or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Sales Tax receipts received by the Village, as specifically defined in Section 2 of this First Amended Agreement. Subject to all of the conditions, limitations and restrictions in this First Amended Agreement, the Village shall be liable to BCR for disbursement of monies hereunder only to the extent of the Sales Tax Receipts actually received by the Village from the Illinois Department of Revenue or other applicable State governmental agency. Further, any payments due to BCR from the Village pursuant to the First Amended Agreement shall be reduced by an amount equal to all collection fees imposed upon the Village by the State of Illinois or the Illinois Department of Revenue or other applicable governmental agency or body, for collections of revenues to be shared. BCR shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the EIP, and no execution of any claim, demand, cause of action, or judgment shall be levied upon or collected from the general credit, general funds, or other property of the Village. No recourse shall be had for any payment pursuant to this First Amended Agreement against any past, present, or future director, member, elected or appointed officer, official, independent contractor, agent, attorney, or employee of the Village in his or her individual capacity.

E. Consent to Payment to BCR. By signing the First Amended Agreement, BCR and each and all of its successors and assigns acknowledges and represents to the Village and each and all of its elected and appointed officers, officials, employees, agents, attorneys, independent contractors successors and assigns (hereinafter for convenience collectively referred to as the "Village Representatives") that no representations, warranties (except that this First Amended Agreement has been duly enacted by the Village in accordance with all applicable laws), advice and/or statements of any kind or nature have been made by any of the Village Representatives that upon the First Amended Agreement becoming effective that:

1. The State of Illinois will continue to share sales tax receipts with the Village;
2. The State of Illinois will continue to authorize and/or permit economic incentive agreements and payments pursuant thereto; and/or

SECTION 5. BCR'S OBLIGATIONS. Village's obligation to make the EIP's as provided for in this First Amended Agreement is conditioned upon BCR's performance of the following acts and obligations. BCR's performance of such is material to this First Amended Agreement, and BCR's failure to perform such, subject to the provisions of notice and cure in Section 7. B., shall be deemed a breach of this First Amended Agreement for which the Village

may immediately suspend and withhold payment of the EIP's or declare the First Amended Agreement terminated and pursue all lawful remedies available to it.

A. BCR shall provide to the Village a copy of all fully executed agreements with Ford Motor Company relating to the long-term relocation of the Elmhurst Ford Franchise to the Property and BCR shall also provide to the Village within three (3) business days of receipt thereof any notices or actions by the Ford Motor Company impacting the use of the Property as the site for said Ford Franchise.

B. BCR shall offer to sell to the Village any Ford Motor Company vehicle offered for sale by BCR at the State bid price, provided nothing herein shall be construed to require the Village to accept such offer or purchase of any vehicles from BCR.

C. BCR shall provide to the Village a copy of all fully executed agreements with Ford Motor Company relating to the long-term location of Roesch Ford Commercial Truck Center to the Property #2 and BCR shall also provide to the Village within three (3) business days of receipt thereof any notices or actions by the Ford Motor Company impacting the use of the Property #2 as the site for said Ford Franchise.

D.. BCR shall maintain for the duration of Term as set forth in this First Amended Agreement copies of any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity with respect to the Property. Such documents shall be available for inspection by the Village at all reasonable times and copies thereof shall be promptly provided to the Village if the Village requests such.

D. BCR shall provide the Village with all authorization necessary for the State's release of Sales Tax information to the Village.

E. BCR shall establish and must maintain throughout the Term set forth in this First Amended Agreement, a procedure whereby all of BCR's internet generated sales of vehicles and parts which generate Sales Tax is administered so that all receipts of such Sales Tax permitted by law therefrom flow to the Village.

F. BRC shall complete the Project no later than December 31, 2013, and shall compete Project #2 no later than December 31, 2013 and must document its expenses for Project #2 to the Village prior to the first payment under this First Amended Agreement. BCR shall maintain the Property and Property #2 at all time in compliance with all Village codes and ordinances and shall not at any time place or permit to be placed any vehicles, signage of any kind, including all temporary signs, or other objects on any roadway easement right-of-way or parkway. Further BCR shall not at any time place or permit to be placed any temporary trailer signs on any portion of the Property or Property #2, except that BCR shall be permitted to erect temporary signage and conduct in any Sales Tax Year up to four (4) "tent-sales" and/or like event on the Property and on Property #2, with each event limited to a maximum duration of eighteen (18) consecutive days.

G. BRC shall grant the Village the right to locate signage on BRC property designating entry into the Village of Bensenville on Grand and Church Roads. Location for said signage to be approved by BRC. Said signage to be created, installed and maintained at the sole cost of the Village.

SECTION 6. FORCE MAJEURE

A. Whenever a period of time is provided for in this First Amended Agreement for either BCR or the Village to perform any act or obligation, and BCR or the Village, as the case may be, is unable to perform or complete such act or obligation because of a Force Majeure, then upon the occurrence of any such Force Majeure, the time period for the performance and completion of such act or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

B. Provided BCR is not in default hereunder, the Village shall continue to make any and all disbursements during any period of reconstruction or Force Majeure referred to hereinabove to which BCR would otherwise be entitled hereunder for said period.

SECTION 7. LITIGATION AND DEFENSE OF AGREEMENT

A. Litigation. If, during the Term as set forth in this First Amended Agreement, any lawsuits or proceedings are filed or initiated against either 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 party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.

B. Defense. The Village and BCR do hereby agree to use their respective best efforts to defend the validity of this First Amended Agreement and all ordinances and resolutions adopted and agreements executed pursuant to this First Amended Agreement, including every portion thereof and every approval given, and every action taken pursuant thereto. Each Party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Village and BCR do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this First Amended Agreement.

SECTION 8. REMEDIES

A. Remedies. In the event of a breach or an alleged breach of this First Amended Agreement by either Party, either Party may, by suit, action, mandamus, or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this First Amended Agreement in accordance with the provisions of Section 11 of this First Amended Agreement.

B. Notice and Cure. Neither Party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section without first providing written notice to the other party of the breach or alleged breach and allowing a period of fifteen (15) days for the curing of said breach or alleged breach, provided, however, that in the event such violation or failure cannot be cured within said fifteen (15)-day period notwithstanding diligent and continuous efforts by the Party receiving notice and said Party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

SECTION 9. RELEASE OF INFORMATION

To the extent permitted by law, the Village shall maintain confidentiality of the information contained in such reports; however, BCR acknowledges the Village, as a public body, is subject to the (Illinois) Freedom of Information Act, 5 ILCS 140/1 *et seq.*, the (Illinois) Open Meetings Act, 5 ILCS 120/1 *et seq.*, and other law providing for the public disclosure of information and records, and agrees to abide by the Village's determinations regarding required disclosures under such laws and not to bring any claims, actions, suits, or causes of action or to seek damages of any kind against the Village on account of any disclosure. In addition, prior to any payments to BCR pursuant to this Agreement, BCR shall provide the State with properly executed authorizations granting the Village the right to access the Sales Tax records of BCR. BCR acknowledges and agrees that the provisions of this First Amended Agreement shall be a matter of public record, as shall any and all payments made by the Village to BCR pursuant to this First Amended Agreement. BCR further covenants and agrees, that upon the request of the Village, BCR shall furnish such consents or waivers as may be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in form and content satisfactory to the State and BCR in order to release the above-described sales tax information to the Village. BCR agrees and acknowledges that any disbursements made by the Village pursuant to this First Amended Agreement can only be made from and to the extent of the data submitted to the State in accordance with this Section.

SECTION 10. PAYMENT OF VILLAGE FEES AND COSTS

General Requirements. In accordance with all applicable Village codes, ordinances, resolutions, rules, or regulations, BCR shall pay to the Village, as and when due, all application, inspection, and permit fees, and all other fees, charges, and contributions therein required as uniformly applied throughout the Village. In good faith, the Village will act diligently to promptly review and process all applications submitted by BCR.

SECTION 11. ENFORCEMENT

A. The Parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this First Amended Agreement, provided, however, that BCR agrees that it shall not seek, and that it does not have the right to seek, to recover a judgment for monetary damages against any elected or appointed Village officers, officials, agents, representatives, attorneys, independent contractors or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this First Amended Agreement. In addition to every other remedy permitted by law or the enforcement of the terms of this First Amended Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any structure on the Property and Property #2 whenever BCR has failed or refused to meet fully any of its material obligations under this First Amended Agreement. In the event of a judicial proceeding brought by any Party to this First Amended Agreement against any other party to this First Amended Agreement for enforcement or for breach of any provision of this First Amended Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorney's fees, incurred in connection with such judicial proceeding.

B. Except as otherwise set forth in this First Amended Agreement, the rights and remedies of the parties to this First Amended Agreement, whether provided by law or this First Amended Agreement, shall be cumulative and the exercise by any party of any one or more such

remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other party. Unless prohibited by law, any delay by any party in instituting or prosecuting any actions or proceedings or asserting its rights under this First Amended Agreement shall not operate as a waiver of such rights in any way, it being the intent of this provision that such party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any party with respect to any specific default by any other party under this First Amended Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this First Amended Agreement or with respect to the particular default except to the extent specifically waived in writing or otherwise prohibited by law.

C. Upon the occurrence of any one or more of the following events during the period of time commencing as of the date of the making of this First Amended Agreement above, and ending on the date that the last EIP is made by the Village to BCR, the Village shall have no obligation of any kind or nature whatsoever to make any further EIP to BCR:

1. A material breach of this First Amended Agreement by BCR; or
2. A significant reduction in the Sales Tax receipts as a result of changes in BCR business plan or other actions by BCR during the Term set forth in this First Amended Agreement. A significant reduction in the Sales Tax receipts for purposes of this provision Section 11.C.2. in this First Amended Agreement shall mean and refer to a reduction in the amount of Sales Tax receipts which is equal to or greater than forty percent (40%) of the average of the Sales Tax receipts received by the Village in the last five (5) years during which economic incentive payments were made by the Village to BCR. Among the purposes of this provision is protection of the Village against relocation of the Franchise after incentive payments have been made or in the event that the Village declares any assignment or transfer of rights or interests void as provided in Section 13 of this First Amended Agreement and BCR proceeds with such assignment or transfer. A termination of BCR's Ford Franchise by Ford Motor Company shall not be a breach of this First Amended Agreement.

D. All judicial proceedings by the Parties to enforce State claims shall be brought in the Circuit Court for the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois, and in the U.S. District Court for the Northern District of Illinois to enforce federal claims.

SECTION 12. NATURE AND SURVIVAL OF OBLIGATIONS

The Parties agree that all charges payable pursuant to the First Amended Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute the obligation of the Party liable for its payment beyond the terms of this First Amended Agreement, and of the successors of such Party.

SECTION 13. TRANSFER OR ASSIGNMENT

BCR shall have the right from time to time to assign or transfer all or any part of its rights or interests under this First Amended Agreement in consideration of or as additional security for any financing or equipment leasing arrangement entered into by BCR. The Village agrees to

execute any documents reasonably requested in connection therewith by a financing source. In all other cases, BCR'S assignment or transfer of any of its rights or interests hereunder shall be made only upon notice and with the written consent of the Village, which shall not be unreasonably delayed or withheld. The Village agrees that any transfer or assignment to a purchaser of its Ford Franchise shall be a permitted assignment. All assignment or transfer by BCR of its rights and interest provided for under this Section 13 shall be subject to the following terms and conditions:

A. No such assignment or transfer, except such assignment or transfer to a successor Ford dealership, shall release BCR from any of its obligations under this First Amended Agreement.

B. No assignments and transfer shall violate the requirements of Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, or other applicable law. Prior to consenting to such a transfer, the Village may require of BCR and BCR shall provide the Village documentation and other information demonstrating conformance therewith.

C. All assignees and transferees of all or any part of its rights or interests under this First Amended Agreement shall be subject to all terms, provisions, and conditions of this First Amended Agreement.

D. Any assignment or transfer of this First Amended Agreement or rights or interests hereunder shall be voidable, at the Village's option, within thirty (30) days after the Village receives notice of or becomes aware of such assignment or transfer, unless the Village has given its written consent to such assignment or transfer, or the assignment or transfer is in consideration of or as additional security for any financing or equipment leasing arrangement as provided for in this Section 13.

SECTION 14. REPRESENTATIONS AND WARRANTIES

In order to induce the Village to enter into this First Amended Agreement and to grant the rights herein provided for BCR hereby warrants and represents to the Village as follows:

A. BCR is an Illinois limited liability company duly organized, validly existing, and in good standing under the laws of the State of Illinois.

B. BCR has the authority and the legal right to make, deliver, and perform this First Amended Agreement and has taken all necessary corporate, partnership, and venture actions to authorize the execution, delivery, and performance of this First Amended Agreement.

C. No mortgagee or any other secured party, other than those listed on Exhibit D attached hereto and, by this reference, incorporated herein, has an interest in the Property #2 as of the date of this First Amended Agreement. No such mortgagee or any other secured party listed on Exhibit D has an objection to either (i) the execution and performance of this First Amended Agreement by BCR or (ii) the binding nature of this Agreement with respect to the Property #2.

D. All necessary consents of the members of BCR and its creditors, investors, partners, franchisers, judicial or administrative bodies, governmental authorities, or other parties regarding the execution and delivery of this First Amended Agreement have been obtained.

E. That it has or will provide any consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village,) that is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement.

F. The individuals executing this First Amended Agreement on behalf of BCR have the full power and authority necessary to execute and deliver this First Amended Agreement on behalf of BCR.

G. The execution, delivery, and performance of this First Amended Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of BCR; (ii) will not result in a breach or default under any agreement to which BCR is a party or to which BCR, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which BCR or the Property or Property #2 or any Franchise in whole or in part is or are subject.

H. BCR has made its own independent investigation and determination of all matters relating to this First Amended Agreement including but not limited to a determination of whether its terms are enforceable and that BCR has not and will not rely upon the Village Representatives in connection therewith.

SECTION 15. GENERAL PROVISIONS

A. Complete Agreement: Supersedence. This First Amended Agreement and Exhibits A, B, C, D, E and F, attached hereto, constitute the complete agreement of the parties regarding Economic Incentive Payments out of a portion of the Local Sales Tax Receipts to BCR and shall supersede and nullify all prior drafts and agreements concerning such matters.

B. Amendments. No amendment to, or modification of, this First Amended Agreement shall be effective unless and until it is in writing and is approved by the authorized representatives of BCR and by the Corporate Authorities by resolution or ordinance duly adopted, and executed and delivered by the authorized representative of each party.

C. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and shall be deemed delivered to and received by the addressee thereof when delivered in person at the address set forth below or one (1) business day after deposit thereof with any recognized private courier company that provides overnight delivery service, or three (3) business days after deposit thereof in any main or branch United States Mail, certified or registered mail, return receipt requested, postage prepaid, properly, addressed to the parties, respectively, as follows:

For notices and communications to the Village:

Village Manager
Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106

With a copy to:

Patrick K. Bond, Esq.
Village Attorney
Bond, Dickson & Associates, P.C.
400 South Knoll Street, Unit C
Wheaton, Illinois 60187

For notices and communications to BCR:

BCR Automotive Group, LLC
333 West Grand Avenue
Bensenville, Illinois 60106

With a copy to:

James R. Hardt
Hardt, Stern & Kayne, P.C.
2610 Lake Cook Road, Suite 200
Riverwoods, IL 60015

By notice complying with the foregoing requirements of this paragraph, each Party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no such notice of change of address shall be effective unless in writing and until actually received.

D. Governing Law. This Agreement and the rights of the Parties hereunder shall be governed by, and construed, interpreted, and enforced in accordance with the laws of the State of Illinois.

E. Interpretation. This First Amended Agreement has been negotiated by all Parties and shall not be interpreted or construed against the Party drafting the First Amended Agreement.

F. Change in Laws. Except as otherwise explicitly provided in this First Amended Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include such laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. Headings. The headings of the sections, paragraphs, and other parts of this First Amended Agreement are for convenience and reference only and in no way define, extend, limit, or describe the meaning, scope, or intent of this Agreement, or the meaning, scope, or intent of any provision hereof.

H. Time of Essence Time is of the essence in the performance of all terms and provisions of this First Amended Agreement.

I. No Third Party Beneficiaries. Except, as expressly provided herein, nothing in

this Agreement shall create, or be construed to create, any third-party beneficiary rights in any person or entity not a signatory to this First Amended Agreement.

J. Exhibits. All Exhibits attached to this First Amended Agreement, are incorporated herein and made a part hereof by this reference.

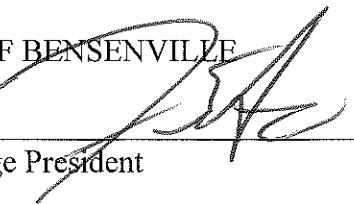
K. Counterparts. This First Amended Agreement may be executed in identical counterparts and all of said counterparts shall, individually and taken together, constitute the First Amended Agreement.

L. Severability. If any provision, condition, covenant or other clause, sentence or phrase of this First Amended Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity there of shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this First Amended Agreement so that the purpose of this First Amended Agreement cannot be fulfilled, then this First Amended Agreement shall terminate as of the date of such judgment.

M. Expansion. In the event that after the Effective Date of this First Amended Agreement BCR expands its business within the Village at a location or locations not now included in this Agreement and if its plans for development and/or redevelopment qualify for economic incentive payments, then, the Village encourages BCR to seek an amendment to this First Amended Agreement and in good faith the Village shall consider the approval of such amendment or amendments.

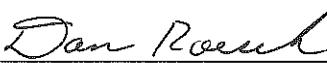
IN WITNESS WHEREOF, the parties have caused this First Amended Agreement to be executed by their duly authorized representatives as of the date first above written.

VILLAGE OF BENSENVILLE

By: 

Village President

BCR AUTOMOTIVE GROUP, LLC

By: 

Its PRESIDENT

ATTEST:



Susan Jankowick
Village Clerk

EXHIBIT A
LEGAL DESCRIPTION OF BCR
____ Property — Cook County, Illinois

PARCEL 1:

PARCEL 2:

PIN NO.

UNOFFICIAL COPY

DESCRIPTION:

PARCEL 2:

THAT PART OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF GRAND AVENUE WITH THE CENTERLINE OF CHURCH ROAD; THENCE NORTH 00° 38' 42" WEST ON THE CENTERLINE OF CHURCH ROAD, A DISTANCE OF 639.83 FEET TO A POINT 787.32 FEET (AS MEASURED ALONG THE CENTERLINE OF CHURCH ROAD); SOUTH OF THE NORTH LINE OF SAID SECTION 28; THENCE NORTH 05°06' 20" EAST PARALLEL WITH THE NORTH LINE OF SAID SECTION 28, A DISTANCE OF 183.00 FEET; THENCE NORTH 00°38' 42" WEST PARALLEL WITH THE CENTERLINE OF CHURCH ROAD A DISTANCE OF 611.82 FEET TO A POINT WHICH IS 168.5 FEET (AS MEASURED WITH THE CENTERLINE CHURCH ROAD) SOUTH OF THE NORTH LINE OF SAID SECTION 28; THENCE NORTH 05°06' 20" EAST PARALLEL WITH THE NORTH LINE OF SAID SECTION 28, A DISTANCE OF 345.7 FEET; THENCE NORTH 00°30' 42" WEST A DISTANCE OF 182.5 FEET TO THE NORTH LINE OF SAID SECTION 28; THENCE NORTH 05°06' 20" EAST ALONG THE NORTH LINE OF SECTION 28, A DISTANCE OF 324.42 FEET TO THE NORTHWEST CORNER OF WHITE PINES CENTER FOR BUSINESS AND INDUSTRY; THENCE SOUTH 00°38' 14" EAST ALONG THE WEST LINE OF WHITE PINES CENTER FOR BUSINESS AND INDUSTRY A DISTANCE OF 1824.13 FEET TO THE CENTERLINE OF GRAND AVENUE; THENCE SOUTH 05°58' 15" WEST ON THE CENTERLINE OF GRAND AVENUE, A DISTANCE OF 654.21 FEET TO THE POINT OF BEGINNING, EXCEPT THAT PART FALLING IN GRAND-CHURCH SUBDIVISION RECORDED DECEMBER 24, 1969 AS DOCUMENT #58-151827 AND ALSO EXCEPTING THAT PART TAKEN BY THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS IN CONDEMNATION CASE #588-820, ALSO EXCEPTING THAT PART DESCRIBED AS FOLLOWS: THAT PART OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF GRAND AVENUE AS DESCRIBED BY CONDEMNATION CASE #588-820, WITH A LINE 33 FEET EAST OF AND PARALLEL WITH THE CENTERLINE OF CHURCH ROAD; THENCE NORTH ON SAID LINE BEING 33 FEET EAST OF AND PARALLEL WITH THE CENTERLINE OF CHURCH ROAD, A DISTANCE OF 63 FEET; THENCE SOUTHEASTERLY TO A POINT ON THE NORTH LINE OF SAID GRAND AVENUE, SAID POINT BEING OF DISTANCE OF 63 FEET EAST OF THE POINT OF BEGINNING; THENCE WEST 63 FEET TO THE POINT OF BEGINNING, AND ALSO EXCEPTING THAT PART OF THE ABOVE DESCRIBED PARCEL LYING WEST OF A LINE DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF LOT 3 IN GRAND-CHURCH SUBDIVISION; THENCE EASTERLY ALONG THE SOUTH LINE OF GRAND-CHURCH SUBDIVISION TO A POINT THAT IS 30.87 FEET WEST OF THE SOUTHEAST CORNER OF LOT 4 IN GRAND-CHURCH SUBDIVISION; THENCE SOUTHERLY FROM THE LAST DESCRIBED COURSE FORMING AN ANGLE TO THE LEFT OF 82 DEGREES 07 MINUTES 10 SECONDS A DISTANCE OF 314.04 FEET; THENCE WESTERLY FROM THE LAST DESCRIBED COURSE FORMING AN ANGLE TO THE LEFT OF 89 DEGREES 55 MINUTES 58 SECONDS A DISTANCE OF 80.91 FEET; THENCE SOUTHERLY FROM THE LAST DESCRIBED COURSE FORMING AN ANGLE TO THE RIGHT OF 80 DEGREES 14 MINUTES 07 SECONDS A DISTANCE OF 165.60 FEET TO THE NORTHERLY LINE OF GRAND AVENUE, AND, ALSO EXCEPTING THAT PART OF THE ABOVE DESCRIBED PARCEL LYING EAST OF A LINE DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF LOT 3 IN GRAND-CHURCH SUBDIVISION; THENCE EASTERLY ALONG THE SOUTH LINE OF GRAND-CHURCH SUBDIVISION TO A POINT THAT IS 6.00 FEET WEST OF THE SOUTHEAST CORNER OF LOT 4; THENCE SOUTHERLY FROM THE LAST DESCRIBED COURSE FORMING AN ANGLE TO THE LEFT OF 89 DEGREES 56 MINUTES 46 SECONDS A DISTANCE OF 29.70 FEET; THENCE WESTERLY PARALLEL WITH THE SOUTHERLY LINE OF GRAND-CHURCH SUBDIVISION A DISTANCE OF 28.45 FEET; THENCE SOUTHERLY FROM THE LAST DESCRIBED COURSE FORMING AN ANGLE TO THE RIGHT OF 87 DEGREES 35 MINUTES 01 SECONDS A DISTANCE OF 280.00 FEET; THENCE WESTERLY FROM THE LAST DESCRIBED COURSE FORMING AN ANGLE TO THE LEFT OF 80 DEGREES 28 MINUTES 11 SECONDS A DISTANCE OF 34.00 FEET; THENCE SOUTHERLY FROM THE LAST DESCRIBED COURSE FORMING AN ANGLE TO THE RIGHT OF 80 DEGREES 17 MINUTES 51 SECONDS A DISTANCE OF 178.00 FEET TO THE NORTHERLY LINE OF GRAND AVENUE, IN DU PAGE COUNTY, ILLINOIS.

AND THE SOUTH 82.00 FEET (EXCEPT THE EAST 6.00 FEET THEREOF) OF LOT 3 AND PART OF THE SOUTH 82.00 FEET OF LOT 4 DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 4; THENCE NORTHERLY ALONG THE EAST LINE OF LOT 4 82.00 FEET; THENCE WESTERLY PARALLEL WITH THE SOUTH LINE OF LOT 4 A DISTANCE OF 41.92 FEET; THENCE SOUTHERLY 82.04 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 THAT IS 30.87 FEET WEST OF THE SOUTHEAST CORNER OF LOT 4; THENCE EASTERLY ALONG THE SOUTH LINE OF LOT 4 30.87 FEET TO THE POINT OF BEGINNING, ALL IN GRAND-CHURCH SUBDIVISION.

PIN: 03-26-102-031

With the specific exclusion of the
Roesch Volkswagen Dealership located
on Grand Avenue, and which is
included in the aforementioned
Permanent Index Number.

EXHIBIT B

SALES TAX REBATE PROJECTIONS

Year	Projected Sales Taxes	For Illustrative Purposes Sales Tax Allocation		Maximum Sharing	Minimum Annual Allocation
Commencing April 1	Roesch Ford	Village	Roesch	Roesch	Bensenville
		25% thru 2013 & 50% thereafter	75% thru 2013 & 50% thereafter		
2011	108,000	27,000	81,000		
2012	216,000	54,000	162,000		
2013	256,500	64,125	192,375		
2014	258,375	129,188	129,188		100,000
2015	271,500	135,750	135,750		100,000
2016	273,375	136,688	136,688		100,000
2017	273,375	136,688	136,688		100,000
2018	273,375	136,688	136,688		100,000
2019	273,375	136,688	136,688		100,000
2020	273,375	136,688	136,688		100,000
2021	273,375	136,688	136,688		100,000
2022	273,375	136,688	136,688		100,000
2023	273,375	136,688	136,688		100,000
2024	273,375	136,688	136,688		100,000
2025	273,375	136,688	136,688		100,000
2026	273,375	136,688	136,688		100,000
Total	4,117,500	1,913,625	2,203,875	2,350,000	

EXHIBIT C
BCR PROJECT SUMMARY

Exhibit "C"

Creation of Ford's "Trustmark 1" Dealership Facility will include razing of the existing showroom structure. The new "Trustmark 1" dealership facility is a customer friendly and branded environment that showcases products in a theater-like setting with warm, natural and inviting yet functional furniture, fixtures and customer touchpoints. The showroom atmosphere is bright, confident and honest.

The "Trustmark 1" facility improvements include:

Reserved customer parking.

Entry tower to promote brand identity and provides convenient access for customers parked in the reserved parking area.

Customer lounge with coffee bar

Children's area

Reception area for customers

Service Observation window to the shop

Distinctive and dramatic billboard façade of Aluminum Composite Material (ACM) with highly stylized entry icon focal point and wall mounted Ford logo and dealership name letter set.

Building improvements, site plan, outdoor vehicle display area, customer parking, site lighting, landscaping, site furnishings and signage will all be reviewed through the standard municipal development review/planned unit development process.

The construction shall be complete no later than December 1, 2013.

EXHIBIT D

LEGAL DESCRIPTION PROPERTY #2

EXHIBIT E

SALES TAX REBATE PROJECTIONS PROPERTY #2

Year	Projected Sales Tax	Sales Tax Allocation	
Commencing April 1	Roesch Ford Truck Center	Village	Roesch
		50%	50%
2012	219,000	109,500	109,500
2013	219,000	109,500	109,500
2014	219,000	109,500	109,500
2015	219,000	109,500	109,500
2016	219,000	157,000	62,000
2017	219,000	219,000	
2018	219,000	219,000	
2019	219,000	219,000	
2020	219,000	219,000	
2021	219,000	219,000	
2022	219,000	219,000	
2023	219,000	219,000	
2024	219,000	219,000	
2025	219,000	219,000	
2026	219,000	219,000	
Total	3,285,000	2,785,000	500,000

Assumptions

New	Used	Avg. Price New	Avg. Price Used	Total	Tax Collected by Bensenville
300	300	48,000	25,000	14,400,000	7,500,000 219,000

EXHIBIT F

PROJECT #2 DESCRIPTION

1. Installation of five (5) heavy duty lifts to service Ford 750 trucks (\$210,000.00).
2. Technician certification school for six (6) technicians (\$16,000.00).
3. Special tools required for repair of Cummins diesel engines (\$85,000.00).
4. Repairs to lot to accommodate weight of trucks (\$150,000.00).
5. Signage, furniture and displays (\$85,000.00).
6. Purchase of parts inventory for truck repairs (\$320,000.00).

**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, *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 to 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.

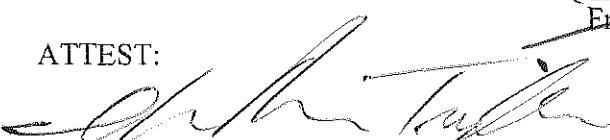
PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this 25th day of June 2013.

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 Estoppel Certificates. Each of the Parties hereto agrees to provide the other, upon not less than ten (10) business days prior request, a certificate ("Estoppel 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.

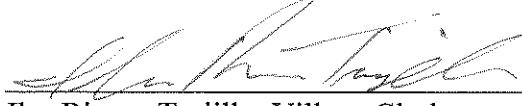
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

VILLAGE OF BENSENVILLE,
an Illinois municipal corporation

By: 

Frank Soto, President

ATTEST:

By: 

Ilsa Rivera-Trujillo, Village Clerk

DEVELOPER:

THORNTONS, INC.,
A Delaware corporation

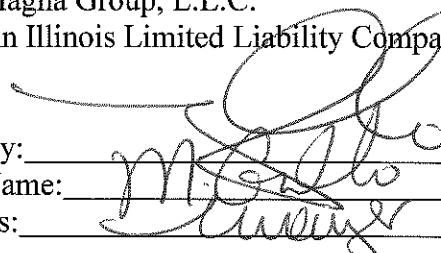
By: 

Name: DAVID A. BRINDLEY

Its: Vice President/General Counsel

OWNER

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

By: 

Name: MICHAELA M. MURRAY

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. BRIDGEMAN, the VP/General Counsel of THORNTON'S, INC. a Delaware 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 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

)

SS

COUNTY OF Cook

)

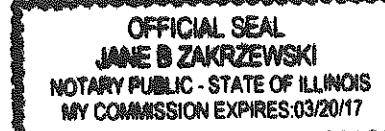
I, JANE B ZAKRZEWSKI, a Notary Public in the State and County aforesaid, do hereby certify that MAKINN GULLO, the MANAGER of MAGNA GROUP, LLC an Illinois limited liabilitycorporation, personally known to me to be the person whose name is subscribed to the foregoing Developer Note, appeared before me 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:



STATE OF ILLINOIS)
COUNTY OF DuPage) SS

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 Public

My Commission Expires: 07.12.2014

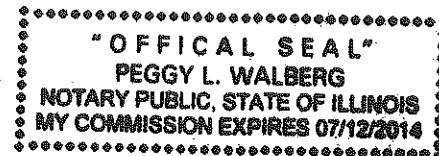


EXHIBIT A

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.

RESOLUTION NO. R-15-2015

**A RESOLUTION APPROVING AN ECONOMIC INCENTIVE AGREEMENT
WITH LAW AUTO GROUP, INC., FOR THE SHARING OF MUNICIPAL
RETAILER'S OCCUPATION 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, Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, authorizes Illinois municipalities to enter into economic incentive agreements to share or rebate portions of the retailers' occupation tax received by the municipality attributable to the development or redevelopment of the property under the following conditions, among others:

1. That the buildings on the property no longer comply with current building codes;
2. That the development or redevelopment project is expected to create or retain job opportunities within the municipality;
3. That the project will serve to further the development of adjacent areas;
4. That without the agreement, the project would not be possible;
5. That the developer meets high standards of creditworthiness and financial strength as demonstrated by one or more of the following: (a) corporate debenture ratings of BBB or higher by Standard & Poor's Corporation or Baa or higher by Moody's Investors Service, Inc.; or (b) a letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the developer; or (c) specific evidence of equity financing for not less than 10% of the total project costs;
6. That the project will strengthen the commercial sector of the municipality;
7. That the project will enhance the tax base of the municipality; and
8. That the agreement is made in the best interest of the municipality.

WHEREAS, Law Auto Group, Inc., an Illinois limited liability company ("Law Auto"), is proposing to relocate their current dealership from 729 Thomas Drive to larger facilities at 877 Supreme Drive in the Village ("Property") and to renovate and redevelop the Property in connection therewith; and

WHEREAS, Law Auto has proposed to the Village that it enter into an economic incentive agreement ("Economic Incentive Agreement") with Law Auto, attached hereto as Exhibit A and incorporated herein by reference as if fully set forth, for the sharing of the municipal retailer's occupation tax received attributable to the redevelopment of the Property; and

WHEREAS, Law Auto has further represented to the Village that the sharing of municipal retailer's occupation tax revenue for use as collateral is essential for Law Auto to secure proper financing for the redevelopment of the Property, and that Law Auto would not be able to redevelop the Property without such tax revenue sharing; and

WHEREAS, after due consideration and investigation of Law Auto's proposal, the President and the Village Board of Trustees find that the proposed sharing of the retailer's occupation tax from the redevelopment of the Property is appropriate and meets the all of requirements of Section 8-11-20 of the Illinois Municipal Code therefor as follows:

1. That the buildings on the Property no longer comply with current Village codes; and
2. That the redevelopment of the Property with the expanded Law Auto dealership will create job opportunities within the Village; and
3. That the redevelopment project will serve to stimulate further development of properties adjacent to the Property; and
4. That, based upon representations by and information from Law Auto, without the Economic Incentive Agreement, the renovation and expansion of the Law Auto dealership in the Village and redevelopment of the Property would not be possible; and
5. That Law Auto meets high standards of creditworthiness and financial strength, as demonstrated by specific evidence of equity financing for not less than 10% of the total project costs; and
6. That the redevelopment project will strengthen the commercial sector of the municipality by contributing to the maintenance and improvement of Thorndale Avenue commercial corridor; and
7. That the project will enhance the tax base of the municipality by generation of additional retailers' occupation tax revenues; and
8. That entering into the Economic Incentive Agreement is in the best interest of the Village; and

WHEREAS, further the Village has developed a strategic plan which includes as two of its primary goals the creation and maintenance of a financially sound village and vibrant major corridors; and

WHEREAS, the creation of jobs, generation additional retailer's occupation taxes, and the maintenance and improvement of Thorndale Avenue commercial corridor, which will result from the Village's entry into the Economic Incentive Agreement, will also contribute to the Village's strategic goals of a financially sound village and vibrant major corridors,

NOW, THEREFORE, BE IT RESOLVED 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 upon the findings set forth in the foregoing recitals, the President and the Village Board of Trustees hereby determine that the entry of the Village into the Economic Incentive Agreement, attached hereto as Exhibit A, is authorized and appropriate.

SECTION THREE: That the Village President is hereby authorized to execute the Economic Incentive Agreement on behalf of the Village, and the Village Clerk 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 Economic Incentive 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: That this Resolution shall take effect immediately upon its passage and approval as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this 24th day of February 2015.

APPROVED:



Frank Soto, Village President

ATTEST:



Ilsa Rivera-Trujillo, Village Clerk

AYES: Janowiak, Jarecki, O'Connell, Ridder, Wesseler

NAYES: None

ABSENT: Bartlett

**ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE VILLAGE OF BENSENVILLE AND LAW AUTO GROUP, INC.**

THIS ECONOMIC INCENTIVE AGREEMENT ("Agreement") is made and entered into as of the 24 day of February 2015 by and between the VILLAGE OF BENSENVILLE, DuPage and Cook Counties, Illinois, an Illinois municipal corporation (the "Village"), and LAW AUTO GROUP, INC., an Illinois limited liability company ("Law Auto Group"), with its principal office at 729 Thomas Drive, Bensenville, Illinois,

W I T N E S S E T H,

WHEREAS, the Village has determined that it is essential to the economic and social welfare of the Village to promote the economic vitality of the community by assuring opportunities for development and sound and stable commercial growth within the Village's corporate limits; and

WHEREAS, the laws of the State of Illinois authorize the corporate authorities of a municipality to enter into economic incentive agreements relating to the development or redevelopment of land within the corporate limits of the municipality; and

WHEREAS, the Corporate Authorities of the Village desire to improve the social and economic welfare of the Village and enhance the tax base of the Village to the benefit of the Village and other governmental entities by exercising the authority provided by law and entering into economic incentive agreements that are in the furtherance of and essential to the public interest; and

WHEREAS, Law Auto Group is a national retail dealer of previously-owned automobiles and trucks and presently operates a local dealership at 729 Thomas Drive in the Village; and

WHEREAS, Law Auto Group desires to relocate its Bensenville dealership to larger facilities to 877 Supreme Drive in the Village; and

WHEREAS, Law auto Group would incur approximately Three Hundred Thousand and no/100ths Dollars (\$300,000.00) redevelopment cost and increase in rental payments as a result of the relocation of its dealership facilities; and

WHEREAS, Law Auto Group has represented to the Village that sales tax revenue sharing is essential for Law Auto Group to enable it to relocate its dealership facilities to 877 Supreme Drive, and that the relocation would not be possible without it; and

WHEREAS, the relocation will enable to expand its vehicle sale business thereby generating increased real estate tax and sales tax revenues and employment opportunities for the Village and stimulate the further revitalization and redevelopment of the Thorndale Road

commercial area; and

WHEREAS, the Village desires to make it economically feasible for Law Auto Group to redevelop and expand its existing dealership facilities by entering into an economic incentive agreement with Law Auto Group pursuant to the authority set forth in Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, and other law; and

WHEREAS, as set forth in its Ordinance approving this Agreement and authorizing its execution and delivery, the Village has made the requisite findings, in accordance with Chapter 65 ILCS 5/8-11-20, that the Law Auto Group's present facility no longer complies with the Village's current code requirements and that adjacent parcel on which Law Auto Group is looking to expand has been vacant for over one (1) year; that the redevelopment project is expected to create or retain job opportunities within the Village, will serve to further develop adjacent areas, will strengthen the commercial sector and enhance the tax base of the Village, and would not be possible without this Agreement; that Law Auto Group meets high standards of credit worthiness and strength; and that this Agreement is in the best interests of the Village.

NOW, THEREFORE, in consideration of the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, Law Auto Group and the Village hereby agree as follows:

SECTION 1. RECITALS

The recitals hereinabove set forth are hereby incorporated by this reference into the body of this Agreement to the same extent as if each such recital had been set forth in full in the body of this Agreement.

SECTION 2. DEFINITIONS

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

“Automobile or Truck Sales Franchise”: The sale of a specified brand or brands of new automobiles and/or trucks and servicing of those brands pursuant to a dealership franchise agreement with the manufacturer or those brands, in which any with sales and servicing of used motor vehicles shall be remain a subordinate business.

“Corporate Authorities”: The President and Board of Trustees of the Village.

“Current Facilities”: Shall mean the property commonly known as 729 Thomas Drive, Bensenville, DuPage County, Illinois, legally described in Exhibit A, which is attached hereto and incorporated herein by reference as if fully set forth, and on which Law Auto Group is operating its business on the Effective Date of this Agreement.

“Effective Date of this Agreement” or “Effective Date”: The date referenced in the first paragraph on Page 1 of this Agreement.

“Economic Incentive Payment” or “EIP”: The amounts payable to the Law Auto Group pursuant to Section 3 of this Agreement.

“Force Majeure”: Shall include but not be limited to an Act of God or other event or cause not reasonably within the control of Law Auto Group or the Village including, without limitation, fire, strikes, lockouts, war, insurrection, earthquakes, casualties, acts of the public enemy, respective governmental laws and regulations, epidemics, quarantine, restrictions, or lack of transportation, building material supply shortages, vendor problems not caused by Law Auto Group, embargoes, civil riot, floods or natural catastrophe.

“Law Auto Group”: Law Auto Group, INC., an Illinois limited liability company, and any and all successors and assignees thereof during the Term of this Agreement.

“Maximum Sharing Amount”: Shall mean the not-to-exceed cumulative amount of Five Hundred Thousand and 00/100ths Dollars (\$500,000.00) to be paid to Law Auto Group.

“Project”: Shall mean the relocation of the Law Auto Group dealership, presently located at 729 Thomas Drive, Bensenville, Illinois, to the Property, and the razing, alteration, renovation, and/or remodeling of any structures on the Property and/or the construction of additional facilities thereon as needed to accommodate the relocation of the Law Auto Group dealership.

“Property”: Shall mean the property commonly known as 877 Supreme Drive, Bensenville, Illinois, and legally described in Exhibit “A,” which is attached hereto and incorporated herein by reference.

“Party” or “Parties”: The Village and/or Law Auto Group.

“Sales Taxes”: The portion (presently one [1] percent) of any and all taxes distributed to and actually received by Village which are imposed and collected by the State pursuant to the Retailer’s Occupation Tax Act, 35 ILCS 120/1 *et seq.*, the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, and the Use Tax Act, 35 ILCS 105/1 *et seq.*, from sales and service transactions occurring on the Property, including internet generated by sales of vehicles and parts from which Illinois sales tax receipts are derived, but not including any portion of the Use Tax which is distributed on the basis of population (per capita distribution) and not included in the term “Sales Taxes,” and further excluding any portion of a tax imposed or that may be imposed under the Non-Home Rule Retailer’s Occupation Tax Act, 65 ILCS 8-11-1.3, *et seq.*; Non-Home Rule Service Occupation Tax Act, 65 ILCS 8-11-1.4, *et seq.*; Non-Home Rule Use Tax Act, 65 ILCS 8-11-1.5, *et seq.*; and any other retailer’s occupation tax, service occupation tax, use tax, or sales, except as expressly authorized by this definition.

“Sales Tax Year”: “Sales Tax Year” shall mean each calendar year or part of a calendar year between the date on which the Village shall issue the final certificate of occupancy

for the Project and a date ten (10) years from that date.

“State”: The State of Illinois.

“Term”: The period for which this Agreement shall be enforced, which shall be from the Effective Date through a date ten (10) years from date of issuance of the final certificate of occupancy for the Project.

SECTION 3. DETERMINATION OF AMOUNT OF ECONOMIC INCENTIVE PAYMENT

A. Amount of Economic Incentive Payment (“EIP”). For each Sales Tax Year, the Village shall pay Law Auto Group an Economic Incentive Payment (“EIP”) of fifty percent (50%) of the Sales Taxes, up to and including but not exceeding the Maximum Sharing Amount. If the Sales Tax Year is less than a full calendar year, the calculation of the EIP shall be based upon Sales Taxes generated only during that portion of the calendar constituting the Sales Tax Year. EIPs shall be made only from proceeds of Sales Taxes imposed and collected by the State, generated by sales and service transaction occurring on the Property, including internet generated sales of vehicles and parts from which Illinois local sales tax receipts are derived, and distributed to and actually received by Village. All EIPs shall be based on the records of the Illinois Department of Revenue for Law Auto Group.

B. Village Payment. The Village shall make the EIP payments in the amounts provided for in Section 3. A. from the proceeds of Sales Tax distributions actually received by the Village within one hundred twenty (120) days of the completion of the Sales Tax Year in which the revenues are recorded, subject to the receipt of the Illinois Department of Revenues Certification of the Sales Tax disbursements to the Village and Village’s receipt of the required supporting documentation for such Sales Taxes as specified in Sections 4. C. and 9. If, for any reason, the State of Illinois fails to distribute the Sales Tax receipts to the Village in sufficient time for the Village to make such annual payments, then the Village shall provide notice of such fact to Law Auto Group. In such event, the Village shall make the required EIP payment within 60 days after the date on which the Village actually receives the Sales Tax Receipts due the Village for the applicable Sales Tax Year. If at the end of any Sales Tax Year there is a need to adjust and reconcile the amount of any EIP to account for any provision of this Agreement or to account for the amount of Sales Tax actually paid by the State of Illinois, then the Village and Law Auto Group do hereby agree to cooperate with each other to accomplish such reconciliation.

C. Change in the Law. The Village and Law Auto Group acknowledge and agree that the Village’s obligation to pay the EIP to Law Auto Group is predicated on existing State law, including, without limitation, the Retailer’s Occupation Tax Act and Section 8-11-20 of the Illinois Municipal Code. The Village and Law Auto Group further acknowledge that the General Assembly of the State has from time to time, considered proposals to modify or eliminate the distribution of Local Sales Tax receipts to Illinois municipalities. In the event that the State of Illinois amends or repeals the applicable state statutes or makes any other promulgation, enactment or change in law (“Change in Law”), and such Change in Law results in replacement

taxes for all or a portion of the Sales Tax receipts generated by Law Auto Group as contemplated hereunder, then, for purposes of this Agreement, the revenue from such replacement taxes shall be used to calculate the Local Sales Tax Receipts, subject in all respects to the Village's actual receipt of its portion of such replacement taxes as well as the Village's authority under state law to provide for the sharing of such replacement taxes, as contemplated herein.

D. Limited Liability. Notwithstanding any other provision of this Agreement to the contrary, the Village's obligation to pay the EIP shall not be a general debt of the Village on or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Sales Tax receipts received by the Village, as specifically defined in Section 2 of this Agreement. Subject to all of the conditions, limitations, and restrictions in this Agreement, the Village shall be liable to Law Auto Group for disbursement of monies hereunder only to the extent of the Sales Tax Receipts actually received by the Village from the Illinois Department of Revenue or other applicable State governmental agency. Further, any payments due Law Auto Group from the Village pursuant to this Agreement shall be reduced by an amount equal to all collection fees imposed upon the Village by the State of Illinois or the Illinois Department of Revenue or other applicable governmental agency or body, for collections of revenues to be shared. Law Auto Group shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the EIP, and no execution of any claim, demand, cause of action, or judgment shall be levied upon or collected from the general credit, general funds, or other property of the Village. No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future director, member, elected or appointed officer, official, independent contractor, agent, attorney, or employee of the Village in his or her individual capacity.

E. Consent to Payment to Law Auto Group. By signing this Agreement, Law Auto Group and each and all of its successors and assigns acknowledges and represents to the Village and each and all of its elected and appointed officers, officials, employees, agents, attorneys, independent contractors successors and assigns (hereinafter for convenience collectively referred to as the "Village Representatives") that no representations, warranties (except that this Agreement has been duly enacted by the Village in accordance with all applicable laws, advice and/or statements of any kind or nature have been made by any of the Village Representatives that upon the Agreement becoming effective that:

1. The State of Illinois will continue to share sales tax receipts with the Village;
2. The State of Illinois will continue to authorize and/or permit economic incentive agreements and payments pursuant thereto; and/or

SECTION 4. LAW AUTO GROUP'S OBLIGATIONS. Village's obligation to make the EIP's as provide for in this Agreement is condition upon Law Auto Group's performance of the following acts and obligations. Law Auto Group's performance of such is material to this Agreement, and Law Auto Group's failure to perform such, subject to the provisions of notice and cure in Section 6. B., shall be deemed a breach of this Agreement for which the Village may

immediately suspend and withhold payment of the EIP's or declare the Agreement terminated and pursue all lawful remedies available to it.

A. Throughout the Term of this Agreement Law Auto Group shall maintain and operate on the Property as an Automobile or Truck Sales facility.

D. Law Auto Group shall maintain for the Term any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity with respect to the Property. Such documents shall be available for inspection by the Village at all reasonable times and copies thereof shall be promptly provided to the Village if the Village requests such.

E. Law Auto Group shall provide the Village with all authorization necessary for the State's release of Sales Tax information to the Village.

F. Law Auto Group shall establish and must maintain throughout the Term of this Agreement, a procedure whereby all of Law Auto Group's internet generated sales of vehicles and parts which generate Sales Tax is administered so that all receipts of such Sales Tax permitted by law therefrom flow to the Village.

G. Law Auto Group shall maintain the Property at all time in compliance with all Village codes and ordinances and shall not at any time place or permit to be placed any vehicles, signage of any kind, including all temporary signs, or other objects on any roadway easement right-of-way or parkway. Further Law Auto Group shall not at any time place or permit to be placed any temporary trailer signs on any portion of the Property.

H. Law Auto Group shall promptly apply to the Village and any other governmental agencies with jurisdiction over the project for all permits and authorization needed therefor.

I. Subject to Law Auto Group receiving approval from the Village and the County of DuPage for all required approvals and permits for construction on or before March 31, 2015, Law Auto Group shall complete the Project no later than June 30, 2015

SECTION 5. FORCE MAJEURE

A. Whenever a period of time is provided for in this Agreement for either Law Auto Group or the Village to perform any act or obligation, and Law Auto Group or the Village, as the case may be, is unable to perform or complete such act or obligation because of a Force Majeure, then upon the occurrence of any such Force Majeure, the time period for the performance and completion of such act or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

B. Provided Law Auto Group is not in default hereunder, the Village shall continue to make any and all disbursements during any period of reconstruction or Force Majeure referred to hereinabove to which Law Auto Group would otherwise be entitled hereunder for said period.

SECTION 6. LITIGATION AND DEFENSE OF AGREEMENT

A. Litigation. If, during the Term of this Agreement, any lawsuits or proceedings are filed or initiated against either 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 party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.

B. Defense. The Village and Law Auto Group do hereby 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. Each Party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Village and Law Auto Group do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

SECTION 7. REMEDIES

A. Remedies. In the event of a breach or an alleged breach of this Agreement by either Party, either Party may, by suit, action, mandamus, or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement in accordance with the provisions of Section 11 of this Agreement.

B. Notice and Cure. Neither Party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section without first providing written notice to the other party of the breach or alleged breach and allowing a period of fifteen (15) days for the curing of said breach or alleged breach, provided, however, that in the event such violation or failure cannot be cured within said fifteen (15)-day period notwithstanding diligent and continuous efforts by the Party receiving notice and said Party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

SECTION 9. RELEASE OF INFORMATION

To the extent permitted by law, the Village shall maintain confidentiality of the information contained in such reports; however, Law Auto Group acknowledges the Village, as a public body, is subject to the (Illinois) Freedom of Information Act, 5 ILCS 140/1 *et seq.*, the (Illinois) Open Meetings Act, 5 ILCS 120/1 *et seq.*, and other law providing for the public disclosure of information and records, and agrees to abide by the Village's determinations regarding required disclosures under such laws and not to bring any claims, actions, suits, or causes of action or to seek damages of any kind against the Village on account of any disclosure.

In addition, prior to any payments to Law Auto Group pursuant to this Agreement, Law Auto Group shall provide the State with properly executed authorizations granting the Village the right to access the Sales Tax records of Law Auto Group. Law Auto Group acknowledges and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments made by the Village to Law Auto Group pursuant to this Agreement. Law Auto Group further covenants and agrees, that upon the request of the Village, Law Auto Group shall furnish such consents or waivers as may be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in form and content satisfactory to the State and Law Auto Group in order to release the above-described sales tax information to the Village. Law Auto Group agrees and acknowledges that any disbursements made by the Village pursuant to this Agreement can only be made from and to the extent of the data submitted to the State in accordance with this Section.

SECTION 10. PERMIT AND LICENSE APPLICATIONS; FEES AND COSTS

The Village will act diligently to promptly review and process all applications submitted to it by Law Auto Group.

The Village shall waive all Village permit and inspection fees in connection with the Project, except for any portion of such fees equal to the fees or charge paid by the Village to contract consultant relate to the permitting or inspection. This waiver shall not include Village business and other license fees or charges related to the operation of the dealership or any Village permit and inspection fees accruing after Law Auto Group is granted the certificate of occupancy for the Project. Law Auto Group shall be responsible for the fees and costs of securing all non-Village licenses, permits, and certifications required for the Project and the operation of the dealership.

SECTION 11. ENFORCEMENT

A. The Parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement, provided, however, that Law Auto Group agrees that it shall not seek, and that it does not have the right to seek, to recover a judgment for monetary damages against any elected or appointed Village officers, officials, agents, representatives, attorneys, independent contractors or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. In addition to every other remedy permitted by law or the enforcement of the terms of this Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any structure on the Property whenever Law Auto Group has failed or refused to meet fully any of its material obligations under this Agreement. In the event of a judicial proceeding brought by any Party to this Agreement against any other party to this Agreement for enforcement or for breach of any provision of this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorney's fees, incurred in connection with such judicial proceeding.

B. Except as otherwise set forth in this Agreement, the rights and remedies of the

parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by any party of any one or more such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other party. Unless prohibited by law, any delay by any party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way, it being the intent of this provision that such party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any party with respect to any specific default by any other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing or otherwise prohibited by law.

C. Upon the occurrence of any one or more of the following events during the period of time commencing as of the date of the making of this Agreement above, and ending on the date that the last EIP is made by the Village to Law Auto Group, the Village shall have no obligation of any kind or nature whatsoever to make any further EIP to Law Auto Group:

1. A material breach of this Agreement by Law Auto Group; or
2. A significant reduction in the Sales Tax receipts as a result of changes in Law Auto Group business plan or other actions by Law Auto Group during the Term of this Agreement. A significant reduction in the Sales Tax receipts for purposes of this provision Section 11.C.2. in this Agreement shall mean and refer to a reduction in the amount of Sales Tax receipts which is equal to or greater than forty percent (40%) of the average of the Sales Tax receipts received by the Village in the last five (5) years during which economic incentive payments were made by the Village to Law Auto Group. Among the purposes of this provision is protection of the Village against relocation of the Franchise after incentive payments have been made or in the event that the Village declares any assignment or transfer of rights or interests void as provided in Section 13 of this Agreement and Law Auto Group proceeds with such assignment or transfer. A termination of Law Auto Group's Ford Franchise by Ford Motor Company shall not be a breach of this Agreement.

D. In the event of a breach of this Agreement by Law Auto Group and failure to cure as provided herein, Law Auto Group, should the Village demand, agrees to pay the Village as liquidated damages, in lieu of all other damages, an amount equal to the average of the annual increased sales tax revenues in each of the Sales Tax Years from the revenues on the Effective Date through the Sales Tax Year in which the breach occurs for each year in the Term that Law Auto Group is in default.

E. All judicial proceedings by the Parties to enforce State claims shall be brought in the Circuit Court for the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois, and in the U.S. District Court for the Northern District of Illinois to enforce federal claims.

SECTION 12. NATURE AND SURVIVAL OF OBLIGATIONS

The Parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute the obligation of the Party liable for its payment beyond the terms of this Agreement, and of the successors of such party.

SECTION 13. TRANSFER OR ASSIGNMENT

Law Auto Group's assignment or transfer of any of its rights or interests hereunder shall be made only upon notice and with the written consent of the Village, which shall not be unreasonably delayed or withheld. All assignment or transfer by Law Auto Group of its rights and interest provided for under this Section 13 shall be subject to the following terms and conditions:

A. No such assignment or transfer shall release Law Auto Group from any of its obligations under this Agreement.

B. No assignments and transfer shall violate the requirements of Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, or other applicable law. Prior to consenting to such a transfer, the Village may require of Law Auto Group and Law Auto Group shall provide the Village documentation and other information demonstrating conformance therewith.

C. All assignees and transferees of all or any part of its rights or interests under this Agreement shall be subject to all terms, provisions, and conditions of this Agreement.

D. Any assignment or transfer of this Agreement or rights or interests hereunder shall be voidable, at the Village's option, within thirty (30) days after the Village receives notice of or becomes aware of such assignment or transfer, unless the Village has given its written consent to such assignment or transfer, or the assignment or transfer is in consideration of or as additional security for any financing or equipment leasing arrangement as provided for in this Section 13.

SECTION 14. REPRESENTATIONS AND WARRANTIES

In order to induce the Village to enter into this Agreement and to grant the rights herein provided for Law Auto Group hereby warrants and represents to the Village as follows:

A. Law Auto Group is an Illinois limited liability company duly organized, validly existing, and in good standing under the laws of the State of Illinois.

B. Law Auto Group has the authority and the legal right to make, deliver, and perform this Agreement and has taken all necessary corporate, partnership, and venture actions to authorize the execution, delivery, and performance of this Agreement.

C. No mortgagee or any other secured party, other than those listed on Exhibit C

attached hereto and, by this reference, incorporated herein, has an interest in the Property as of the date of this Agreement. No such mortgagee or any other secured party listed on Exhibit C has an objection to either (i) the execution and performance of this Agreement by Law Auto Group or (ii) the binding nature of this Agreement with respect to the Property.

D. All necessary consents of the members of Law Auto Group and its creditors, investors, partners, franchisers, judicial or administrative bodies, governmental authorities, or other parties regarding the execution and delivery of this Agreement have been obtained.

E. Law Auto Group has provided, or will provide, any consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village,) that is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement.

F. The individuals executing this Agreement on behalf of Law Auto Group have the full power and authority necessary to execute and deliver this Agreement on behalf of Law Auto Group.

G. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of Law Auto Group; (ii) will not result in a breach or default under any agreement to which Law Auto Group is a party or to which Law Auto Group, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which Law Auto Group or the Property or any Franchise in whole or in part is or are subject.

H. Law Auto Group has made its own independent investigation and determination of all matters relating to this Agreement including but not limited to a determination of whether its terms are enforceable and that Law Auto Group has not and will not rely upon the Village Representatives in connection therewith.

SECTION 15. GENERAL PROVISIONS

A. Complete Agreement: Supersedence. This Agreement and Exhibits A, B, and C, attached hereto, constitute the complete agreement of the parties regarding Economic Incentive Payments out of a portion of the Local Sales Tax Receipts to Law Auto Group and shall supersede and nullify all prior drafts and agreements concerning such matters.

B. Amendments. No amendment to, or modification of, this Agreement shall be effective unless and until it is in writing and is approved by the authorized representatives of Law Auto Group and by the Corporate Authorities by resolution or ordinance duly adopted, and executed and delivered by the authorized representative of each party.

C. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and shall be deemed delivered to and received by the addressee thereof when delivered in person at the address set forth below or one (1) business day after deposit thereof with any recognized private courier company that provides overnight

delivery service, or three (3) business days after deposit thereof in any main or branch United States Mail, certified or registered mail, return receipt requested, postage prepaid, properly, addressed to the parties, respectively, as follows:

For notices and communications to the Village:

Michael J. Cassady
Village Manager
Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106

With a copy to:

Patrick K. Bond, Esq.
Village Attorney
Bond, Dickson & Associates, P.C.
400 South Knoll Street, Unit C
Wheaton, Illinois 60187

For notices and communications to Law Auto Group:

Law Auto Group, Inc.
879 Thomas Drive
Bensenville, Illinois 60106

With a copy to:

By notice complying with the foregoing requirements of this paragraph, each Party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no such notice of change of address shall be effective unless in writing and until actually received.

D. Governing Law. This Agreement and the rights of the Parties hereunder shall be governed by, and construed, interpreted, and enforced in accordance with the laws of the State of Illinois.

E. Interpretation. This Agreement has been negotiated by all Parties and shall not be interpreted or construed against the Party drafting the Agreement.

F. Change in Laws. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include such laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. Headings. The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the meaning, scope, or intent of this Agreement, or the meaning, scope, or intent of any provision hereof.

H. Time of Essence Time is of the essence in the performance of all terms and provisions of this Agreement.

I. No Third Party Beneficiaries. Except, as expressly provided herein, nothing in this Agreement shall create, or be construed to create, any third-party beneficiary rights in any person or entity not a signatory to this Agreement.

J. Exhibits. Exhibits A, B, and C attached to this Agreement, are incorporated herein and made a part hereof by this reference.

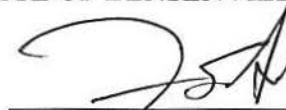
K. Counterparts. This Agreement may be executed in identical counterparts and all of said counterparts shall, individually and taken together, constitute the Agreement.

L. Severability. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purpose of this Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

VILLAGE OF BENSENVILLE

By:



Village President

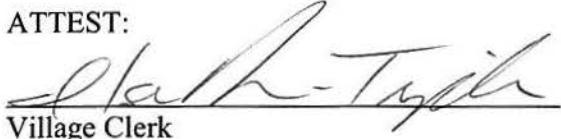
LAW AUTO GROUP, INC.

By:



Its President

ATTEST:



Village Clerk

EXHIBIT A

PROJECT DESCRIPTION

Law Auto Group is in the process of relocating from 729 Thomas Drive to 877 Supreme Drive to meet the demands of their expanding high end automobile sales business. The subject property is located within an existing I-2 Light Industrial District, just south of Thorndale Avenue within an approximately 3.5 acre site with a warehouse and office space. Law Auto is also applying for conditional use permits for Motor Vehicle Repair (Major & Minor), Outdoor Sales and Display, and a Car Wash. Law Auto Group has proposed, as depicted on the site plan attached below an area 120' x 90' in which this work is to be performed.

Law Auto Group has reached an agreement to lease the approximately 52,000 SF Prologis building for the next 10 ½ years. This building has been vacant for over 3 years. One rider of the lease agreement is that a sales tax sharing agreement must be reached before it becomes final. This building is larger and carries more expense than they currently can justify thus a sales tax sharing agreement would be required to help cover these additional expenses.

Law Auto Group came under new management a few years ago and their sales growth has been dramatically increasing ever since. They anticipate monthly sales growth of 20% at this new facility going forward. Below is information regarding sales tax history, a location map, and property tax history.

Sale Tax History:

Rank	Name	SIC Code	2011 Actual	2012 Actual	2013 Actual	2014 Actual Jan to Aug	2014 Projected Sep to Dec	Total 2014 Projected
824	LAW AUTO GROUP INC	New and used car dealers	-	14,962.93	67,069.18	40,780.87	29,260.26	70,041.13

From 2012 to 2013 Law Auto experienced 348% sales growth. Based on sales figures supplied to us directly from Law Auto (and attached below) they have generated approximately \$90,000 in sales tax in 2014 which compared to 2013 is a growth of 34.19%.



Village of Bensenville

Law Auto Group Relocation



New Location
877 N Supreme
3.55 ac
53,850 sf

Current Location
729 N Thomas
0.92 ac
23,650 sf

RESOLUTION NO. R-28-2015

**RESOLUTION AUTHORIZING EXECUTION OF AN
ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE VILLAGE OF BENSENVILLE AND LA CHIQUITA FOOD MARKET**

WHEREAS, the VILLAGE OF BENSENVILLE (hereinafter "VILLAGE") is a municipal corporation established and existing under the laws of the State of Illinois pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, the VILLAGE is empowered to make all agreements and contracts and to undertake other acts as necessary in the exercise of its statutory powers; and

WHEREAS, it is sometimes necessary in furtherance of its statutory functions for the VILLAGE to contract for various services required by the VILLAGE; and

WHEREAS, for this purpose, the VILLAGE has determined that it is reasonable, necessary, and desirable to enter into an Economic Incentive Agreement with La Chiquita Food Market, which Agreement is attached hereto and incorporated herein by reference as Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

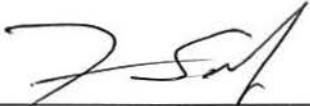
SECTION ONE: The recitals set forth above are incorporated herein and made a part hereof.

SECTION TWO: The Village President and Village Manager are hereby authorized and directed to execute on behalf of the Village of Bensenville, and the Village Clerk is hereby authorized to attest thereto, the Agreement attached hereto and incorporated herein by reference as Exhibit "A."

SECTION THREE: This Resolution shall take effect immediately upon its passage and approval as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this 24th day of February 2015.

APPROVED:



Frank Soto, Village President

ATTEST:



Ilsa Rivera-Trujillo, Village Clerk

Ayes: Janowiak, Jarecki, O'Connell, Ridder, Wesseler

Nays: None

Absent: Bartlett

**ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE VILLAGE OF BENSENVILLE AND CHIQUITA FOOD MARKET
BENSENVILLE, INC.**

THIS ECONOMIC INCENTIVE AGREEMENT (“Agreement”) is made and entered into as of the 11th day of March 2015 by and between the VILLAGE OF BENSENVILLE, DuPage and Cook Counties, Illinois, an Illinois municipal corporation (the “Village”), and CHIQUITA FOOD MARKET BENSENVILLE, INC., an Illinois corporation (“Chiquita Bensenville”).

W I T N E S S E T H,

WHEREAS, the Village has determined that it is essential to the economic and social welfare of the Village to promote the economic vitality of the community by assuring opportunities for development and sound and stable commercial growth within the Village’s corporate limits; and

WHEREAS, the laws of the State of Illinois authorize the corporate authorities of a municipality to enter into economic incentive agreements relating to the development or redevelopment of land within the corporate limits of the municipality; and

WHEREAS, the Corporate Authorities of the Village desire to improve the social and economic welfare of the Village and enhance its tax base to the benefit of it and other governmental entities having territory within the Village boundaries by exercising its statutory authority to enter into economic incentive agreements that are in the furtherance of and essential to the public interest; and

WHEREAS, Alfredo Linares, controlling shareholder of Chiquita Bensenville, is an experienced grocer, operating eight (8) retail grocery outlets in the Chicago metropolitan area under the Chiquita brand; and

WHEREAS, Chiquita Bensenville has purchased the Property, as defined herein, containing the current Edmar Foods, Inc., retail grocery store outlet and will invest approximately \$2.7 million in the redevelopment of the Property to modernize, upgrade, and rebrand it as Chiquita retail grocery store outlet; and

WHEREAS, Mr. Linares, through another business entity owned by him, has also purchased the Park ‘N Shop Shopping Center (“Center”), associated with the Property, which will also be redeveloped to modernize and upgrade it; and

WHEREAS, Mr. Linares has represented to the Village that he will be unable to make the investment in Chiquita Bensenville to enable its redevelopment of the Property simultaneously with undertaking through the other business entity the redevelopment of the Center, and therefore, that sales tax revenue sharing is essential for Chiquita Bensenville to undertake redevelopment of the Property; and

WHEREAS, the Corporate Authorities of the Village have determined that the redevelopment of the Property will generate increased real estate tax and sales tax revenues and employment opportunities for the Village and assure the continuation of a full-service retail grocery outlet in the Village's downtown, stimulating the further revitalization and redevelopment of the downtown; and

WHEREAS, accordingly, the Village desires to make it economically feasible for Chiquita Bensenville to redevelop the Property by entering into an economic incentive agreement with Chiquita Bensenville pursuant to the authority set forth in Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, and other law; and

WHEREAS, as set forth in its Ordinance approving this Agreement and authorizing its execution and delivery, the Village has made the requisite findings, in accordance with 65 ILCS 5/8-11-20, that the Property in its present condition no longer complies with the Village's current code requirements; that its redevelopment is expected to create or retain job opportunities within the Village, will serve to further develop adjacent areas, will strengthen the commercial sector and enhance the tax base of the Village, and would not be possible without this Agreement; that Chiquita Bensenville meets high standards of credit worthiness and strength; and that this Agreement is in the best interests of the Village.

NOW, THEREFORE, in consideration of the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, Chiquita Bensenville and the Village hereby agree as follows:

SECTION 1. RECITALS

The recitals hereinabove set forth are hereby incorporated by this reference into the body of this Agreement to the same extent as if each such recitals had been set forth in full in the body of this Agreement.

SECTION 2. DEFINITIONS

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

“Corporate Authorities”: The President and Board of Trustees of the Village.

“Department”: Shall mean the Illinois Department of Revenue, or any successor agency of the State.

“Effective Date of this Agreement” or “Effective Date”: The date referenced in the first paragraph on Page 1 of this Agreement.

“Economic Incentive Payment” or “EIP”: The amounts payable to Chiquita Bensenville pursuant to Section 3 of this Agreement.

“Force Majeure”: Shall mean any act of God or other event or cause not reasonably within the control of Chiquita Bensenville or the Village including, without limitation, fire, storm, strikes, lockouts, war, insurrection, earthquakes, casualties, acts of the public enemy, respective governmental laws and regulations, epidemics, quarantine, restrictions, or lack of transportation, building material supply shortages, vendor problems not caused by Chiquita Bensenville, embargoes, civil riot, floods or natural catastrophe.

“Full-Service Grocery Store”: Shall mean a retail grocery store outlet that shall minimally include the sale of fresh produce; fresh meat, poultry, and seafood butchered or packed for retail sale on the premises; baked goods; and an on-premises delicatessen.

“Chiquita Bensenville”: Shall mean Chiquita Food Market Bensenville, Inc., together with its permitted successors and assigns.

“Maximum Sharing Amount”: Shall mean, for each Sales Tax Year, the amount scheduled for that Sales Tax Year reflected in the column headed “Maximum Allowed Rebate” as set out in Exhibit A, which is attached hereto and incorporated herein by reference as if fully set forth, the total amount of which for all Sales Tax Years shall not exceed the amount reflected in the row marked “Total” for such column.

“Minimum Annual Allocation”: Shall mean for each Sales Tax Year the amount scheduled in the column headed “Minimum Annual Sales Tax to Bensenville” as set out in Exhibit A, which shall be the Sales Taxes allocated to and received by the Village before any sharing with Chiquita Bensenville for that Sales Tax Year. If total Sales Taxes received by the Village from the Property in any Sales Tax Year is less than the scheduled Minimum Annual Allocation amount therefor in Exhibit A, then the Minimum Annual Allocation for that Sales Tax Year shall be equal to said total. In no case shall Chiquita Bensenville be required to cover the difference between the scheduled Minimum Annual Allocation amount and the total sales tax receipts for a Sales Tax Year if the said total is less than the scheduled amount for that Sales Tax Year.

“Project”: The redevelopment of the Property, including but not limited to the repair, renovation, modernization, and upgrading of the improvements thereon as set out and described in Exhibit B, which is attached hereto and incorporated herein by reference as if fully set forth, and the operation thereon of a Full-Service Grocery Store under the Chiquita brand, or such other equivalent brand as the Village may approve.

“Property”: Shall mean the real property described in Exhibit C, which is attached hereto and incorporated herein by reference as if fully set forth, and all improvements thereon.

“Party” or “Parties”: The Village and/or Chiquita Bensenville.

“Sales Taxes”: Shall mean any and all taxes imposed and collected by the Village under the Non-Home Rule Retailer’s Occupation Tax Act, 65 ILCS 5/8-11-1.3, *et seq.*, Non-Home Rule Service Occupation Tax Act, 65 ILCS 5/8-11-1.4, *et seq.*, and Non-Home

Rule Use Tax Act, 65 ILCS 5/8-11-1.5, *et seq.*; the portion (presently one [1] percent) of any and all taxes distributed to and actually received by Village which are imposed and collected by the State pursuant to the Retailer's Occupation Tax Act, 35 ILCS 120/1 *et seq.*, the Service Occupation Tax Act, 35 ILCS 115/1, *et seq.*, the Use Tax Act, 35 ILCS 105/1 *et seq.*, and the Service Use Tax Act, 35 ILCS 110/1 *et seq.*, from sales and service transactions occurring on the Property, including without limitation any increases in such taxes or replacements thereof due to changes in Illinois statutes or municipal ordinances, any such taxes imposed on internet generated sales from which Illinois sales tax receipts are derived, and any other retailer's occupation tax, service occupation tax, use tax, or sales tax, except as expressly authorized by this definition, together with any interest earned on Sales Taxes while held by the Department. However, "Sales Taxes" shall not mean any portion of the Use Tax which is distributed on the basis of population (per capita distribution) and not included in the term "Sales Taxes."

"Sales Tax Year": "Sales Tax Year" shall mean each calendar year or part of a calendar year between the date on which the Village shall issue the final certificate of occupancy for the Project and a date fifteen (15) years from that date.

"State": The State of Illinois.

"Term": The period for which this Agreement shall be enforce, which shall be from the Effective Date through a date fifteen (15) years from the date of issuance of the final certificate of occupancy for the Project.

SECTION 3. DETERMINATION OF AMOUNT OF ECONOMIC INCENTIVE PAYMENT

A. **Amount of Economic Incentive Payment.** For each Sales Tax Year, the Village shall pay Chiquita Bensenville an Economic Incentive Payment from Sales Taxes above the Minimum Annual Allocation amount received by the Village in each Sales Tax Year, up to and including, but not exceeding, the Maximum Sharing Amount, according to the schedule set out in Exhibit A.

If the Sales Tax Year is less than a full calendar year the Minimum Annual Allocation amount and the Maximum Sharing Amount shall be prorated accordingly and the calculation of the EIP shall be based upon Sales Taxes generated only during that portion of the calendar year constituting the Sales Tax Year. EIPs shall be made only from proceeds of Sales Taxes imposed and collected by the State or Village, generated by sales and service transactions occurring on the Property, including internet generated sales from which Illinois local sales tax receipts are derived, and distributed to and actually received by Village. All EIPs shall be based on the records of the Illinois Department of Revenue for Chiquita Bensenville.

B. **Village Payment.** The Village shall make the EIP payments annually for each partial or full Sales Tax Year, in the amounts provided for in Section 3.A. and prorated for a partial Sales Tax Year, from the proceeds of Sales Taxes actually received by the Village, within thirty (30) days following the Village's receipt of the September through December Remittance

Report from the Department for such partial or full Sales Tax Year.

C. Audit and Reconciliation. Chiquita Bensenville shall have thirty (30) days following the receipt of an EIP to contest the amount thereof. In the event that Chiquita Bensenville shall initiate any such contest, it must be made by written notice to the Village. If such contest shows that the amount of EIP paid to Chiquita Bensenville is less than the amount of EIP which should have been paid, the Village shall pay the difference to Chiquita Bensenville within thirty (30) days of the completion of such contest. If such contest shows that the amount of EIP paid to Chiquita Bensenville is more than the amount of EIP which should have been paid, or if Chiquita Bensenville files an amended sales tax return, which amended return is approved by the Department and shows that the amount of the EIP paid to Chiquita Bensenville is more than the amount that should have been paid, then Chiquita Bensenville shall pay the difference to Chiquita the Village within thirty (30) days of the completion of such contest. Chiquita Bensenville agrees to promptly forward a copy of all such amended sales tax returns to the Village, clearly identifying them as amendments of sales tax returns.

D. Change in the Law. The Village and Chiquita Bensenville acknowledge and agree that the Village's obligation to pay the EIP to Chiquita Bensenville is predicated on existing State law, including, without limitation, the Retailer's Occupation Tax Act and Section 8-11-20 of the Illinois Municipal Code. The Village and Chiquita Bensenville further acknowledge that the General Assembly of the State has from time to time, considered proposals to modify or eliminate the distribution of sales taxes to Illinois municipalities. In the event that the State amends or repeals the applicable state statutes or makes any other promulgation, enactment or change in law ("Change in Law"), and such Change in Law results in replacement taxes for all or a portion of the Sales Taxes generated by Chiquita Bensenville as contemplated hereunder, then, for purposes of this Agreement, the revenue from such replacement taxes shall be used to calculate the Sales Taxes, subject in all respects to the Village's actual receipt of its portion of such replacement taxes as well as the Village's authority under state law to provide for the sharing of such replacement taxes, as contemplated herein.

E. Limited Liability. Notwithstanding any other provision of this Agreement to the contrary, the Village's obligation to pay the EIP shall not be a general debt of the Village on or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Sales Taxes received by the Village, as specifically defined in Section 2 of this Agreement. Subject to all of the conditions, limitations, and restrictions in this Agreement, the Village shall be liable to Chiquita Bensenville for disbursement of monies hereunder only to the extent of the Sales Taxes actually received by the Village from the Department or other applicable State governmental agency. Further, any payments due Chiquita Bensenville from the Village pursuant to this Agreement shall be reduced by an amount equal to all collection fees imposed upon the Village by the State, the Department or other applicable governmental agency or body, for collections of revenues to be shared. Chiquita Bensenville shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the EIP, and no execution of any claim, demand, cause of action, or judgment shall be levied upon or collected from the general credit, general funds, or other property of the Village. No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future director, member, elected or appointed officer, official, independent contractor,

agent, attorney, or employee of the Village in his or her individual capacity.

F. Village Representations. By signing this Agreement, Chiquita Bensenville and each and all of its successors and assigns acknowledges and represents to the Village and each and all of its elected and appointed officers, officials, employees, agents, attorneys, independent contractors successors and assigns (hereinafter for convenience collectively referred to as the "Village Representatives") that no representations, warranties (except that this Agreement has been duly enacted by the Village in accordance with all applicable laws), advice and/or statements of any kind or nature have been made by any of the Village Representatives that upon the Agreement becoming effective that:

1. The State will continue to share Sales Taxes with the Village; or
2. The State will continue to authorize and/or permit economic incentive agreements and payments pursuant thereto.

SECTION 4. SALES TAX INFORMATION.

A. Chiquita Bensenville shall provide to the Village, to the attention of its Finance Department, a copy of the first page of Chiquita Bensenville's monthly Sales and Use Tax and E911 Surcharge Return (Department Form ST-1), or any successor form thereto, with proof of remittance to the Department of payment stated as due therein, within twenty (20) days of the filing of said return with the Department. The Village may obtain, as it determines to be necessary, all pertinent information regarding the Sales Taxes (including, without limitation, the amount of Sales Taxes collected from the Project) directly from the Department, and may enter into an agreement for the exchange of information with the Department if required to obtain said information. To the extent permitted by law, the Village shall endeavor to maintain the confidentiality of the information contained in the reports obtained from the Department, but shall be permitted to disclose such information to such Village officers, employees, attorneys, accountants, agents, and consultants relating to the administration of this Agreement as the Village, in its sole discretion, deems appropriate in order to monitor compliance and audit this Agreement.

B. If requested by the Village, Chiquita Bensenville shall use its best efforts to obtain all pertinent information regarding the Sales Taxes (including, without limitation, the amount of Sales Taxes collected from the Project) directly from the Department, and shall enter into an agreement for the exchange of information with the Department if required to obtain said information. Chiquita Bensenville agrees that it shall prepare and execute an Authorization to Release Sales Tax Information substantially in the form approved by the Department, and deliver a fully executed copy of the same to the Village and the Department to authorize the Department to directly report information on Sales Taxes to the Village. Chiquita Bensenville shall maintain and have available for inspection for the Village copies of any and all sales tax returns, sales tax reports, amendments concerning sales tax, proof of payment or any other sales tax information filed with the Department. Chiquita Bensenville also agrees, upon the request of the Village, to furnish such consents or waivers or other reasonably sought documentation requested to

effectuate the intent of this Agreement as may be required by the Department to provide the Village with sales tax information concerning the Project.

SECTION 5. CHIQUITA BENSENVILLE'S OBLIGATIONS. Village's obligation to make the EIP's as provide for in this Agreement is condition upon Chiquita Bensenville's performance of the following acts and obligations, which, if not performed, the Village may immediately suspend and withhold payment of the EIPs to Chiquita Bensenville. The acts and obligations in Paragraphs A., C., D. and E. are material to this Agreement, and Chiquita Bensenville's failure to perform such, subject to the provisions of notice and cure in Section 8. B. shall be deemed a breach of this Agreement for which the Village declare the Agreement terminated and pursue all lawful remedies available to it.

A. From the date of issuance of the certificate of occupancy for the completed repair, renovation, modernization, and upgrading of the improvements through the conclusion of the Term of this Agreement, except for temporary closures not exceeding more than thirty (30) consecutive days or for necessary repairs requiring more than thirty (30) days, Chiquita Bensenville shall maintain and operate on the Property a Full-Service Grocery Store under the Chiquita brand, or such other equivalent brand as the Village may approve, which approval shall not be unreasonably withheld, conditioned, or delayed.

B. Chiquita Bensenville shall provide the Village with all authorization necessary for the State's release of Sales Tax information to the Village.

C. Chiquita Bensenville shall maintain the Property at all time in compliance with all Village codes and ordinances and shall not at any time place or permit to be placed any vehicles, signage of any kind, including all temporary signs, or other objects on any roadway easement right-of-way or parkway. Further Chiquita Bensenville shall not at any time place or permit to be placed any temporary trailer signs on any portion of the Property.

D. Chiquita Bensenville shall promptly apply to the Village and any other governmental agencies with jurisdiction over the Project for all permits and authorization needed therefor.

E. Chiquita Bensenville shall substantially redevelop the Property, including but not limited to the repair, renovation, modernization, and upgrading of the improvements thereon as set out and described in Exhibit B.

SECTION 6. FORCE MAJEURE

A. Whenever a period of time is provided for in this Agreement for either Chiquita Bensenville or the Village to perform any act or obligation, and Chiquita Bensenville or the Village, as the case may be, is unable to perform or complete such act or obligation because of a Force Majeure, then upon the occurrence of any such Force Majeure, or for the performance and completion of such act or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

B. Provided Chiquita Bensenville is not in default hereunder, the Village shall continue to make any and all disbursements referred to hereinabove to which Chiquita Bensenville would otherwise be entitled hereunder during any period of a Force Majeure or any period of non-operation of the Property during its repair or reconstruction on account of a Force Majeure.

SECTION 7. LITIGATION AND DEFENSE OF AGREEMENT

A. Litigation. If, during the Term of this Agreement, any lawsuits or proceedings are filed or initiated against either 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 party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.

B. Defense. The Village and Chiquita Bensenville hereby 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. Each Party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Village and Chiquita Bensenville do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

SECTION 8. REMEDIES: NOTICE AND CURE PERIOD

A. Remedies. In the event of a breach or an alleged breach of this Agreement by either Party, either Party may, by suit, action, mandamus, or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement in accordance with the provisions of Section 11 of this Agreement.

B. Notice and Cure Period. Neither Party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section without first providing written notice to the other party of the breach or alleged breach and allowing a period of thirty (30) days for the curing of said breach or alleged breach, provided, however, that in the event such violation or failure cannot be cured within said thirty (30) day period, notwithstanding diligent and continuous efforts by the Party receiving notice to cure the violation or failure, then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

SECTION 9. RELEASE OF INFORMATION

A. To the extent permitted by law, the Village shall maintain the confidentiality and proprietary nature of the information contained in sales tax returns and other information provided to the Village by Chiquita Bensenville; however, Chiquita Bensenville acknowledges that the Village, as a public body, is subject to the (Illinois) Freedom of Information Act, 5 ILCS 140/1 *et seq.*, the (Illinois) Open Meetings Act, 5 ILCS 120/1 *et seq.*, and other law providing for

the public disclosure of information and records and the Village's obligations of confidentiality as to such information under this Agreement is subject to the requirements of such laws. To the extent permitted by law, Chiquita Bensenville shall be allowed to defend any claim made by any third party against Village for release of such documents.

SECTION 10. PERMIT AND LICENSE APPLICATIONS

The Village will act diligently to promptly review and process all applications submitted to it by Chiquita Bensenville.

SECTION 11. ENFORCEMENT

A. Upon expiration of the notice and cure period in Section 8.B. above, the Parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement, provided, however, that Chiquita Bensenville agrees that it shall not seek, and that it does not have the right to seek, to recover a judgment for monetary damages against any elected or appointed Village officers, officials, agents, representatives, attorneys, independent contractors or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. In addition to every other remedy permitted by law or the enforcement of the terms of this Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any structure on the Property whenever Chiquita Bensenville has failed or refused to meet fully any of its material obligations under this Agreement. In the event of a judicial proceeding brought by any Party to this Agreement against any other party to this Agreement for enforcement or for breach of any provision of this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorney's fees, incurred in connection with such judicial proceeding.

B. Except as otherwise set forth in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by any party of any one or more such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other party. Unless prohibited by law, any delay by any party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way, it being the intent of this provision that such party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any party with respect to any specific default by any other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing or otherwise prohibited by law.

C. Chiquita Bensenville's failure to perform any of the acts and obligations in designated as material in Section 5 during the Term of this Agreement shall be deemed a material breach of and default under this Agreement, and the Village shall have no obligation of

any kind or nature whatsoever to make any further EIP to Chiquita Bensenville.

D. All judicial proceedings by the Parties to enforce State claims shall be brought in the Circuit Court for the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois, and in the U.S. District Court for the Northern District of Illinois to enforce federal claims.

SECTION 12. NATURE AND SURVIVAL OF OBLIGATIONS

The Parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute the obligation of the Party liable for its payment beyond the terms of this Agreement, and of the successors of such party.

SECTION 13. TRANSFER OR ASSIGNMENT

Chiquita Bensenville's assignment or transfer of any of its rights or interests hereunder shall be made only upon prior written notice to the Village. All assignment or transfer by Chiquita Bensenville of its rights and interest provided for under this Section 13 shall be subject to the following terms and conditions:

A. All assignees and transferees of all or any part of its rights or interests under this Agreement shall be subject to all terms, provisions, and conditions of this Agreement.

B. Any assignment or transfer of this Agreement or rights or interests hereunder without the Village's prior written consent shall be voidable, at the Village's option, within sixty (60) days after the Village receives notice of or becomes aware of such assignment or transfer, unless the assignment or transfer is in consideration of or as additional security for any financing or equipment leasing arrangement as provided for in this Section 13.

SECTION 14. REPRESENTATIONS AND WARRANTIES

A. Mutual Representations and Warranties. In order to induce each Party to enter into this Agreement and to grant the rights herein provided for, the Parties hereby warrant and represent to each other as follows:

1. Each Party is an Illinois municipal or other corporation duly organized, validly existing, and in good standing under the laws of the State of Illinois.

2. Each Party and the individual representatives of each Party executing this Agreement have the authority and the legal right to make, deliver, and perform this Agreement and has taken all necessary corporate actions to authorize the execution, delivery, and performance of this Agreement.

3. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of any Party; (ii) will not result in a breach or default under any agreement to which any Party is a

party or to which such Party, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which any Party or the Property in whole or in part is or are subject.

B. Chiquita Bensenville's Representations and Warranties. Chiquita Bensenville represents and warrants to the Village as follows:

1. No mortgagee has an interest in the Property as of the date of this Agreement.

2. Chiquita Bensenville has made its own independent investigation and determination of all matters relating to this Agreement including but not limited to a determination of whether its terms are enforceable and that Chiquita Bensenville has not and will not rely upon the Village representatives in connection therewith.

SECTION 15. GENERAL PROVISIONS

A. Complete Agreement: Supersedence. This Agreement and Exhibits A, B, C, and D, attached hereto and incorporated herein reference as if fully set forth, constitute the complete agreement of the Parties regarding Economic Incentive Payments out of a portion of Sales Taxes to Chiquita Bensenville and shall supersede and nullify all prior drafts and agreements concerning such matters.

B. Amendments. No amendment to, or modification of, this Agreement shall be effective unless and until it is in writing and is approved by the authorized representatives of Chiquita Bensenville and by the Corporate Authorities by resolution or ordinance duly adopted, and executed and delivered by the authorized representative of each party.

C. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and shall be deemed delivered to and received by the addressee thereof when delivered in person at the address set forth below or one (1) business day after deposit thereof with any recognized private courier company that provides overnight delivery service, or three (3) business days after deposit thereof in any main or branch United States Mail, certified or registered mail, return receipt requested, postage prepaid, properly, addressed to the parties, respectively, as follows:

For notices and communications to the Village:

Michael J. Cassady
Village Manager
Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106

With a copy to:

Patrick K. Bond, Esq.
Village Attorney
Bond, Dickson & Associates, P.C.
400 South Knoll Street, Unit C
Wheaton, Illinois 60187

For notices and communications to Chiquita Bensenville:

Alfredo Linares
Chiquita Food Market Bensenville, Inc.
c/o Supermercado La Chiquita
3555 W. 26th Street
Chicago, Illinois 60623

With a copy to:

Kerry M. Lavelle, Esq.
Lavelle Law, Ltd.
501 West Colfax Street
Palatine, Illinois 60067

By notice complying with the foregoing requirements of this paragraph, each Party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no such notice of change of address shall be effective unless in writing and until actually received.

D. Governing Law. This Agreement and the rights of the Parties hereunder shall be governed by, and construed, interpreted, and enforced in accordance with the laws of the State of Illinois.

E. Interpretation. This Agreement has been negotiated by all Parties and shall not be interpreted or construed against the Party drafting the Agreement.

F. Change in Laws. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include such laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. Headings. The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the meaning, scope, or intent of this Agreement, or the meaning, scope, or intent of any provision hereof.

H. Time of Essence Time is of the essence in the performance of all terms and provisions of this Agreement.

I. No Third Party Beneficiaries. Except, as expressly provided herein, nothing in this Agreement shall create, or be construed to create, any third-party beneficiary rights in any person or entity not a signatory to this Agreement.

J. Exhibits. Exhibits A, B, C, and D, attached to this Agreement, are incorporated herein and made a part hereof by this reference.

K. Counterparts. This Agreement may be executed in identical counterparts and all of said counterparts shall, individually and taken together, constitute the Agreement.

L. Severability. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purpose of this Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

M. Cooperation and Further Assurances. Each Party covenants and agrees that it 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 or Chiquita Bensenville, or other appropriate persons, the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

N. Conflict. To the extent that any federal or state statute, regulation, rule, or order, or any part thereof shall conflict with a provision of this Agreement, the provision of such federal or state statute, regulation, rule, or order shall be controlling to the extent lawful, and if such federal or state statute, regulation, rule, or order shall prohibit either Party from carrying out any provisions of this Agreement, this Agreement shall be null and void to such extent.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

VILLAGE OF BENSENVILLE

By:



Village President

ATTEST:



Village Clerk

CHIQUITA FOOD MARKET
BENSENVILLE, INC.

By:



Its President

ATTEST:



Secretary

EXHIBIT A

REVENUE SHARING SCHEDULE

ECONOMIC INCENTIVE AGREEMENT BETWEEN THE VILLAGE OF BENSENVILLE
AND CHIQUITA FOOD MARKET BENSENVILLE, INC.

Sales Taxes collected over and above the Minimum Annual Allocation will be shared in the given ratio subject to Maximum allowed rebate amounts.

Year	Minimum Annual Sales Tax to Bensenville	Additional Sales Tax Sharing		Maximum Allowed Rebate
		La Chiquita	Bensenville	
Year 1	61,000	90.00%	10.00%	57,420
Year 2	61,610	80.00%	20.00%	53,547
Year 3	62,226	70.00%	30.00%	49,122
Year 4	62,848	60.00%	40.00%	44,114
Year 5	63,477	50.00%	50.00%	38,493
Year 6	64,112	40.00%	60.00%	32,226
Year 7	64,753	30.00%	70.00%	25,279
Year 8	65,400	20.00%	80.00%	17,618
Year 9	66,054	20.00%	80.00%	18,408
Year 10	66,715	30.00%	70.00%	28,836
Year 11	67,382	40.00%	60.00%	40,136
Year 12	68,056	50.00%	50.00%	52,348
Year 13	68,736	60.00%	40.00%	65,519
Year 14	69,424	70.00%	30.00%	79,695
Year 15	70,118	80.00%	20.00%	72,238
Total	\$ 981,911	52.67%	47.33%	\$ 675,000

EXHIBIT B

PROJECT DESCRIPTION

The following improvements will be made to the Property:

1. Modernize Façade of Building;
2. New Outdoor Signs;
3. New Indoor Décor Package to Rebrand the Inside of the Store;
4. New Energy Efficient LED lighting Throughout Store;
5. New Ceiling;
6. New POS Equipment-9 Registers, 2 Servers, Remote Price Gun;
7. 8 New Check Out Counters;
8. New Sales Flooring;
9. Replace all Refrigeration Cases with New Energy Efficient Cases;
10. New Walk-In Coolers;
11. Plumbing Costs for Refrigeration;
12. Electrical Work for New Lighting, Refrigeration, and POS System; and
13. New HVAC Units.

EXHIBIT C

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1: LOTS 1, 2, 3, 4, 5 AND 6 IN BLOCK 3 IN TIOGA, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 24, 1873 AS DOCUMENT 17017, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 2: LOTS 15 IN GEORGE E. FRANZEN'S SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1913 AS DOCUMENT 111220, IN DU PAGE COUNTY, ILLINOIS.

The Real Property is commonly known as: 209-321 W. Main Street, Bensenville, Illinois 60106

Permanent Index Numbers: 03-14-210-028-0000; 03-14-210-027-0000.

RESOLUTION NO. R-51-2015

**A RESOLUTION APPROVING AN ECONOMIC INCENTIVE AGREEMENT
WITH GRAND SUBARU, LLC, FOR THE REDEVELOPMENT OF
125 WEST GRAND AVENUE AND THE SHARING OF MUNICIPAL
RETAILER'S OCCUPATION 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, Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, authorizes Illinois municipalities to enter into economic incentive agreements for the development or redevelopment of land within their corporate limits and, pursuant thereto, to share or rebate portions of the retailers' occupation tax received by the municipality attributable to the development or redevelopment of the property under the following conditions, among others:

1. That the buildings on the property no longer comply with current building codes;
2. That the development or redevelopment project is expected to create or retain job opportunities within the municipality;
3. That the project will serve to further the development of adjacent areas;
4. That without the agreement, the project would not be possible;
5. That the developer meets high standards of creditworthiness and financial strength as demonstrated by one or more of the following: (a) corporate debenture ratings of BBB or higher by Standard & Poor's Corporation or Baa or higher by Moody's Investors Service, Inc.; or (b) a letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the developer; or (c) specific evidence of equity financing for not less than 10% of the total project costs;
6. That the project will strengthen the commercial sector of the municipality;
7. That the project will enhance the tax base of the municipality; and
8. That the agreement is made in the best interest of the municipality.

WHEREAS, Grand Subaru, LLC, an Illinois limited liability company, is proposing to renovate and expand its current location at 125 West Grand Avenue in the Village ("Property") and to redevelop the Property in connection therewith; and

WHEREAS, Grand Subaru has proposed to the Village that it enter into an economic incentive agreement with Grand Subaru ("Economic Incentive Agreement"), attached hereto as Exhibit A and incorporated herein by reference as if fully set forth, for the sharing of the municipal retailer's occupation tax received attributable to the redevelopment of the Property; and

WHEREAS, Grand Subaru has further represented to the Village that the sharing of municipal retailer's occupation tax revenue for use as collateral is essential for Grand Subaru to secure proper financing for the redevelopment of the Property, and that Grand Subaru would not be able to redevelop the Property without such tax revenue sharing; and

WHEREAS, after due consideration and investigation of Grand Subaru's proposal, the President and the Village Board of Trustees find that the proposed sharing of the retailer's occupation tax from the redevelopment of the Property is appropriate and meets the all of requirements of Section 8-11-20 of the Illinois Municipal Code therefor as follows:

1. That the buildings on the Property no longer comply with current Village codes; and
2. That the redevelopment of the Property with an expanded Subaru dealership will create job opportunities within the Village; and
3. That the redevelopment project will serve to stimulate further development of properties adjacent to the Property and along the West Grand Avenue "automobile sales corridor"; and
4. That, based upon representations by and information from Grand Subaru, without the Economic Incentive Agreement, the renovation and expansion of the Subaru dealership in the Village and redevelopment of the Property would not be possible; and
5. That Grand Subaru meets high standards of creditworthiness and financial strength, as demonstrated by specific evidence of equity financing for not less than 10% of the total project costs; and
6. That the redevelopment project will strengthen the commercial sector of the municipality by contributing to the maintenance and improvement of West Grand Avenue "automobile sales corridor"; and
7. That the project will enhance the tax base of the municipality by generation of additional retailers' occupation tax revenues; and
8. That entering into the Economic Incentive Agreement is in the best interest of the Village; and

WHEREAS, further the Village has developed a strategic plan which includes as two of its primary goals the creation and maintenance of a financially sound village and vibrant major corridors; and

WHEREAS, the creation of jobs, generation additional retailer's occupation taxes, and the maintenance and improvement of West Grand Avenue "automobile sales corridor," which will result from the Village's entry into the Economic Incentive Agreement, will also contribute to the Village's strategic goals of a financially sound village and vibrant major corridors; and

NOW, THEREFORE, BE IT RESOLVED 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 of the Village into the Economic Incentive Agreement, attached hereto as Exhibit A, is authorized and appropriate.

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

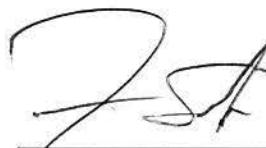
SECTION FOUR: That the Village President, the Village Manager, the Village Attorney, and such other Village officers and staff are further authorized to execute all documents and perform all other acts necessary to carry out the Economic Incentive Agreement.

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: That this Resolution shall take effect immediately upon its passage and approval as provided by Law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this 28th day of April 2015.

APPROVED:



Frank Soto, Village President

ATTEST:



Ilsa Rivera-Trujillo, Village Clerk

AYES: O'Connell, Ridder, Wesseler, President Soto

NAYES: None

ABSENT: Bartlett, Janowiak, Jarecki

**ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE VILLAGE OF BENSENVILLE AND GRAND SUBARU, LLC**

THIS ECONOMIC INCENTIVE AGREEMENT (“Agreement”) is made and entered into as of the 28th day of April 2015 by and between the VILLAGE OF BENSENVILLE, DuPage and Cook Counties, Illinois, an Illinois municipal corporation (the “Village”), and GRAND SUBARU, LLC, an Illinois limited liability company (“Grand Subaru”), with its principal office at 125 West Grand Avenue, Bensenville, Illinois,

WITNESSETH,

WHEREAS, the Village has determined that it is essential to the economic and social welfare of the Village to promote the economic vitality of the community by assuring opportunities for development and sound and stable commercial growth within the Village’s corporate limits; and

WHEREAS, the laws of the State of Illinois authorize the corporate authorities of a municipality to enter into economic incentive agreements relating to the development or redevelopment of land within the corporate limits of the municipality; and

WHEREAS, the Corporate Authorities of the Village desire to improve the social and economic welfare of the Village and enhance the tax base of the Village to the benefit of the Village and other governmental entities by exercising the authority provided by law and entering into economic incentive agreements that are in the furtherance of and essential to the public interest; and

WHEREAS, Grand Subaru has operated an automobile dealership at 125 West Grand Avenue in the Village since 2005 which presently draws clientele from all over the Chicago metropolitan area; and

WHEREAS, Grand Subaru plans to invest between \$3,500,000.00 and \$4,500,000.00 to redevelop its current dealership facilities by expanding its showroom, office, and repair facility on its present site and to develop the vacant parcel to the immediate west for a new and previously owned vehicle display and appropriate access to and from Grand Avenue with upgraded landscaping, lighting, and signage; and

WHEREAS, Grand Subaru has represented to the Village that sales tax revenue sharing is essential for Grand Subaru for the redevelopment of its current facilities and its expansion onto the adjacent parcel, and that the redevelopment and expansion not be possible without sales tax revenue sharing; and

WHEREAS, the redevelopment and expansion will generate increased real estate tax and sales tax revenues and employment opportunities for the Village and stimulate the further revitalization and redevelopment of the West Grand Avenue automobile sales corridor; and

WHEREAS, the Village desires to make it economically feasible for Grand Subaru to

redevelop and expand its existing dealership facilities by entering into an economic incentive agreement with Grand Subaru pursuant to the authority set forth in Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, and other law; and

WHEREAS, as set forth in its Ordinance approving this Agreement and authorizing its execution and delivery, the Village has made the requisite findings, in accordance with Chapter 65 ILCS 5/8-11-20, that the Grand Subaru's present facility no longer complies with the Village's current code requirements and that adjacent parcel on which Grand Subaru is looking to expand has been vacant for over one (1) year; that the redevelopment project is expected to create or retain job opportunities within the Village, will serve to further develop adjacent areas, will strengthen the commercial sector and enhance the tax base of the Village, and would not be possible without this Agreement; that Grand Subaru meets high standards of credit worthiness and strength; and that this Agreement is in the best interests of the Village.

NOW, THEREFORE, in consideration of the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, Grand Subaru and the Village hereby agree as follows:

SECTION 1. RECITALS

The recitals hereinabove set forth are hereby incorporated by this reference into the body of this Agreement to the same extent as if each such recital had been set forth in full in the body of this Agreement.

SECTION 2. DEFINITIONS

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

"Grand Subaru, LLC": Grand Subaru, LLC, an Illinois limited liability company, is the Dealership that operates at 125 W. Grand Avenue, Bensenville, Illinois 60106. Grand Subaru, LLC shall be the sole entity with obligations to the Village under the Economic Incentive Agreement.

"Heritage Bensenville, LLC": Heritage Bensenville, LLC, an Illinois limited liability company, which is the owner of the land on which Grand Subaru, LLC currently operates its automobile dealership. Heritage Bensenville, LLC shall have no obligations to the Village under the Economic Incentive Agreement.

"Heritage 1000, LLC": Heritage 1000, LLC, an Illinois limited liability company, which is the owner of the parcel to the west of the parcel on which Grand Subaru, LLC currently operates its automobile dealership and where the dealership plans to expand its operations pursuant to this Agreement. Heritage 1000, LLC shall have no obligations to the Village under the Economic Incentive Agreement.

“Automobile or Truck Sales Franchise”: The sale of a specified brand or brands of new automobiles and/or trucks and servicing of those brands pursuant to a dealership franchise agreement with the manufacturer or those brands, in which any with sales and servicing of used motor vehicles shall be remain a subordinate business.

“Corporate Authorities”: The President and Board of Trustees of the Village.

“Current Facilities”: Shall mean the property commonly known as 125 West Grand Avenue, Bensenville, DuPage County, Illinois, legally described in Exhibit A, which is attached hereto and incorporated herein by reference as if fully set forth, and on which Grand Subaru is operating its business on the Effective Date of this Agreement.

“Effective Date of this Agreement” or “Effective Date”: The date referenced in the first paragraph on Page 1 of this Agreement.

“Economic Incentive Payment” or “EIP”: The amounts payable to the Grand Subaru pursuant to Section 3 of this Agreement.

“Force Majeure”: Shall include but not be limited to an Act of God or other event or cause not reasonably within the control of Grand Subaru or the Village including, without limitation, fire, strikes, lockouts, war, insurrection, earthquakes, casualties, acts of the public enemy, respective governmental laws and regulations, epidemics, quarantine, restrictions, or lack of transportation, building material supply shortages, vendor problems not caused by Grand Subaru, embargoes, civil riot, floods or natural catastrophe.

“Grand Subaru”: Grand Subaru, LLC, an Illinois limited liability company, and any and all successors and assignees thereof during the Term of this Agreement.

“Maximum Sharing Amount”: Shall mean the not-to-exceed cumulative amount of Four Million and 00/100ths Dollars (\$4,000,000.00) to be paid to Grand Subaru.

“Minimum Annual Allocation”: Shall mean the Two Hundred Thousand and no/100ths (\$200,000.00) annual minimum sales tax allocation to the Village effective for each Sales Tax Year. If total sales tax receipts in any Sales Tax Year is less than Two Hundred Thousand and no/100ths (\$200,000.00), then the Village minimum allocation shall be equal to said total. In no case shall Grand Subaru be required to cover the differential between the Two Hundred Thousand and no/100ths (\$200,000.00) and the total if the total is less than the Two Hundred Thousand and no/100ths (\$200,000.00) minimum allocation.

“Project”: The redevelopment of the Property, including the razing, alteration, renovation, and/or remodeling of the structures of the Current Facilities and the construction of additional facilities and their integration with those of the redeveloped Current Facilities, as set out and described in Exhibit B, which is attached hereto and incorporated herein by reference as if fully set forth.

“Property”: Shall mean the Current Facilities and the Vacant Parcel.

“Party” or “Parties”: The Village and/or Grand Subaru.

“Sales Taxes”: The portion (presently one [1] percent) of any and all taxes distributed to and actually received by Village which are imposed and collected by the State pursuant to the Retailer’s Occupation Tax Act, 35 ILCS 120/1 *et seq.*, the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, and the Use Tax Act, 35 ILCS 105/1 *et seq.*, from sales and service transactions occurring on the Property, including internet generated sales of vehicles and parts from which Illinois sales tax receipts are derived, but not including any portion of the Use Tax which is distributed on the basis of population (per capita distribution) and not included in the term “Sales Taxes,” and further excluding any portion of a tax imposed or that may be imposed under the Non-Home Rule Retailer’s Occupation Tax Act, 65 ILCS 8-11-1.3 *et seq.*; Non-Home Rule Service Occupation Tax Act, 65 ILCS 8-11-1.4 *et seq.*; Non-Home Rule Use Tax Act, 65 ILCS 8-11-1.5 *et seq.*; and the Service Use Tax Act, 35 ILCS 110/1 *et seq.*, and any other retailer’s occupation tax, service occupation tax, use tax, or sales, except as expressly authorized by this definition.

“Sales Tax Year”: “Sales Tax Year” shall mean each calendar year or part of a calendar year between the date on which the Village shall issue the final certificate of occupancy for the Project and a date fifteen (15) years from that date.

“State”: The State of Illinois.

“Term”: The period for which this Agreement shall be enforced, which shall be from the Effective Date through a date fifteen (15) years from date of issuance of the final certificate of occupancy for the Project.

“Vacant Parcel”: Shall mean the property fronting West Grand Avenue and abutting the Current Facilities to the west, also legally described in Exhibit A, which is attached hereto and incorporated herein by reference as if fully set forth, and which Grand Subaru will be developing and integrating with the redevelopment of its Current Facilities under the Project.

SECTION 3. DETERMINATION OF AMOUNT OF ECONOMIC INCENTIVE PAYMENT

A. Amount of Economic Incentive Payment (“EIP”).

1. For each of the Sales Tax Years 2015, 2016, and 2017, the Village shall retain \$200,000.00, or twenty-five percent - whichever is greater - of any Sales Taxes received by the Village; Grand Subaru shall receive any amounts remaining after the Village’s allocation; and
2. For each of the Sales Tax Years 2018 through the remainder of the Term, the Village shall retain \$200,000.00 or fifty percent – whichever is greater – of any Sales Taxes received by the Village; Grand Subaru shall receive any amounts remaining after the

Village's allocation.

However, the total EIPs to Grand Subaru under this Agreement shall not exceed the Maximum Sharing Amount, and the Village shall have no obligation to make any EIPs to Grand Subaru above the Maximum Sharing Amount, regardless of whether or not the Term of this Agreement shall have expired when the EIP's paid Grand Subaru hereunder shall equal the Maximum Sharing Amount. If the Sales Tax Year is less than a full calendar year, the calculation of the EIP shall be based upon Sales Taxes generated only during that portion of the calendar constituting the Sales Tax Year. EIPs shall be made only from proceeds of Sales Taxes imposed and collected by the State, generated by sales and service transactions occurring on the Property, including internet generated sales of vehicles and parts from which Illinois local sales tax receipts are derived, and distributed to and actually received by Village. All EIPs shall be based on the records of the Illinois Department of Revenue for Grand Subaru.

Exhibit C, which is attached hereto and incorporated herein by reference, sets forth estimates of Sales Tax projections for the Term of this Agreement provided to the Village by Grand Subaru and the allocation of Sales taxes to the Village, and EIPs for each Sales Tax Year and cumulative EIPs to Grand Subaru. Exhibit C is included merely for purposes of illustrating the application of the Sales Tax sharing provisions of this Section 3.A. and is not intended to set out required minimum Sales Tax amounts to be generated by Grand Subaru or required EIPs to be made to Grand Subaru by the Village.

B. Village Payment. The Village shall make the EIP payments in the amounts provided for in Section 3. A. from the proceeds of Sales Tax distributions actually received by the Village within one hundred twenty (120) days of the completion of the Sales Tax Year in which the revenues are recorded, subject to the receipt of the Illinois Department of Revenues Certification of the Sales Tax disbursements to the Village and Village's receipt of the required supporting documentation for such Sales Taxes as specified in Sections 4. C. and 9. If, for any reason, the State of Illinois fails to distribute the Sales Tax receipts to the Village in sufficient time for the Village to make such annual payments, then the Village shall provide notice of such fact to Grand Subaru. In such event, the Village shall make the required EIP payment within 60 days after the date on which the Village actually receives the Sales Tax Receipts due the Village for the applicable Sales Tax Year. If at the end of any Sales Tax Year there is a need to adjust and reconcile the amount of any EIP to account for any provision of this Agreement or to account for the amount of Sales Tax actually paid by the State of Illinois, then the Village and Grand Subaru do hereby agree to cooperate with each other to accomplish such reconciliation.

C. Change in the Law. The Village and Grand Subaru acknowledge and agree that the Village's obligation to pay the EIP to Grand Subaru is predicated on existing State law, including, without limitation, the Retailer's Occupation Tax Act and Section 8-11-20 of the Illinois Municipal Code. The Village and Grand Subaru further acknowledge that the General Assembly of the State has from time to time, considered proposals to modify or eliminate the distribution of Local Sales Tax receipts to Illinois municipalities. In the event that the State of Illinois amends or repeals the applicable state statutes or makes any other promulgation, enactment or change in law ("Change in Law"), and such Change in Law results in replacement taxes for all or a portion of the Sales Tax

receipts generated by Grand Subaru as contemplated hereunder, then, for purposes of this Agreement, the revenue from such replacement taxes shall be used to calculate the Local Sales Tax Receipts, subject in all respects to the Village's actual receipt of its portion of such replacement taxes as well as the Village's authority under state law to provide for the sharing of such replacement taxes, as contemplated herein.

D. Limited Liability. Notwithstanding any other provision of this Agreement to the contrary, the Village's obligation to pay the EIP shall not be a general debt of the Village on or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Sales Tax receipts received by the Village, as specifically defined in Section 2 of this Agreement. Subject to all of the conditions, limitations, and restrictions in this Agreement, the Village shall be liable to Grand Subaru for disbursement of monies hereunder only to the extent of the Sales Tax Receipts actually received by the Village from the Illinois Department of Revenue or other applicable State governmental agency. Further, any payments due Grand Subaru from the Village pursuant to this Agreement shall be reduced by an amount equal to all collection fees imposed upon the Village by the State of Illinois or the Illinois Department of Revenue or other applicable governmental agency or body, for collections of revenues to be shared. Grand Subaru shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the EIP, and no execution of any claim, demand, cause of action, or judgment shall be levied upon or collected from the general credit, general funds, or other property of the Village. No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future director, member, elected or appointed officer, official, independent contractor, agent, attorney, or employee of the Village in his or her individual capacity.

E. Exempt Entities and Persons. Both the Village and Grand Subaru, LLC acknowledge and agree that Heritage Bensenville, LLC and Heritage 1000, LLC, and the respective officers, directors, and agents of each (hereinafter "Exempt Entities and Persons"), shall have no obligations under this Agreement to the Village and that neither the Village nor Grand Subaru, LLC will look to Exempt Entities and Persons for any remedy, financial or otherwise, pursuant to any breach or alleged breach of this Agreement. The Village and Grand Subaru, LLC agree to indemnify and hold harmless the Exempt Entities and Persons from any claims, actions, demands, suits in law or in equity, arising from this Agreement.

F. Consent to Payment to Grand Subaru. By signing this Agreement, Grand Subaru and each and all of its successors and assigns acknowledges and represents to the Village and each and all of its elected and appointed officers, officials, employees, agents, attorneys, independent contractors successors and assigns (hereinafter for convenience collectively referred to as the "Village Representatives") that no representations, warranties (except that this Agreement has been duly enacted by the Village in accordance with all applicable laws, advice and/or statements of any kind or nature have been made by any of the Village Representatives that upon the Agreement becoming effective that:

1. The State of Illinois will continue to share sales tax receipts with the Village;

2. The State of Illinois will continue to authorize and/or permit economic incentive agreements and payments pursuant thereto; and/or

SECTION 4. GRAND SUBARU'S OBLIGATIONS. Village's obligation to make the EIP's as provided for in this Agreement is conditioned upon Grand Subaru's performance of the following acts and obligations. Grand Subaru's performance of such is material to this Agreement, and Grand Subaru's failure to perform such, subject to the provisions of notice and cure in Section 6. B., shall be deemed a breach of this Agreement for which the Village may immediately suspend and withhold payment of the EIP's or pursue all lawful remedies available to it.

A. Grand Subaru shall make available to the Village a copy of all fully executed franchise agreements with Subaru of America and/or other franchisors relating to its Current Facilities and the Project and shall also provide to the Village within five (5) business days of receipt thereof any notices or actions by Subaru of America and/or other Franchisors relating to the use of the Property as the site for said Subaru Automobile or Truck Sale Franchise.

B. Throughout the Term of this Agreement Grand Subaru shall maintain and operate on the Property an Automobile or Truck Sale Franchise. However, a termination of Grand Subaru's Franchise by Subaru of America shall not be a breach of this Agreement and shall terminate the obligations of each party to the other pursuant to this Agreement.

C. Grand Subaru shall maintain for the Term any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity with respect to the Property. Such documents shall be available for inspection by the Village at all reasonable times and copies thereof shall be promptly provided to the Village if the Village requests such.

D. Grand Subaru shall provide the Village with all authorization necessary for the State's release of Sales Tax information to the Village.

E. Grand Subaru shall establish and must maintain throughout the Term of this Agreement, a procedure whereby all of Grand Subaru's internet generated sales of vehicles and parts which generate Sales Tax is administered so that all receipts of such Sales Tax permitted by law therefrom flow to the Village.

F. Grand Subaru shall maintain the Property at all time in compliance with all Village codes and ordinances and shall not at any time place or permit to be placed any vehicles, signage of any kind, including all temporary signs, or other objects on any roadway easement right-of-way or parkway. Further Grand Subaru shall not at any time place or permit to be placed any temporary trailer signs on any portion of the Property, except that Grand Subaru, LLC shall be permitted to erect temporary signage and conduct in any Sales Tax Year up to four (4) "tent-sales" and/or like event on the Property, with each event limited to a maximum duration of eighteen (18) consecutive days.

G. Grand Subaru shall promptly apply to the Village and any other governmental

agencies with jurisdiction over the project for all permits and authorization needed therefor.

H. Subject to Grand Subaru receiving approval from the Village and the County of DuPage for all required approvals and permits for construction on or before May 31, 2015, Grand Subaru shall complete the Project no later than December 31, 2015.

I. Grand Subaru, LLC shall offer to sell to the Village any Subaru vehicle offered for sale by Grand Subaru, LLC at the State bid price, provided nothing herein shall be construed to require the Village to accept such offer or purchase of any vehicles from Grand Subaru, LLC.

SECTION 5. FORCE MAJEURE

A. Whenever a period of time is provided for in this Agreement for either Grand Subaru or the Village to perform any act or obligation, and Grand Subaru or the Village, as the case may be, is unable to perform or complete such act or obligation because of a Force Majeure, then upon the occurrence of any such Force Majeure, the time period for the performance and completion of such act or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

B. Provided Grand Subaru is not in default hereunder, the Village shall continue to make any and all disbursements during any period of reconstruction or Force Majeure referred to hereinabove to which Grand Subaru would otherwise be entitled hereunder for said period.

SECTION 6. LITIGATION AND DEFENSE OF AGREEMENT

A. Litigation. If, during the Term of this Agreement, any lawsuits or proceedings are filed or initiated against either 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 party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.

B. Defense. The Village and Grand Subaru do hereby 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. Each Party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Village and Grand Subaru do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

SECTION 7. REMEDIES

A. Remedies. In the event of a breach or an alleged breach of this Agreement by either Party, either Party may, by suit, action, mandamus, or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement in

accordance with the provisions of Section 11 of this Agreement.

B. Notice and Cure. Neither Party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section without first providing written notice to the other party of the breach or alleged breach and allowing a period of fifteen (15) days for the curing of said breach or alleged breach, provided, however, that in the event such violation or failure cannot be cured within said fifteen (15)-day period notwithstanding diligent and continuous efforts by the Party receiving notice and said Party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

SECTION 9. RELEASE OF INFORMATION

To the extent permitted by law, the Village shall maintain confidentiality of the information contained in such reports; however, Grand Subaru acknowledges the Village, as a public body, is subject to the (Illinois) Freedom of Information Act, 5 ILCS 140/1 *et seq.*, the (Illinois) Open Meetings Act, 5 ILCS 120/1 *et seq.*, and other law providing for the public disclosure of information and records, and agrees to abide by the Village's determinations regarding required disclosures under such laws and not to bring any claims, actions, suits, or causes of action or to seek damages of any kind against the Village on account of any disclosure. In addition, prior to any payments to Grand Subaru pursuant to this Agreement, Grand Subaru shall provide the State with properly executed authorizations granting the Village the right to access the Sales Tax records of Grand Subaru. Grand Subaru acknowledges and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments made by the Village to Grand Subaru pursuant to this Agreement. Grand Subaru further covenants and agrees, that upon the request of the Village, Grand Subaru shall furnish such consents or waivers as may be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in form and content satisfactory to the State and Grand Subaru in order to release the above-described sales tax information to the Village. Grand Subaru agrees and acknowledges that any disbursements made by the Village pursuant to this Agreement can only be made from and to the extent of the data submitted to the State in accordance with this Section.

SECTION 10. PERMIT AND LICENSE APPLICATIONS; FEES AND COSTS

The Village will act diligently to promptly review and process all applications submitted to it by Grand Subaru.

The Village shall waive all Village permit and inspection fees in connection with the Project, except for any portion of such fees equal to the fees or charge paid by the Village to contract consultants related to the permitting or inspection of the Project. This waiver shall not include Village business and other license fees or charges related to the operation of the dealership or any Village permit and inspection fees accruing after Grand Subaru is granted the certificate of occupancy for the Project. Grand Subaru shall be responsible for the fees and costs of securing all non-Village licenses, permits, and certifications required for the Project and the operation of the dealership.

SECTION 11. ENFORCEMENT

A. The Parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement, provided, however, that Grand Subaru agrees that it shall not seek, and that it does not have the right to seek, to recover a judgment for monetary damages against any elected or appointed Village officers, officials, agents, representatives, attorneys, independent contractors or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. In addition to every other remedy permitted by law or the enforcement of the terms of this Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any structure on the Property whenever Grand Subaru has failed or refused to meet fully any of its material obligations under this Agreement. In the event of a judicial proceeding brought by any Party to this Agreement against any other party to this Agreement for enforcement or for breach of any provision of this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorney's fees, incurred in connection with such judicial proceeding.

B. Except as otherwise set forth in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by any party of any one or more such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other party. Unless prohibited by law, any delay by any party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way, it being the intent of this provision that such party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any party with respect to any specific default by any other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing or otherwise prohibited by law.

C. Upon the occurrence of any one or more of the following events during the period of time commencing as of the date of the making of this Agreement above, and ending on the date that the last EIP is made by the Village to Grand Subaru, the Village shall have no obligation of any kind or nature whatsoever to make any further EIP to Grand Subaru provided that Grand Subaru has not cured in accordance with terms of this Agreement:

1. A material breach of this Agreement by Grand Subaru; or
2. A significant reduction in the Sales Tax receipts as a direct result of changes in Grand Subaru's business plan and not as a result of factors beyond the reasonable control of Grand Subaru during the Term of this Agreement. A significant reduction in the Sales Tax receipts for purposes of this provision Section 11.C.2. in this Agreement shall mean and refer to a reduction in the amount of Sales Tax receipts which is equal to or greater than forty percent (40%) of the average of the Sales Tax receipts received by the Village in the last five (5) years during which

economic incentive payments were made by the Village to Grand Subaru. Among the purposes of this provision is protection of the Village against relocation of the Franchise after incentive payments have been made or in the event that the Village declares any assignment or transfer of rights or interests void as provided in Section 13 of this Agreement and Grand Subaru proceeds with such assignment or transfer.

D. All judicial proceedings by the Parties to enforce State claims shall be brought in the Circuit Court for the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois, and in the U.S. District Court for the Northern District of Illinois to enforce federal claims.

SECTION 12. NATURE AND SURVIVAL OF OBLIGATIONS

The Parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute the obligation of the Party liable for its payment beyond the terms of this Agreement, and of the successors of such party.

SECTION 13. TRANSFER OR ASSIGNMENT

Grand Subaru's assignment or transfer of any of its rights or interests hereunder shall be made only upon notice and with the written consent of the Village, which shall not be unreasonably delayed or withheld. All assignment or transfer by Grand Subaru of its rights and interest provided for under this Section 13 shall be subject to the following terms and conditions:

A. Such assignment or transfer shall release Grand Subaru from any remaining obligations under this Agreement provided the assignee/purchaser agrees to be bound by the terms of this Agreement.

B. No assignments and transfer shall violate the requirements of Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, or other applicable law. Prior to consenting to such a transfer, the Village may require of Grand Subaru and Grand Subaru shall provide the Village documentation and other information demonstrating conformance therewith.

C. All assignees and transferees of all or any part of its rights or interests under this Agreement shall be subject to all terms, provisions, and conditions of this Agreement.

D. Any assignment or transfer of this Agreement or rights or interests hereunder shall be voidable, at the Village's option, within thirty (30) days after the Village receives notice of or becomes aware of such assignment or transfer, unless the Village has given its written consent to such assignment or transfer, or the assignment or transfer is in consideration of or as additional security for any financing or equipment leasing arrangement as provided for in this Section 13.

SECTION 14. REPRESENTATIONS AND WARRANTIES

In order to induce the Village to enter into this Agreement and to grant the rights herein provided for, Grand Subaru hereby warrants and represents to the Village as follows:

A. Grand Subaru is an Illinois limited liability company duly organized, validly existing, and in good standing under the laws of the State of Illinois.

B. Grand Subaru has the authority and the legal right to make, deliver, and perform this Agreement and has taken all necessary corporate, partnership, and venture actions to authorize the execution, delivery, and performance of this Agreement.

C. No mortgagee or any other secured party, other than those listed on Exhibit D attached hereto and, by this reference, incorporated herein, has an interest in the Property as of the date of this Agreement. No such mortgagee or any other secured party listed on Exhibit D has an objection to either (i) the execution and performance of this Agreement by Grand Subaru or (ii) the binding nature of this Agreement with respect to the Property.

D. All necessary consents of the members of Grand Subaru and its creditors, investors, partners, franchisers, judicial or administrative bodies, governmental authorities, or other parties regarding the execution and delivery of this Agreement have been obtained.

E. Grand Subaru has provided, or will provide, any consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village,) that is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement.

F. The individuals executing this Agreement on behalf of Grand Subaru have the full power and authority necessary to execute and deliver this Agreement on behalf of Grand Subaru.

G. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of Grand Subaru; (ii) will not result in a breach or default under any agreement to which Grand Subaru is a party or to which Grand Subaru, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which Grand Subaru or the Property or any Franchise in whole or in part is or are subject.

H. Grand Subaru has made its own independent investigation and determination of all matters relating to this Agreement including but not limited to a determination of whether its terms are enforceable and that Grand Subaru has not and will not rely upon the Village Representatives in connection therewith.

SECTION 15. GENERAL PROVISIONS

A. Complete Agreement: Supersedence. This Agreement and Exhibits A, B, C and D, attached hereto, constitute the complete agreement of the parties regarding Economic Incentive Payments out of a portion of the Local Sales Tax Receipts to Grand Subaru and shall supersede and nullify all prior drafts and agreements concerning such matters.

B. Amendments. No amendment to, or modification of, this Agreement shall be effective unless and until it is in writing and is approved by the authorized representatives of Grand

Subaru and by the Corporate Authorities by resolution or ordinance duly adopted, and executed and delivered by the authorized representative of each party.

C. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and shall be deemed delivered to and received by the addressee thereof when delivered in person at the address set forth below or one (1) business day after deposit thereof with any recognized private courier company that provides overnight delivery service, or three (3) business days after deposit thereof in any main or branch United States Mail, certified or registered mail, return receipt requested, postage prepaid, properly, addressed to the parties, respectively, as follows:

For notices and communications to the Village:

Michael J. Cassady
Village Manager
Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106

With a copy to:

Patrick K. Bond, Esq.
Village Attorney
Bond, Dickson & Associates, P.C.
400 South Knoll Street, Unit C
Wheaton, Illinois 60187

For notices and communications to Grand Subaru:

Grand Subaru, LLC
125 West Grand Avenue
Bensenville, Illinois 60106

With a copy to:

Steven R. Johnson, Esq.
Langhenry, Gillen, Lundquist & Johnson, LLC
311 South County Farm Road, Suite L
Wheaton, Illinois 60187

By notice complying with the foregoing requirements of this paragraph, each Party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no such notice of change of address shall be effective unless in writing and until actually received.

D. Governing Law. This Agreement and the rights of the Parties hereunder shall be

governed by, and construed, interpreted, and enforced in accordance with the laws of the State of Illinois.

E. Interpretation. This Agreement has been negotiated by all Parties and shall not be interpreted or construed against the Party drafting the Agreement.

F. Change in Laws. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include such laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. Headings. The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the meaning, scope, or intent of this Agreement, or the meaning, scope, or intent of any provision hereof.

H. Time of Essence Time is of the essence in the performance of all terms and provisions of this Agreement.

I. No Third Party Beneficiaries. Except, as expressly provided herein, nothing in this Agreement shall create, or be construed to create, any third-party beneficiary rights in any person or entity not a signatory to this Agreement.

J. Exhibits. Exhibits A, B, C, and D attached to this Agreement, are incorporated herein and made a part hereof by this reference.

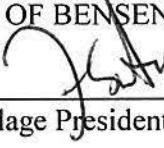
K. Counterparts. This Agreement may be executed in identical counterparts and all of said counterparts shall, individually and taken together, constitute the Agreement.

L. Severability. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purpose of this Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

M. Expansion. In the event that the after the Effective Date of this Agreement, Grand Subaru, LLC expands its business within the Village at a location or locations not now included in this Agreement and if its plans for development and/or redevelopment qualify for economic incentive payments, then, the Village encourages Grand Subaru, LLC to seek an amendment to this Agreement and in good faith the Village shall consider the approval of such amendment or amendments.

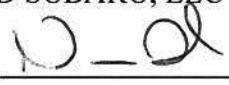
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

VILLAGE OF BENSENVILLE

By: 

Village President

GRAND SUBARU, LLC

By: 

Its CFO

ATTEST:


Village Clerk

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTIES

“Current Facilities” (125 West Grand Avenue, Bensenville, Illinois):

PARCEL 1 (PIN No.: 03-26-204-005):

LOT 1 IN JOHN H. SCHUDDER'S RESUBDIVISION OF LOTS 30, 31, 32 IN ADDISON TOWNSHIP SUPERVISOR'S ASSESSMENT PLAT NO. 5, BEING THE PROPERTY KNOWN AS "YORK GRAND ESTATES" UNIT NO. 2, IN THE NORTHEAST $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED NOVEMBER 16, 1966 AS DOCUMENT NO. R66-45131 IN DUPAGE COUNTY, ILLINOIS.

“Vacant Parcel”:

PARCEL 2 (PIN No.:03-26-204-024):

THAT PART OF LOT 3 IN WHITE PINES CENTER FOR BUSINESS AND INDUSTRY SUBDIVISION, BEING A SUBDIVISION IN THAT PART OF THE NORTH HALF OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS ACCORDING TO A PLAT THEREOF RECORDED NOVEMBER 7, 1977 AS DOCUMENT NO. R77-102033, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE FOUND IRO PIPE MARKING THE SOUTHEAST CORNER OF SAID LOT 3, THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 3, SAID SOUTHERLY LINE ALSO BEING THE NORTHERLY LINE OF GRAND AVENUE AS DEDICATED BY SAID DOCUMENT NO. R77-102033, AN ASSUMED BEARING OF SOUTH 85 DEGREES 16 MINUTES 46 SECONDS WEST A DISTANCE OF 290.46 FEET TO A 5/8 INCH REBAR WITH A PLASTIC CAP MARKED "P.L.S. 3240" ON A LINE 290.0 FEET WEST OF AND PARALLEL TO THE EASTERLY LINE OF SAID LOT 3; THENCE NORTH 01 DEGREES 29 MINUTES 51 SECONDS WEST, 311.71 FEET ALONG SAID PARALLEL LINE TO A 5/8 INCH REBAR WITH A PLASTIC CAP MARKED "P.L.S. 3240" ON THE NORTHERLY LINE OF SAID LOT 3, THENCE NORTH 87 DEGREES 24 MINUTES 34 SECONDS EAST, 290.05 FEET ALONG SAID NORTHERLY LINE OF LOT 3 TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTH 01 DEGREES 29 MINUTES 51 SECONDS EAST, 300.91 FEET ALONG THE EASTERLY LINE OF SAID LOT 3 TO THE POINT OF BEGINNING.

EXHIBIT B

PROJECT DESCRIPTION

Grand Subaru, LLC Project Summary:

Grand Subaru, LLC and the property owners seek to expand the current PUD entered with the Village on August 1, 2012 to incorporate the expansion and redevelopment of the existing dealership to add office space, service bays, and other amenities. In addition, Grand Subaru, LLC and the property owners seek to develop the adjacent parcel to the west of the existing dealership with landscaping, signage, lighting, additional automobile display space, and access to Grand Avenue, with the expectation of improving this important gateway to the Village and increasing sales tax revenue as a result of the proposed expansion. See attached plans and specifications which are incorporated into this Exhibit and Agreement as if fully set forth.

Exhibit C

Sales Tax Projections For Illustrative Purposes Only

Year	Projected Sales Tax			Sales Tax Sharing
January 1		Village Allocation \$200,000 Minimum or 25% whichever is greater through 2017	Grand Subaru Projected EIPs less Village allocation through 2017	Grand Subaru Sales Tax Sharing
		Village allocation \$200,000 Minimum or 50%, whichever is greater thereafter	Grand Subaru Projected EIPs less Village Allocation thereafter	
2015	\$ 545,819	\$ 200,000	\$ 345,819	\$ 345,819
2016	\$ 580,306	\$ 200,000	\$ 380,306	\$ 380,306
2017	\$ 656,451	\$ 200,000	\$ 456,451	\$ 456,451
2018	\$ 656,451	\$ 328,226	\$ 328,226	\$ 328,226
2019	\$ 656,451	\$ 328,226	\$ 328,226	\$ 328,226
2020	\$ 656,451	\$ 328,226	\$ 328,226	\$ 328,226
2021	\$ 656,451	\$ 328,226	\$ 328,226	\$ 328,226
2022	\$ 656,451	\$ 328,226	\$ 328,226	\$ 328,226
2023	\$ 656,451	\$ 328,226	\$ 328,226	\$ 328,226
2024	\$ 656,451	\$ 328,226	\$ 328,226	\$ 328,226
2025	\$ 656,451	\$ 328,226	\$ 328,226	\$ 328,226
2026	\$ 656,451	\$ 328,226	\$ 328,226	\$ 191,620
2027	\$ 656,451	\$ 328,226	\$ 328,226	\$ -
2028	\$ 656,451	\$ 328,226	\$ 328,226	\$ -
2029	\$ 656,451	\$ 328,226	\$ 328,226	\$ -
Total	\$ 9,659,988	\$ 4,538,706	\$ 5,121,282	\$ 4,000,000

Maximum sharing amount of EIPs is the lesser of \$4,000,000.00 or actual development “hard” costs.

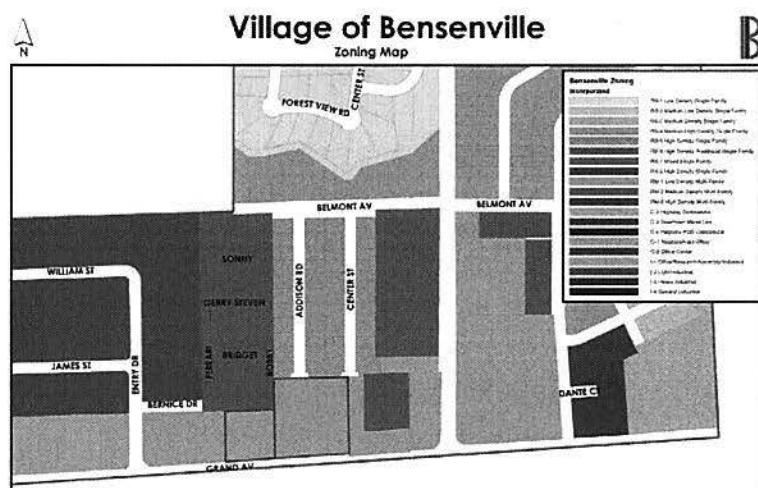
EXHIBIT D

MORTGAGEES AND SECURED PARTIES

NONE.

Grand Subaru
125 West Grand Avenue

Village of Bensenville
125 W Grand Av



**RESOLUTION AUTHORIZING EXECUTION OF AN ECONOMIC INCENTIVE AGREEMENT
BETWEEN THE VILLAGE OF BENSENVILLE AND JEWEL-OSCO**

WHEREAS, the VILLAGE FO BENSENVILLE (hereinafter "VILLAGE") is a municipal corporation established and existing under the laws of the State of Illinois pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and

WHEREAS, the VILLAGE is empowered to make all agreements and contracts and to undertake other acts as necessary in the exercise of its statutory powers; and

WHEREAS, it is sometimes necessary in furtherance of its statutory functions for the VILLAGE to contract for various services required by the VILLAGE; and

WHEREAS, for this purpose, the VILLAGE has determined that it is reasonable, necessary, and desirable to enter into an Economic Incentive Agreement with Jewel-Osco, which Agreement is attached hereto and incorporated herein by reference as Exhibit "A."

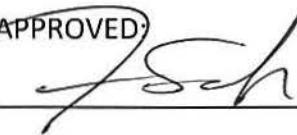
NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

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

SECTION TWO: The Village President and Village Manager are hereby authorized and directed to execute on behalf of the Village of Bensenville, and the Village Clerk is hereby authorized to attest thereto, the Agreement attached hereto and incorporated herein by reference as Exhibit "A."

SECTION THREE: This Resolution shall take effect immediately upon its passage and approval as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this
22nd day of September 2015.

APPROVED


Frank Soto, Village President

ATTEST:



Ilsa Rivera-Trujillo, Village Clerk

Ayes: DeSimone, Carmona, Jaworska, Janowiak, O'Connell

Nays: None

Absent: Wesseler

Brentwood Commons

Northeast Corner Grand Avenue & York Road



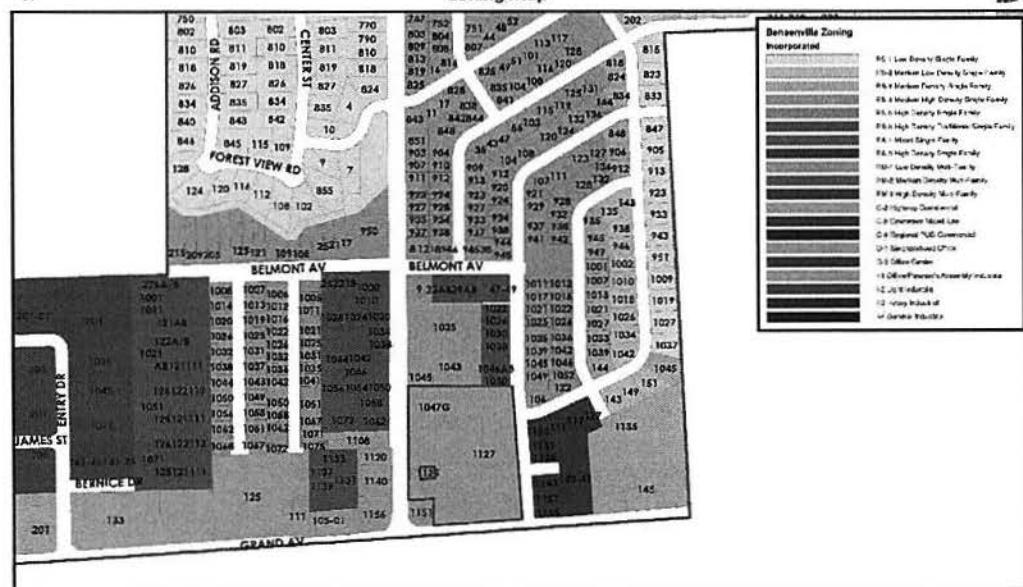
Village of Bensenville

Brentwood Commons Shopping Center



Village of Bensenville

Zoning Map



**ECONOMIC INCENTIVE AGREEMENT BETWEEN THE
VILLAGE OF BENSENVILLE AND JEWEL-OSCO**

THIS ECONOMIC INCENTIVE AGREEMENT ("Agreement") is made and entered into as of the 22nd day of September, 2015, by and between the Village of Bensenville, DuPage and Cook Counties, Illinois, an Illinois municipal corporation ("Village"), and Jewel Food Stores, Inc., an Ohio corporation, with principal offices in the City of Boise, Ada County, Idaho ("Jewel-Osco"),

W I T N E S S E T H,

WHEREAS, the Village has determined that it is essential to the economic and social welfare of the Village to promote the economic vitality of the community by assuring opportunities for development and sound and stable commercial growth within the Village's corporate limits; and

WHEREAS, the laws of the State of Illinois authorize the corporate authorities of a municipality to enter into economic incentive agreements relating to the development or redevelopment of land within the corporate limits of the municipality; and

WHEREAS, the Corporate Authorities of the Village desire to improve the social and economic welfare of the Village and enhance the tax base of the Village to the benefit of the Village and other governmental entities by exercising the authority provided by law and entering into economic incentive agreements that are in the furtherance of and essential to the public interest; and

WHEREAS, Jewel-Osco owns and operates full service grocery stores, many with pharmacies, at locations within metropolitan Chicago, Indiana, and Iowa; and

WHEREAS, Jewel-Osco is in final negotiations to lease and operate a Jewel-Osco full-service grocery store and pharmacy in the Building (as defined below); and

WHEREAS, the Building no longer complies with the Village's Building Regulations in Chapter 9 of the Bensenville Village Code, but as a result of Jewel-Osco's leasing and occupying said space with a full-service grocery store and pharmacy, the Building will be renovated and brought into compliance with the said building regulations; and

WHEREAS, the redevelopment of the Building will also generate increased real estate tax and sales tax revenues and employment opportunities for the Village and maintain and stimulate further development of the South York Road-West Grand Avenue commercial area; and

WHEREAS, Jewel-Osco has provided the Village with store sales projections and costs for the Project, as defined in Section 2 below and attached hereto in Exhibit B, which

demonstrate that sales tax revenue sharing is essential for Jewel-Osco to achieve profitability for the Project as is hereafter defined; and

WHEREAS, the Village desires to make it economically feasible for Jewel-Osco to redevelop and occupy the Building by entering into an economic incentive agreement with Jewel-Osco pursuant to the authority set forth in Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, and other law; and

WHEREAS, as set forth in its Ordinance approving this Agreement and authorizing its execution and delivery, the Village has made the requisite findings, in accordance with Chapter 65 ILCS 5/8-11-20, that the Building will be brought into compliance with current building regulations; that the Project is expected to create or retain job opportunities within the Village, will serve to further develop adjacent areas, will strengthen the commercial sector and enhance the tax base of the Village, and would not be possible without this Agreement; that Jewel-Osco meets high standards of credit worthiness and strength; and that this Agreement is in the best interests of the Village.

NOW, THEREFORE, IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, Jewel-Osco and the Village hereby agree as follows:

SECTION 1. RECITALS

The recitals hereinabove set forth are hereby incorporated by this reference into the body of this Agreement to the same extent as if each such recital had been set forth in full in the body of this Agreement.

SECTION 2. DEFINITIONS

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

“Building”: Shall mean Unit 11 (the former Dominick’s Finer Foods store) in the Brentwood Commons shopping center at 1127 South York Road in the Village, as identified in Exhibit A, attached hereto and incorporated herein by reference as if fully set forth.

“Commencement Date”: Shall mean the date on which the Village shall issue the final certificate of occupancy for the Project.

“Corporate Authorities”: The President and Board of Trustees of the Village.

“Department”: Shall mean the Illinois Department of Revenue, or any successor agency of the State.

“Effective Date of this Agreement” or “Effective Date”: The date referenced in the preamble on Page 1 of this Agreement.

“Economic Incentive Payment” or “EIP”: The amounts payable to Jewel-Osco pursuant to Section 3 of this Agreement.

“Force Majeure”: Shall include but not be limited to an Act of God or other event or cause not reasonably within the control of Jewel-Osco or the Village including, without limitation, fire, storm, strikes, lockouts, war, insurrection, earthquakes, casualties, acts of the public enemy, respective governmental laws and regulations, epidemics, quarantine, restrictions, or lack of transportation, building material supply shortages, vendor problems not caused by Jewel-Osco, embargoes, civil riot, floods or natural catastrophe.

“Shopping Center”: Shall mean the Building, other improvements and common areas commonly known as the Brentwood Commons shopping center at 1127 South York Road in the Village, which is depicted in Exhibit A, attached hereto and incorporated herein by reference as if fully set forth.

“Landlord”: Shall mean Brentwood Commons Station LLC, a Delaware limited liability company, or its successor in interest to the Building.

“Maximum Sharing Amount”: Shall mean an amount not exceeding the total expenditures for the physical hard cost renovation of the Building and the fixturing and equipment added for its redevelopment for the Project. The amount of such expenditures shall be established by an affidavit or affidavits of an appropriate Jewel-Osco officer, which shall be supported by evidence of payment of such expenditures, such as paid invoices, receipts, or other customary Jewel-Osco project documentation reasonably acceptable to the Village. The approximate estimate of Jewel-Osco’s expenditures is set forth on Exhibit A-1, which is attached hereto and incorporated herein by reference as if fully set forth.

“Project”: Shall mean Jewel-Osco’s redevelopment of the Building for the operation of a “Jewel-Osco” brand full-service grocery store and pharmacy which shall include the sale of fresh produce, fresh on-site butchered meats, on-site bakery, dairy, deli items, florals and plants, prescription drugs, and beer, wine, and liquors among other specialty items, and may also include areas such as a sit-down sandwich, hot-meal, and/or Starbucks or other brand coffee shop.

“Party” or “Parties”: Shall mean the Village, Jewel-Osco and their successors or assigns as permitted under this Agreement.

“Sales Taxes”: Shall mean (a) any and all taxes imposed and collected by the Village under the Non-Home Rule Retailer’s Occupation Tax Act, 65 ILCS 5/8-11-1.3, *et seq.*, Non-Home Rule Service Occupation Tax Act, 65 ILCS 5/8-11-1.4, *et seq.*, and Non-Home Rule Use Tax Act, 65 ILCS 5/8-11-1.5, *et seq.*, and (b) the portion (presently one [1] percent) of any and all taxes distributed to and actually received by Village which are

imposed and collected by the State pursuant to the Retailer's Occupation Tax Act, 35 ILCS 120/1, *et seq.*; the Service Occupation Tax Act, 35 ILCS 115/1, *et seq.*; the Use Tax Act, 35 ILCS 105/1, *et seq.*; and the Service Use Tax Act, 35 ILCS 110/1, *et seq.*, in each case from sales and service transactions occurring on the Property, including without limitation any increases in such taxes or replacements thereof due to changes in Illinois statutes or municipal ordinances, any such taxes imposed on internet generated sales from which Illinois sales tax receipts are derived, and any other retailer's occupation tax, service occupation tax, use tax, or sales tax, except as expressly authorized by this definition, together with any interest earned on Sales Taxes while held by the Department. However, "Sales Taxes" shall not mean any portion of the Use Tax which is distributed on the basis of population (per capita distribution) and not included in the term "Sales Taxes."

"Sales Tax Year": Shall mean, during the Term, each calendar year or part of a calendar year between the date on which the Village shall issue the final certificate of occupancy for the Project and December 31 of such year.

"State": Shall mean the State of Illinois.

"Term": Shall mean the period for which this Agreement shall be enforced, which shall be from the Effective Date through the earlier of Jewel-Osco's receipt of total EIP's equal to the Maximum Sharing Amount or December 31, 2030

SECTION 3. DETERMINATION OF AMOUNT OF ECONOMIC INCENTIVE PAYMENT

A. **Amount of Economic Incentive Payment**. Subject to sub-paragraphs 1, 2 and 3 below, for the first (1st) through the fifth (5th) Sales Tax Years during the Term hereof, the Village shall pay Jewel-Osco an Economic Incentive Payment of seventy-five percent (75%) of the amount of the Sales Taxes collected and remitted to the Village by the Department up to and including, but not exceeding, the Maximum Sharing Amount; and for the sixth (6th) through the fifteenth (15th) Sales Tax Years during the Term hereof, the Village shall pay Jewel-Osco an Economic Incentive Payment of fifty percent (50%) of the amount of the Sales Taxes collected and remitted to the Village by the Department up to and including, but not exceeding, the Maximum Sharing Amount. Provided, however, that notwithstanding the foregoing, the following shall apply:

1. For any given Sales Tax Year if the total sales tax revenue received by the Village from the Jewel-Osco Store is less than \$100,000, the Village will share 100% of the Sales Tax;
2. For any given Sales Tax Year if the total sales tax revenue received by the Village from the Jewel-Osco Store exceeds \$100,000, but the Sales Tax to be shared as per the above percentage for the given Sales Tax Year is less than \$100,000, the Village will share \$100,000 with Jewel-Osco and the balance will be the Village's Share of Sales Tax; and

3. For any given Sales Tax Year when the total Sales Tax to be shared based on the above percentages for the given Sales Tax Year exceeds \$100,000, no adjustment will be done and the amount derived by straight Sales Tax multiplied by the appropriate percentage of sharing for Jewel-Osco for that Sales Tax Year will be shared.

If the Sales Tax Year is less than a full calendar year the EIP shall be calculated upon and paid from Sales Taxes generated only during that portion of the calendar year constituting the Sales Tax Year. EIPs shall be made only from proceeds of Sales Taxes imposed and collected by the State or Village, generated by sales and service transactions occurring on the Property, including internet generated sales from which Illinois local sales tax receipts are derived, and distributed to and actually received by Village. All EIPs shall be based on the records of the Department for Jewel-Osco. The Projected Sales Taxes amounts and Sales Tax Allocation amounts in Exhibit C, Sales Tax Rebate Projections, are for illustrative purposes only, and no obligation to make or entitlement to receive any payment is created thereby.

All Sales Taxes collected and remitted to the Village in excess of those required to make the Economic Incentive Payments as provide in this Section 3.A. shall belong to the Village. Notwithstanding any provision of this Section 3.A. or this Agreement, Jewel-Osco shall not be entitled to further Economic Incentive Payments or payments of any Sales Tax monies upon its receipt of total Economic Incentive Payments equal to the Maximum Sharing Amount, even if the Term of this Agreement shall not have expired.

B. Village Payment. The Village shall make the EIP payments annually for each partial or full Sales Tax Year, in the amounts provided for in Section 3.A. and prorated for a partial Sales Tax Year, from the proceeds of Sales Taxes actually received by the Village, within thirty (30) days following the Village's receipt of the September through December Remittance Report from the Department for such partial or full Sales Tax Year.

C. Audit and Reconciliation. Jewel – Osco shall have thirty (30) days following the receipt of an EIP to contest the amount thereof. In the event that Jewel-Osco shall initiate any such contest, it must be made by written notice to the Village. If such contest shows that the amount of EIP paid to Jewel-Osco is less than the amount of EIP which should have been paid, the Village shall pay the difference to Jewel - Osco within thirty (30) days of the completion of such contest. If such contest shows that the amount of EIP paid to Jewel-Osco is more than the amount of EIP which should have been paid, or if Jewel-Osco files an amended sales tax return, which amended return is approved by the Department and shows that the amount of the EIP paid to Jewel-Osco is more than the amount that should have been paid, then Jewel-Osco shall pay the difference to the Village within thirty (30) days of the completion of such contest. Jewel-Osco agrees to promptly forward a copy of all such amended sales tax returns to the Village, clearly identifying them as amendments of sales tax returns.

D. Change in the Law. The Village and Jewel-Osco acknowledge and agree that the Village's obligation to pay the EIP to Jewel-Osco is predicated on existing State law, including, without limitation, the Retailer's Occupation Tax Act and Section 8-11-20 of the Illinois Municipal Code. The Village and Jewel-Osco further acknowledge that the General Assembly of

the State has from time to time, considered proposals to modify or eliminate the distribution of local Sales Taxes to Illinois municipalities. In the event that the State amends or repeals the applicable state statutes or makes any other promulgation, enactment or change in law ("Change in Law"), and such Change in Law results in replacement taxes for all or a portion of the Sales Taxes generated by Jewel-Osco as contemplated hereunder, then, for purposes of this Agreement, the revenue from such replacement taxes shall be used to calculate the local Sales Taxes, subject in all respects to the Village's actual receipt of its portion of such replacement taxes as well as the Village's authority under state law to provide for the sharing of such replacement taxes, as contemplated herein.

E. Limited Liability. Notwithstanding any other provision of this Agreement to the contrary, the Village's obligation to pay the EIP shall not be a general debt of the Village on or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Sales Taxes received by the Village, as specifically defined in Section 2 of this Agreement. Subject to all of the conditions, limitations and restrictions in this Agreement, the Village shall be liable to Jewel-Osco for disbursement of monies hereunder only to the extent of the Sales Taxes actually received by the Village from the Department or other applicable State governmental agency. Further, any payments due to Jewel-Osco from the Village pursuant to this Agreement shall be reduced by an amount equal to all collection fees imposed upon the Village by the State, the Department or other applicable governmental agency or body, for collections of revenues to be shared. Jewel-Osco shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the EIP, and no execution of any claim, demand, cause of action, or judgment shall be levied upon or collected from the general credit, general funds, or other property of the Village. No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future director, member, elected or appointed officer, official, independent contractor, agent, attorney, or employee of the Village in his or her individual capacity.

F. Village Representations. By signing this Agreement, Jewel-Osco and each and all of its successors and assigns acknowledges and represents to the Village and each and all of its elected and appointed officers, officials, employees, agents, attorneys, independent contractors successors and assigns (hereinafter for convenience collectively referred to as the "Village Representatives") that no representations, warranties (except that this Agreement has been duly enacted by the Village in accordance with all applicable laws), advice and/or statements of any kind or nature have been made by any of the Village Representatives that upon the Agreement becoming effective that:

1. The State will continue to share Sales Taxes with the Village; or
2. The State will continue to authorize and/or permit economic incentive agreements and payments pursuant thereto.

SECTION 4. SALES TAX INFORMATION.

A. The Village may obtain, as it determines to be necessary, all pertinent information regarding the Sales Taxes (including, without limitation, the amount of Sales Taxes collected

from the Project) directly from the Department, and may enter into an agreement for the exchange of information with the Department if required to obtain said information. To the extent permitted by law, the Village shall endeavor to maintain the confidentiality of the information contained in the reports obtained from the Department, but shall be permitted to disclose such information to such Village officers, employees, attorneys, accountants, agents, and consultants relating to the administration of this Agreement as the Village, in its sole discretion, deems appropriate in order to monitor compliance and audit this Agreement.

B. Jewel-Osco agrees that it shall execute an Authorization to Release Sales Tax Information in the form approved by the Department, and deliver a fully executed copy of the same to the Village and the Department to authorize the Department to directly report information on Sales Taxes to the Village. Jewel-Osco shall maintain copies of any and all sales tax returns, sales tax reports, amendments concerning sales tax, proof of payment or other sales tax information filed with the Department, which Jewel-Osco shall make available to the Village upon the Village's reasonable requests therefor related to claims by the Village or Jewel-Osco regarding EIP's. Jewel-Osco also agrees, upon the request of the Village, to furnish such consents or waivers or other reasonably sought documentation requested to effectuate the intent of this Agreement as may be required by the Department to provide the Village with sales tax information concerning the Project.

SECTION 5. JEWEL-OSCO'S OBLIGATIONS. Village's obligation to make the EIPs as provided for in this Agreement is conditioned upon Jewel-Osco's performance of Paragraphs A. and D. below. Jewel-Osco's performance of them is material to this Agreement, and Jewel-Osco's failure to perform them, subject to the provisions of notice and cure in Section 8.B., shall be deemed a breach of this Agreement for which the Village, in addition to the remedies provided for in Section 8 hereof, may immediately suspend and withhold payment of the EIP's.

A. Jewel-Osco shall provide to the Village a copy of its fully executed current lease with the amounts of all rental payments redacted therefrom, and all amendments and successor leases thereto and all other agreements with the Landlord relating to the lease and use of the Building by Jewel-Osco within fourteen (14) days of the execution thereof. Jewel-Osco shall also provide to the Village within three (3) business days of receipt thereof any notices or actions by the Landlord affecting or potentially affecting Jewel-Osco's lease and/or use of the Building as the site for the Project.

B. Jewel-Osco shall provide the Village with all authorization necessary for the State's release of Sales Tax information to the Village.

C. Although Jewel-Osco does not currently have internet-generated sales, should it do so during the term of this Agreement, Jewel-Osco will use reasonable efforts to maintain throughout the Term of this Agreement a procedure whereby all internet-generated sales of goods from the Project, if any, which generate Sales Tax is tracked, so that all receipts of such Sales Taxes permitted by law therefrom flow to the Village.

D. All maintenance that Jewel-Osco is required to perform on the Building under its lease with the Landlord shall, based on information and belief, be performed at all times in compliance with all Village codes and ordinances.

E. Waive enforcement of and Landlord's compliance with prohibiting leasing of Shopping Center space to take-out donut, pastry, and coffee business.

SECTION 6. FORCE MAJEURE

A. Whenever a period of time is provided for in this Agreement for either Jewel-Osco or the Village to perform any act or obligation, and Jewel-Osco or the Village, as the case may be, is unable to perform or complete such act or obligation because of a Force Majeure, then upon the occurrence of any such Force Majeure, the time period for the performance and completion of such act or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

B. Provided Jewel-Osco is not in default hereunder, the Village shall continue to make any and all disbursements during any period of reconstruction or Force Majeure referred to hereinabove to which Jewel-Osco would otherwise be entitled hereunder for said period.

SECTION 7. LITIGATION AND DEFENSE OF AGREEMENT

A. Litigation. If, during the Term of this Agreement, any lawsuits or proceedings are filed or initiated against either 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 party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.

B. Defense. The Village and Jewel-Osco do hereby 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. Each Party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Village and Jewel-Osco do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

SECTION 8. REMEDIES; NOTICE AND CURE PERIOD; PREVAILING PARTY

A. Remedies.

1. Upon the occurrence of a default by Jewel-Osco, the Village shall be relieved of any and all of its obligations arising pursuant to this Agreement and such obligations on the part of the Village shall be immediately canceled and without any force or effect, except with respect to the obligation to pay Sales Taxes accrued prior to

the date of termination. Provided, however, in the event that the Village, for whatever reason, were to overpay the Maximum Sharing Amount to Jewel-Osco, if necessary, the Village shall have the right to bring an action in law or equity to recover such over payment.

2. Subject to the limitations in Section 3.E., the failure of the Village to make an Economic Incentive Payment hereunder shall constitute a default by Village under this Agreement. Upon the occurrence of a default by Village, Jewel-Osco shall have all remedies available to it in law or equity. However, Jewel-Osco agrees that it shall not seek, and does not have the right to seek, to recover a judgement for monetary damages against any elected or appointed Village officers, officials, agents, representatives, attorneys, or employees in their individual capacities.

B. Notice and Cure Period. In the event of any alleged default under or violation of this Agreement, the party not in default or violation shall serve written notice upon the party or parties in default or violation, which notice shall be in writing and shall specify the particular violation or default. The parties hereto reserve the right to cure any violation of this Agreement or default by any of them hereunder within sixty (60) days from written notice of such default. If such default is so cured to the reasonable satisfaction of the party not in default within said sixty (60) day period, all the terms and conditions of this Agreement shall remain in full force and effect as if no such violation occurred. In the case of a default by Jewel-Osco, the obligation of the Village to make Economic Incentive Payments hereunder shall be stayed during any default period.

C. Prevailing Party. In the event any party institutes legal proceedings against another party for violation of this Agreement, the court having jurisdiction thereof shall determine and include in its judgment against the non-prevailing party all expenses of such legal proceedings incurred by the prevailing party, including court costs, reasonable attorneys' fees and witness fees incurred by the prevailing party in connection therewith.

D. Judicial Proceedings. All judicial proceedings by the Parties to enforce State claims shall be brought in the Circuit Court for the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois, and in the U.S. District Court for the Northern District of Illinois to enforce Federal claims.

SECTION 9. RELEASE OF INFORMATION

To the extent permitted by law, the Village shall maintain the confidentiality and proprietary nature of the information contained in sales tax returns and other information provided to the Village by Jewel-Osco; however, Jewel-Osco acknowledges that the Village, as a public body, is subject to the (Illinois) Freedom of Information Act, 5 ILCS 140/1 *et seq.*, the (Illinois) Open Meetings Act, 5 ILCS 120/1 *et seq.*, and other law providing for the public disclosure of information and records and the Village's obligations of confidentiality as to such information under this Agreement is subject to the requirements of such laws. To the extent permitted by law, Jewel-Osco shall be allowed to defend any claim made by any third party against Village for release of such documents.

SECTION 10. PAYMENT OF VILLAGE FEES AND COSTS

The Village shall waive all of its building permit and inspection fees related to the Project, except for any fee or portion of a fee attributable to the Village's costs for consulting or other third party services. However, Village liquor license and business license fees shall not be waived. In good faith, the Village will act diligently to promptly review and process all applications submitted by Jewel-Osco.

SECTION 11. NATURE AND SURVIVAL OF OBLIGATIONS

The Parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute the obligation of the Party liable for its payment beyond the terms of this Agreement, and of the successors of such party.

SECTION 12. TRANSFER OR ASSIGNMENT BY JEWEL-OSCO

A. Except in the case of an assignment or transfer to an affiliate whose ownership shares a controlling interest with Jewel-Osco and which assignees will continue to operate the Project in accordance with this Agreement, Jewel-Osco may not assign or transfer its rights and obligations under this Agreement to any person or entity without the prior written consent of the Village. Village approval of any transfer or assignment shall not be unreasonably withheld.

B. Any assignment or transfer of this Agreement or rights or interests hereunder without the Village's prior written consent shall be voidable, at the Village's option, within sixty (60) days after the Village receives notice of or becomes aware of such assignment or transfer, unless the assignment or transfer is in consideration of or as additional security for any financing or equipment leasing arrangement as provided for in this Section 12.

SECTION 13. REPRESENTATIONS AND WARRANTIES

A. Mutual Representations and Warranties. In order to induce each Party to enter into this Agreement and to grant the rights herein provided for, the Parties hereby warrant and represent to each other as follows:

1. Each Party and the individual representatives of each Party executing this Agreement have the authority and the legal right to make, deliver, and perform this Agreement, and has taken all necessary corporate actions to authorize the execution, delivery, and performance of this Agreement.

2. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of any Party; (ii) will not result in a breach or default under any agreement to which any Party is a party or to which such Party, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which any Party or the Property in whole or in part is or are subject.

B. Jewel-Osco's Representations and Warranties. Jewel-Osco represents and warrants to the Village as follows:

1. Jewel-Osco is a lawfully organized and existing corporation and legally authorized to conduct business in the State.

2. All necessary consents, if any, of Jewel-Osco's creditors, investors, partners, franchisers, judicial or administrative bodies, governmental authorities, or other third parties regarding the execution and delivery of this Agreement have been obtained, or Jewel-Osco will provide any such third party consent or authorization of, filing with, or other act by or in respect of any other governmental authority, that is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement by Jewel-Osco .

3. Jewel-Osco has made its own independent investigation and determination of all matters relating to this Agreement including but not limited to a determination of whether its terms are enforceable and that Jewel-Osco has not and will not rely upon the Village Representatives in connection therewith.

4. The projected Sales Taxes in Exhibit B are based upon good faith projections of sales revenues from the Project by Jewel-Osco, based upon its knowledge and experience in the operation of full-service retail grocery stores and pharmacies and factors relating specifically to the operation of a such a store on the Property.

SECTION 14. GENERAL PROVISIONS

A. Complete Agreement: Supersedence. This Agreement and Exhibits A, B, C and D attached hereto constitute the complete agreement of the Parties regarding Economic Incentive Payments out of a portion of the Sales Taxes to Jewel-Osco and shall supersede and nullify all prior drafts and agreements concerning such matters.

B. Amendments. No amendment to, or modification of, this Agreement shall be effective unless and until it is in writing and is approved by the authorized representatives of Jewel-Osco and by the Corporate Authority of the Village by resolution or ordinance duly adopted, and executed and delivered by the authorized representative of each party.

C. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and shall be deemed delivered to and received by the addressee thereof when delivered in person at the address set forth below or one (1) business day after deposit thereof with any recognized private courier company that provides overnight delivery service, or three (3) business days after deposit thereof in any main or branch United States Mail, certified or registered mail, return receipt requested, postage prepaid, properly, addressed to the parties, respectively, as follows:

For notices and communications to the Village:

Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106
Attn: Village Manager

With a copy to:

Patrick K. Bond, Esq.
Village Attorney
Bond, Dickson & Associates, P.C.
400 South Knoll Street, Unit C
Wheaton, Illinois 60187

For notices and communications to Jewel - Osco:

Jewel Food Stores, Inc.
c/o New Albertson's, Inc.
P.O. Box 20, Boise, Idaho 83726 (mailing address)
250 Parkcenter Blvd, Boise Idaho 83726 (street address)
Attn: Legal Department, Jewel #3469

With a copy to:

Jewel Food Stores, Inc.
150 Pierce Road, Suite 200
Itasca, Illinois 60143

And with a copy to:

Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd.
835 McClintock Drive, Second Floor
Burr Ridge, Illinois 60527
Attn: Richard J. Skrodzki

By notice complying with the foregoing requirements of this paragraph, each Party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no such notice of change of address shall be effective unless in writing and until actually received.

D. Governing Law. This Agreement and the rights of the Parties hereunder shall be governed by, and construed, interpreted, and enforced in accordance with the laws of the State of Illinois.

E. Interpretation. This Agreement has been negotiated by all Parties and shall not be interpreted or construed against the Party drafting the Agreement.

F. Change in Laws. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include such laws,

ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. Headings. The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the meaning, scope, or intent of this Agreement, or the meaning, scope, or intent of any provision hereof.

H. Time of Essence Time is of the essence in the performance of all terms and provisions of this Agreement.

I. No Third Party Beneficiaries. Except as expressly provided herein, nothing in this Agreement shall create, or be construed to create, any third-party beneficiary rights in any person or entity not a signatory to this Agreement.

J. Exhibits. Exhibits A, A-1, B and C attached to this Agreement are incorporated herein and made a part hereof by this reference.

K. Counterparts. This Agreement may be executed in identical counterparts and all of said counterparts shall, individually and taken together, constitute the Agreement.

L. Severability. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purpose of this Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

M. Expansion. In the event that after the Effective Date of this Agreement Jewel - Osco expands its business within the Village at a location or locations not now included in this Agreement and if its plans for development and/or redevelopment qualify for Economic Incentive Payments, then, the Village encourages Jewel-Osco to seek an amendment to this Agreement and in good faith the Village shall consider the approval of such amendment or amendments.

N. Cooperation and Further Assurances. Each Party covenants and agrees that it 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 or Jewel-Osco or other appropriate persons, the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

O. Conflict. To the extent that any federal or state statute, regulation, rule, or order, or any part thereof shall conflict with a provision of this Agreement, the provision of such

federal or state statute, regulation, rule, or order shall be controlling to the extent lawful, and if such federal or state statute, regulation, rule, or order shall prohibit either Party from carrying out any provisions of this Agreement, this Agreement shall be null and void to such extent.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

VILLAGE OF BENSENVILLE

By:



Village President

JEWEL FOOD STORES, INC.,
an Ohio corporation

By:


Its: President
Authorized Signatory

ATTEST:

Village Clerk



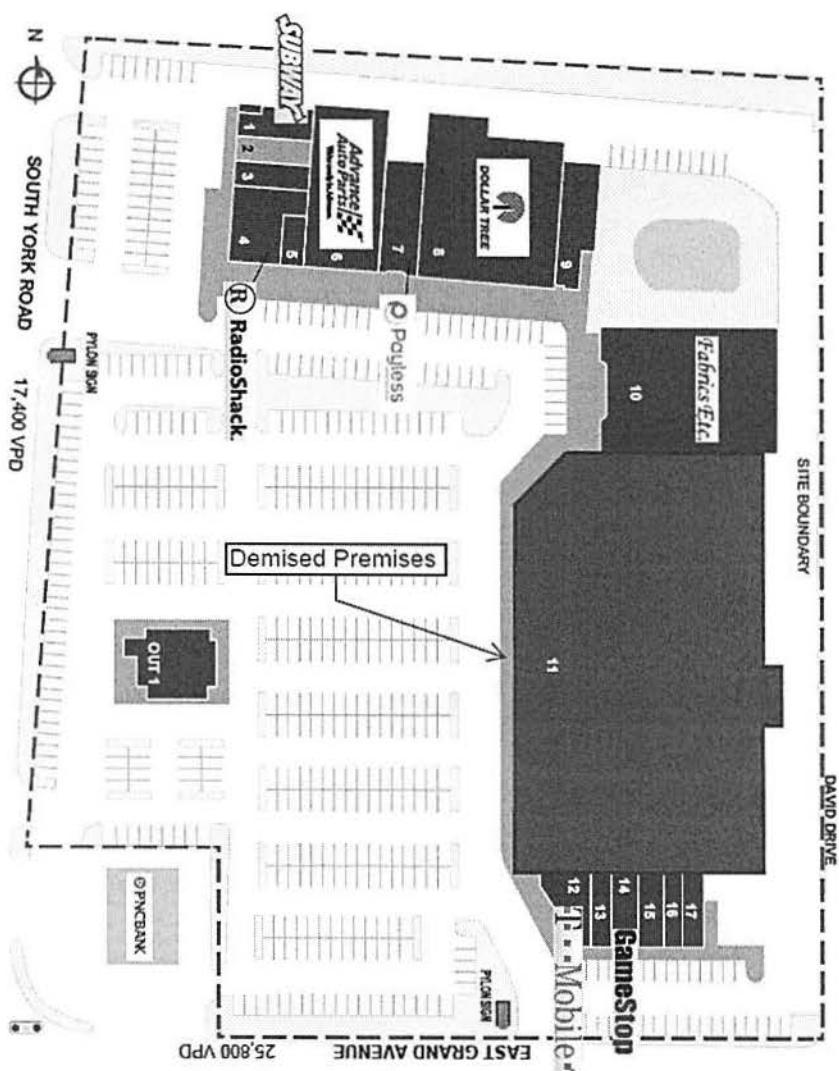
965601.5

EXHIBIT A

SITE PLAN

BRENTWOOD COMMONS

1047-1147 S YORK ROAD | BENSENVILLE, IL 60106



PHILLIPS EDISON & COMPANY

EXHIBIT A-1

ESTIMATED PROJECT COSTS/BUDGET

Jewel-Osco Store No. 3495
Bensenville, Illinois
1127 S. York Road
New Store
64,762 SF

Equipment:	\$1,100,000
Point of Sale/IT Equipment:	\$350,000
Refrigeration Installation:	\$175,000
General Contractor:	\$1,200,000
<u>Soft Costs/A&E:</u>	<u>\$175,000</u>
Total:	\$3,000,000

EXHIBIT B

SALES TAX REBATE PROJECTIONS

See attached.

EXHIBIT "B"
TO
ECONOMIC INCENTIVE AGREEMENT
BETWEEN THE VILLAGE OF BENSENVILLE
AND JEWEL FOOD STORES, INC.

Village of Bensenville

Jewel Osco Sales Tax Sharing Agreement

First Five Years

75 % Sharing

From Year Six to Year Fifteen

50 % Sharing

\$400,000 per Week with 2% Escalation starting Year 2

Years	Total Sales	Total Sales Tax	Village Share	Jewel Osco Share	Village Share	Jewel Osco Share	Discounting @ 5%	Discounted Cash Flow
Year 1	\$ 20,800,000	\$ 276,640	25.00%	75.00%	\$ 69,160	\$ 207,480	0.9524	\$ 197,600
Year 2	\$ 21,216,000	\$ 282,173	25.00%	75.00%	\$ 70,543	\$ 211,630	0.9070	\$ 191,954
Year 3	\$ 21,640,320	\$ 287,816	25.00%	75.00%	\$ 71,954	\$ 215,862	0.8638	\$ 186,470
Year 4	\$ 22,073,126	\$ 293,573	25.00%	75.00%	\$ 73,393	\$ 220,179	0.8227	\$ 181,142
Year 5	\$ 22,514,589	\$ 299,444	25.00%	75.00%	\$ 74,861	\$ 224,583	0.7835	\$ 175,967
Year 6	\$ 22,964,881	\$ 305,433	50.00%	50.00%	\$ 152,716	\$ 152,716	0.7462	\$ 113,959
Year 7	\$ 23,424,178	\$ 311,542	50.00%	50.00%	\$ 155,771	\$ 155,771	0.7107	\$ 110,703
Year 8	\$ 23,892,662	\$ 317,772	50.00%	50.00%	\$ 158,886	\$ 158,886	0.6768	\$ 107,540
Year 9	\$ 24,370,515	\$ 324,128	50.00%	50.00%	\$ 162,064	\$ 162,064	0.6446	\$ 104,468
Year 10	\$ 24,857,925	\$ 330,610	50.00%	50.00%	\$ 165,305	\$ 165,305	0.6139	\$ 101,483
Year 11	\$ 25,355,084	\$ 337,223	50.00%	50.00%	\$ 168,611	\$ 168,611	0.5847	\$ 98,584
Year 12	\$ 25,862,186	\$ 343,967	50.00%	50.00%	\$ 171,984	\$ 171,984	0.5568	\$ 95,767
Year 13	\$ 26,379,429	\$ 350,846	50.00%	50.00%	\$ 175,423	\$ 175,423	0.5303	\$ 93,031
Year 14	\$ 26,907,018	\$ 357,863	50.00%	50.00%	\$ 178,932	\$ 178,932	0.5051	\$ 90,373
Year 15	\$ 27,445,158	\$ 365,021	50.00%	50.00%	\$ 182,510	\$ 182,510	0.4810	\$ 87,791
Year 1 to 15	\$ 359,703,072	\$ 4,784,051	41.67%	58.33%	\$ 2,032,114	\$ 2,751,937		\$ 1,936,831

\$450,000 per Week with 2% Escalation starting Year 2

Years	Total Sales	Total Sales Tax	Village Share	Jewel Osco Share	Village Share	Jewel Osco Share	Discounting @ 5%	Discounted Cash Flow
Year 1	\$ 23,400,000	\$ 311,220	25.00%	75.00%	\$ 77,805	\$ 233,415	0.9524	\$ 222,300
Year 2	\$ 23,868,000	\$ 317,444	25.00%	75.00%	\$ 79,361	\$ 238,083	0.9070	\$ 215,949
Year 3	\$ 24,345,360	\$ 323,793	25.00%	75.00%	\$ 80,948	\$ 242,845	0.8638	\$ 209,779
Year 4	\$ 24,832,267	\$ 330,269	25.00%	75.00%	\$ 82,567	\$ 247,702	0.8227	\$ 203,785
Year 5	\$ 25,328,913	\$ 336,875	25.00%	75.00%	\$ 84,219	\$ 252,656	0.7835	\$ 197,963
Year 6	\$ 25,835,491	\$ 343,612	50.00%	50.00%	\$ 171,806	\$ 171,806	0.7462	\$ 128,204
Year 7	\$ 26,352,201	\$ 350,484	50.00%	50.00%	\$ 175,242	\$ 175,242	0.7107	\$ 124,541
Year 8	\$ 26,879,245	\$ 357,494	50.00%	50.00%	\$ 178,747	\$ 178,747	0.6768	\$ 120,983
Year 9	\$ 27,416,830	\$ 364,644	50.00%	50.00%	\$ 182,322	\$ 182,322	0.6446	\$ 117,526
Year 10	\$ 27,965,166	\$ 371,937	50.00%	50.00%	\$ 185,968	\$ 185,968	0.6139	\$ 114,168
Year 11	\$ 28,524,469	\$ 379,375	50.00%	50.00%	\$ 189,688	\$ 189,688	0.5847	\$ 110,906
Year 12	\$ 29,094,959	\$ 386,963	50.00%	50.00%	\$ 193,481	\$ 193,481	0.5568	\$ 107,738
Year 13	\$ 29,676,858	\$ 394,702	50.00%	50.00%	\$ 197,351	\$ 197,351	0.5303	\$ 104,660
Year 14	\$ 30,270,395	\$ 402,596	50.00%	50.00%	\$ 201,298	\$ 201,298	0.5051	\$ 101,669
Year 15	\$ 30,875,803	\$ 410,648	50.00%	50.00%	\$ 205,324	\$ 205,324	0.4810	\$ 98,764
Year 1 to 15	\$ 404,665,956	\$ 5,382,057	41.67%	58.33%	\$ 2,286,128	\$ 3,095,929		\$ 2,178,935