

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


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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott R. Niehaus, Village Manager

DATE: March 14, 2016 (B of T) Date: March 17, 2016

TITLE: Bluestone Single Tenant Properties Economic Incentive Agreement

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

Your Economic and Community Development Committee (ECDC) transmits for your consideration its recommendation regarding an economic incentive agreement to Bluestone Single Tenant Properties in an amount up to and not to exceed \$587,000.

The ECDC recommended approval of this petition by a vote of 4-1 at its February 8, 2016 meeting.

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 

DATE: March 17, 2016

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

Bluestone Single Tenant Properties, LLC, as developer and petitioner, is seeking approval of an economic incentive agreement for their proposed fuel center and companion convenience store at the southeast corner of North Avenue (Route 64) and Columbine Avenue (Route 53). The incentive agreement is intended to address extraordinary infrastructure costs associated with the project. The Economic and Community Development Committee recommended approval (4-1) of the incentive request.

The incentive request is capped at \$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.

Subsequent to the ECDC recommendation, staff, Village Counsel and the petitioner finalized the language of the agreement. Through these discussions, the agreement was modified to cover the extraordinary costs of additional public right of way improvements to Broadview Avenue as well as North Avenue and Columbine Avenue. Previously the agreement envisioned that Broadview Avenue reconstruction and a portion of the on-site vault detention system would be covered by the incentive. To account for this change, the final agreement is restated to cap the costs of the incentive of up to \$587,000, based upon final engineering and construction costs for the public improvements. Additionally, at the request of the petitioner, the final agreement added an “out-clause” which would allow the developer to cancel the agreement in its entirety if they find that it is no longer in their best interests to be subject to the agreement provisions. From the Village’s perspective, this opt out provision would not negatively impact the Village as the public improvements will be undertaken as part of the first phase of construction.

In consideration of the request, attached are the following documents:

1. Report to the ECDC regarding the initial Bluestone incentive request, with supporting documentation; and
2. A Resolution authorizing the signature of the Village President and Village Clerk on the agreement.

Bluestone Single Tenant Properties Economic Incentive Agreement

March 17, 2016

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RECOMMENDATION:

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

MEMORANDUM

TO: Bill Johnston, Chairperson
Economic and Community Development Committee

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

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 southeast 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 March 3, 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

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:

BSTP Redevelopment of North & Columbine

1/13/16

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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	4	EA	\$ 1,500.00	\$ 6,000.00
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	checking cost/unit	Unit	checked comparable total cost	Notes
Broadview Ave. Reconstruction					(as checked by VOL)				
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					
Curb & Gutter, B6.12	475.00	LF	\$25.00	\$11,875.00	475.00	\$25.00	FT	\$11,875.00	
Backfill Curb & Gutter	475.00	LF	\$3.00	\$1,425.00	475.00	\$3.00	LF	\$1,425.00	
Termoplastic Striping	1.00	Allowance	\$10,000.00	\$10,000.00				\$0.00	No striping required
Pavement Reflective Markers	1.00	Allowance	\$10,000.00	\$10,000.00				\$0.00	VOL doesn't require these
Signage	1.00	Allowance	\$5,000.00	\$5,000.00				\$500.00	Allowance seems really high for maybe 4 signs
Curb Ramps	6.00	EA	\$350.00	\$2,100.00				\$5,000.00	
Total Paving:				<u>\$113,100.00</u>				<u>\$89,200.00</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)

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>	<u>Year 7</u>	<u>Year 8</u>	<u>Year 9</u>	<u>Year 10</u>
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 Zanck, 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

RESOLUTION
R _____ 16

A RESOLUTION AUTHORIZING SIGNATURE
OF PRESIDENT AND CLERK ON AN AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard has received an Agreement between the Village of Lombard and Bluestone Single Tenant Properties, LLC regarding a 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 _____, 2016.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____ 2016.

Keith T. Giagnorio
Village President

Attest:

Sharon Kuderna
Village Clerk

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 authorized to do business in Illinois (the "Developer"). (The Village and the 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, a portion of which is developed with single-family residences and a portion of which is vacant, located at 505-537 West North Avenue and 715-723 North 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 fueling station and a convenience store (the "Private Development"), and to construct the necessary public improvements within the dedicated right-of-ways

of Broadview Avenue, North Avenue and Illinois Route 53 in relation thereto (the "Public Improvements"), all as more fully described and depicted on Group Exhibit B attached hereto and made part hereof (the Private Development and the Public Improvements being collectively referred to as the "Project").

E. The projected cost of the Project, exclusive of property acquisition costs, is estimated to be Seven Million and No/100 Dollars (\$7,000,000.00), as more fully set forth on Exhibit C attached hereto and made part hereof; with Exhibit C specifically breaking out the costs associated with the Public Improvements.

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, relative to the Public Improvements portion of the Project, up to Five Hundred Eighty-Seven Thousand and No/100 Dollars (\$587,000.00) or the actual cost of the Public Improvements, whichever is less, over up to a ten (10) year period, in Developer Sales Taxes (as defined in Section 3.01(A)(5) below), generated by the Project, subject to the other terms and conditions of this Agreement.

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.
- (B) Construction of the Project shall commence on or before March 1, 2017, subject to the *force majeure* provisions of Section 5.01 hereof; however, construction shall not commence until the Developer has acquired title to the Subject Property, and obtained the necessary permits for the construction of the Project.
- (C) Developer shall obtain a certificate of occupancy for the Project on or before November 1, 2017, subject to the *force majeure* provisions of Section 5.01 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 the terms of this Agreement and all applicable Federal, State and local laws, ordinances, rules and regulations, and in conformance with all applicable Village-approved documents relative to the Project. Developer shall not knowingly cause or permit the existence of any violation of any Federal or State law, rule or regulation, or any Village ordinances, rules or regulations, including, but not limited to, the Village's Land Usage Codes (Article XV of the Lombard Village Code), and all rules and regulations thereunder, applicable to the Project.
- (E) Developer shall pay, and shall require its contractors and subcontractors to pay, the prevailing rate of wages (as established under 820 ILCS 130/0.01 *et seq.* – the "Prevailing Wage Act") to all workers involved with the construction of the Public Improvements, and shall comply with, and shall require its contractors and subcontractors to comply with, the Prevailing Wage Act, relative to the construction of the Public Improvements.

2.03 State Sales Taxes Information. Developer shall supply the Village with copies of State Sales Taxes (as defined in Section 3.02 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 through the date which is ten (10) years six (6) months after the Commencement Date (as defined in Section 3.02 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 Section 3.01(A)(2) below) generated by the Project during each Quarterly Payment Period (as defined in Section 3.03 below) of the Revenue Sharing Term (as defined in Section 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 said Quarterly Payment Period (as defined in Section 3.03 below). Developer will deliver said reports to the Village on a quarterly basis before the fifteenth (15) day following the end of the Quarterly Payment Period (as defined in Section 3.03 below) 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 Section 3.01(A)(2) 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 Section 3.01(A)(2) 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 Section 3.01(A)(2) below) information is financial information obtained from a business that is proprietary, privileged and/or confidential, and that disclosure of the Developer's sales and State Sales Taxes (as defined in Section 3.01(A)(2) 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 Section 3.01(A)(2) 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 Developer, its tenants, successors or assigns shall occupy and operate the Project on the Subject Property for a minimum of ten (10) years from the Commencement Date (as defined in Section 3.02 below). Developer further agrees that the Village shall receive State Sales Taxes (as defined in Section 3.01(A)(2) below) from the Project for a minimum of ten (10) years from the Commencement Date (as defined in Section 3.02 below). Notwithstanding the foregoing, in the event that it is necessary for Developer, its tenant, successors or assigns to close the Project because of remodeling, rebuilding, maintenance or repairs, within fifteen (15) days of such closure, the Developer shall provide the Village with a written notice detailing the reason for the closure and the expected date of reopening. In the event the Project is closed for more than six (6) months from the delivery of notice to the Village, the Village may provide written notice

to Developer, its tenant, successors or assigns, that the Village intends to terminate this Agreement. In the event that the Project has not reopened with thirty (30) days of delivery of the Village's notice, this Agreement shall terminate and the Village shall be entitled to cease any further payments under this Agreement to Developer, other than those earned by Developer prior to the closure of the Project but not yet paid by the Village, and this Agreement shall be null and void. In the event the Project closes because of fire, riot, insurrection, acts of terrorism, disruption in the fuel supply chain for the Developer or its tenant, successors or assigns, explosion or acts of God, the six(6) month period prescribed above shall be extended to twelve (12) months. The Developer shall be required to provide the Village with written notice, within fifteen (15) days of a closure of the Project for any such reason, in the same manner and containing the same information as in regard to a closure of the Project for remodeling, rebuilding, maintenance or repairs. If Developer or its tenant, successors or assigns does not reopen within the twelve (12) month period, the Village may provide written notice to Developer, its tenant, successors or assigns, that the Village intends to terminate this Agreement. In the event that the Project has not reopened with thirty (30) days of delivery of the Village's notice, this Agreement shall terminate and the Village shall be entitled to cease any further payments under this Agreement to Developer other than those earned by Developer prior to the closure of the Project but not yet paid by the Village, and this Agreement shall be null and void. The Revenue Sharing Term, as defined in Section 3.01(B) below, shall not be extended as a result of the aforementioned temporary closures of the Project.

- 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 The Developer shall reimburse the Village for the third party costs, including, but not limited to, attorney's fees, incurred by the Village in regard to the preparation of this Agreement.
- 2.08 Certification of Project Costs. Developer shall supply the Village with a statement of the costs of the Project, with the costs associated with the Public Improvements being specifically broken out, certified as true by a person holding the title of Vice President or an officer of Developer or its tenant, successors or assigns, and such other information, in regard to the costs of the Project, 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) "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.
- (3) "Village Sales Taxes" shall be the first Twenty-Five Thousand and No/100 Dollars (\$25,000.00) of State Sales Taxes generated by the Project, which are distributed to the Village by the State during each of the ten (10) twelve (12) month periods after the Commencement Date (as defined in Section 3.02 below).
- (4) "Developer Sales Tax Allocation" shall be fifty percent (50%).
- (5) "Developer Sales Taxes" shall be: (i) those State Sales Taxes generated by the Project, which are distributed to the Village by the State, other than the Village Sales Taxes, during each of the ten (10) twelve (12) month periods after the Commencement Date (as defined in Section 3.02 below); multiplied by (ii) the Developer Sales Tax Allocation. "Developer Sales Taxes" shall not include any Non-Home Rule Sales Taxes received by the Village.

(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 Section 3.02 below, or until

the Developer receives the lesser of the actual cost of the Public Improvements or Five Hundred Eighty-Seven Thousand and No/100 Dollars (\$587,000.00) in Developer Sales Taxes, whichever occurs first (the "Revenue Sharing Term"). At the end of the Revenue Sharing Term, all future State Sales Taxes generated by the Project shall be retained by the Village.

3.02 Commencement Date. The commencement date of the Revenue Sharing Term shall be defined as the first (1st) of the month following the date of the issuance of certificate of occupancy by the Village to Developer, its tenant, successors or assigns for the Project (the "Commencement Date"), provided that the Village has confirmed that the Developer has satisfied all of the conditions of Article II of this Agreement, to the extent said conditions can be satisfied as of the Commencement Date. In the event that the Village has not verified the Developer's satisfaction of all of the conditions of Article II of this Agreement, to the extent said conditions can be satisfied as of the Commencement Date, the Commencement Date shall be delayed until the first (1st) of the month following the date of the Village's verification of the Developer's satisfaction of all of said conditions of Article II of this Agreement, to the extent said conditions can be satisfied as of the Commencement Date.

3.03 Payment Procedure. After the Commencement Date, as long as the Developer is in compliance with the conditions of Article II of this Agreement, during the Revenue Sharing Term, the Village shall pay to Developer the Developer Sales Taxes, relative to each three (3) month period following the Commencement Date (a "Quarterly Payment Period"), within forty-five (45) days of the Village's receipt of Developer Sales Taxes from each Quarterly Payment Period.

ARTICLE IV

PROJECT CONSTRUCTION REQUIREMENTS

- 4.01 Pursuant to Chapter 16 of the Lombard Village Code, the Developer shall pay all “costs,” as said term is defined in Section 16.02 of the Lombard Village Code, incurred by the Village relative to the Project, and shall pay all utility connection and permit fees in connection with the construction of 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.
- 4.02 The Developer agrees that it shall repair and, if necessary, reconstruct, at its sole cost and expense, any driveway, road, parking area, sidewalk, curb, landscaping, or other property of the Village or others, which is damaged by the Developer, or its contractors, during or as a result of the construction of the Project, to at least the condition in which it existed prior to the start of construction, or as required by law, whichever is more restrictive.
- 4.03 The Developer shall post such surety bond, as required by the Lombard Village Code, relative to any work in relation to the Project.
- 4.04 It is expressly agreed and understood by the Developer that the terms of this Agreement shall be binding and applicable to all of Developer’s contractors working on the Subject Property and/or adjacent public land or rights-of-way, in relation to the construction of the Project (a “Developer Contractor”). The Developer shall ensure that each Developer Contractor is aware of the obligations imposed under this Agreement and shall take such measures to ensure each Developer Contractor complies herewith at all times. The Developer shall be liable for non-compliance with applicable provisions of this Agreement by a Developer Contractor, and shall promptly notify the Village, in the event any Developer 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

Developer Contractor, the Village will look solely to the Developer, and the Developer hereby accepts responsibility on behalf of any such Developer Contractor.

- 4.05 The Developer shall deliver to the Village a progress report at the conclusion of each month following the commencement of the construction of the Project, 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*. 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 and architectural analyses, as well as Village access to the appropriate Project development team personnel, at any such progress meetings, as may be requested by the Village, or as may be appropriate to provide an accurate progress report.
- 4.06 Following the commencement of the construction of the Project, the Developer shall use commercially reasonable efforts to continue the construction of the Project without interruption or delay, and otherwise diligently pursue and prosecute the construction of the Project to completion.
- 4.07 The Developer shall stage all construction materials, equipment and machinery on the Subject Property. No access to areas outside the boundaries of the Subject Property shall be allowed for said activities, unless specifically authorized by the Village in writing.
- 4.08 The Developer agrees that the Village Engineer and Community Development Director, and their respective 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 stop work order is rescinded.

- 4.09 The Developer shall be responsible, at its sole cost and expense, for the construction of any and all sanitary sewer lines, storm water management facilities, water mains, sidewalks, right-of-way improvements, 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. In this regard, the Developer shall have the right to tap into public sanitary sewer lines, storm water sewer lines, and water mains for use with the Project, subject to any permit fees, recapture or connection fees or obligations applicable thereto.
- 4.10 The Developer hereby agrees to defend, indemnify and hold harmless the Village, and its officers, employees and agents (the "Village Parties"), from and against, 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) of whatever kind and nature, which may be imposed on or incurred by the Village Parties, related to this Agreement, the Subject Property or the Project, including, without limitation, Project construction performed pursuant to this Agreement and the non-compliance by the Developer, and/or the Developer's contractors and/or subcontractors, with the Prevailing Wage Act relative to the construction of the Private Development, which are not the result of any willful and wanton acts or omissions of the Village Parties, and shall provide the Village with evidence of such insurance, as required by the Lombard Village Code relative to the Project. For purposes of this Section, the fact that this Agreement is silent, as to the applicability of the Prevailing Wage Act to the Private Development, shall not be deemed to be a willful and wanton act or omission of the Village.

ARTICLE V
GENERAL PROVISIONS

5.01 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, tornados 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.

5.02 Assignment of Agreement. This Agreement may be assigned by Developer, without the Village's consent, to: (i) a bonafide purchaser of Developer's business; (ii) an entity that Developer owns no less than a fifty percent (50%) interest in; or (iii) Developer's tenant under a ground lease agreement for the Project, so long as that ground lease has a primary term of not less than fifteen (15) years; 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.

The Parties acknowledge that the assignee, and the assignee's use of the Subject Property, shall be subject to the Village's zoning approval process.

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

5.04 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.
- (B) 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.
- (C) In the event of a default under or violation of this Agreement by Developer, should such default not be cured or remedied within the time period referenced above, the Village shall be entitled to cease any further payments under this Agreement to Developer other than those earned by Developer prior to the event of default but not yet paid by the Village, and this Agreement shall be null and void.
- (D) In the event that any default under or violation of this Agreement is not timely cured, the non-defaulting Party/Party not in violation of this Agreement shall have the right, upon providing notice to the defaulting/violating Party, to terminate this Agreement.

5.05 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.

5.06 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.

5.07 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.

- 5.13 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
- 5.14 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.
- 5.15 Developer Termination Option. The Developer shall have the right to terminate this Agreement, on or before March 1, 2017, by providing written notice of said termination to the Village in accordance with Section 5.05 above.

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

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

By: _____
Keith Giagnorio
Village President

By: _____
Rick Claes
Manager

Date: _____

Date: _____

ATTEST:

By: _____
Sharon Kuderna
Village Clerk

Date: _____

EXHIBIT A-1

Legal Description of the Subject Property

Lots 4 through 11 and Lots 32 through 35 in Block "G" in Lombard Terrace, Being a Resubdivision of Part of Elmore's Northview, a Subdivision in the North ½ of Section 6, Township 39 North, Range 11, East of the Third Principal Meridian, According to the Plat Thereof Recorded December 20, 1933 as Document 341767, in DuPage County, Illinois, and Lot 2 in James D. Raines Resubdivision Being a Subdivision in the North ½ of Section 6, Township 39 North, Range 11, East of the Third Principal Meridian, According to the Plat Thereof Recorded August 11, 1970 as Document R70-27995, in DuPage County, Illinois, Except That Part Described As Follows: Commencing at the Northwest Corner of Said Lot 2, For a Point of Beginning, Thence North 87 Degrees 30 Minutes 28 Seconds East Along the North Line of Said Lot 2, 5.00 Feet; Thence South 02 Degrees 08 Minutes 34 Seconds West, 109.06 Feet to a Point on the South Line of Lot 2; Thence North 88 Degrees 51 Minutes 46 Seconds West Along Said South Line of Lot 2, 2.13 Feet to the Southwest Corner of Lot 2, Thence North 00 Degrees, 38 Minutes 07 Seconds East Along the West Line of Lot 2, 109.01 Feet to the Point of Beginning.

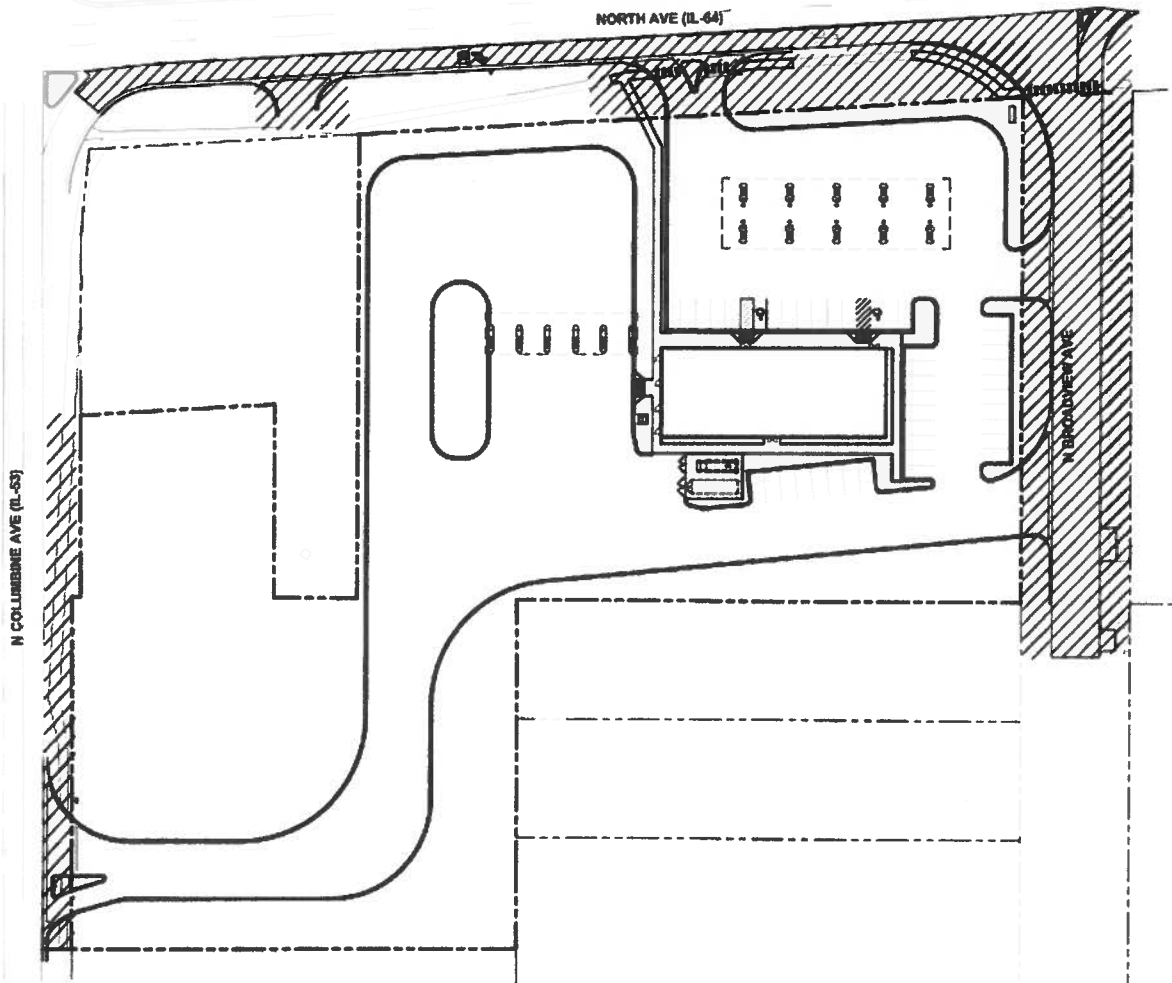
EXHIBIT A-2

Depiction of the Location of the Subject Property



GROUP EXHIBIT B

Depiction of the Project



LEGEND



"Public Improvements"

EXHIBIT C

Estimated Project Costs

Private Development Costs

Soft Costs & General Conditions	\$ 465,000	
Building & Equipment	\$ 3,820,000	
On-Site Grading, Utilities & Paving	<u>\$ 2,100,000</u>	
Subtotal Private Development Costs		\$ 6,385,000

Public Improvements Costs

Reconstruction of Broadview Avenue	\$ 360,000	
Demolition of Existing Roadway		
Construction of 345 Lineal Feet 2-Lane Road		
Curb & Gutter		
Storm Sewer		
Sidewalk on East Side of Broadview		
Reconstruction of Private Driveways on East Side		
of Broadview		
Pavement Striping		
ADA Accessible Crosswalks		
Signage		
Extension of North Avenue Eastbound Deceleration Lane	\$ 225,000	
Demolition of Portions of Existing Turn Lane		
Construction of 915 Lineal Feet of Roadway		
to IDOT Specifications		
Curb & Gutter		
Storm Sewer		
Sidewalk on South Side of North Avenue		
Reconstruction of Private Driveway (Burger King)		
Pavement Striping		
Signage		
Route 53 Right-of-Way	<u>\$ 30,000</u>	
Driveway Reconstruction		
Sidewalk on East Side of Route 53		
ADA Accessible Crosswalk		
Signage		
Subtotal Private Development Costs		<u>\$ 615,000</u>
TOTAL ESTIMATED PROJECT COSTS		\$ 7,000,000