

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) *Waiver of First Requested*
Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott R. Niehaus, Village Manager

DATE: January 10, 2017 (B of T) Date: January 19, 2017

TITLE: Bluestone Single Tenant Properties Economic Incentive Agreement – First Amendment

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a resolution authorizing signature of the President and Clerk on a First Amendment to the Bluestone Single Tenant Properties, LLC Sales Tax Revenue Sharing Agreement.

Staff recommends approval of the amendment.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____

Finance Director X _____ Date _____

Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.

MEMORANDUM

TO: Scott Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development *WJH*

DATE: January 19, 2017

RE: **Bluestone Single Tenant Properties Economic Incentive Agreement**

Bluestone Single Tenant Properties, LLC, as developer and petitioner, is seeking approval of a first amendment to the sales tax sharing agreement. The project will not commence by the dates specified in the original agreement due to delays in securing final engineering approvals from IDOT. As such, the amendment sets forth new dates for construction start (June 1, 2017) and completion (February 1, 2018). The First Amendment also recognizes that BSTP Lombard I, LLC and Thornton's, Inc. have assumed the role of Developer Affiliate (property owner) and Developer Affiliate Tenant respectively. However, the financial commitments and obligations associated with the original agreement remain unaffected.

RECOMMENDATION

Staff recommends the Village Board approve the first amendment to the sales tax sharing agreement.

RESOLUTION
R _____ 17

A RESOLUTION AUTHORIZING SIGNATURE
OF PRESIDENT AND CLERK ON AN AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard has received a First Amendment to the Bluestone Single Tenant Properties, LLC Sales Tax Revenue Sharing Agreement; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

Section 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said Agreement as attached hereto.

Section 2: That the Village Clerk be and hereby is authorized to attest said Agreement as attached hereto.

Adopted this _____ day of _____, 2017.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____ 2017.

Keith T. Giagnorio
Village President

Attest:

Sharon Kuderna
Village Clerk

**FIRST AMENDMENT TO
BLUESTONE SINGLE TENANT PROPERTIES, LLC
SALES TAX REVENUE SHARING AGREEMENT**

This First Amendment to Bluestone Single Tenant Properties, LLC Sales Tax Revenue Sharing Agreement (hereinafter, the "First Amendment") is made and entered into as of _____, 201__ (hereinafter, the "Effective Date"), by and between the Village of Lombard, an Illinois municipal corporation located in DuPage County, Illinois (hereinafter, the "Village"), Bluestone Single Tenant Properties, LLC, a Delaware limited liability company authorized to do business in Illinois (hereinafter, the "Developer"), BSTP Lombard I, LLC, a Delaware limited liability company authorized to do business in Illinois (hereinafter, the "Developer Affiliate"), and Thorntons, Inc., a Delaware corporation authorized to do business in Illinois (hereinafter, the "Developer Affiliate Tenant"). The Village, the Developer, the Developer Affiliate and the Developer Affiliate Tenant are hereinafter sometimes referred to collectively as the "Parties" and individually as a "Party."

WITNESSETH

WHEREAS, the Village and the Developer entered into a Bluestone Single Tenant Properties, LLC Sales Tax Revenue Sharing Agreement dated March 24, 2016 (the "Original Agreement"), in regard to the property as legally described on Exhibit 1 attached hereto and made part hereof (the "Subject Property"); and

WHEREAS, the Developer has assigned all of its rights, title and interest under the Original Agreement to the Developer Affiliate, pursuant to Section 5.02(ii) of the Original Agreement and the Assignment & Assumption of Sales Tax Sharing Agreement dated June 6, 2016 between the Developer and the Developer Affiliate; and

WHEREAS, the Developer Affiliate has become the owner of fee simple title to the Subject Property; and

WHEREAS, the Developer Affiliate Tenant, as tenant, and the Developer Affiliate, as landlord, have entered into that certain Land Lease Agreement dated June 7, 2016, with a term exceeding fifteen (15) years, which pertains to the Subject Property; and

WHEREAS, the Developer Affiliate has assigned all of its rights, title and interest under the Original Agreement, to receive the Developer Sales Taxes (as defined in the Original Agreement) during the Revenue Sharing Term (as defined in the Original Agreement), to the Developer Affiliate Tenant, pursuant to Section 5.02(iii) of the Original Agreement and the

Assignment And Assumption of Certain Rights Under A Sales Tax Revenue Sharing Agreement dated June 7, 2016 between the Developer, the Developer Affiliate and the Developer Affiliate Tenant, subject to the Developer retaining the obligation to construct the Public Improvements (as defined in the Original Agreement); and

WHEREAS, the Village, the Developer, the Developer Affiliate and the Developer Affiliate Tenant desire to amend certain provisions of the Original Agreement; and

WHEREAS, it is in the best interests of the Village, the Developer, the Developer Affiliate and the Developer Affiliate Tenant to enter into this First Amendment;

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

1. That Section 2.02(A) of the Original Agreement is amended by revising the reference therein to "December 31, 2016" to read "March 31, 2017."
2. That Section 2.02(B) of the Original Agreement is amended by revising the reference therein to "March 1, 2017" to read "June 1, 2017."
3. That Section 2.02(C) of the Original Agreement is amended by revising the reference therein to "November 1, 2017" to read "February 1, 2018."
4. That Section 5.15 of the Original Agreement is amended by revising the reference therein to "March 1, 2017" to read "June 1, 2017."
5. That the individual executing this First Amendment on behalf of the Developer warrants that he has been lawfully authorized by the Developer to execute this First Amendment on behalf of said Developer.
6. That the individual executing this First Amendment on behalf of the Developer Affiliate warrants that he has been lawfully authorized by the Developer Affiliate to execute this First Amendment on behalf of said Developer Affiliate.
7. That the individual executing this First Amendment on behalf of the Developer Affiliate Tenant warrants that he/she has been lawfully authorized by the Developer Affiliate Tenant to execute this First Amendment on behalf of said Developer Affiliate Tenant.
8. That the Village President and Village Clerk hereby warrant that they have been lawfully authorized by the Corporate Authorities of the Village to execute this First Amendment.
9. That this First Amendment may be executed in four (4) counterparts, each of which, taken together, shall constitute one and the same instrument.

10. That the date on which the last of the Village, the Developer, the Developer Affiliate or the Developer Affiliate Tenant signs this First Amendment shall be inserted on page 1 hereof, which date shall be the Effective Date of this First Amendment.

11. That all portions of the Original Agreement, not amended hereby, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the date first above written.

Village of Lombard,
an Illinois municipal corporation

By: _____
Keith Giagnorio Village President

Date: _____

ATTEST:

Sharon Kuderna
Village Clerk

Date: _____

Bluestone Single Tenant Properties, LLC,
a Delaware limited liability company
authorized to do business in Illinois

By: _____
Rick Claes, Manager

Date: _____

BSTP Lombard I, LLC,
a Delaware limited liability company
authorized to do business in Illinois

By: Bluestone Single Tenant Properties, LLC,
a Delaware limited liability company
authorized to do business in Illinois,
its sole Member

By: _____
Rick Claes, Manager

Date: _____

Thornton, Inc.,
a Delaware corporation
authorized to do business in Illinois

By: _____
Name: _____
Title: _____

Date: _____

State of Illinois)
) SS
County of DuPage)

ACKNOWLEDGMENT

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

GIVEN under my hand and official seal, this _____ day of _____, 201__.

Notary Public

State of Illinois)
) SS
County of Cook)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Rick Claes, personally known to me as Manager of Bluestone Single Tenant Properties, LLC, a Delaware limited liability company authorized to do business in Illinois, acknowledged to me that he signed and delivered the foregoing instrument on behalf of said company as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 201__.

Notary Public

State of Illinois)
) SS
County of Cook)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Rick Claes, personally known to me as Manager of Bluestone Single Tenant Properties, LLC, a Delaware limited liability company authorized to do business in Illinois, the sole Member of BSTP Lombard I, LLC, a Delaware limited liability company authorized to do business in Illinois, acknowledged to me that he signed and delivered the foregoing instrument on behalf of said company as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 201__.

Notary Public

State of _____)
County of _____) SS

ACKNOWLEDGMENT

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me as the _____ for Thorntons, Inc., a Delaware corporation authorized to do business in Illinois, acknowledged to me that he/she signed and delivered the foregoing instrument on behalf of said corporation, pursuant to authority given by said corporation, as his/her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 201__.

Notary Public

Exhibit 1

Legal Description of Subject Property

LOTS 4 THROUGH 11 AND LOTS 33 THROUGH 35 IN BLOCK G IN LOMBARD TERRACE SUBDIVISION, BEING A RESUBDIVISION OF PART OF ELMORE'S NORTHVIEW, BEING A SUBDIVISION IN THE NORTH HALF OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED AS DOCUMENT NUMBER R1993,341767 AND ALSO LOT 2 IN JAMES D. RAINE'S RESUBDIVISION OF LOTS 1, 2, AND 3 IN BLOCK G IN LOMBARD TERRACE, BEING A RESUBDIVISION OF PART OF ELMORE'S NORTHVIEW, BEING A SUBDIVISION IN THE NORTH HALF OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED AS DOCUMENT NUMBER R1970-027995, IN DUPAGE COUNTY, IL.

Parcel Identification Number(s): 06-06-100-011, -010, -009, -008, -007, -006, -005, -004, -048, -012, -013, -014, and -015; (the "Subject Property")

Commonly Known as 505-537 W. North Avenue and 715-733 N. Columbine Avenue, Lombard, Illinois.