

MEMORANDUM

TO: Bill Johnston, Chairperson
Economic and Community Development Committee

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

DATE: February 8, 2016

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

BACKGROUND:

Bluestone Single Tenant Properties, LLC, as petitioner, is seeking to develop a new gasoline and diesel fuel station and companion convenience store at the southwest corner of North Avenue (Route 64) and Columbine Avenue (Route 53). The development petition was considered by the Plan Commission in December, 2015 (PC 15-23) as the project needed zoning entitlements in order to proceed. The Plan Commission has recommended approval of the petition, subject to development conditions and the zoning matters will be considered by the Village Board at their February 18, 2016 meeting.

For background purposes only, a copy of the companion staff report that was submitted to the public hearing record is attached. Please note that the role of the ECDC is limited to consideration of any economic incentives and not the development petition itself.

INCENTIVE REQUEST:

As a companion to this development request, Bluestone is seeking approval of an incentive agreement to address extraordinary costs associated with the project, consisting solely of costs associated with the reconstruction of the Broadview Avenue public right of way and the difference in costs associated with vault detention systems.

The incentive request is \$587,000, to be paid out over a 10 year period and which would be reimbursed in the form of a sales tax rebate generated specifically from the project. In the event the \$587,000 request is distributed prior to the end of the ten year period, the agreement will terminate. If the \$587,000 request is not generated after a 10 year period, the Village will not have an obligation for further reimbursement. The material aspects of the agreement are agreed to by Bluestone and Village staff and the companion agreement itself will be finalized by the respective Counsel prior to Village Board consideration.

In consideration of the request, the following materials are provided:

1. Initial Bluestone incentive request, dated January 13, 2016 (the initial request was for \$750,000, but was amended in subsequent documents).
2. Opinion of Probable Costs, provided by Kimley Horn (petitioner's engineering consultant)

3. Draft Preliminary Review of Probable Costs, created by Village staff
4. Potential Incentive Economic Analysis, prepared by Village staff
5. Bluestone Letter of Understanding, dated January 28, 2016
6. A preliminary draft of the agreement, subject to ECDC consideration and attorney review.

INCENTIVE POLICY COMPLIANCE:

The Village adopted a Village-wide Economic Incentive Policy in November, 2015 which identifies the polies and criteria that should be met in order to receive any financial consideration by the Village as part of a development project. In consideration of this request, staff offers the following attached narrative demonstrating that the request is in compliance with the established policy, as it pertains to performance based incentives. Staff notes that the proposed agreement as negotiated falls within the policy parameters. It is also comparable to other agreements entered into by Bluestone for projects in Bensenville, Wood Dale and West Chicago.

BENEFITS:

Key benefits to the project and incentive are as follows:

1. The use brings additional sales tax dollars and increased corresponding property tax assessments to the Village.
2. The use addresses a leakage area by establishing a new business enterprise (diesel fuel sales) that currently does not exist in the Village.
3. The use advances the goals of the previously adopted Village Comprehensive Plan.
4. The incentive will address improvements for a substandard roadway maintained by the Village.
5. The incentive will also help address stormwater runoff and detention issues.

RECOMMENDATION:

Staff and the petitioner recommend that the ECDC recommend approval of an economic incentive agreement to Bluestone Single Tenant Properties in an amount not to exceed \$587,000.

**BLUESTONE SINGLE TENANT PROPERTIES
COMPLIANCE NARRATIVE WITH VILLAGE ECONOMIC INCENTIVE POLICY**

- 1. The funds that are eligible for an incentive shall be limited to the funds collected by the Village as part of the Local Government Distribution Funds transmitted by the State of Illinois to the Village. The Village's non-home sales tax designated for capital improvements shall not be eligible as part of an incentive.*

Response: The proposed reimbursement would be derived from the Village's 1% redistribution of sales tax provided under the Illinois Retailers' Occupation Tax Act which is the one percent (1%) distribution of sales tax that is currently redistributed back to municipalities. This is typically the funding source many municipalities use in consideration of sales tax rebates. No property tax revenue reimbursements are being contemplated as part of this project.

- 2. The Village should only consider such an incentive if it will generate additional sales tax above and beyond existing revenue levels. Such incentives must also account for any cannibalism of existing business activity within the community. Offering a sales tax incentive in order to keep an existing business in operation or retain a business, absent an offsetting investment meeting the economic goals of the Village, should not be considered.*

Response: This agreement will be for a new business enterprise and will utilize existing vacant and single-family residential property that does not generate sales tax revenue. To account for potential diversion of sales from other establishments to the proposed facility, Village staff incorporated a 20% cannibalization factor.

- 3. The Village gets paid first. Any such agreement shall be set up in such a manner that allows the Village to receive the first dollars generated by a project. This can include dollars that are currently received by the Village for existing or past sales tax generations, the costs of performing municipal services anticipated by the project as well as any incidental administrative costs.*

Response: To account for this provision, the Village will receive and retain the first \$25,000 in retail sales tax dollars from the project. Sales tax revenues generated beyond this initial figure will be shared on an equal basis until the overall maximum incentive amount is reached or until 10 years has passed.

- 4. Unless specifically identified in the incentive agreement, any rebates should be established in such a manner that the Village receives at least one-half of the anticipated additional tax generation attributable to the project during the life of the agreement.*

Generally, the only exception to this provision would be if an incentive is offered to rebate a previously constructed capital improvement that was installed prior to and directly associated with the business opening.

Response: As noted above, the Village will receive the majority of the derived sales tax during the reimbursement period.

5. *A project will be more favorably reviewed if the project:*

a. *represents significant private-sector financial investment;*

Response: The proposed project cost is \$8,500,000. It will employ about 13 full-time labor equivalents.

b. *promotes a higher and better use of the property as determined by the Village through its adopted plans;*

Response: The project will be consistent with the intent of Village's 2014 Comprehensive Plan by providing for a commercial use that would be compatible with other types of commercial uses along the North Avenue corridor. As North Avenue is a high-volume strategic regional arterial roadway and as Route 53 also has a significant amount of local and regional traffic, the proposed business seeks to take advantage of the existing traffic volumes and neighboring demand for diesel fuel created by the nearby industrial uses.

c. *provides a positive fiscal and economic impact to the Village;*

Response: The project will further contribute to the Village economy. The sales tax generated is based upon an estimated annual retail sales in the convenience store of \$2,000,000 annually along with \$11,250,000 in taxable gasoline sales. (Special note: diesel fuel currently does not have a local sales tax component, so it was not included in the analysis). Assuming conservative growth projections, the project will add an estimated \$582,450 to the Lombard economy over the life of the agreement.

d. *adds new and unique retail business tenants to the Lombard market;*

Response: Currently, the Village does not have any truck diesel fuel establishments. As such, this use will create a new market niche that will serve the neighboring industrial users and motorists that would otherwise purchase fuel and services elsewhere.

e. *mitigates any potential negative impacts to the surrounding area;*

Response: The incentive agreement will be specifically used to pay for two primary improvements. First, funds will be allocated toward the complete reconstruction of the adjacent Broadview Avenue right-of-way. This roadway is a Village-owned under-improved street and

the funds would address both the reconstruction as well as addressing existing drainage concerns raised by the adjacent Forest Preserve District and a neighboring property. Without Bluestone making this improvement, the Village would have to place this project on a future Capital Improvements Program (CIP) list and the reconstruction costs would be paid wholly by the Village. Second, the incentive will offset some of the costs associated with the requirement to install a vault detention system in lieu of a traditional at-grade facility. This additional need is based upon the need to meet DuPage County stormwater detention requirements in a manner that does not adversely impact existing wetland area surrounding the subject property. Given the need to provide for proper access and circulation around the site and to meet operational demands, a vault detention system is the preferred method of addressing runoff. Staff also notes that it is only supportive of the net difference between a traditional stormwater detention facility and the proposed vault system.

f. closes an existing leakage in retail sales tax dollars within the Village; and

Response: The lack of diesel fuel forces the fueling in other communities. This facility will help close that leakage.

g. addresses or minimizes the impacts of consumer expenditure cannibalization from existing businesses and projects in the Village.

Response: The Village reviewed the request and accounted for a 20 percent cannibalization factor in the analysis.



January 13, 2016

Scott Niehaus
Bill Heniff
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148-3969

Re: Commercial Redevelopment Project
Southeast Corner of North Avenue & Columbine Avenue, Lombard, Illinois

Scott & Bill,

Following up on our recent conversations, please find below our summary of estimated extraordinary costs for the redevelopment of the southeast corner of North Avenue and Columbine Avenue totaling \$1,079,945. We have also enclosed our civil engineer's opinion of probable cost for the construction items detailed below.

Description	Cost
Reconstruction of Broadview to Village Standards	\$360,195
Survey & Engineering Fees for Broadview Avenue Design	\$35,000
Export of Clay Material to Grade to Retail Standards	\$292,875
Underground Detention Vault & Pond Retaining Walls to Avoid Additional Impact to On-Site Wetland	\$391,875
Total Extraordinary Costs	\$1,079,945

As we have discussed, Broadview Avenue is in need of reconstruction with or without our proposed development. The improvements to Broadview would include curb & gutter, storm sewer, and sidewalk along the east side of the road.

BLUESTONE SINGLE TENANT PROPERTIES, LLC

WRIGLEY BUILDING - NORTH TOWER
410 N. MICHIGAN AVENUE, SUITE 850 | CHICAGO, IL 60611
TEL (312) 519-7100 | FAX (312) 878-4860

BSTP Redevelopment of North & Columbine

1/13/16

Page 2 of 3

The extraordinary on-site costs consist of (i) the removal of a large mound of clay material under the existing homes on the property to make this a viable retail location (i.e. level with the street grade), and (ii) the extraordinary costs associated with managing the wetland on the property, including the addition of an underground detention vault and retaining walls for the aboveground detention. While all developments are required to comply the local and county storm water management requirements, in our view, the aforementioned costs are above and beyond what is typically required for a four-acre development project. Although not included in the costs stipulated above, Bluestone is also acquiring the property at 715 Columbine for the sole purpose of providing ingress and egress to Route 53 (required for any retailer) while avoiding the impact to the wetland.

We are aware that all of the sales tax revenue generated by our project will not be incremental revenue to the Village of Lombard as the new facility will cannibalize a portion of the existing fuel volumes in the community. Based upon our experience in developing over 200 convenience stores and fuel centers, however, there are a number of factors that mitigate the impact of our project on the existing convenience stores and fuel centers:

- ⇒ Given the size and layout of the existing gas stations in the community, none of these facilities can accommodate large commercial diesel vehicles and virtually all of the diesel fuel sales generated by our proposed retail project will represent incremental sales in the Village of Lombard;
- ⇒ The large volume of automobile and truck traffic on North Avenue makes it difficult for customers to “cross-over” from one side of North Avenue to the other - as a result, our facility will service predominantly eastbound automobile traffic – in our professional opinion, the impact on the Shell on the Northwest Corner of the subject intersection and the BP on the Northeast Corner will be less than 10%;
- ⇒ While the gasoline sales at the Mobil station at North & Main will likely be impacted by 15% - 20%, it has a very strategic location and features a car wash (which our project does not). In addition, Exxon Mobil is the most dominant major oil company in the world and offers their customers a proprietary credit card and a robust rewards program that promotes loyalty to their brand even as new competitors enter the market.

We have accounted for the projected cannibalization of the Village’s existing tax revenue in the sales tax sharing structure that we have proposed below.

Despite the projected impact on existing facilities in the community, once completed, our proposed state-of-the-art convenience store and commercial fueling center will generate significant incremental annual retail sales tax revenue to the Village of Lombard. This figure is calculated by multiplying the municipal share of the 8.25% state sales tax of 1.0% plus the Village’s 1.0% non-home rule sales tax by the projected sales revenue from the facility as summarized in the chart below that has been previously provided to the Village:

Revenue Category	Anticipated Sales Volume	Sales Tax to Lombard
Convenience Store Sales	\$2,000,000	\$40,000
Gasoline Sales	4,800,000 Gallons x \$3.00	\$230,400
Diesel Sales	6,000,000 Gallons x \$3.25	\$0 / (\$180,000 + after 2018)
TOTAL		\$270,400 - \$450,000+

The State of Illinois provides a 20% sales tax exemption on the retail sale of ethanol blended motor fuel and a 100% exemption on the retail sale of bio-diesel blended fuel; however, the 100% bio-diesel exemption is set to expire in 2018 and it is likely that the bio-diesel exemption will either be reduced by 50% or equalized to the 20% ethanol exemption rate. In the event the bio-diesel exemption is modified as planned, the local tax revenue generated by diesel fuel sales at the proposed facility would increase by several hundred thousand dollars. In addition to the sales taxes and incremental property taxes that will be generated by this development, this facility will also create approximately 20 new jobs in the community.

The structure of our proposed sales tax sharing agreement with the Village is as follows:

- ⇒ To account for the cannibalization of existing tax revenue generated by our proposed facility, the Village shall be entitled to 100% of the first \$50,000 of annual retail sales tax generated from our project;
- ⇒ For annual retail sales tax generated by the proposed facility above \$50,000, Bluestone Single Tenant Properties proposes to split the tax revenue 50/50 until the earlier of (i) the date Bluestone receives the aggregate sum of \$750,000, or (ii) ten years from the date of the sales tax sharing agreement.

I hope that the foregoing has provided you an overview of our economic incentive request. Please call me at (312) 519-7100 or email at rick.claes@bluestonestp.com should you have any questions. Thank you in advance for your assistance.

Respectfully,



Rick Claes
Managing Partner

PRELIMINARY OPINION OF PROBABLE CONSTRUCTION COST
BROADVIEW AVENUE IMPROVEMENTS

1001 Warrenville Road
Suite 350
Lisle, Illinois 60532

Project: Bluestone - Lombard

Location: Lombard, IL

Date: January 8, 2016

BROADVIEW AVENUE RECONSTRUCTION				
1.00 DEMOLITION	QUANTITY	UNITS	PRICE	COST
1.01 Asphalt Removal	8,700	SF	\$ 1.00	\$ 8,700.00
1.02 Existing Storm Structure Removal	1	EA	\$ 1,500.00	\$ 1,500.00
1.03 Miscellaneous Removals/Restoration (tree, sign, etc.)	1	Allowance	\$ 10,000.00	\$ 10,000.00
1.04 Striping Removal	1	Allowance	\$ 5,000.00	\$ 5,000.00
1.05 Sanitary Structure Adjustments	1	Allowance	\$ 5,000.00	\$ 5,000.00
Subtotal Demolition				\$ 34,700.00
2.00 EROSION CONTROL	QUANTITY	UNITS	PRICE	COST
2.01 Construction Entrance	1	EA	\$ 7,000.00	\$ 7,000.00
2.03 Silt Fence Installation	1,000	LF	\$ 3.50	\$ 3,500.00
2.04 Inlet Filter Baskets	7	EA	\$ 250.00	\$ 1,750.00
2.05 Erosion Control Blanket	600	SY	\$ 2.00	\$ 1,200.00
2.06 Seeding	0.35	AC	\$ 2,000.00	\$ 700.00
Subtotal Erosion Control				\$ 14,150.00
3.00 PAVING	QUANTITY	UNITS	PRICE	COST
3.01 Heavy Duty Pavement	1,600	SY	\$ 40.00	\$ 64,000.00
3.02 Sidewalk	1,450	SF	\$ 6.00	\$ 8,700.00
3.03 Curb & Gutter	475	LF	\$ 25.00	\$ 11,875.00
3.04 Backfill Curb & Gutter	475	LF	\$ 3.00	\$ 1,425.00
3.05 Thermoplastic Striping	1	Allowance	\$ 10,000.00	\$ 10,000.00
3.06 Pavement Reflective Markers	1	Allowance	\$ 10,000.00	\$ 10,000.00
3.07 Signage	1	Allowance	\$ 5,000.00	\$ 5,000.00
3.08 Curb Ramps	6	EA	\$ 350.00	\$ 2,100.00
Subtotal Paving				\$ 113,100.00
4.00 STORM SEWER	QUANTITY	UNITS	PRICE	COST
4.01 12" RCP	300	LF	\$ 35.00	\$ 10,500.00
4.02 12" Flared End Section	5	EA	\$ 3,500.00	\$ 17,500.00
4.03 4' Diameter Storm Manhole	3	EA	\$ 3,500.00	\$ 10,500.00
4.04 Trench Backfill	100	CY	\$ 20.00	\$ 2,000.00
Subtotal Storm Sewer System				\$ 40,500.00
5.00 LANDSCAPING	QUANTITY	UNITS	PRICE	COST
5.01 Landscaping	1	Allowance	\$ 30,000.00	\$ 30,000.00
Subtotal Landscaping				\$ 30,000.00
6.00 TOTAL MISCELLANEOUS	QUANTITY	UNITS	PRICE	COST
6.01 Mobilization	1	Allowance	\$ 10,000.00	\$ 10,000.00
6.02 Traffic Control	1	Allowance	\$ 50,000.00	\$ 50,000.00
6.03 Street Sweeping & Dust Control	1	Allowance	\$ 10,000.00	\$ 10,000.00
6.04 Bad Soil Contingency	1	Allowance	\$ 25,000.00	\$ 25,000.00
Subtotal Earthwork				\$ 95,000.00
10% Contingency				\$ 32,745.00
BROADVIEW AVENUE				\$ 360,195.00

EXTRAORDINARY ON-SITE COSTS				
7.00 ON-SITE WORK	QUANTITY	UNITS	PRICE	COST
7.01 Clay Export	14,650	CY	\$ 25.00	\$ 366,250.00
7.02 Pond Retaining Wall	1,450	SF	\$ 25.00	\$ 36,250.00
7.03 Underground Detention	1	Allowance	\$ 320,000.00	\$ 320,000.00
7.04 Typical Earthwork Costs	1	Allowance	(\$ 100,000.00)	(\$ 100,000.00)
10% Contingency				\$ 62,250.00
EXTRAORDINARY ON-SITE COSTS				\$ 684,750.00

TOTAL BROADVIEW & ON-SITE EXTRAORDINARY COSTS \$ 1,044,945.00

This Engineer's Opinion of Probable Construction Cost is based upon Preliminary Plans for the Proposed Development. The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

DRAFT/Preliminary Review of Costs

Bluestone Development - SE Corner IL 53 IL 64

Item (as provided by Bluestone)	Quantity	Unit	Cost/Unit per K-H	Total Cost	checking Quantity (as checked by VOL)	checking cost/unit	Unit	checked comparable total cost	Notes
Broadview Ave. Reconstruction									
Demo									
Asphalt Removal	8,700.00	SF	\$1.00	\$8,700.00	966.67	\$20.00	SY	\$19,333.33	
Existing Storm Structure Removal	4.00	EA	\$1,500.00	\$6,000.00	4.00	\$500.00	EA	\$2,000.00	
Misc. Removals/Restoration (tree, sign, etc.)	1.00	Allowance	\$10,000.00	\$10,000.00	1.00	\$1.00	SF	\$10,000.00	
Striping Removal	1.00	Allowance	\$5,000.00	\$5,000.00				\$0.00	Not sure why this is a line item, if demo'ing pavement, no reason to remove striping
Sanitary Str Adj.	1.00	Allowance	\$5,000.00	\$5,000.00	1.00	\$500.00	EA	\$500.00	
Total Demo:				<u>\$34,700.00</u>				<u>\$31,833.33</u>	
Erosion Control									
Construction Entrance	1.00	EA	\$7,000.00	\$7,000.00	111.111111	\$25.00	SY	\$2,777.78	
Silt Fence Install	1,000.00	LF	\$3.50	\$3,500.00	1,000.00	\$3.00	LF	\$3,000.00	
Inlet Filter Baskets	7.00	EA	\$250.00	\$1,750.00	7.00	\$225.00	EA	\$1,575.00	
Erosion Control Blanket	600.00	SY	\$2.00	\$1,200.00	600.00	\$2.50	SY	\$1,500.00	
Seeding	0.35	Ac	\$2,000.00	\$700.00	0.35	\$2,000.00	Ac	\$700.00	
Total Erosion Control:				<u>\$14,150.00</u>				<u>\$9,552.78</u>	
Paving									
Heavy Duty Pavement	1,600.00	SY	\$40.00	\$64,000.00	1,600.00	\$6.00	SY	\$9,600.00	
-Surface Course, 2"	1,600.00	SY			1,600.00	\$8.00	SY	\$12,800.00	
-Binder Course, 2"	1,600.00	SY			1,600.00	\$20.00	SY	\$32,000.00	
-Base Course (BAM), 8"	1,600.00	SY			1,600.00	\$4.00	SY	\$6,400.00	\$60,800.00
-Subbase (CA-6), 4"	1,600.00	SY			1,600.00	\$6.00	SF	\$9,600.00	
Sidewalk, 5"	1,450.00	SF	\$6.00	\$8,700.00	1,600.00	\$25.00	FT	\$11,875.00	
Curb & Gutter, B6.12	475.00	LF	\$25.00	\$11,875.00	475.00	\$3.00	LF	\$1,425.00	
Backfill Curb & Gutter	475.00	LF	\$3.00	\$1,425.00					\$0.00 No striping required
Termoplastic Striping	1.00	Allowance	\$10,000.00	\$10,000.00					\$0.00 VOL doesn't require these
Pavement Reflective Markers	1.00	Allowance	\$10,000.00	\$10,000.00					\$500.00 Allowance seems really high for maybe 4 signs
Signage	1.00	Allowance	\$5,000.00	\$5,000.00					
Curb Ramps	6.00	EA	\$350.00	\$2,100.00					
Total Paving:				<u>\$113,100.00</u>				<u>\$5,000.00</u>	
Storm Sewer									
12" RCP	300.00	LF	\$35.00	\$10,500.00	300.00	\$45.00	FT	\$13,500.00	
12" FES	5.00	EA	\$3,500.00	\$17,500.00	5.00	\$600.00	EA	\$3,000.00	
4' Dia Storm MH	3.00	EA	\$3,500.00	\$10,500.00	3.00	\$2,500.00	EA	\$7,500.00	
Trench Backfill	100.00	CY	\$20.00	\$2,000.00	100.00	\$40.00	CY	\$4,000.00	
Total Storm Sewer:				<u>\$40,500.00</u>				<u>\$28,000.00</u>	
Landscaping									
Landscaping	1.00	Allowance	\$30,000.00	\$30,000.00					\$0.00 Only seeding & parkway trees required, not extraordinary cost
Total Landscaping:				<u>\$30,000.00</u>				<u>\$0.00</u>	
Misc.									
Mobilization	1.00	Allowance	\$10,000.00	\$10,000.00					\$0.00 Should already be mobilized for site construction, why pay 2x?
Traffic Control	1.00	Allowance	\$50,000.00	\$50,000.00					\$50,000.00
Street Sweeping & Dust Control	1.00	Allowance	\$10,000.00	\$10,000.00					\$10,000.00
Bad Soil Contingency	1.00	Allowance	\$25,000.00	\$25,000.00					\$25,000.00

DRAFT/Preliminary Review of Costs

Bluestone Development - SE Corner IL 53 IL 64

Total Misc.:	\$95,000.00
Subtotal:	\$327,450.00
10% Contingency:	\$32,745.00
Total Broadview Reconstruction:	\$360,195.00

Extraordinary On-Site Costs

Site Work					
Clay export	14,650.00	CY	\$25.00	\$366,250.00	
Pond Retaining Wall	1,450.00	SF	\$25.00	\$36,250.00	
Underground Detention	1.00	Allowance	\$320,000.00	\$320,000.00	
Typical Earthwork Costs	1.00	Allowance	-\$100,000.00	-\$100,000.00	
Subtotal:				\$622,500.00	
10% Contingency:				\$62,250.00	
Total Extraordinary On-Site Costs:				\$684,750.00	

Overall Costs (per Kimley-Horn estimate)	\$1,044,945.00
---	-----------------------

	\$85,000.00
	\$243,586.11
	\$24,358.61
	\$267,944.72

14,650.00	\$18.00	CY	\$0.00	Would have to remove this amount anyway, to dig a pond
	\$25.00	SF		Not sure a retaining wall is an extraordinary cost
		LS	\$290,000.00	See calcs on other page
		LS	\$0.00	
			\$290,000.00	
			\$29,000.00	
			\$319,000.00	

VOL checked amount:	\$586,944.72
---------------------	---------------------

Potential Incentive for North Ave./Rt. 53 Site
50/50 Split

Sales Tax (Note 1)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Convenience Store Sales	2,000,000	2,030,000	2,060,450	2,091,357	2,122,727	2,154,568	2,186,887	2,219,690	2,252,985	2,286,780
Sales Tax Rate	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Sales Tax Generated	20,000	20,300	20,605	20,914	21,227	21,546	21,869	22,197	22,530	22,868
Less: Cannibalization of other establishments (Note 2)	(3,000)	(3,045)	(3,091)	(3,137)	(3,184)	(3,232)	(3,280)	(3,330)	(3,379)	(3,430)
Net Sales Tax for Convenience Store Sales	17,000	17,255	17,514	17,777	18,043	18,314	18,589	18,867	19,150	19,438
Gasoline Sales (Gallons)	4,800,000	4,872,000	4,945,080	5,019,256	5,094,545	5,170,963	5,248,528	5,327,256	5,407,164	5,488,272
Price Per Gallon	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00
Total Gasoline Sales	14,400,000	14,616,000	14,835,240	15,057,769	15,283,635	15,512,890	15,745,583	15,981,767	16,221,493	16,464,816
Less 20% Exemption	(2,880,000)	(2,923,200)	(2,967,048)	(3,011,554)	(3,056,727)	(3,102,578)	(3,149,117)	(3,196,353)	(3,244,299)	(3,292,963)
Taxable Gasoline Sales	11,520,000	11,692,800	11,868,192	12,046,215	12,226,908	12,410,312	12,596,466	12,785,413	12,977,195	13,171,853
Tax Rate	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Sales Tax Generated	115,200	116,928	118,682	120,462	122,269	124,103	125,965	127,854	129,772	131,719
Less: Cannibalization of other establishments (Note 2)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)
Net Sales Tax for Gasoline Sales	90,200	91,928	93,682	95,462	97,269	99,103	100,965	102,854	104,772	106,719
Total Sales Tax-Convenience Store and Gasoline	107,200	109,183	111,196	113,239	115,312	117,417	119,553	121,721	123,922	126,156
50% To New Business	53,600	54,592	55,598	56,619	57,656	58,708	59,777	60,861	61,961	63,078
Cumulative to New Business	53,600	108,192	163,789	220,409	278,065	336,773	396,550	457,411	519,372	582,450
50% To Lombard	53,600	54,592	55,598	56,619	57,656	58,708	59,777	60,861	61,961	63,078
Cumulative to Lombard	53,600	108,192	163,789	220,409	278,065	336,773	396,550	457,411	519,372	582,450

Notes:

- (1) For Sales growth, assumes 1.5% long-term growth for future years; this is consistent with overall Village sales tax
- (2) Cannibalization of other establishments is an estimate based on what the other gas stations/convenience stores in town may lose in sales (and thus sales tax to the Village); per agreement with Bluestone, the factor will be \$25,000 per year, which is an estimate of roughly 20% of sales, which we believe is adequate



January 28, 2016

William Heniff, AICP
Director of Community Development
Village of Lombard
255 East Wilson Avenue, Lombard, IL 60148

RE: Letter of Understanding
Economic Incentive/Sales Tax Sharing Agreement
Bluestone Project on Southeast Corner of North Ave. & Columbine Ave.

Dear Bill:

I am writing to memorialize my understanding of the terms and conditions of the proposed Sales Tax Sharing Agreement between my firm, Bluestone Single Tenant Properties, LLC ("BSTP"), and the Village of Lombard ("Village") for our pending convenience store and fuel center project on the Southeast Corner of North Avenue & Columbine Avenue (the "Project"). Of course, while a definitive agreement will need to be negotiated, I thought it was worthwhile to highlight the essential terms and conditions of the agreement.

Based upon my understanding of our discussions to date, I believe the essential terms and conditions of the agreement include the following:

- | | |
|---------------------------------------|--|
| Maximum Incentive Amount: | \$587,000 |
| Term of Agreement: | Earlier of ten (10) years from the opening of the proposed retail facility or the date that BSTP, or its tenant, successors or assigns, receives an aggregate amount of sales tax rebates of \$587,000. |
| Purpose of Economic Incentive: | Economic assistance is intended to offset (i) a portion of development costs associated with the reconstruction of Broadview Avenue, a publicly dedicated right-of-way under the jurisdiction of the Village, from its existing underimproved roadway condition to a fully improved right-of-way meeting Village roadway construction standards, and (ii) a portion of the costs associated with the development of an underground vault stormwater detention facility in order to ensure that the existing and neighboring wetlands are not negatively impacted by the Project. |

BLUESTONE SINGLE TENANT PROPERTIES, LLC

WRIGLEY BUILDING - NORTH TOWER
410 N. MICHIGAN AVENUE, SUITE 850 | CHICAGO, IL 60611
TEL (312) 519-7100 | FAX (312) 878-4860

Structure of Incentive:

The Village shall retain the first \$25,000 in annual sales taxes generated by the Project;

Thereafter, the Village and BSTP, its tenant, successors or assigns, shall split the remainder of the annual sales taxes generated by the Project 50/50 until BSTP receives an aggregate reimbursement from the Village of \$587,000 or until the term of the Sales Tax Sharing Agreement expires.

The Village shall distribute BSTP's share of the sales taxes generated by the Project within thirty (30) days of receipt from the State of Illinois.

Milestones:

It is anticipated that the Village will approve the Project on or before March 31, 2016;

BSTP shall agree to acquire the subject property on or before 12/31/2016;

BSTP, its tenant, successors or assigns, shall commence construction of the Project not later than 3/1/2017 subject to force majeure;

BSTP, its tenant, successors or assigns, shall receive a certificate of occupancy for the Project on or before November 1, 2017 subject to force majeure;

Developer Covenants

BSTP, its tenant, successors or assigns, shall pay all normal, ordinary, and customary fees for any and all permits required by the Village in connection with the Project;

BSTP, its tenant, successors or assigns, shall comply with all local, county, and state ordinances, laws and regulations regarding the construction of the Project;

After acquisition of the subject property, within ten (10) days after a request, BSTP, its tenant, successors or assigns shall provide a progress report describing the status of the work on the Project, any proposed changes to the construction schedule and revisions to the completion date;

BSTP, its tenant, successors or assigns, shall use commercially reasonable efforts to diligently pursue and prosecute the development of the Project to completion;

BSTP, its tenant, successors or assigns, shall be responsible, at its sole cost and expense, for the construction of sanitary sewer lines, storm water detention facilities, water mains, sidewalks and parkway improvements, reconstruction of Broadview Avenue to commercial roadway standards, and all other improvements necessary to develop the Project in compliance with the final engineering plans as approved by the Village and the Illinois Department of Transportation.

Please let me know if the foregoing list of essential terms and conditions accurately describes our discussions to date. Upon receipt of your acknowledgment, I will direct my attorney, Tom Burney of Zank, Coen, Wright & Saladin to contact the Village attorney to finalize the definitive incentive agreement for execution.

Please let me know if you have any questions or comments on this Letter of Understanding. Of course, this letter is only intended to clarify the essential terms and conditions of a sales tax sharing agreement and neither the Village or BSTP shall be legally bound by this letter.

Sincerely,

Rick Claes
Managing Partner

BLUESTONE SINGLE TENANT PROPERTIES, LLC
SALES TAX REVENUE SHARING AGREEMENT

This Sales Tax Revenue Sharing Agreement (the "Agreement") is entered into on this ____ day of _____, 2016 (the "Effective Date") by and between the Village of Lombard, Illinois, an Illinois municipal corporation (the "Village"), and Bluestone Single Tenant Properties, LLC a Delaware Limited Liability Company ("Developer"). (The Village and Developer are sometimes referred to herein collectively as the "Parties," and individually as a "Party.")

RECITALS

- A. The Village deems it to be of significant importance to encourage development and redevelopment within the Village, so as to maintain a viable real estate tax and sales tax base and employment opportunities.
- B. The Village is authorized under Section 8-1-2.5 of the Illinois Municipal Code (65 ILCS 5/8-1-2.5) to appropriate and expend funds for economic development purposes, including, without limitation, the making of grants to any commercial enterprise that are deemed necessary or desirable for the promotion of economic development within the Village.
- C. Developer is the owner of, or contract purchaser of, certain real property, some of which are developed as single family residences and some of which are vacant, located at 505-537 W. North Avenue and 715-733 N. Columbine Avenue, Lombard, Illinois, as legally described and depicted on Exhibit A-1 and Exhibit A-2, respectively, attached hereto and made part hereof (the "Subject Property").
- D. The Developer intends to improve the Subject Property with the construction of a Gasoline and Diesel Fuel Station, and a companion Convenience Store, as more fully

described and depicted on Group Exhibit B attached hereto and made part hereof (the "Project").

E. The projected cost of the Project is estimated to be _____ and No/100 Dollars (\$_____.00), as more fully set forth on Exhibit C attached hereto and made part hereof.

F. Pursuant to 65 ILCS 5/8-11-20, the Village finds as follows:

1. As to the vacant portion of the Subject Property:
 - (a) said portion has remained vacant for at least one (1) year; or
 - (b) any buildings that were located thereon were demolished within the last year, and would have been found to qualify under subsection 2 below;
2. As to the developed portion of the Subject Property, the buildings located thereon:
 - (a) no longer comply in all respects with current building codes; or
 - (b) have remained less than significantly occupied or utilized for a period of at least one (1) year;
3. The Project is expected to create job opportunities within the Village;
4. The Project will serve to further the development of adjacent areas;
5. Without this Agreement, the Project would not be possible;
6. The Developer meets/will meet the criteria set forth in 65 ILCS 5/8-11-20(6)(A), (B) and/or (C);
7. The Project will strengthen the commercial sector of the Village;
8. The Project will enhance the tax base of the Village; and
9. This Agreement is made in the best interests of the Village.

G. Developer and the Village acknowledge that Developer requires economic assistance from the Village in order to complete the Project, and that the Project would not be economically feasible, but for the economic assistance promised by the Village in this Agreement.

- H. Because the Project would not be economically feasible but for the economic assistance promised by the Village in this Agreement, the Village agrees, pursuant to the terms of this Agreement, to rebate to Developer up to Five Hundred Eighty Seven Thousand and No/100 Dollars (\$587,000.00), for a time length of up to ten (10) years, in Developer Sales Taxes, as defined in Article III below, generated by the Project, subject to the other terms and conditions of this Agreement.
- I. The economic assistance is intended to offset project development costs associated with the reconstruction of Broadview Avenue, a publicly dedicated right-of-way under the jurisdiction of the Village from its existing underimproved roadway condition to a fully improved right-of-way meeting commercial roadway construction standards. Furthermore, the assistance is also intended to partially address the additional costs associated with the development of a vault stormwater detention system, in order to ensure that the existing and neighboring wetlands are not negatively impacted by the Project.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements herein made, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, the Village and Developer hereby agree as follows:

ARTICLE I
RECITALS AS PART OF AGREEMENT

The Parties acknowledge that the statements and representations contained in the foregoing recitals are true and accurate, and incorporate such recitals into this Agreement as if fully set forth in this Article I.

ARTICLE II
OBLIGATIONS OF DEVELOPER –
CONDITIONS PRECEDENT TO VILLAGE UNDERTAKINGS

2.01 Condition Precedent. Each of the obligations specified in this Article II shall be a condition precedent to the Village's financial undertakings in this Agreement. The Village shall have no financial obligation to Developer under this Agreement until the satisfaction by Developer of each and every condition of this Article II.

2.02 Construction of the Project.

- (A) Acquisition of the Subject Property shall be completed by the Developer on or before December 31, 2016. The Developer shall not commence work on the Subject Property for the Project until after the closing and the Developer has secured any requisite permits for the Project.
- (B) Construction of the Project shall commence on or before March 1, 2017, subject to the *force majeure* provisions of Paragraph 4.01 hereof.
- (C) Developer shall receive a certificate of occupancy for the Project on or before September 1, 2017, subject to the *force majeure* provisions of Paragraph 4.01 hereof. The date on which the certificate of occupancy is issued for the Project shall be the "Occupancy Date."
- (D) The Project shall be built in accordance with all applicable ordinances, rules and regulations of the Village and in conformance with all Village-approved applications, plats, final engineering plans, permits and architectural renderings. To this end, the Village hereby acknowledges and certifies that: i) the current zoning of the Developer Property is within the B2 General Neighborhood Shopping Zoning District; ii) by virtue of an ordinance adopted by the Village on March 3, 2016, and otherwise identified as Ordinance No. _____, the Retail Project, as presented to the Village, is permitted to be developed on the Developer Property; and iii) no further zoning relief (zoning changes, variances or special use permits) are necessary for the construction or operation of the Retail

Project, the Retail Center, or the proposed uses on the Developer Property. The Developer promises, covenants and agrees to use the Developer Property for only those uses that are permitted by the Lombard Zoning Ordinance. Developer shall not knowingly cause or permit the existence of any violation of Village ordinances, rules or regulations, including, but not limited to, the Building Code and the Zoning Ordinance, and all rules and regulations thereunder applicable to the Project.

- (E) Minor changes to the Developer plans as determined by the Developer to be appropriate and necessary and which do not affect the documents previously approved by the Village in any substantial manner, as determined in the sole discretion of the Village's Community Development Director, or his/her designee (the "Minor Plan Changes"), shall be subject to the provisions set forth within Section 155.504 of the Lombard Code of Ordinances and may allowed as follows: (i) a proposed modification shall be submitted to the Village Community Development Director for review; (ii) upon review of the modifications, if the Village Community Development Director concludes that the proposed revisions constitute Minor Plan Changes in the exercise of reasonable discretion, the Village Community Development Director shall authorize the changes, which shall become and shall become a part of Developer Submissions under this Agreement; and (iv) upon review of the proposed modifications, if the Village Community Development Director concludes that the proposed revisions do not constitute Minor Plan Changes but rather of a more significant nature, the Developer shall be so notified and directed to apply for such other relief as may be necessary to obtain the requisite approval, as noted within Section 155.504.

- (F) The Developer shall pay all normal, ordinary and customary fees and expenses chargeable including, without limitation, engineering review, attorney review, and permit fees for any and all permits required in connection with the Project. The Village may withhold or issue stop work orders with respect to any permit if the Developer has failed or refused to comply in all material aspects with this Agreement or applicable law.
- (G) The Developer agrees that it shall repair and, if necessary, reconstruct, at its sole cost and expense, any driveways, roads, parking areas, sidewalks, curbs, sidewalks, landscaping, or other property of the Village or others damaged by the Developer or its contractors during or as a result of the development of the Project, to at least the condition in which it existed prior thereto or as required by law, whichever is more restrictive. The Developer shall post such bond as required by the Lombard Village Code.
- (H) It is expressly agreed and understood by the Developer that the terms of this Agreement shall be binding and applicable to all contractors working on the Property, adjacent public land or rights-of-way and/or the Project. The Developer shall ensure that each contractor is aware of the obligations imposed under this Agreement and shall take such measures to ensure each contractor complies herewith at all times. The Developer will be liable for non-compliance with applicable provisions of this Agreement by such contractors and further, it will promptly notify the Village in the event any contractor fails or refuses to comply herewith. It is expressly agreed and understood that in the event of a breach of the provisions of this Agreement by any contractor, the Village will look solely to the Developer, and the Developer hereby accepts responsibility on behalf of any such contractor.

- (I) The Developer covenants, warrants and agrees that in the event any contractor or other person files or records any constitutional, statutory or other lien, interest or right against the Property or the Project, the lien shall be satisfied or bonded over by the Developer within sixty (60) days of receipt of such a claim. The Village reserves the right to withhold any reimbursement of any funds set forth within this Agreement in the interim, until such time that the lien is satisfied or bonded over.
- (J) The Developer shall deliver to the Village a progress report at the conclusion of each month following commencement of construction, which report shall describe the status of the work on the Project, any proposed changes to the construction schedule, and any proposed or revised completion date, if necessary, due to *force majeure* provisions. The Developer shall meet with the Village as appropriate, and make presentations thereto as reasonably requested in order to keep the Village apprised of the progress of the Project. The Developer shall provide adequate information, including, without limitation, engineering analyses, architectural analyses, as well as appropriate development team personnel, at any such progress meeting as may be requested by the Village, or as may be appropriate to provide an accurate progress report.
- (K) No later than thirty (30) days after the Developer has acquired the Subject Property in its entirety and prior to starting permitted construction activities, the Developer shall erect construction/protective fencing around the perimeter of the Subject Property, or those areas which would be subject to demolition, grading or construction activity, as determined by the Village in its sole discretion. The Developer shall also erect development signage sufficient to alert the public that the Subject Property is to be a construction site for the Project, and identifying

the future use(s) for the Subject Property. Said signage shall be in compliance with Sections 150 (the "Lombard Building Code") and 153 (the "Lombard Sign Ordinance").

- (L) Following commencement of construction, the Developer shall use commercially reasonable efforts to continue without interruption or delay, and otherwise diligently pursue and prosecute the development of the Project to completion.
- (M) The Developer shall stage all construction materials, equipment and machinery on the Subject Property. No access to areas outside the boundaries of the Developer Property shall be allowed by the Village for said activities unless specifically authorized by the Village in writing.
- (N) The Developer agrees that the Village Engineer and Community Development Director, and their designees, shall have the right at all times during normal business hours to reasonably inspect the progress of the construction of the Project. In the event such inspection is denied, the Developer shall be issued a stop work order and no work shall be thereafter commenced until such time as an inspection is granted, and the Village Engineer and/or Community Development Director shall so order.
- (O) The Developer shall be responsible, at its sole cost and expense, for the construction of sanitary sewer lines, storm water detention facilities and lines, water mains, sidewalks and parkway improvements and all other improvements necessary in order to construct and service the Project in compliance with the final engineering plans to be submitted and approved by the Village and/or the Illinois Department of Transportation, whichever jurisdiction is applicable. The Developer shall have the right to tap into public sanitary sewer lines, storm water sewer lines, and water utility mains for use with the Project, subject to any permit

fees, recapture or tap-on fees or obligations. The Village's acceptance of any public easements on the Subject Property, or its acceptance of utility mains located within a public easement or public rights-of-way, which shall be conveyed to the Village by the Developer through a bill of sale no later than the Village's acceptance of said public easements, shall be contingent upon the Village's Engineer's satisfaction that said installation has been completed in accordance with this Agreement and Applicable Law.

- (P) The Developer shall comply with the Occupational Safety and Health Act of 1970 (OSHA) and its regulations as amended in performing any work on the Retail Project. The Developer shall also comply with the non-discrimination federal, state and local laws, including without limitation: Equal Employment Opportunities Act, American with Disabilities Act, the Human Rights Act, the Illinois Human Rights Act and all federal Equal Employment Opportunity Laws, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*, and rules and regulations promulgated thereunder. To the extent applicable to the Project as a result of this Agreement and the rebate of Developer Sales Taxes (as defined in Article III below) to the Developer as provided for by this Agreement, the Developer shall comply with, and require its contractors and subcontractors to comply with, the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 *et seq.*, in relation to the construction of the Project
- (Q) The Developer shall comply with all applicable environmental laws of any federal, state or local jurisdiction. The Developer shall not permit or allow the use, storage, generation, treatment, disposal or release of any hazardous substance or material on the Subject Property. Notwithstanding the foregoing, the Village acknowledges that Developer is engaged in the operation of a retail business

that dispenses gasoline, diesel, alternative motor fuels and other automotive products, and the use, storage, generation, treatment, disposal or release of any hazardous substance or material that is incidental to the normal and customary operation of a facility engaged in the sale of gasoline and diesel fuels shall not be considered a violation of this provision.

- (R) The Developer hereby agrees to defend, indemnify and hold harmless the Village, its officers, employees and agents (the "Village Parties"), to and from any and all claims that may be asserted at any time against any of them arising out of environmental conditions associated with the Subject Property. The Developer hereby agrees to defend, indemnify and hold harmless Village Parties against, and to protect, save and keep harmless from, and to pay on behalf of or reimburse as and when incurred, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorney's fees) (the "Claim") of whatever kind and nature, which may be imposed on or incurred by any Person, including third-parties, related to this Agreement, the Subject Property or the Project, including, without limitation, Work performed under this Agreement or the construction contracts, which are not the result of any willful and wanton acts or omissions of Village Parties. Any liability insurance policy required by this Agreement shall include a contractual liability endorsement for the Developer's obligations under this section. Any insurance policy maintained by the Village shall be non-contributory with respect to such Claim.

2.03 State Sales Taxes Information. Developer shall supply the Village with copies of State Sales Taxes (as defined in Article III below) information for the Project, certified as true

by an officer of Developer, at the request of the Village's Finance Director. Developer represents and warrants that all such information produced to the Village pursuant to this provision is, and will be at all times in the future, true and accurate, and agrees and acknowledges that the Village relies on the truth and accuracy of said information as a basis for its entering into this Agreement. Developer shall submit to the Village an executed Illinois Department of Revenue form PTAX 1002-21 for the Project with a reporting period from the Effective Date for a period of up to ten (10) years from the Commencement Date (as defined in Article III below).

2.04 State Sales Taxes Reporting, Audits and Confidentiality.

- (A) Developer hereby agrees to provide the Village with written reports of all the State Sales Taxes (as defined in Article III below) generated by the Project during each calendar year of the Revenue Sharing Term, as defined in Paragraph 3.01(B) below. Such reports shall be certified as true by an officer of Developer and shall have attached thereto certified copies of all monthly State of Illinois sales tax returns filed by Developer for the previous three (3) month period. Developer will deliver said reports to the Village on a quarterly basis before the fifteenth (15) day following the end of the calendar quarter for which Developer is reporting.
- (B) Upon request, the Village shall have the right to audit Developer's records of Project costs and sales, and State Sales Taxes (as defined in Article III below) returns from time-to-time. The Village hereby represents and warrants that any and all information regarding Developer's State Sales Taxes (as defined in Article III below) shall be confidential and used only for the purpose of calculating any amounts due and owing to Developer pursuant to this Agreement. The Village and Developer acknowledge that Developer's sales and State Sales Taxes (as

defined in Article III below) information is financial information obtained from a business that is proprietary, privileged and/or confidential, and that disclosure of the sales and State Sales Taxes (as defined in Article III below) information would cause competitive harm to Developer, and, therefore, would not be subject to disclosure pursuant to a request under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq*, as amended (the "FOIA"). Developer agrees to reimburse the Village for the reasonable attorneys' fees and costs incurred by the Village in responding to any requests for information under FOIA, subpoena or otherwise relating to this Agreement or Developer's sales and State Sales Taxes (as defined in Article III below) information supplied under this Agreement. Developer agrees that the Village's compliance with any court order to produce information shall not subject the Village to any liability hereunder for said information release.

2.05 Guaranteed Occupancy and Operation of the Project. Developer agrees that it shall occupy and operate the Project on the Subject Property for a minimum of ten (10) years from the Commencement Date (as defined in Article III below). Developer further agrees that the Village shall receive State Sales Taxes (as defined in Article III below) from the Project for a minimum of ten (10) years from the Commencement Date (as defined in Article III below).

2.06 Real Estate Taxes and Other Charges. Developer hereby covenants and agrees to promptly pay or cause to be paid before becoming delinquent, subject to any appeal rights, any and all real estate taxes and governmental charges of general applicability that may at any time be lawfully finally assessed with respect to the Project and the Subject Property.

2.07 Developer's Guaranteed Employment Levels.

- (A) As of the Occupancy Date, Developer shall employ no less than ____ (__) full-time equivalent employees at the Project, and that for a period of ____ (__) years thereafter, Developer will employ no less than ____ (__) full-time equivalent employees at the Project.
- (B) If, because of negative economic circumstances, Developer is unable to maintain the required employment levels in any year or years, Developer may request that the Village waive the violation of the employment level requirement for a set period of time, and extend the time period for which it is to maintain said employment levels by an equal amount. The Village may grant or deny such request in its sole discretion. If the Village grants a request by Developer to waive the employment level violation and extend the employment level period, Developer shall not be liable for the penalties set forth in Paragraph 4.04(D) below.
- (C) Developer shall supply the Village with copies of its State of Illinois employment reports and such other information as reasonably requested by the Village's Finance Director so that Developer's employment levels as required by this Agreement may be verified. Developer represents and warrants that all such information produced to the Village pursuant to this provision is, and will be at all times in the future, true and accurate, and agrees and acknowledges that the Village may, and for the purposes of this Agreement does, rely on the truth and accuracy of said information as a basis for its entering into this Agreement.

2.08 Certification of Project Costs. Developer shall supply the Village with a statement of the costs of the Project certified as true by an officer of Developer, and such other information reasonably requested by the Village's Finance Director. Developer represents and warrants that all such information produced to the Village pursuant to this

provision is, and will be at all times in the future, true and accurate, and agrees and acknowledges that the Village may, and does, rely on the truth and accuracy of said information as a basis for its entering into this Agreement.

2.09 No Breach. Developer shall not be in breach of any term of this Agreement.

ARTICLE III
VILLAGE OBLIGATIONS AND UNDERTAKINGS

3.01 Economic Assistance.

(A) Definitions.

- (1) "Non-Home Rule Sales Taxes" shall be those taxes received by the Village pursuant to the Non-Home Rule Municipal Retailers' Occupation Tax Act (65 ILCS 5/8-11-1.3), as amended, and the Non-Home Rule Municipal Service Occupation Tax Act (65 ILCS 5/8-11-1.4), as amended, or any taxes received by the Village as a replacement for the taxes currently received pursuant to the Non-Home Rule Municipal Retailers' Occupation Tax Act or the Non-Home Rule Municipal Service Occupation Tax Act.
- (2) "Maximum Reimbursement" shall be Five Hundred Eighty Seven Thousand and No/100 Dollars (\$587,000.00).
- (3) "Developer Sales Tax Allocation" shall be fifty percent (50%).
- (4) "Developer Sales Taxes" shall be: (i) those State Sales Taxes generated by the Project, which are distributed to the Village by the State, as calculated after the Commencement Date, up to the Maximum Reimbursement after the Commencement Date, during the term of this Agreement; multiplied by (ii) the Developer Sales Tax Allocation. "Developer Sales Taxes" shall not include any Non-Home Rule Sales Taxes received by the Village.

- (5) "State Sales Taxes" shall be those taxes received by the Village pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1, *et seq.*, as amended, and the Service Occupation Tax Act, 35 ILCS 115/1, *et seq.*, as amended, or any taxes received by the Village as a replacement for the taxes currently received pursuant to the Retailers' Occupation Tax Act or the Service Occupation Tax Act.
- (6) "Annual Sales Tax Distribution" shall be the Developer Sales Taxes minus any funds designated to be retained by the Village on an annual basis multiplied by the Developer Sales Tax Allocation within a given year.

(B) Assistance.

Upon satisfaction by Developer of all of the conditions stated in Article II of this Agreement, the Village shall rebate to Developer the Developer Sales Taxes. Said payments shall be made by the Village to Developer for a period of ten (10) years from the Commencement Date, as defined in Paragraph 3.02 below (the "Revenue Sharing Term"). For each eligible year during the Revenue Sharing Term, the Village shall retain the first \$25,000 in Developer Sales Taxes generated from the Project within each calendar year of the Agreement. The Developer shall then receive the Annual Sales Tax Distribution for each calendar year in which the Agreement is in full force and effect. The Developer shall continue to receive such funds on an annual basis until the Developer has received:

- a) a total disbursement from the Village of \$587,000 over the entire life of the Agreement,
- b) until the Revenue Sharing Period has ended, or

c) the Agreement is otherwise terminated by the Parties, whichever occurs first.

The Village is under no obligation to provide any further contributions to the Developer that were generated beyond the life of the Agreement, even if the Maximum Reimbursement is not realized during the life of the agreement.

3.02 Commencement Date. Developer shall give the Village written notice that it has satisfied all of the conditions of Article II of this Agreement, and that it is electing to commence the Revenue Sharing Term. The notice shall specify the commencement date (the "Commencement Date") as the next following January 1st. The Village shall thereafter confirm whether Developer has satisfied all of the conditions of Article II of this Agreement and determine whether Developer is entitled to receive the Developer Sales Taxes.

3.03 Payment Procedure. After the Commencement Date, so long as the Village has confirmed that Developer has satisfied all the conditions of Article II of this Agreement, during the Revenue Sharing Term, the Village shall pay to Developer the Developer Sales Taxes within forty five (45) days of receipt of Developer Sales Taxes.

ARTICLE IV **GENERAL PROVISIONS**

4.01 Delay and Force Majeure. For the purposes of any of the provisions of this Agreement, neither the Village nor Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain or storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornadoes and other events or conditions beyond the reasonable control of the Party affected which in fact interfere with the ability of such Party to discharge its respective obligations hereunder.

4.02 Assignment of Agreement. This Agreement may be assigned by Developer to a bona fide purchaser of its business, provided:

- (A) the transaction does not violate 65 ILCS 5/8-11-20, as amended, or any statute enacted to amend or replace 65 ILCS 5/8-11-20;
- (B) at least thirty (30) days prior written notice of such assignment is given to the Village; and
- (C) that the assignee agrees to be bound by all of the terms, conditions and provisions of this Agreement, including, but not limited to, the Village's default remedies.

4.03 Developer Authority. Developer hereby represents and warrants that it is a corporation authorized to do business in, and in good standing with, the State of Illinois. Developer further represents and warrants that all corporate action necessary to make Developer's obligations hereunder enforceable against Developer have been taken, and that no further approvals or actions are required.

4.04 Defaults; Remedies.

- (A) In the event of any default under or violation of this Agreement, the Party not in default or violation shall serve notice upon the Party in default or violation, which notice shall be in writing and shall specify the particular violation or default. Each Party shall have the right to cure any violation of this Agreement or default within thirty (30) days from written notice of such default. In the event of default by the Village of its obligations to Developer provided for in Article III, Developer's sole and exclusive remedy shall be to seek specific performance from a court of competent jurisdiction. Developer will not be entitled to any monetary damages from the Village, and hereby expressly waives any claim for monetary damages.

(B) In the event that Developer fails to meet its obligations as set forth in Paragraph 2.05 above, the Village shall have the following additional remedies, after giving Developer the notice required by Paragraph 4.04(A) above:

- (1) In the first (1st) year after the Commencement Date, the Village shall be repaid one-hundred percent (100%) of any sums paid or rebated to Developer pursuant to this Agreement.
- (2) In the second (2nd) year after the Commencement Date, the Village shall be repaid ninety percent (90%) of any sums paid or rebated to Developer pursuant to this Agreement.
- (3) In the third (3rd) year after the Commencement Date, the Village shall be repaid eighty percent (80%) of any sums paid or rebated to Developer pursuant to this Agreement.
- (4) In the fourth (4th) year after the Commencement Date, the Village shall be repaid seventy percent (70%) of any sums paid or rebated to Developer pursuant to this Agreement.
- (5) In the fifth (5th) year after the Commencement Date, the Village shall be repaid sixty percent (60%) of any sums paid or rebated to Developer pursuant to this Agreement.
- (6) In the sixth (6th) year after the Commencement Date, the Village shall be repaid fifty percent (50%) of any sums paid or rebated to Developer pursuant to this Agreement.
- (7) In the seventh (7th) year after the Commencement Date, the Village shall be repaid forty percent (40%) of any sums paid or rebated to Developer pursuant to this Agreement.
- (8) In the eighth (8th) year after the Commencement Date, the Village shall be repaid thirty percent (30%) of any sums paid or rebated to Developer pursuant to this Agreement.
- (9) In the ninth (9th) year after the Commencement Date, the Village shall be repaid twenty percent (20%) of any sums paid or rebated to Developer pursuant to this Agreement.
- (10) In the tenth (10th) year after the Commencement Date, the Village shall be repaid ten percent (10%) of any sums paid or rebated to Developer pursuant to this Agreement.
- (11) In addition to the foregoing, the Village shall be entitled to cease any further payments under this Agreement to Developer, and this Agreement shall be null and void.

- (C) Developer shall make any repayment owed to the Village under this Agreement within thirty (30) days of a written demand from the Village. Any amounts not repaid within said thirty (30) day period shall accrue interest at the rate of two percent (2%) per month, with the minimum interest payment being for a one (1) month period. In addition, in the event any such amount is not repaid within said thirty (30) day period, the Village shall be entitled to record a lien against the Subject Property in said amount plus the accruing interest.
- (D) In the event that Developer fails to meet its obligations as set forth in Paragraph 2.07 above, Developer shall forfeit an amount equal to the next one (1) year's worth of Developer Sales Taxes payment(s) for every year in which there is such a failure not excused by the Village.

4.05 Notices. All notices and requests required pursuant to this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, or by personal or overnight delivery, as follows:

If to Developer: Richard Claes
Bluestone Single Tenant Properties, LLC
410 North Michigan Avenue, Suite 850
Chicago, Illinois 60611

If to the Village: Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148-3931

with copies to: Finance Director
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148-3931

Director of Community Development
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148-3931

and: Klein, Thorpe and Jenkins, Ltd.

20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606-2903
Attn: Thomas P. Bayer / Jason A. Guisinger

or at such other addresses as either Party may indicate in writing to the other Party. Service by personal or overnight delivery shall be deemed to occur at the time of the delivery, and service by certified mail, return receipt requested, shall be deemed to occur on the third day after mailing.

- 4.06 Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Venue for any legal action brought by either Party as a result of entering into the Agreement shall be in the Circuit Court of DuPage County, Illinois.
- 4.07 Time. Time is of the essence under this Agreement and all time limits set forth herein are mandatory, and cannot be waived except by a lawfully authorized and executed written waiver by the Party excusing such timely performance.
- 4.08 Limitation of Liability. Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the Village created by or arising out of this Agreement shall not be a general debt of the Village on, or a charge against, the Village's general credit or taxing powers, but shall be a limited obligation payable solely out of the Developer Sales Taxes as set forth in Article III, and shall further be limited to the actual sum of money paid to Developer by the Village.
- 4.09 No Waiver or Relinquishment of Right to Enforce Agreement. Failure of either Party to this Agreement to insist upon the strict and prompt performance of the terms covenants, agreements, and conditions herein contained, or any of them, upon the other Party imposed, shall not constitute or be construed as a waiver or relinquishment of the Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

- 4.10 Article and Paragraph Headings. All Article and Paragraph headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.
- 4.11 Village's Authorization to Execute. The Village President and Village Clerk of the Village hereby warrant that they have been lawfully authorized by the President and Board of Trustees to execute this Agreement.
- 4.12 Amendment; Conflict with Agreement. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Developer and the Village relative to the subject matter thereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced to writing and signed by them.
- 4.13 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
- 4.14 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

IN WITNESS WHEREOF, the Parties have executed this Sales Tax Revenue Sharing Agreement as of the date of the last signatory below, which date shall be inserted on page 1 of this Agreement.

Village of Lombard,
an Illinois municipal corporation

Developer:

By: _____
Keith Giagnorio
Village President

By: _____
Name: _____
Title: _____

ATTEST:

ATTEST:

By: _____
Sharon Kuderna
Village Clerk

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

EXHIBIT A-1

Legal Description of the 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.

EXHIBIT A-2

Depiction of the Location of the Subject Property

(attached)

GROUP EXHIBIT B

Description and Depiction of the Project

(attached)

EXHIBIT C

Estimated Project Costs