



12 South Center Street
Bensenville, IL 60106

Office 630.350.3404
Fax 630.350.3438
www.bensenville.il.us

VILLAGE BOARD

August 1, 2022

President

Frank DeSimone

Board of Trustees

Rosa Carmena
Amy Franz
Marie T. Frey
Melanie Lompa
Orfolios Paniagua Jr.
Angelinda Perez

Village Clerk

Nancy Rumm

Village Manager

Evan E. Summers

Mr. Paul De Michele
17W275 Rodeck Lane
Bensenville, Illinois 60106

Re: July 25, 2022 FOIA Request

Dear Mr. De Michele:

I am pleased to help you with your July 25, 2022 Freedom of Information Act ("FOIA"). The Village of Bensenville received your request on July 25, 2022. You requested copies of the items indicated below:

"I request the following under the FOIA Act from the July 19, 2022 Agenda:

- 1) *A copy of the TIF Agreement in VIII B1.*
- 2) *A Copy of the Incentive Agreement in VIII B2.*
- 3) *A copy of the service contract listed in VIII E4."*

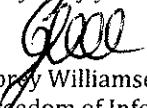
Your FOIA request is hereby granted in full and denied in part.

Section 7(1)(b) of FOIA provided that "private information" is exempt from disclosure. "Private information" is defined in FOIA as, "unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords, or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when complied without possibility of attribution to any person." 5 ILCS 140/2(c-5). Consequently, certain identifiers have been redacted from the records being provided, specifically signatures have been withheld from your request.

Pursuant to Section 9 of the FOIA, 5 ILCS 140/9, I am required to advise you that I, the undersigned Freedom of Information Officer, reviewed and made the foregoing determination to deny a portion of your FOIA Request as indicated. Should you believe that this Response constitutes an improper denial of your request, you may appeal such by filing a request for review within sixty (60) days of the date of this letter with the Public Access Counselor of the Illinois Attorney General's Office, Public Access Bureau, 500 South Second Street, Springfield, Illinois 62706; telephone 1-887-299-FOIA; e-mail: publicaccess@atg.state.il.us. You may also have a right of judicial review of the denial under Section 11 of the FOIA, 5 ILCS 140/11.

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

Very truly yours,


Cory Williamson
Freedom of Information Officer
Village of Bensenville

LOREY WECAMSO
Deputy Clerk

11713

July 25, 2022

I REQUEST THE FOLLOWING UNDER THE FOIA ACT
FROM THE JULY 19, 2022 AGREEMENT,

- 1) A COPY OF THE TIR AGREEMENT
IN III B 1.
- 2) A COPY OF THE TRANSPORT AGREEMENT
IN III B 2.
- 3) A COPY OF THE SERVICE CONTRACT LISTED
IN III B 4.

50ND 70

FRANK'S
Paul

PAUL DE MICHELE
17W275 RODECK LN.
BENSENVILLE, IL 60106
PH 630-279-6528

~~630-279-6528~~

Village Board

Village President
Frank DeSimone

Trustees
Rosa Carmona
Ann Franz
Marie T. Frey
McLane Lomax
Nicholas Panicola Jr.
Armando Perez

Village Clerk
Nancy Quinn

Village Manager
Evan K. Summers



BENSENVILLE
GROWING OPPORTUNITY

**Village of Bensenville, Illinois
VILLAGE BOARD
BOARD OF TRUSTEES MEETING
AGENDA**

6:30 PM July 19, 2022

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. PUBLIC COMMENT (3 minutes per person with a 30 minute meeting limitation)
- V. APPROVAL OF MINUTES

1. *June 21, 2022 Village Board Meeting Minutes*

VI. WARRANT

1. *Warrant Report 7-19-2022 22/12 \$2,100,568.59*

VII. **CONSENT AGENDA – CONSIDERATION OF AN “OMNIBUS VOTE”**

VIII. **REPORTS OF VILLAGE DEPARTMENTS**

A. Administration – No Report

B. Community and Economic Development

→ 1. *Ordinance of the Village of Bensenville, DuPage and Cook Counties, Illinois Authorizing a Tax Increment Financing Redevelopment Agreement by and Between the Village of Bensenville and Illinois Cabinet Depot, LLC for Property Located at 480-500 West Irving Park Road, Bensenville, Illinois*

→ 2. *Ordinance of the Village of Bensenville, DuPage and Cook Counties, Illinois Approving an Economic Incentive Agreement with Larry Roesch Volkswagen for the Sharing of Municipal Retailer's Occupation Tax Revenues*

C. Finance – No Report

D. Police Department – No Report

E. Public Works

**A TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT
BY AND BETWEEN THE VILLAGE OF BENSENVILLE, DUPAGE AND
COOK COUNTIES ILLINOIS AND ILLINOIS CABINET DEPOT, LLC**

THIS REDEVELOPMENT AGREEMENT (the “**Agreement**”) dated as of June 21, 2022 (the “**Effective Date**”) by and between the **VILLAGE OF BENSENVILLE**, an Illinois municipal corporation, (the “**Village**”) and **ILLINOIS CABINET DEPOT, LLC**, an Illinois limited liability company (the “**Developer**”). The Village and Developer shall collectively be known as the “**Parties**”.

RECITALS

A. As a unit of local government under the laws of the State of Illinois, the Village has the authority to promote the health, safety and welfare of the Village and its residents, to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals; and

B. The Village has undertaken a program for the redevelopment of certain property within the Village of Bensenville, pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (the “**Act**”) to among other things, finance redevelopment projects that retain, expand and create employment opportunities within the Village of Bensenville, increase industry and commerce within the State of Illinois, increase the tax base and eradicate potentially blighting conditions, through the use of tax increment allocation financing for economic redevelopment; and

C. On April 20, 2011, pursuant to the Act and after giving all notices required by law and after conducting all public hearings required by law, the Village President and Board of Trustees (the “**Corporate Authorities**”) passed and approved the following ordinances: (i) Ordinance No. 28-2011, entitled, “AN ORDINANCE DESIGNATING THE VILLAGE OF BENSENVILLE NORTH INDUSTRIAL DISTRICT TAX INCREMENT FINANCING DISTRICT REDEVELOPMENT PROJECT AREA;” (ii) Ordinance No. 29-2011, entitled, “AN ORDINANCE APPROVING THE VILLAGE OF BENSENVILLE NORTH INDUSTRIAL DISTRICT TAX INCREMENT FINANCE DISTRICT REDEVELOPMENT PROJECT AREA REDEVELOPMENT PLAN AND PROJECT”; and (iii) Ordinance No. 30-2011, entitled, “AN ORDINANCE ADOPTING TAX INCREMENT FINANCING FOR THE VILLAGE OF BENSENVILLE NORTH INDUSTRIAL DISTRICT TAX INCREMENT FINANCE DISTRICT” (collectively, the “**TIF Ordinances**”); and

D. The TIF Ordinances adopted a Redevelopment Plan (the “**Redevelopment Plan**”) and designated the area legally described in the Redevelopment Plan as a redevelopment project area which is identified as the North Industrial Redevelopment Project Area (the “**Redevelopment Project Area**”); and

E. Developer is the owner of the property commonly known as 480-500 West Irving Park Road, Bensenville, Illinois, which is legally described in **Exhibit A** (the “**Property**”) and is

within the boundaries of the Redevelopment Project Area; and

F. In accordance with the terms and conditions of this Agreement and the Redevelopment Plan, Developer shall undertake and complete the rehabilitation and reconstruction of the 17,890 square feet vacant building on the Property, which is to be occupied and utilized as a commercial retail space for Developer's House Depot and Master Cabinets business, where Superior Brands products will be sold at retail to the general public, all as generally depicted on Exhibit B (the "Preliminary Site Plan") and as more fully described herein (the "Project"); and

G. To induce Developer to undertake the Project, the Corporate Authorities have determined it is in the best interests of the Village and the health, safety, morals and welfare of its residents to make certain economic development incentives available to Developer as set forth herein; and

H. The Corporate Authorities have determined: (i) that the development and construction of the Project would be, in all respects, consistent with and in furtherance of the Redevelopment Plan, (ii) the completion of the Project would not be completed but for the financing incentive contemplated in this Agreement, and (iii) as a direct benefit of this Agreement and the contemplated rehabilitation and redevelopment of the Project, the equalized assessed value of the Property and the Redevelopment Project Area will increase; and

I. The Village has approved Developer as a developer within the Redevelopment Project Area, and has approved the Project, subject to Developer's compliance with all applicable laws, statutes, codes, ordinances, rules and regulations of or by any federal, state or local government entity (collectively, "Laws"), through the Village's June 21, 2022 passage and approval of an ordinance, entitled, "An Ordinance of the Village of Bensenville, DuPage and Cook Counties, Illinois, Authorizing and Approving a Tax Increment Financing Redevelopment Agreement By and Between the Village of Bensenville, DuPage and Cook Counties, Illinois and Illinois Cabinet Depot, LLC," and

J. Developer has agreed, in reliance on the Village's commitments set forth in this Agreement, to develop and construct the Project and undertake certain other actions, all in accordance with this Agreement; and

K. The Village has agreed, in reliance on Developer's commitments set forth in this Agreement, to provide incentives for the Project through the Village Contribution (as defined below), until the earlier of (i) the expiration of the Term or (ii) complete satisfaction of such obligations as provided herein; and

L. The Village is authorized to enter into this Agreement and take all actions contemplated by it pursuant to the authority provided under the Act as well as the Corporate Authorities' passage and approval of the TIF Ordinances described above.

K. The Corporate Authorities in accordance with the authority granted to them by the Act and the Illinois Municipal Code have determined that it is advisable, necessary and in the best

interests of the health, safety, and welfare of the residents of the Village and in furtherance of the Redevelopment Plan for the Project Area to enter into the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties covenant and agree with each other as follows:

ARTICLE 1: RECITALS AND DEFINITIONS

Section 1.01. Recitals. The statements, representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into and made a part of this Agreement as though they were fully set forth herein. The Parties acknowledge the accuracy and validity of such statements, representations, covenants, and recitations.

Section 1.02. Intentionally Deleted.

Section 1.03. Term. This Agreement shall be in full force and effect from the Effective Date and shall remain in full force and effect, unless earlier terminated pursuant to the terms of this Agreement, until December 31, 2034 (the “**Term**”).

ARTICLE 2: REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations of Village. The Village makes the following representations and warranties, which are true and correct on the date hereof:

A. Due Authority. The Village has full lawful right, power, and authority, under current applicable law, to execute, deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary Village proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Village, enforceable in accordance with its terms.

B. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing. To the best of Village’s knowledge, the TIF Ordinances, the Redevelopment Plan and the Redevelopment Project Area have been adopted and approved in accordance with the Laws.

C. Litigation. To the best of the Village’s knowledge, there is no litigation, proceeding or investigation pending or threatened against the Village with respect to the Redevelopment Plan or this Agreement. In addition, to the best of the Village’s knowledge, there is no other litigation, proceeding or investigation pending or threatened against the Village seeking to restrain, enjoin or in any way limit the approval or issuance

and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Village to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Village of the terms and provisions of this Agreement.

Section 2.02. Representations of Developer. Developer makes the following representations and warranties, which are true and correct on the date hereof:

A. Due Authority. Developer has all necessary power and authority to execute, deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of Developer herein, and such execution and delivery have been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of Developer, enforceable in accordance with its terms.

B. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. Litigation. To the best of Developer's knowledge, there is no litigation, proceeding or investigation pending or threatened against Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by Developer of the terms and provisions of this Agreement.

D. No Material Change. Developer has not experienced a materially adverse change in the business, financial position or results of its operations that could reasonably be expected to adversely affect Developer's ability to perform its obligations pursuant to this Agreement.

E. Corporate Consents. Except for the Governmental Approvals, no consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery, and performance by Developer of this Agreement.

F. No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of Developer under this Agreement, or any other material agreement or material instrument to which Developer is a party or by which Developer is bound.

G. Title to Property. Developer owns good and marketable fee simple title to the Property and no rights or options have been granted by, through or under Developer to purchase, lease or otherwise acquire the Property.

H. Compliance with Laws. To the best of Developer's knowledge, Developer is in compliance in all material respects with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

I. Other Disclosures. The information furnished to the Village by Developer in connection with the matters covered in this Agreement are true and correct or are the result of good faith estimates where applicable, and do not contain any untrue statement of any material fact and do not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in light of the circumstances under which it is made, not misleading.

Section 2.03. Survival of Representations and Warranties. Developer agrees that all of its representations and warranties, and the Village agrees that all of its representations and warranties, set forth in this Article 2 or elsewhere in the Agreement are true as of the Effective Date and will be true in all material respects at all times hereafter during the Term of the Agreement, except with respect to matters which have been disclosed in writing to and approved in writing by the other party or as otherwise specifically set forth herein.

ARTICLE 3: DEVELOPMENT OF THE PROJECT

Section 3.01. Developer Covenant to Redevelop. Developer shall redevelop, reconstruct, and rehabilitate the Property and cause the Project to be constructed in accordance with this Agreement and all Exhibits attached hereto, the Preliminary Site Plan, the Project Schedule, the Plans and Specifications, the Project Budget, the Redevelopment Plan and all Laws applicable to the Property, the Project and/or Developer. The covenants set forth in this Article 3 shall run with the land and be binding upon any transferee of the Property and shall be deemed satisfied upon acceptance by the Village of the respective Certificates of Substantial Completion as set forth in Section 3.10.

Section 3.02. Project Schedule. Absent an event of Force Majeure, Developer shall commence and substantially complete the Project, including all improvements, in accordance with the schedule attached as Exhibit C (the "**Project Schedule**"). The Project Schedule may be modified as necessary by Developer with the prior written consent of the Village, which will not be unreasonably conditioned, delayed or withheld. An event of Force Majeure shall not be deemed a modification as contemplated by this Section 3.02.

Section 3.03. Plans and Specifications. Developer shall submit to the Village for its approval, which shall not be unreasonably withheld or delayed, the initial construction documents, containing a site plan and working drawings and specification for the Project (the "**Plans and Specifications**"), in sufficient time so as to allow for review of the Plans and Specifications in

accordance with applicable Village ordinances and in accordance with the Project Schedule but in no event later than ninety (90) days after the Execution Date. The Plans and Specifications shall be prepared and sealed by a professional engineer or architect licensed to practice in the State of Illinois and the Plans and Specifications and all construction practices and procedures with respect to the Project shall be in material conformity with all Laws. The Plans and Specifications shall be in sufficient completeness and detail to show that construction will be in material conformance with the Preliminary Site Plan and this Agreement.

A. **Material Change.** Any material change to the Plans and Specifications must be submitted to the Village for its written approval, which approval shall not be unreasonably withheld or delayed. The Village shall review and approve or disapprove, as the case may be, any such proposed modification in no event later than thirty (30) days after submission by Developer. Any approved material change to the Plans and Specifications shall not be deemed to imply any obligation on the part of the Village to increase the Village Contribution or to provide any other additional assistance to Developer.

B. **Limitation.** Approval of the Plans and Specifications under Section 3.04 shall not apply to the building permit review process. Nothing in said section is a substitute for and does not eliminate the requirement that Developer apply for and receive any and all necessary building permits for construction of the Project.

Section 3.04. Intentionally Deleted.

Section 3.05. Intentionally Deleted.

Section 3.06. Developer Standard of Care. Developer shall design and construct or cause to be designed and constructed the Project: (i) in a good and workmanlike manner and free of defects; and (ii) in accordance with all applicable Laws and the terms of this Agreement (including its exhibits and attachments).

Section 3.07. Contractors and Subcontractors. Developer shall not enter into any agreement or contract in connection with any Reimbursable Project Cost (as defined herein) that could be construed as self-dealing or negotiated on other than an arms-length, competitive basis. Any agreement or contract in connection with any Reimbursable Project Cost, exclusive of professional services, shall be awarded through competitive bidding. Developer shall provide, within five (5) business days of written request by the Village, copies of all agreements and contracts entered into in connection with Reimbursable Project Costs.

Section 3.08. Governmental Approvals. Developer agrees to employ reasonable and good faith efforts to secure and comply with all zoning approvals, site plan approvals, or any other approvals required by any governmental agency with regulatory authority for the implementation of the Project (the “**Governmental Approvals**”). The Village agrees to employ reasonable and good faith efforts to cooperate with Developer and to process and timely consider and respond to all applications for the Governmental Approvals as received, all in accordance with the Laws, including, without limitation, the applicable Village ordinances and laws of the State of Illinois.

Section 3.09. Prevailing Wage Act. To the extent required by law, Developer shall comply with and shall require its contractor(s) to comply with the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 *et seq.*, in relation to the development and construction of the Project. Compliance with the Illinois Prevailing Wage Act, to the extent that it applies, shall be the obligation of Developer, and Developer shall indemnify and hold harmless the Village from and against liabilities that might attach for non-compliance. The covenant contained in this Section 3.09 shall survive for five (5) years after issuance of the Certificate of Substantial Completion as provided below.

Section 3.10. Certificate of Substantial Completion. Promptly after substantial completion of the Project in accordance with the provisions of this Agreement, Developer shall submit a certificate of substantial completion to the Village for the Project (the “**Certificate of Substantial Completion**”). The Certificate of Substantial Completion shall be in substantially the form attached as Exhibit D. The Village shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion and Developer shall without condition allow access to the Property by the Village, or its designated representatives, for any inspection purpose. The Certificate of Substantial Completion shall be deemed accepted by the Village unless, prior to the end of the thirty (30)-day inspection period set forth above, or such reasonable extension as required by the Village, the Village furnishes Developer with specific written objections to the status of the Project, describing such objections and the measures required to correct such objections in reasonable detail, which may include, as applicable, photographs or other documentary evidence. The time limits set forth in this paragraph shall be extended by the duration of time reasonably necessary for Developer to respond to such written objections by the Village; provided, however, that absent delays by Developer in responding to such objections, the Village shall accept or furnish written objections to the Certificate of Substantial Completion within the thirty (30) day inspection period described above. Upon acceptance of the Certificate of Substantial Completion, which acceptance shall be conclusively determined upon the lapse of thirty (30) days after delivery thereof without any written objections thereto, Developer may record the Certificate of Substantial Completion with the DuPage County Recorder of Deeds, and the same, absent fraud, shall be conclusive evidence of the satisfaction of Developer’s agreements and covenants to construct the Project and Developer’s satisfaction of its obligations under this Article, except its obligation to indemnify under Section 3.09.

A. Limitation. The Certificate of Substantial Completion relate only to the construction of the Project, and upon issuance, the Village will certify that the terms of the Agreement specifically related to Developer’s obligation to complete such activities have been satisfied. A Certificate of Substantial Completion shall not constitute evidence that Developer has complied with applicable provisions of federal, state, and local laws, ordinances, and regulations with regard to construction of the Project (including the Prevailing Wage Act). All executor terms and conditions of this Agreement and all representations, warranties, and covenants, except as limited above, contained herein will continue to remain in full force and effect throughout the Term of this Agreement, and the issuance of the Certificate of Substantial Completion shall not be construed as a waiver by

the Village of any rights and remedies pursuant to such terms.

Section 3.11. Survival of Covenants. The covenants set forth in this Article 3 shall run with the land and be binding upon any successor in interest or transferee. Except for the obligation to indemnify under Section 3.09 and Section 3.10(A), the covenants and obligations of this Article 3 shall be deemed satisfied upon acceptance by the Village of the Certificate of Substantial Completion.

ARTICLE 4: FINANCING; SOURCE OF FUNDS

Section 4.01. Developer to Advance Project Costs. Developer agrees to advance all Project Costs as necessary to complete the Project on its behalf, subject to Developer's right to seek reimbursement from the Village for those Project Costs for which Developer is eligible for reimbursement under the Act and the Redevelopment Plan, and as identified on Exhibit E (the "Reimbursable Project Costs") as provided herein.

Section 4.02. Project Budget. The total costs to be incurred by Developer in constructing the Project (the "Project Costs") is estimated to be Eight Hundred Fifty Thousand Dollars and no/100 (\$850,000.00) (the "Project Budget"). The Project Budget, setting forth the projected Project Costs, has been approved by the Village and is attached hereto as Exhibit E. Developer certifies to the Village that (i) the Village Contribution, together with Developer equity and lender financing, shall be sufficient to complete the Project, and (ii) the Project Budget is true and correct and complete in all material respects as of the Execution Date. Nothing set forth in this Agreement shall be construed as a covenant by Developer to expend the full balance of the Project Budget, but in no event shall the total Project Costs be less than 95% of the aggregate Project Budget.

Section 4.03. Source of Funds. Developer has furnished (or will furnish) proof reasonably acceptable to the Village that Developer has equity and/or lender financing in an aggregate amount equal to or greater than the Project Budget. Equity and/or lender financing may be used to pay any Project Cost, including but not limited to Reimbursable Project Costs.

Section 4.04. Intentionally Deleted.

Section 4.05. Village Contribution.

A. Village Contribution. Subject to the terms of this Agreement, the Village agrees to reimburse Developer exclusively for those Reimbursable Project Costs which (i) are eligible under the Act and the Redevelopment Plan, (ii) relate to the Project's building mechanical and electrical equipment (such as plumbing, lighting, ventilation, power systems, fire systems and HVAC), demolition, masonry, roofing, carpentry or architectural, engineering or other such site work, and (iii) are identified in the Project Budget in an amount not to exceed the principal balance of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) (the "Village Contribution") but nothing in this Section 4.05(A) is to be construed as permitting the Village to reimburse Developer for amounts that are not Reimbursable Project Costs, it being agreed that the amounts set forth herein exist merely to establish the maximum amount of the Village Contribution.

i. *Determination of Amount of Village Contribution.* Concurrently with submission of the Certificate of Substantial Completion for the Project, Developer shall provide to the Village the Certificate of Reimbursable Project Costs in substantially the form attached hereto as Exhibit F along with the information and documentation required therein. The Certificate of Reimbursable Project Cost shall include a certified amount of the total Project Costs incurred by Developer to undertake and complete the Project (the “**Final Project Cost**”). The Village shall either accept or reject, with comments, the respective Certificate of Reimbursable Project Costs within thirty (30) days after the submission thereof. If the Village determines that any cost identified as a Reimbursable Project Cost is not a “Redevelopment Project Cost” as defined herein, the Village shall so notify Developer in writing within said thirty (30) day period, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon Developer shall have the right to identify and substitute other Project Costs that may qualify as Reimbursable Project Costs with a supplemental application for payment, subject to the limitations of this Agreement. Within said thirty (30)-day period, the Village may also request such additional information from Developer as may be reasonably required to process the requested reimbursement, and the time limits set forth in this paragraph shall be extended by the duration of time necessary for Developer to respond to such request by the Village; provided, however, that absent delays by Developer in responding to such requests, the Village shall issue its determination on the respective Certificate of Reimbursable Project Costs within the thirty (30) day period described above.

ii. *Reimbursement Process.* Subject to the limitations set forth in this Agreement, the Village Contribution (\$100,000.00) shall be made as herein provided: a) an \$80,000.00 one-time payment for Reimbursable Project Cost upon issuance of Village building permits to undertake the Project; and b) a \$20,000.00 payment for Reimbursable Project Cost disbursed in yearly installments after approval of the Certificate of Substantial Completion and payable only from incremental property tax revenues from the Property received by the Village and directly attributable to and generated from the Project that is above the initial TIF 2009 equalized assessed value of \$378,700, which equals the 2009 property tax of \$24,112.59. All payments of the Village Contribution are subject to the terms, conditions and limitations contained in this Agreement. Payments of the Village Contribution are subject to the amount of Available Incremental Taxes (as defined below) deposited into the STAF (as defined below) being sufficient for such payments. The Village Contribution will be funded solely from Available Incremental Taxes that are deposited into the STAF, except as otherwise set forth herein. The obligation to pay the Village Contribution under this Agreement shall expire on December 31, 2034 (the “**Maturity Date**”). If, at the Maturity Date, any outstanding financial obligation on the Village Contribution exists, such outstanding financial obligation shall be forgiven in full by Developer or successors and/or assigns, and the Village shall have no obligation to pay such outstanding financial obligation upon the Maturity Date.

B. Not General Obligation. THE VILLAGE CONTRIBUTION SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE VILLAGE, NOR SHALL IT BE SECURED BY THE FULL FAITH AND CREDIT OF THE VILLAGE. THE VILLAGE CONTRIBUTION SHALL BE PAYABLE SOLELY FROM AVAILABLE INCREMENTAL TAXES DEPOSITED FROM TIME TO TIME INTO THE STAF AND AS PROVIDED HEREIN. INSUFFICIENCY OF THE STAF TO PAY THE PRINCIPAL OBLIGATION RELATING TO THE VILLAGE CONTRIBUTION WHEN DUE SHALL NOT BE A DEFAULT THEREON, AND NEITHER THE DEVELOPER, NOR ITS SUCCESSORS AND/OR ASSIGNS, SHALL HAVE ANY RE COURSE WHATSOEVER AGAINST THE VILLAGE IN THE EVENT THAT THE AVAILABLE INCREMENTAL TAXES ARE INSUFFICIENT TO PAY A PRINCIPAL OBLIGATION IF OR WHEN DUE.

C. Conditional Grant. The Village obligation to pay the Village Contribution is contingent upon satisfaction of the terms and conditions of this Agreement. The Village shall have no obligation to pay the Village Contribution if there exists an Event of Default which is continuing.

ARTICLE 5: COLLECTION AND USE OF INCREMENTAL TAXES

Section 5.01. Source of Village Contribution. The Village Contribution pledged by the Village pursuant to this Agreement to reimburse Reimbursable Project Costs shall be paid solely from Available Incremental Taxes (as defined below).

Section 5.02. Special Tax Allocation Fund. Pursuant to the Act, the Village has established and maintains a special tax allocation fund (the “STAF”) for the deposit of the ad valorem taxes, if any, arising from the property tax levies upon the properties within the Redevelopment Project Area by taxing districts, which taxes are attributable to the increase in the current equalized assessed valuation of the Property over and above the initial equalized assessed value of Property in the Redevelopment Area, as determined by the Clerk of the County of DuPage, Illinois and received by the Village (the “**Incremental Taxes**”). The Village Contribution shall be paid solely from those Incremental Taxes in the STAF which have not been previously allocated or pledged by the Village before the Execution Date (the “**Available Incremental Taxes**”) and as specified herein. The Available Incremental Taxes shall be used solely to meet the payment obligations of the Village Contribution.

ARTICLE 6: GENERAL COVENANTS

Section 6.01. Indemnification. Developer agrees to indemnify, defend and hold the Village, its officers, officials, employees, attorneys, agents, independent contractors and consultants (collectively, the “**Village Indemnified Parties**”) harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonably attorneys’ fees and court costs) suffered or incurred by the Village arising from or in connection with: (i) the construction of the Project, (ii) the Developer’s failure to comply with any of the terms, covenants and conditions contained within this Agreement, (iii) the existence of any material misrepresentation or omission in this Agreement, including

Exhibits, that is the result of information supplied or omitted by the Developer or its agents, employees, contractors or persons acting under the control or at the request of the Developer, or (iv) the Developer's failure to cure any misrepresentation by the Developer in this Agreement.

A. Environmental Indemnity. Developer further agrees to indemnify, defend and hold the Village's Indemnified Parties harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses, or claims of any kind whatsoever, including without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims, save those caused by the acts or omissions of the Village's Indemnified Parties, asserted or arising under any Environmental Laws incurred, suffered by or asserted against the Village's Indemnified Parties as a direct result of any of the following, regardless of whether or not caused by, or within the control of Developer: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from all or any portion of the Property; or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the Village or Developer or any of its affiliates under any Environmental Laws relating to the Property. "Hazardous Material" shall mean any hazardous, toxic or dangerous substance, material and waste, including, without limitation, hydrocarbons, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants, sewage, sludge, industrial slag, solvents and/or any other similar substances, materials or wastes that are or become regulated under any Environmental Law. "Environmental Laws" shall mean, without limitation, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act and other federal laws governing the environment together with their implementing regulations applicable to the Property, and all applicable state, regional, county, municipal and other local laws, regulations and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials.

B. Waiver. To the fullest extent permitted by law, Developer waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including any claim by any employee of Developer that may be subject to the Workers' Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision.

C. Survivability. The rights and obligations under this Section 6.01 shall survive the termination or expiration of this Agreement with respect to any and all facts, events or circumstances occurring or arising prior to such expiration or termination.

D. Additional Obligations. The Parties acknowledge and agree that obligations under this Section 6.01 are in addition to any other obligations of a party under this Agreement.

Section 6.02. Insurance. Developer shall procure and maintain at Developer's own expense, or cause to be provided and maintained, during the Term of this Agreement, the types

and limits of insurance specified below, covering all operations under the Agreement, whether performed by Developer or by an agent of Developer.

A. During Construction. From the commencement of any of construction of the Project until issuance of the Certificate of Substantial Completion, Developer shall procure and maintain:

i. *Workers Compensation and Employers Liability Insurance.* Worker's Compensation Insurance, in accordance with the laws of the State of Illinois, with statutory limits covering all employees providing services under this Agreement and Employer's Liability Insurance with limits not less than \$1,000,000.00 each accident or illness.

ii. *Commercial General Liability Insurance.* Commercial General Liability Insurance with not less than \$2,000,000.00 combined single limits per occurrence and aggregate for bodily injury, property damage, and personal injury, including, but not limited to, coverage for premises/operations, products/completed operations, broad form property damage, independent contractors, contractual liability, and explosion/collapse/underground hazards. The Village is to be named as an additional insured on a primary, non-contributory basis.

iii. *Automobile Liability Insurance.* Commercial Automobile Liability Insurance, covering all owned, non-owned, and hired vehicles, including the loading and unloading thereof, with limits not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The Village is to be named as an additional insured on a primary, non-contributory basis.

iv. *All Risk/Builders Risk.* When Developer undertakes any construction, Developer must provide or cause to be provided All Risk/Builders Risk Insurance at replacement costs for materials, supplies, equipment, machinery and fixtures that are or will be part of the Project.

v. *Professional Liability.* When any architects, engineers, construction managers, or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000.00, including contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Project.

vi. *Valuable Papers.* When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount sufficient to pay for the recreation, reconstruction, or restoration of any and all records related to the Project.

vii. *Independent Contractors and Subcontractors.* Developer shall require all independent contractors and subcontractors to procure and maintain insurance as required and submit documentation of the maintenance of such insurance from time to time as required herein.

B. Post-Construction. After the issuance of the Certificate of Substantial Completion, Developer shall procure and maintain the following:

i. *All Risk Property Insurance.* All Risk Property Insurance at Replacement Value of the property to protect against loss of, damage to, or destruction of the Project. As used herein, "**Replacement Value**" means an amount sufficient to prevent the application of any co-insurance obligation on any loss but in no event less than 100% of the actual replacement cost of the improvements in the Project; including both administrative or managerial costs that may be incurred to effect the repairs or reconstruction.

C. General Insurance Requirements. Unless otherwise provided above, all insurance policies required pursuant to this Agreement shall:

i. Provide that the insurance policy may not be suspended, voided, canceled, non-renewed, or reduced in coverage or in limits without sixty (60) days' prior written notice by certified mail, return receipt requested, to the Village;

ii. Be issued by a company or companies authorized to do business in the State of Illinois with a Best's rating of no less than A:VII;

iii. Waive all rights of subrogation of insurers against the Village Indemnified Parties; and

iv. Specifically name Developer as a named insured.

D. Certificates. Within sixty (60) days of the Effective Date and by December 31 of each calendar year thereafter in which the Agreement is in effect, Developer shall furnish the Village with a certificate(s) of insurance effecting coverage as required under this Section 6.02. In addition, Developer shall annually furnish the Village copies of receipts for payments of premiums regarding such policies. The receipt of any certificate does not constitute agreement by the Village that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the Agreement. The failure of the Village to obtain certificates or other insurance evidence is not a waiver by the Village of any requirements for Developer to obtain and maintain the specified coverages. Non-conforming insurance constitutes an Event of Default.

E. Deductibles. Any deductibles or referenced insurance coverages must be borne by Developer or its independent contractors or subcontractors.

F. No Offset or Contribution. The insurance requirements set forth in this Section 6.02 shall in no way limit or be used to offset against Developer's indemnification obligations under this Agreement.

Section 6.03. Maintaining Records and Right to Inspection. Developer shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents pertaining to the Project and/or Reimbursable Project Costs shall be available at Developer's offices for inspection, copying, audit and examination by an authorized representative of the Village. With respect to contracts covering Reimbursable Project Costs, Developer shall utilize commercially reasonable efforts to incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by Developer with respect to the Project.

Section 6.04. Maintenance and Use. During the Term, Developer shall cause the Project and the Property to be maintained, preserved, and kept in good repair and working order and in a safe condition, consistent at all times with the quality of other similar retail establishments in DuPage County and in such a manner as to maximize sales. Developer will make all repairs, renewals, replacements, and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations at the Project. Developer shall maintain all government permits, certificates, and consents necessary to conduct its business and operate the Project. Developer covenants not willfully to do or willfully to suffer any waste or unrepaired damage to, or otherwise to do or to suffer or permit to be done any act that would substantially impair the value of, the Project or Property or any part thereof.

Section 6.05. Real Estate Provisions. Developer shall pay or cause to be paid when due all federal, state, county, local or other governmental taxes, levies, assessments, charges, liens, claims or encumbrances relating to the Property and the Project or the operations on the Project including but not limited to real estate taxes and utility taxes (the "**Governmental Charges**") which are assessed or imposed upon the Project or the Property, or which become due and payable. Further, after issuance of the Certificate of Substantial Completion, Developer may make additions, alterations, and changes to the Project so long as such additions, alterations and changes are made in compliance with all applicable Laws, this Agreement, the Redevelopment Plan, and as long as such additions, alterations and changes to the Project do not have a material adverse affect on the market value of the Project.

A. Intentionally Deleted.

B. Prohibition on Real Estate Exemption. With respect to the Property or the Project, neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee, or successor in interest to Developer shall seek or authorize any property exemption (as such term is used in the Illinois Constitution, Article IX, Section 6 (1970)), during the Term.

C. Inducement. The covenants of this Section 6.05 shall be construed and interpreted as an express agreement by Developer with the Village that an incentive

inducing the Village to enter into the rights and obligations of this Agreement is the payment of all applicable Governmental Charges as provided in the Agreement.

Section 6.06. Environmental Covenants. Developer covenants that (i) the construction, development and operations of the Project will materially comply with all Environmental Laws; (ii) Developer shall promptly notify the Village upon becoming aware of any investigation, proceeding, complaint order, directive, claim, citation or notice by any governmental authority or any other person which is directed or threatened against the Project and/or the Property and Developer shall take prompt and appropriate actions to respond thereto; and (iii) Developer shall promptly notify the Village upon becoming aware of any non-compliance with or violation of the requirements of any Environmental Law or the release, spill, or discharge, threatened or actual, of any Hazardous Materials on the Property.

Section 6.07. Prohibition on Certain Liens. Developer agrees that no mechanics' or other liens, unrelated to the financing of the Project, shall be established or remain against the Project or the Property, or the funds in connection with the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, Developer shall not be in default if mechanics' or other liens are filed or established and Developer contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. Developer hereby agrees and covenants to indemnify and hold harmless the Village in the event any liens are filed against the Project or Property as a result of acts of Developer, its agents or independent contractors. Developer shall provide the Village with all waivers of lien or releases of lien for all labor or material furnished or provided on the Property or for the Project.

Section 6.08. Operations Covenant and Liquidated Damages. Developer covenants that the Property shall be utilized and operated as a flagship retail establishment to sell Superior Brands products along with Master Cabinets and will generate significant sales tax revenues for the Village. Failure of Developer to maintain and continuously operate the Project on the Property from the Date of the Certificate of Substantial Completion to and including December 31, 2034, or to generate and pay tax revenue to the Village shall require the Developer or its successors or assigns to pay liquidated damages to Village in the amount of ONE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$100,000.00) as reimbursement to the Village for lost property and sales tax revenues expected to be generated from the Property and Project and for reimbursement of the Village Contribution to the Developer. The Parties further agree that the terms of this Section 6.08 shall be a covenant running with the land for the benefit of the Village and shall survive the Term of this Agreement.

Section 6.09. Survival of Covenants. The covenants set forth in this Article 6 shall run with the land, be binding upon any successor in interest or transferee, and remain in effect during the Term.

ARTICLE 7: DEFAULTS AND REMEDIES

Section 7.01. Events of Default; Remedies; Cure.

A. Event of Default. The occurrence of any one or more of the following events, subject to the provisions of Section 8.14 and 7.01(C), shall constitute an “**Event of Default**” hereunder by the applicable party:

- i. the failure of a party to perform, keep or observe, in all material respects, the covenants, conditions, obligations of such party under the Agreement;
- ii. the making or furnishing by a party of any written representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement which, when made, is or was materially untrue or materially misleading in any material respect;
- iii. the commencement or any proceedings in bankruptcy by or against a party or for its liquidation or reorganization, or alleging that such party is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of a party’s debts, whether under the United States Bankruptcy code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving such party; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within 90 days after the commencement of such proceedings; or
- iv. the appointment of a receiver or trustee for a party, for any substantial part of such party’s assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of such party; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within ninety (90) days after the commencement thereof.

B. Remedies.

i. *Village Remedies.* Upon the occurrence of an Event of Default, the Village may (i) suspend payments due on the Village Contribution, and (ii) in any court of competent jurisdiction by any other action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to, damages, injunctive relief, the specific performance of this Redevelopment Agreement, and/or reimbursement of the Village Contribution or any part thereof.

ii. *Developer Remedies.* Upon the occurrence of an Event of Default, which continues after written notice thereof and the expiration of the applicable curative period without cure having been effectuated, the sole remedies of Developer shall be injunctive relief or specific performance. Developer shall not be entitled to economic, consequential, incidental, preventative or punitive damages resulting from an Event of Default.

C. Curative Period. In the event a party to this Agreement shall fail to perform a monetary covenant which it is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless that party has failed to perform such monetary covenant within thirty (30) days of its receipt of a written notice from the other party specifying that it has failed to perform such monetary covenant. In the event a party to this Agreement shall fail to perform a non-monetary covenant which it is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless that party has failed to cure such default within sixty (60) days of its receipt of a written notice from the other party specifying the nature of this default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such sixty (60) day period, Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such sixty (60) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured, but in no event shall such cure period exceed one hundred twenty (120) days of its receipt of written notice from the other party specifying the nature of the default.

D. Non-Waiver. The failure of any party to this Agreement to insist upon strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any Parties' rights, to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect. No waiver by either party shall be valid or binding on such party unless it is has been consented to in writing.

E. Cumulative Remedies. Unless expressly provided otherwise herein, the rights and remedies of the Parties provided for herein shall be cumulative and concurrent and shall include all other rights and remedies available at law or in equity, may be pursued singly, successively, or together, at the sole discretion of either party and may be exercised as often as occasion therefore shall arise.

ARTICLE 8: MISCELLANEOUS PROVISIONS

Section 8.01. Notice. Any notice or other communication given under this Agreement shall be in writing, and shall be deemed delivered by the addressee thereof when delivered at the address set forth below 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 mail, return receipt requested, postage prepaid, properly, addressed to the Parties, respectively, as follows:

With a copy to: Office of the Village Clerk
Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106

If to Developer:

With a copy to: 480 W. Irving Park Rd.
Bensenville, IL 60106

Section 8.02. Amendment. The Agreement and the Exhibits may not be amended without the prior written consent of the Village and Developer. Consent of the Village must be approved by the Corporate Authorities.

Section 8.03. Entire Agreement. The Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference), the documents, agreements and other instruments to which reference is made herein or therein, constitute the entire agreement between the Parties hereto and supersede all prior agreements, negotiations, and discussions between the Parties relative to the subject matter hereof.

Section 8.04. Limitation of Liability. No Village Indemnified Parties shall be personally liable to Developer or any successor in interest in the event of any default or breach by the Village or for any amount which may become due to Developer from the Village or any successor in interest or on any obligation under the terms of this Redevelopment Agreement.

Section 8.05. Further Assurances. Developer and Village agree to take such action, including execution and delivery of such documents, instruments, petitions, and certifications as may become necessary or appropriate to carry out the terms, provisions, and intent of this Redevelopment Agreement.

Section 8.06. Enforceability of Agreement. This Agreement shall be enforceable in any court of competent jurisdiction within the County of DuPage, Illinois by any of the Parties by an appropriate action at law or in equity to secure the performance of the provisions and covenants herein described. The Parties agree to waive any right to a trial by jury. The Developer agrees to be solely responsible for its court cost and attorney fees.

Section 8.07. Disclaimer. Nothing contained in this Agreement, nor any act of either or both Parties to this Agreement, shall be deemed construed by any of the Parties or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship by or among such Parties except as expressly set forth herein.

Section 8.08. Headings. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define, or expand the content thereof.

Section 8.09. Severability. If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word, or the application thereof, in any circumstance, is held invalid, this Agreement shall be construed as if such invalid part were never included herein, and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

Section 8.10. Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, if any, the TIF Ordinances shall prevail and control.

Section 8.11. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the County of DuPage and State of Illinois, without regard to its conflicts of law principles.

Section 8.12. Form of Documents. All documents required by this Agreement to be submitted, delivered, or furnished to the Village shall be in form and content satisfactory to the Village, which approval shall not be unreasonably withheld or delayed.

Section 8.13. Binding Effect. This Agreement shall be binding upon Developer, the Village and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of Developer, the Village and their successors and permitted assigns (as provided herein).

Section 8.14. Force Majeure. Neither the Village nor Developer nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by failure or unreasonable delay, after Developer has utilized its best efforts to prevent such failure or unreasonable delay, in the receipt of any Governmental Approval, damage or destruction by fire or other casualty, strike, litigation concerning the Project, shortage of material, unusually adverse weather conditions near the Property such as, by way of illustration and not limitation, severe rain storms or below-freezing temperatures of abnormal degree or for an abnormal duration, tornadoes, and other events or conditions beyond the reasonable control of the party affected which in fact directly interferes with the ability of such party to discharge its obligations hereunder. The time for a party's performance of any obligation under this Agreement shall be extended on a day-for-day basis during the period of the event of Force Majeure. The party seeking the extension shall have the burden to establish the other party regarding an event of Force Majeure and shall keep the other party reasonably informed as to the nature of the delay and the anticipated time of completion of the performance of its obligations.

Section 8.15. Exhibits. All the exhibits referenced herein are attached hereto and incorporated herein by reference.

Section 8.16. No Joint Venture, Agency or Partnership Created. Nothing in this Agreement, whether expressed or implied, or any actions of the Parties shall be construed or is intended to confer any rights or remedies under or by reason of this Agreement on any other persons or third party to create the relationship of a partnership, agency, or joint venture between or among such party, nor is anything in this Agreement intended to relieve or discharge the

obligation or liability of any third parties to either the Village or Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or Developer. This Agreement is not intended to and does not create any third-party beneficiary rights whatsoever.

Section 8.17. Time of the Essence. Time is of the essence of this Agreement.

Section 8.18. Cooperation. The Village and Developer each covenants and agrees 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 or Developer 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. The successful consummation of this Agreement and the Project are in the best interests of the Parties and requires their continued cooperation. The Parties will use commercially reasonable efforts to cooperate with all reasonable requests made by the other party to effectuate the intent of this Agreement.

Section 8.19. Assignment.

A. Prior to the issuance of the Certificate of Substantial Completion, the Developer agrees that it shall not sell, assign, or otherwise transfer the Project, the Property or any of its rights and obligations under this Agreement (an “Assignment”) without the prior written consent of the Village, which may be granted or denied in its sole and absolute discretion.

B. After the issuance of the Certificate of Substantial Completion, Developer shall be permitted an Assignment with the Village’s prior written consent, which shall not be unreasonably withheld, denied, or delayed.

C. Any such approved transferee or assignee under this Section 8.19 shall expressly assume all of the obligations of Developer under this Agreement and shall agree to be subject to all the conditions and restrictions to which Developer is subject by executing an assumption, in a form reasonably acceptable to the Village (the “Assumption”). If the Village has approved an Assignment as provided herein, Developer shall only be released from any obligation or responsibility under this Agreement upon receipt of the fully executed Assumption by the Village. No assignment or transfer in violation of this Section 8.19 shall relieve Developer or any other party from any obligations under this Agreement, and any such transferee or assignee shall not be entitled to the rights and benefits provided for herein.

Section 8.20. Intentionally Deleted.

Section 8.21. Short Form of Agreement. The Village and Developer shall execute, acknowledge, and deliver a short form version of this Agreement in the form of Exhibit G (the “Short Form Agreement”) and shall cause the same to be recorded in the Office of the Recorder

of DuPage County, Illinois, as notice of the existence of this Agreement and of the rights, obligations and interests of the Village and Developer hereunder.

Section 8.22. Rights of Mortgagee. Notwithstanding anything to the contrary contained herein and provided Developer provides the Village with the name and address of its mortgagee and any replacement mortgagee (the “**Mortgagee**”), if an Event of Default by Developer occurs and Developer does not cure such Event of Default within the applicable cure period, the Village shall provide Mortgagee with written notice of such Event of Default and an additional thirty (30) calendar day period in which to cure such Event of Default, and the Village hereby agrees that it shall accept a cure by Mortgagee in fulfillment of Developer’s obligations under this Agreement, for the account of Developer and with the same force and effect as if performed by Developer. No cure or attempted cure by or on behalf of such Mortgagee shall cause it to be deemed to have accepted an assignment of this Agreement.

Section 8.23. Approvals; Materiality. Except as otherwise provided in this Agreement, whenever consent or approval of a party is required, such consent or approval shall not be unreasonably withheld, delayed, or conditioned. All of Developer’s performance obligations set forth in this Agreement shall be deemed complete upon material satisfaction of the same. Except as otherwise set forth in this Agreement, strict compliance with all monetary obligations hereunder shall be required.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the Village and Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

VILLAGE OF BENSENVILLE, ILLINOIS,
An Illinois municipal corporation

Village President

ATTEST:

Village Clerk

STATE OF ILLINOIS)
) ss.
COUNTY OF DUPAGE)

On this ____ day of _____, 2022, before me, personally appeared Frank DeSimone, personally known, who being by me duly sworn did say that he is the Village President of the Village of Bensenville, Illinois, an Illinois municipal corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Trustees and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in DuPage County, Illinois the day and year last above written.

Notary Public

Printed Name: _____

My commission expires:

IN WITNESS WHEREOF, the Village and Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

ILLINOIS CABINET DEPOT, LLC,
An Illinois limited liability corporation

By: _____
Its: President

STATE OF ILLINOIS)
) ss.
COUNTY OF DUPAGE)

On this _____ day of _____, 2022, before me, personally appeared _____ personally known, who being by me duly sworn did say that he/she is the _____ of Illinois Cabinet Depot, LLC, an Illinois limited liability corporation, that said instrument was signed on behalf of said limited liability corporation, and acknowledged said instrument to be the free act and deed of said limited liability corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in DuPage County, Illinois the day and year last above written.

Notary Public

Printed Name: MONIKA Polaska

My commission expires:

EXHIBIT A

Legal Description

Common Address: 480-500 West Irving Park Road, Bensenville, Illinois
Permanent Index Numbers (PINs): 03-14-210-008-0000 and 03-14-210-004-0000

EXHIBIT B

Preliminary Site Plan

(see attached)

EXHIBIT C

Project Schedule

(see attached)

EXHIBIT D

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION FOR THE PROJECT

CERTIFICATE OF SUBSTANTIAL COMPLETION FOR THE PROJECT OF ILLINOIS CABINET DEPOT, LLC

The undersigned, Illinois Cabinet Depot, LLC (the “**Developer**”), pursuant to that certain Tax Increment Financing Redevelopment Agreement, dated June 21, 2022, between the Village of Bensenville, DuPage and Cook Counties, Illinois (the “**Village**”) and Developer (the “**Agreement**”) for the property legally described on Appendix A, attached hereto and incorporated herein, hereby certifies to the Village as follows:

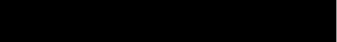
1. That as of _____, 20 __, the Project (as such term is defined in the Agreement) has been substantially completed in accordance with the terms and conditions of the Agreement.
2. The Project has been completed in a good and workmanlike manner and in accordance with the Plans and Specifications, all as set forth in the Agreement.
3. Lien waivers for applicable portions of the Project have been obtained and are attached.
4. This Certificate of Substantial Completion is being issued by Developer to the Village in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants under solely Article 3 of the Agreement with respect to the Project set forth in **Section 1** hereof.
5. The Village’s acceptance (below) or the Village’s failure to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate of Substantial Completion to the Village (which specific written objection, as set forth in the Agreement, must be delivered to the Developer prior to the end of such 30-day period), and the recordation of this Certificate of Substantial Completion with the DuPage County Recorder of Deeds, shall evidence the satisfaction of the Developer’s agreements and covenants to construct the Project.

Upon such acceptance, or failure to object, by the Village, the Developer may record this Certificate in the office of the DuPage County Recorder of Deeds. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

[Signature Page(s) Follow]

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ____ day of
_____, 20____.

ILLINOIS CABINET DEPOT, LLC
An Illinois limited liability corporation

By: 
Its: President

Signed and sworn before me by MONIKA Pulaski

this 13 day of JULY, 2022

Notary Public

ACCEPTED:

VILLAGE OF BENSENVILLE, ILLINOIS, an Illinois municipal corporation

By: _____

Name: _____

Title: _____

Appendix A

Legal Description

Common Address: 480-500 West Irving Park Road, Bensenville, Illinois
Permanent Index Numbers (PINs): 03-14-210-008-0000 and 03-14-210-004-0000

EXHIBIT E

Reimbursable Project Cost and Project Budget

EXHIBIT F

FORM OF CERTIFICATE OF REIMBURSABLE PROJECT COSTS FOR THE PROJECT

CERTIFICATE OF REIMBURSABLE PROJECTS COSTS FOR THE PROJECT OF ILLINOIS CABINET DEPOT, LLC

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

Terms not otherwise defined herein shall have the meanings ascribed to such terms in the Tax Increment Financing Redevelopment Agreement dated as of June 21, 2022 (the "Agreement"), between the Village of Bensenville and Illinois Cabinet Depot, LLC, an Illinois limited liability company (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. **Schedule 1** is incorporated herein by reference. Each item listed on **Schedule 1** hereto is a Reimbursable Project Cost and was incurred in connection with the construction of the Project. Identified on the attached Schedule 1 are the name, business address and business phone number of all contractors, subcontractors and/or suppliers who were paid directly by Developer and for which the amount identified herein shall reimburse Developer; also included as part of Schedule 1 are all applicable contracts, paid invoices and lien waivers in relation to said contractors, subcontractors and/or suppliers as well as proof of payment of said invoices. The information and documentation constituting Schedule 1 is accurate, verified and complete.

2. The Reimbursable Project Costs on **Schedule 1**: (i) were necessary for completion of the Project, (ii) have been paid by the Developer and are eligible for reimbursement under the TIF Act, the Redevelopment Plan and the Agreement, and (iii) were incurred in accordance with the Agreement.

3. The Reimbursable Project Costs listed on **Schedule 1** have not previously been paid or reimbursed from money derived from Incremental Revenues or any money derived from any project fund established pursuant to the Agreement, and no part thereof has been included in any other Certificate of Reimbursable Project Costs previously filed with the Village.

4. Developer has kept and maintained financial records related to the Reimbursable Project Costs listed on **Schedule 1** in compliance with Section 6.03 of the Agreement.

5. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm, entity, or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.

6. If any cost item to be reimbursed under this Certificate is deemed not to constitute a "redevelopment project cost" within the meaning of the TIF Act and the Agreement, Developer

shall have the right to identify and substitute other eligible Reimbursable Project Costs for payment hereunder, subject to limitations under the Agreement.

7. The Agreement is in full force and effect; and no Event of Default exists under the Agreement.

8. All of Developer's representations and warranties set forth in the Agreement remain true and correct as of the date hereof.

9. The development and construction of the Project is in compliance with the Project Schedule, subject to any amendment or Force Majeure.

10. The Reimbursable Project Costs set forth herein for the Project is not in excess of the amount of \$100,000.00

11. The Final Project Cost is _____ (\$ _____).

Developer agrees that if prior to the time of acceptance by Village any matter certified to herein by it will not be true and correct in all material respects at such time as if then made, it will immediately so notify the Village. Except to the extent, if any, that prior to the time of the Village's approval of Reimbursable Project Costs for the Project, the Village shall receive written notice to the contrary from Developer, each matter certified to herein shall be deemed once again to be certified as true and correct at the date of approval of Reimbursable Project Costs as if then made.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ___ day of _____, 20 ____.

ILLINOIS CABINET DEPOT, LLC

An Illinois limited liability corporation

By: _____

Its: President

Signed and sworn before me by MONIKA Pulaski this 13 day of JULY, 2022

Notary Public

APPROVED: **VILLAGE OF BENSENVILLE, ILLINOIS**, an Illinois municipal corporation

By: _____

Name: _____

Title: _____

Schedule 1

Reimbursable Project Costs Schedule for the Project

Date: _____
Page ____ of ____

#	Vendor Name/Address	Phone	Description	Project Budget Item (Exhibit G)	Invoice Date	Payment Date	Total Amount Paid	Requested Certification Amount
—								
—								
—								
—								
—								
—								
—								
—								
—								

Final Project Cost Incurred for the Project: \$_____.

Total Reimbursement Request for Redevelopment Project Costs: \$_____.

**Attached hereto are the contracts, invoices, proof of payment and lien waivers corresponding to each of the above cited vendors for which Developer seeks such costs to be certified as a Reimbursable Project Cost.

ILLINOIS CABINET DEPOT, LLC
An Illinois limited liability corporation

By: _____

Its: _____

Signed and sworn before me by: _____

this ____ day of _____, 20 ____.

Notary Public

Exhibit G

Short Form Agreement

This document prepared by,
and after recording return to:

Village of Bensenville
Office of the Village Clerk
12 South Center Street
Bensenville, Illinois 60106

This space reserved for Recorder's use only.

SHORT FORM AND MEMORANDUM OF TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT

This Short Form and Memorandum of Tax Increment Financing Redevelopment Agreement (the “**Short Form Agreement**”) is made as of June 21, 2022, by and between **VILLAGE OF BENSENVILLE**, an Illinois municipal corporation (the “**Village**”), and **ILLINOIS CABINET DEPOT, LLC**, an Illinois limited liability company (the “**Developer**”).

1. **Capitalized Terms.** All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Redevelopment Agreement. To the extent of any conflict between this Short Form Agreement and the terms of the Redevelopment Agreement, the Redevelopment Agreement shall control.
2. **Redevelopment Agreement.** Village and Developer entered into that certain Tax Increment Financing Redevelopment Agreement, dated June 21, 2022, (the “**Redevelopment Agreement**”) describing the Project being made to real property owned by Developer and legally described on the attached and incorporated Exhibit A (the “**Property**”).
 - A. The Term of the Redevelopment Agreement shall be in full force and effect from the Effective Date and shall remain in full force and effect, unless earlier terminated pursuant to the terms of the Redevelopment Agreement, until December 31, 2034.
3. **Tax Increment Financing.** The Redevelopment Agreement provides for the capture by the Village of Incremental Taxes from the Property for a period not to extend beyond December 31st of the year following the twenty-third (23rd) year from the date of designation of the Redevelopment Project Area. The Incremental Taxes so captured by the Village shall be utilized as described in the Redevelopment Agreement.
4. **Remaining Terms.** The remaining terms of the Redevelopment Agreement are hereby incorporated into this Short Form Agreement as if they were set forth in full. A full and correct

copy of the Redevelopment Agreement may be inspected at the office of the Village Clerk of the Village of Bensenville, DuPage and Cook Counties, Illinois.

5. **Other Redevelopment Agreement Provisions.** Among the other terms and conditions contained in the Redevelopment Agreement, the Redevelopment Agreement provides:

A. Developer shall redevelop the Property and cause the Project to be constructed in accordance with the Redevelopment Agreement and all Exhibits attached thereto, the Preliminary Site Plan, the Project Schedule, the Plans and Specifications, the Project Budget, the Redevelopment Plan and all Laws applicable to the Property, the Project and/or Developer. The aforesaid covenant shall be deemed satisfied upon acceptance by Village of the respective Certificate of Substantial Completion.

B. During the Term, Developer shall pay or cause to be paid when due all Governmental Charges which are assessed or imposed upon the Project, or the Property, or which become due and payable. Further, after acceptance of the Certificate of Substantial Completion, Developer may make additions, alterations, and changes to the Project so long as such additions, alterations and changes are made in compliance with all applicable Laws, the Redevelopment Agreement, the Redevelopment Plan, and as long as such additions, alterations and changes to the Project or Property do not have a material adverse effect on the assessed value of the Project or Property.

D. With respect to the Property or the Project, neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee, or successor in interest to Developer shall seek or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)), during the Term.

6. **Inquiries.** Further inquiries regarding this Short Form Agreement and the Redevelopment Agreement may be made to the following Parties:

If to Developer:

or at such other address with respect to either party as that party may from time to time designate in writing and notify the other as provided in the Redevelopment Agreement.

WITNESS the due execution of this Short Form of Agreement by Village as of the day and year first above written.

VILLAGE OF BENSENVILLE, ILLINOIS,
An Illinois municipal corporation

Village President

ATTEST:

Village Clerk

STATE OF ILLINOIS)
) ss.
COUNTY OF DUPAGE)

On this _____ day of _____, 2022, before me, personally appeared Frank DeSimone, personally known, who being by me duly sworn did say that he is the Village President of the Village of Bensenville, Illinois, an Illinois municipal corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Trustees and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in DuPage County, Illinois the day and year last above written.

Notary Public

Printed Name: _____

My commission expires:

IN WITNESS WHEREOF, the Village and Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

ILLINOIS CABINET DEPOT, LLC,
An Illinois limited liability corporation

By: _____
Its: President,

STATE OF ILLINOIS)
) ss.
COUNTY OF DUPAGE)

On this _____ day of _____, 2022, before me, personally appeared _____ personally known, who being by me duly sworn did say that he is the _____ of ILLINOIS CABINET DEPOT, LLC, an Illinois limited liability corporation, that said instrument was signed on behalf of said limited liability corporation, and acknowledged said instrument to be the free act and deed of said limited liability corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in DuPage County, Illinois the day and year last above written.

Notary Public

Printed Name: MONICA POLANSKI

My commission expires:

Attachment A

Legal Description

Common Address: 480-500 West Irving Park Road, Bensenville, Illinois
Permanent Index Numbers (PINs): 03-14-210-008-0000 and 03-14-210-004-0000

**ECONOMIC INCENTIVE AGREEMENT BETWEEN THE VILLAGE
OF BENSENVILLE AND LARRY ROESCH VOLKSWAGEN**

THIS ECONOMIC INCENTIVE AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____ 2022 by and between the VILLAGE OF BENSENVILLE, DuPage and Cook Counties, Illinois, an Illinois municipal corporation (the "Village"), and ROESCH FINCO, L.L.C., an Illinois Limited Liability Corporation d/b/a LARRY ROESCH VOLKSWAGEN (the "Roesch"), with its principal office at 313 West Grand Avenue, Bensenville, Illinois.

WITNESSETH

WHEREAS, the Village of Bensenville, DuPage and Cook Counties, Illinois (the "Village") is a duly organized and existing municipal corporation created under the provisions of the laws of the State of Illinois and under the provisions of the Illinois Municipal Code, as from time to time supplemented and amended; and

WHEREAS, Roesch has operated an automobile dealership at 313 West Grand Avenue in the Village since 2002 which presently draws clientele from all over the Chicago metropolitan area; and

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 corporate limits of the Village; and

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

WHEREAS, the President and Board of Trustees 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, including 65 ILCS 5/8-1.2.5 of the Illinois Municipal Code, and entering into economic incentive agreements that are in the furtherance of and essential to the public interest; and

WHEREAS, Roesch and the Village desire to enter into this Agreement, as Roesch plans to invest an estimated \$4,820,000.00 to expand its footprint, including the construction of four (4) additional service bays and undertake renovations and improvements to its storefront and interior to comply with the latest Volkswagen corporate thematic design; and

WHEREAS, Roesch has represented to the Village that sales tax revenue sharing is essential for Roesch to undertake the redevelopment of its current facilities and that the redevelopment and expansion in this Agreement would not be possible without sales tax revenue sharing; and

WHEREAS, the redevelopment and expansion contemplated in this Agreement 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 Roesch to redevelop and expand its existing dealership facilities by entering into this Agreement with Roesch 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 the Village's Ordinance approving this Agreement and authorizing its execution and delivery, the Village has made the requisite legislative findings, in accordance with 65 ILCS 5/8-11-20, that a portion of Roesch's facility is functionally obsolete and that a portion of the property is underutilized; 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 Roesch meets high standards of credit worthiness and strength; and that this Agreement is in the best interests of the Village; and

WHEREAS, Roesch represents and warrants to the Village that it agrees with the findings stated above and that the sales tax revenue proceeds herein contemplated would not have been paid to any other unit of local government and that Roesch does not maintain within another unit of local government a retail location or a warehouse from which the tangible personal property is delivered to purchasers, in accordance with Section 8-11-21 of the Illinois Municipal Code, 65 ILCS 5/8-11-21.

NOW, THEREFORE, for and in consideration of the recitals and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and Roesch hereby covenant, warrant, and agree, as follows:

SECTION 1. RECITALS

The recitals, findings and determinations hereinabove are hereby incorporated herein by this reference into the body of this Agreement to the same extent as if each had been set forth in full in this Section of this Agreement.

SECTION 2. DEFINITIONS

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

"Effective Date": Shall mean January 1, 2022.

“Economic Incentive Payment” or “EIP”: Shall mean the amounts payable to Roesch pursuant to Section 3 of this Agreement.

“Force Majeure”: Shall mean an Act of God or other event or cause not reasonably within the control of Roesch and the Village, which include fire, strikes, lockouts, embargoes, civil riot, war, insurrection, earthquakes, casualties, acts of the public enemy, floods or natural catastrophe, not caused by Roesch and occurring within the region, but specifically excluding any shipping or transportation delays, labor or building material supply shortages, or vendor or supplier chain disruptions, epidemic, pandemic, quarantine, lock down or business interruption related to COVID-19, or any variant thereof.

“Maximum Sharing Amount”: Shall mean the not-to-exceed amount of all EIPs paid to Roesch pursuant to and in accordance with Section 3 of this Agreement and that Roesch actually paid for the Project and is eligible to receive reimbursement as determined by the Village in Section 3. A. but not more than Four Million Eight Hundred Twenty Thousand and 00/100ths Dollars (\$4,820,000.00), whichever amount is lower.

“Project”: Shall mean the redevelopment of the Property to construct an approximate 5,000 square feet building addition along with the construction of six (6) additional service bays and undertake renovations and improvements to its storefront and interior to comply with the latest Volkswagen corporate thematic design.

“Property”: Shall mean the property commonly known as 313 West Grand Avenue, Bensenville, DuPage County, Illinois, as legally described in Exhibit A, a copy of which is attached hereto and made a part hereof as if fully set forth herein, and on which Roesch is operating its Volkswagen Automobile Franchise on the Effective Date of this Agreement.

“Party” or “Parties”: Shall mean the Village or Roesch, singularly, and the Village and Roesch, plurally.

“Roesch”: Shall mean Roesch Finc d/b/a Larry Roesch Volkswagen and Roe-Lee Investments and is the Volkswagen Automobile Franchise that operates at 313 West Grand Avenue, Bensenville, Illinois 60106.

“Sales Taxes”: Shall mean the not to exceed one percent (1%) portion of any and all taxes distributed to and actually received by Village which are imposed and collected by the State of Illinois 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, online or such other computer or direct 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”: Shall mean each calendar year beginning from the Effective Date of this Agreement and from January 1st to December 31st thereafter until the Term of this Agreement expires.

“Term”: Shall mean the period for which this Agreement shall be effective, which shall begin on the Effective Date of this Agreement, through and including December 31, 2036.

“Volkswagen Automobile Franchise”: Shall mean 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 manufacture or those brands, in which any sales and servicing of used motor vehicles shall remain a subordinate business.

SECTION 3. ECONOMIC INCENTIVE PAYMENT

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

The Parties covenant and agree that the Economic Incentive Payment or EIP under this Agreement shall be for costs that are actually spent on and paid for the Project by Roesch and is eligible to receive reimbursement but not more than Four Million Eight Hundred Twenty Thousand and 00/100ths Dollars (\$4,820,000.00), whichever amount is lower. The cost incurred by Roesch for the Project must be clearly evidenced in documents satisfactory to the Village in its sole discretion that identify the funding source and capital outlay, or expense made by or on behalf of Roesch to complete the Project. Such documentation must identify the source of funding, exact capital outlay incurred, receipts, paid invoices and contracts for purchases, services and materials needed by Roesch for the Project on the Property. The Village shall have the unequivocal right to require such additional documentation it needs to substantiate a cost incurred by Roesch, including but not limited to the right to conduct an audit of the Project.

For every Sales Tax Year included in this Agreement, the Village shall wholly retain the first \$200,000.00 of Sales Taxes received by the Village for each Sales Tax Year. Additional Sales Taxes received by the Village in any Sales Tax Year over \$200,000.00 shall be equally split 50% to Village and 50% to Roesch in the first Sales Tax Year (2022), which shall not be paid until the Project is substantially completed, operational, and upon issuance of the certificate of occupancy. Additional Sales Taxes received by the Village in any Sales Tax Year over \$200,000.00 shall be split 25% to Village and 75% to Roesch in the second, third, fourth, fifth and sixth Sales Tax Years (2023, 2024, 2025, 2026, and 2027). Additional Sales Taxes received by the Village in any Sales Tax Year over \$200,000.00 shall be equally split 50% to Village and 50% to Roesch in the seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth Sales Tax Years (2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, and 2036). Under no circumstances shall Roesch receive any additional percentage of Sales Taxes, as herein provided.

The total EIPs to Roesch under this Agreement shall not exceed the Maximum Sharing

Amount, and the Village shall have no obligation to make any EIP to Roesch above the Maximum Sharing Amount once the total of all EIPs equal the Maximum Sharing Amount even if the Term of this Agreement has not expired. In no event is the Village required to make up or provide any further EIP to Roesch if the Maximum Sharing Amount is not reached at the expiration or termination of this Agreement. EIPs shall be made only from proceeds of Sales Taxes imposed and collected by the State of Illinois, 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 received by Village. All EIPs shall be based on the records of the Illinois Department of Revenue. Each annual EIP shall be automatically deducted from the Maximum Sharing Amount balance and shall be done so until the remaining balance is paid or the expiration or termination of this Agreement.

B. Village Payment. The Village shall make the EIPs in the amounts provided for in Section 3 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 Roesch. In such event, the Village shall make the required EIP 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 by the Illinois Department of Revenues. 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 Roesch hereby agree to cooperate with each other to accomplish such reconciliation.

No EIP (including but not limited to Sales Tax Year 2022) by the Village shall occur until the Project is substantially completed, operational and upon issuance of the certificate of occupancy (at which time Sales Tax Year 2022 shall be paid in accordance with the terms and conditions herein provided). Roesch shall make available to the Village proof that it has completed the Project and that the specific investment expenses by Roesch are evidenced in documentation satisfactory to the Village, as herein required. In addition, the Volkswagen Automobile Franchise must remain fully operational throughout the Term of this Agreement to qualify and receive any EIP, as herein provided.

C. EIP Payment Audit-Reconciliation. Each EIP payment by the Village to Roesch shall be accompanied by a statement from the Village, setting forth the calculations of such payment. The Village shall also issue a statement to Roesch setting forth all payments made to date to Roesch. Roesch shall have thirty (30) days following the receipt of said payment to provide written notice of a dispute concerning the calculations contained in such statements. In the event that Roesch shall initiate any such dispute, it must be made by written notice to the Village Manager. In the event that the Parties are unable to reconcile the dispute within thirty (30) days, the Village's auditor shall review such calculations and information and determine whether the amount paid to Roesch was less or more than the amount that should have been paid hereunder.

The Village auditor shall have the right to request such additional documentation from Roesch to substantiate any dispute and Roesch shall have the burden to furnish same. The determination of the Village's auditor shall be final and binding to the Parties. If such dispute shows that the amount paid to Roesch was less or more than the amount that should have been paid to Roesch, either the Village shall pay to Roesch the balance of such amount within thirty (30) days of the completion of the findings of the Village's Auditor, or Roesch shall pay to the Village the amount of any overpayment within thirty (30) days of the completion date as herein provided, whichever is applicable. In the event that no dispute with respect to a payment is initiated as set forth above, such payment shall be deemed correct and not subject to dispute in any forum by Roesch thereafter.

D. Change in the Law. The Village and Roesch acknowledge and agree that the Village's obligation to pay the EIP to Roesch is predicated on existing State of Illinois law, including, without limitation, the Retailer's Occupation Tax Act and Sections 8-11-20 and 8-11-21 of the Illinois Municipal Code. The Village and Roesch further acknowledge that the General Assembly of the State of Illinois 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 of Illinois statutes or makes any other promulgation, enactment or change in law (the "Change in Law"), and such Change in Law results in replacement taxes for all or a portion of the Sales Tax receipts generated by Roesch 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 of Illinois 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 Tax receipts received by the Village, as defined in Section 2 of this Agreement. Subject to all the conditions, limitations, and restrictions in this Agreement, the Village shall be liable to Roesch for disbursement of monies hereunder only to the extent of the Sales Tax or such other replacement tax receipts actually received by the Village from the Illinois Department of Revenue or other applicable State of Illinois governmental agency. Further, any payments due Roesch 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. Roesch 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, claim of law or equity, liability, remedy, right or obligation shall be had for any payment pursuant to this Agreement against any past, present, or future elected or appointed officer, official, employee, agent, attorney or independent contractor of the Village in his or her individual capacity. Without limiting the generality of the foregoing, in the event any legal proceedings against the Village are instituted, in no event shall any judgement for monetary damages or award be entered individually against any of the above referenced parties.

F. Consent to Payment to Roesch. By signing this Agreement, Roesch 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 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 or statements of any kind or nature have been made by any Village Representatives that upon the Agreement becoming effective that:

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

SECTION 4. ROESCH'S OBLIGATIONS

Village's obligation to make the EIP's as provided for in this Agreement is conditioned upon Roesch's performance of the following acts and obligations. Roesch's performance of such is material to this Agreement, and Roesch's failure to perform such, subject to the provisions of notice and cure 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. Roesch shall make available to the Village a copy of all fully executed franchise agreement(s) with Volkswagen and/or other franchisors relating to its facilities and shall also provide to the Village within five (5) business days of receipt thereof any notices or actions by Volkswagen and/or other franchisors relating to the use of the Property, as the site for said automobile or truck sale franchise.

B. Throughout the Term of this Agreement, Roesch shall maintain and continually operate on the Property a Volkswagen Automobile Franchise. A termination of Roesch's franchise by Volkswagen or vice versa shall serve to terminate the obligations of the Parties pursuant to this Agreement.

C. Roesch shall maintain throughout 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 upon its requests.

D. Roesch shall provide the Village with all authorization necessary for the State of Illinois to release Sales Tax information to the Village.

E. Roesch shall establish and maintain throughout the Term of this Agreement, a procedure whereby all of Roesch's internet, online or such other computer or direct 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. Roesch shall construct the Project in accordance with all approved plans and zoning requirements and shall further operate and maintain the Project, Property, and its operations on the Property at all times in full compliance with all Village codes, regulations 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, right-of-way or parkway without approval from the Village.

G. Roesch 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 Roesch receiving approval from the Village and all required approvals and permits for construction of the Project, Roesch shall complete the Project no later than July 1, 2023, or this Agreement shall automatically terminate and no EIP will be due to Roesch by the Village under any circumstance.

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

K. Roesch will continue to operate at the Property uninterrupted and if it ceases to operate or relocates its operation, or any portion thereof, to a different location during the Term of this Agreement, Roesch shall forfeit any further EIP and shall reimburse the Village for the last six (6) EIP received by it from the Village, as liquidated damages.

SECTION 5. FORCE MAJEURE

Whenever a period of time is provided for in this Agreement for either Roesch or the Village to perform any act or obligation, and Roesch 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.

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 (the "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 informed concerning all aspects of the Litigation.

B. Defense. The Village and Roesch 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 Roesch 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 8. ZONING AND PERMIT REQUIREMENTS AND PROCEDURES

A. Community Development Commission Process (Zoning). Roesch shall timely submit all necessary plans and documents for the Project required for an amendment to the Planned Unit Development Ordinance 43-2011 and subsequent PUD Amendment Ordinance 55-2012. Roesch shall submit a complete application to the Village within sixty (60) days of the Effective Date of this Agreement. The Village shall timely review such application, provide Roesch with comments and schedule the required public hearing.

B. Construction Plan and Permit Review Process. Roesch shall submit all necessary plans and documents required for the issuance of Village permits for the Project within thirty (30) days of obtaining zoning approval for the Project. The Village shall timely provide Roesch written comments informing Roesch of the need to submit or obtain additional information or documents required for the Village to complete its review and issue such permit(s) for the Project. Upon receipt of the Village's written comments, Roesch shall submit to the Village within 30 days of receipt of the Village's written comments that which is required by the Village. Upon such additional submission, the Village shall timely provide additional written comments, if applicable, or issue such permit(s) for the Project. Either party can request a meeting with the other party during this process to clarify a requirement or address a permit(s) for the Project or construction matter pertaining to the Project. The Parties will act in good faith to address and resolve any issue or discrepancy.

C. Project Construction and Budget. Roesch shall commence construction of the Project within sixty (60) days of permit approval by the Village. In addition, Roesch shall submit to the Village an itemized budget in such sufficient details to demonstrate the total amount of funds required for the completion of the Project prior to the commencement of construction of the Project.

SECTION 9. RELEASE OF INFORMATION

To the extent permitted by law, the Village shall maintain confidentiality of the information contained in such reports; however, Roesch 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 Roesch pursuant to this Agreement, Roesch shall provide the State of Illinois with properly executed authorizations granting the Village the right to access the Sales Tax records of Roesch. Roesch 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 Roesch pursuant to this Agreement. Roesch further covenants and agrees, that upon the request of the Village, Roesch 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 of Illinois and Roesch in order to release the above-described sales tax information to the Village. Roesch 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 of Illinois in accordance with this Section.

SECTION 10. PERMIT AND LICENSE APPLICATIONS; FEES AND COSTS

Roesch shall be responsible for the fees and costs associated with any applications, licenses, permits, inspections, and certifications required for the Project and the operation of the Volkswagen Automobile Franchise throughout the Term of this Agreement.

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 Roesch 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 Roesch

has failed or refused to meet fully any of its material obligations under this Agreement. In the event of any administrative or judicial proceeding brought by any Party to this Agreement against the other Party to this Agreement for enforcement or for breach of any provision of this Agreement, each Party shall be responsible for all of its own costs and expenses, including attorney's fees, incurred in connection with such 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 Roesch, the Village shall have no obligation of any kind or nature whatsoever to make any further EIP to Roesch provided that Roesch has not cured in accordance with terms of this Agreement:

1. A material breach of this Agreement by Roesch; or
2. A significant reduction in the Sales Tax receipts as a direct result of changes in Roesch's business plan and not as a result of factors beyond the reasonable control of Roesch 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 twenty-five percent (25%) of the average of the Sales Tax receipts received by the Village in the last three (3) years during which economic incentive payments were made by the Village to Roesch. 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 Roesch proceeds with such assignment or transfer.

SECTION 12. NATURE AND SURVIVAL OF OBLIGATIONS

The Parties covenant and agree that the terms and conditions of this Agreement shall survive the Term of this Agreement and that the indemnifications, representations, agreements, conditions, statements, warranties, and covenants contained herein shall be enforceable against the other Party.

SECTION 13. TRANSFER OR ASSIGNMENT

Roesch'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, in its absolute sole discretion. All assignment or transfer by Roesch of its rights and interest provided for under this Section shall be subject to the following terms and conditions:

A. Such assignment or transfer shall release Roesch 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 Section 8-11-21 of the Illinois Municipal Code, 65 ILCS 5/8-11-21, or other applicable law. Prior to consenting to such a transfer, the Village may require of Roesch and Roesch 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, Roesch hereby warrants and represents to the Village as follows:

A. Roesch is an Illinois Limited Liability Corporation duly organized, validly existing, and in good standing under the laws of the State of Illinois.

B. Roesch 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 has an interest in the Property as of the date of this Agreement or that such mortgagee or any other secured party has an objection to either (i) the execution and performance of this Agreement by Roesch or (ii) the binding nature of this Agreement with respect to the Property.

D. All necessary consents of the members of Roesch 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. Roesch 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 Roesch have the full power and authority necessary to execute and deliver this Agreement on behalf of Roesch.

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

H. Roesch 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 Roesch has not and will not rely upon the Village Representatives in connection therewith.

SECTION 15. GENERAL PROVISIONS

A. Complete Agreement: Supersede. This Agreement incorporates all agreements and understandings of the Parties hereto as of the date of its execution and each Party acknowledges that no representation or warranties have been made which have not been set forth herein and that no other agreements or representations other than those contained in this Agreement has been made by the Parties. Each Party further agrees that no statement, representation promise or provision it requested has been excluded in this Agreement and; if so omitted, that the Party hereby relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance thereon or making any other claim on account of such omission. This Agreement shall be deemed and construed to be the joint and collective work product between the Parties and, as such, this Agreement shall not be construed against the Village, as the otherwise purported drafter of same, by any court of competent jurisdiction or order resolving any inconsistency, any ambiguity, vagueness or conflict in the terms or provisions, if any, contained herein. Roesch further covenant and agree that there exists no claim, remedy, demand, cause of action, default or right against the Village, and that any such claim, remedy, demand, cause of action, default or right, either known or unknown, is hereby specifically waived and relinquished in its entirety for the benefits and obligations herein specified as of the Effective Date of this Agreement.

B. Amendments. No amendment, change, alteration, waiver, or modification of any provision of this Agreement shall be valid or effective unless it is in writing and approved by the authorized representatives of Roesch and the Village.

C. Notices. Any notice or other communication given under this Agreement shall be in writing, and shall be deemed delivered by the addressee thereof when delivered at the address set forth below 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 mail, return receipt requested, postage prepaid, properly, addressed to the parties, respectively, as follows:

For notices and communications to the Village:

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

With a copy to:

Office of the Village Clerk
Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106

For notices and communications to Roesch:

Jeannine Roesch-Lee
Larry Roesch Volkswagen
313 West Grand Avenue
Bensenville, Illinois 60106

With a copy to:

John C. Eggert, Esq.
Hardt, Stern & Kayne, P.C.
2610 Lake Cook Road - Suite 200
Riverwoods, Illinois 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 received.

D. Language and Paragraph Headings. Any headings of this Agreement are for convenience of reference only and do not modify, define, or limit the provisions thereof and are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any person or entity shall be deemed

to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement.

E. 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.

F. 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. Any and all legal proceedings of any kind arising in connection with this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois, and in the District Court for the Northern District of Illinois to enforce federal claims.

G. No Liability of Village for Cost or Expenses Incurred by Roesch. The Village shall have no obligations to make any payment to Roesch or any other person or entity, nor shall the Village be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to Roesch pertaining to the Property or operation of its enterprise.

H. Time of Essence. Time is of the essence of this Agreement and the term, condition, and provision hereof. If the final date of any period of time set forth herein occurs on a Saturday, Sunday or legal or Village holiday, then in such event, the expiration of such period of time shall be postponed to the next day which is not a Saturday, Sunday or a legal or Village holiday.

I. No Third-Party Beneficiaries or Joint Venture. 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. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or partnership or fiduciaries or of a joint venture between the parties hereto.

J. Exhibits. The Exhibits 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, be deemed an original and 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. Future Agreement or Amendment to this Agreement. Roesch, or any of its subsidiaries or associated companies, shall not seek a revision or amendment to this Agreement

during the Term of this Agreement and that the Village is not obligated in any way under this Agreement to consider same.

(Intentionally Left Blank)

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

Roesch

By: _____

Its: _____ president

SUBSCRIBED AND SWORN to before me
this 8th day of July, 2022.

Notary Public

Village of Bensenville, Illinois

By: _____

Its: _____

ATTEST:

Village Clerk

EXHIBIT A

Legal Description of Property

PIN(s): 03-26-102-035

313 West Grand Avenue
Bensenville, Illinois 60106



July 12, 2022

VIA E-MAIL
(5) Page(s) Inclusive
jcaracci@bensenville.il.us

Mr. Joe Caracci, Director of Public Works
Village of Bensenville
717 E Jefferson Street
Bensenville, Illinois 60106

Re: **Village of Bensenville – New Senior Center Village Hall Buildout Project
12 S. Center Street, Bensenville, Illinois 60106
Proposal for Professional Services**

Dear Mr. Caracci:

It was a pleasure talking with you about your design needs. We thank you for the opportunity to work with you. We have reviewed the project and understand the scope of services. We feel that our experience with similar projects and our dedication to exceptional design and service will blend in perfectly with this project. We have described our scope of services below.

PROJECT UNDERSTANDING:

- I. Tria Architecture (TRIA) will complete all Architectural Design for you (OWNER), as described herein. This proposal is based on the following key components:
 - A. Design renovations (+/- 6,000 sf) within the existing village hall building lower level and upper level to repurpose into a new senior center space.
 1. The OWNER's overall project budget is \$1.18M, and the construction budget for items covered under this proposal is \$900K.
 - B. If the budget allows, the facility design is to include:
 1. A meeting room for approximately 100 people.
 2. A warming kitchen with a serving window.
 3. Village media studio renovation
 4. Administrative conference room renovations
 5. Mechanical, Electrical, and plumbing upgrades.
 6. Technology upgrades.
- II. All additional designs or design modifications requested by the OWNER or Authorities Having Jurisdiction will be completed on a Time and Material basis above and beyond this proposal, including travel.

DESIGN PHASE SERVICES:

- I. TRIA will generally field verify all relevant existing conditions for the renovation areas only. No field verification of the remainder of the building or site is included in this proposal.

TRIA ARCHITECTURE

Illinois Office | Corporate Headquarters: 901 McClintock Drive, Suite 100, Burr Ridge, Illinois 60527

Indiana Office: 436 Sand Creek Drive N, Suite 105, Chesterton, Indiana 46304

Company Main: 630.455.4500 Fax: 630.455.4040

www.TriaArchitecture.com

INIT. 

Mr. Joe Caracci, Director of Public Works

Proposal for Professional Services

Village of Bensenville – New Senior Center Village Hall Buildout Project

12 S. Center Street, Bensenville, Illinois 60106

July 12, 2022

Page 2 of 5

II. TRIA will provide one (1) round of Schematic Design (SD), before proceeding to DD and CD phases.

A. The OWNER shall review the documents at the end of each phase, and if acceptable, will provide a sign-off authorizing TRIA to proceed to the next phase.

B. All additional designs or design modifications requested by the OWNER or Authorities Having Jurisdiction will be completed on a Time and Material basis above and beyond this proposal.

III. TRIA will provide Furniture, Fixture and Equipment (FF&E) Design.

IV. TRIA will design the Mechanical, Electrical, Plumbing and Fire Protection (M.E.P.F.P.) systems as required to accommodate the new design:

A. TRIA will design the renovations to the existing Heating, Ventilation and Air Conditioning (HVAC) systems for the building as needed for the design.

B. TRIA will design the renovations to the existing electrical system for the building including:

1. General power and lighting as needed for the design.

2. The OWNER shall coordinate the new telecommunications utility entrances (Voice, Data, Internet, Security, Television).

C. TRIA will design the specialized engineering such as security, intelligent lighting, voice and data. The OWNER will design and provide all head-end equipment.

D. TRIA will design the renovations to the existing plumbing system for the building, including:

1. Natural gas, domestic water and sanitary sewer for the building as needed for the design.

BIDDING PHASE:

I. TRIA will assist the OWNER with all bidding, soliciting contractors, Requests for Information (RFI's), pre-bid meeting, bid opening, negotiation, and evaluation of the lowest apparent bidder.

II. TRIA will process the AIA contract for the general contractor.

A. AIA Owner-Contractor contracts will be forwarded to the OWNER's attorney for review during design.

CONSTRUCTION OBSERVATION PHASE:

I. Not Applicable

GENERAL ITEMS:

I. The OWNER shall provide the following services/information:

A. An electronic copy of the existing facility (also showing all utility locations, M.E.P.F.P. equipment details and sizes), if available.

1. All building covenants, rules and regulations regarding our scope of services are to be provided to TRIA prior to the start of services.

B. The most current Environmental Testing reports (lead, asbestos, etc.) for the facility, if any.

TRIA ARCHITECTURE

Illinois Office | Corporate Headquarters: 901 McClintock Drive, Suite 100, Burr Ridge, Illinois 60527

Indiana Office: 436 Sand Creek Drive N, Suite 105, Chesterton, Indiana 46304

Company Main: 630.455.4500 Fax: 630.455.4040

www.TriaArchitecture.com

INIT. 

Mr. Joe Caracci, Director of Public Works

Proposal for Professional Services

Village of Bensenville – New Senior Center Village Hall Buildout Project

12 S. Center Street, Bensenville, Illinois 60106

July 12, 2022

Page 3 of 5

- C. Security, communications, and data systems head-end designs and specifications for incorporation into the Construction Documents.**
- II. Items excluded, but not limited to, from this proposal:**
 - A. Alternate Bid Designs.**
 - B. Value Engineering.**
 - C. Structural Engineering**
 - D. Civil Engineering**
 - E. Landscaping**
 - F. Roofing Modifications.**
 - G. Commercial Kitchen Design (Full Service).**

This proposal references and includes the AIA Document B101 (2007 edition) - Standard Form of Agreement Between Owner and Architect, Articles five, six, seven, eight (with the litigation option for section 8.2.4), nine and ten inclusive.

As discussed, our goal is not just to complete this project, but also to build a relationship with you so that we may fill any future design needs of yours. Please review this proposal and don't hesitate to contact me if you have any questions or require any additional information. **If this proposal is acceptable, please execute all of the yellow highlighted areas and send the entire proposal back to our office.** Tria Architecture and I look forward to your direction and working with you.

TRIA ARCHITECTURE

Illinois Office | Corporate Headquarters: 901 McClintock Drive, Suite 100, Burr Ridge, Illinois 60527

Indiana Office: 436 Sand Creek Drive N, Suite 105, Chesterton, Indiana 46304

Company Main: 630.455.4500 Fax: 630.455.4040

www.TriaArchitecture.com

INIT. 

Mr. Joe Caracci, Director of Public Works
Proposal for Professional Services
Village of Bensenville – New Senior Center Village Hall Buildout Project
12 S. Center Street, Bensenville, Illinois 60106
July 12, 2022
Page 4 of 5

FEE SCHEDULE

BASE BID PROPOSAL: Architectural Design services as described above for a Lump Sum Not-to-Exceed Fee of **\$97,875.00**.
- Based on a \$1,350,000 construction budget.

2022 HOURLY RATES

(For services above and beyond our scope of services listed above):

Principal Architect	\$210.00
Associate Architect	\$180.00
Architectural Associate	\$170.00
Senior Staff Architect / Senior Interior Designer	\$160.00
Staff Architect II / Interior Designer II	\$150.00
Architectural Staff II	\$150.00
Staff Architect I / Interior Designer I	\$140.00
Senior Architectural Staff	\$140.00
Architectural Staff	\$130.00
Graphic Designer	\$125.00
Architectural Intern / Interiors Intern	\$120.00
Administrative Assistant	\$100.00

Approved by (Sign / Print): _____

Title: _____ Date: _____

Sincerely,



TRIA ARCHITECTURE, INC.
Thomas R. Szurgot, AIA, LEED AP
Principal Architect

TRS/jp

Attachments: None

cc: Jim Petrakos, Tria Architecture

File Name: MRK.PRP.VOB Buildout.071222.docx

TRIA ARCHITECTURE

Illinois Office | Corporate Headquarters: 901 McClintock Drive, Suite 100, Burr Ridge, Illinois 60527

Indiana Office: 436 Sand Creek Drive N, Suite 105, Chesterton, Indiana 46304

Company Main: 630.455.4500 Fax: 630.455.4040

www.TriaArchitecture.com

INIT. _____

Mr. Joe Caracci, Director of Public Works
Proposal for Professional Services
Village of Bensenville – New Senior Center Village Hall Buildout Project
12 S. Center Street, Bensenville, Illinois 60106
July 12, 2022
Page 5 of 5

TERMS AND CONDITIONS

- I. If TRIA is requested to perform any onsite visits during construction, the OWNER or Contractor will obtain General Liability Insurance during construction and name TRIA as additional insured.
- II. The OWNER will be responsible for all material, printing and distribution costs of progress printings, presentations, office drawings and bid documents. These will be provided through TRIA as a reimbursable expense.
- III. TRIA shall not be liable or responsible for the quality of materials, equipment and fixtures used, nor the quality of workmanship on the project.
- IV. The OWNER will provide proportional monthly progress payments throughout the project and final payment upon completion of TRIA's services for that phase.
- V. If any payment is not paid by the OWNER when due, the unpaid balance shall accrue interest at one and one-half percent (1.5%), or the maximum legal rate, per month until paid.
- VI. TRIA reserves the right to cease all services until prompt payment of all outstanding invoices. In the event any portion of an account remains unpaid 120 days after the billing, TRIA may institute collection action and the OWNER shall pay all costs of collection, including reasonable attorney fees.
- VII. Payment of invoices is in no case subject to unilateral discounting, back-charges, or set-offs by the OWNER, and payment is due regardless of suspension or termination of this agreement by either party.
- VIII. This proposal is valid for a period of 45 days. After that period, TRIA will provide a revised proposal for any services.
- IX. If the services covered by this proposal have not been completed within eight (8) months of the date hereof through no fault of TRIA, the amounts of compensation, rates and multiples set forth herein shall be equitably adjusted.
- X. All designs are the property of TRIA and are not to be used for any project without the expressed written consent of TRIA. The OWNER will allow TRIA full access to the site and project to be photographed for use in marketing material. The OWNER will provide a copy of the final approved permit set to TRIA
- XI. To the fullest extent permitted by law, and notwithstanding any other provisions of this agreement, the total liability, in the aggregate, of TRIA and TRIA's officers, directors, partners, employees, agents, and subconsultants, and any of them, to the OWNER and anyone claiming by, through or under the OWNER, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or Agreement from any cause or causes, including, but not limited to the negligence, professional errors and omissions, strict liability, breach of contract or warranty, expressed or implied, of TRIA and TRIA's officers, directors, partners, employees, agents, and subconsultants, or any of them, shall not exceed the amount of TRIA's insurance limits.
- XII. TRIA and the OWNER waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with AIA B101 (2017 edition) - Article 9.
- XIII. Hourly rates are subject to change at the beginning of every calendar year.
- XIV. TRIA reserves the right to renegotiate the fee should changes in the scope of services occur.
- XV. All reimbursables will be forwarded with a 1.1 multiplier factor. All additional services will proceed only on a verbal or written "as directed" basis from the OWNER.
- XVI. TRIA will not be held responsible for identifying and/or investigating any existing hazardous conditions or materials on site.
- XVII. For purposes of this Agreement, the Cost of the Work shall be the total cost to the OWNER to construct all elements of the Project designed or specified by the Architect and shall include construction manager fees and costs and contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the OWNER. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the OWNER. The Cost of Work shall include: 1) 80% of the cost of alternates which are not accepted; 2) 100% of the cost of alternates which are accepted; 3) 100% of the cost of change orders which increase the Cost of the Work; 4) 80% of the cost of the cost reduction for change orders which reduce the Cost of the Work; and 5) 80% of the cost of items removed by value engineering.

 (Initial) The Terms and Conditions have each been individually read and agreed upon.

TRIA ARCHITECTURE

Illinois Office | Corporate Headquarters: 901 McClintock Drive, Suite 100, Burr Ridge, Illinois 60527
Indiana Office: 436 Sand Creek Drive N, Suite 105, Chesterton, Indiana 46304
Company Main: 630.455.4500 Fax: 630.455.4040
www.TriaArchitecture.com

INIT. 