

RESOLUTION  
R 21-16

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 17<sup>th</sup> day of March, 2016.

Ayes: Trustee Whittington, Fugiel, Foltyniewicz, Johnston, Pike and Ware

Nays: None

Absent: None

Approved this 17<sup>th</sup> day of March, 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 24<sup>th</sup> day of MARCH, 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 (1<sup>st</sup>) 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 (1<sup>st</sup>) 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.

- 5.08 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.
- 5.09 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 wavier 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.
- 5.10 Article and Section Headings. All Article and Section 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.
- 5.11 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.
- 5.12 Amendment; Conflict with Annexation 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.

- 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: March 17, 2016

Date: MARCH 24, 2016

**ATTEST:**

By:   
Sharon Kuderna  
Village Clerk

Date: March 17, 2016

## **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.

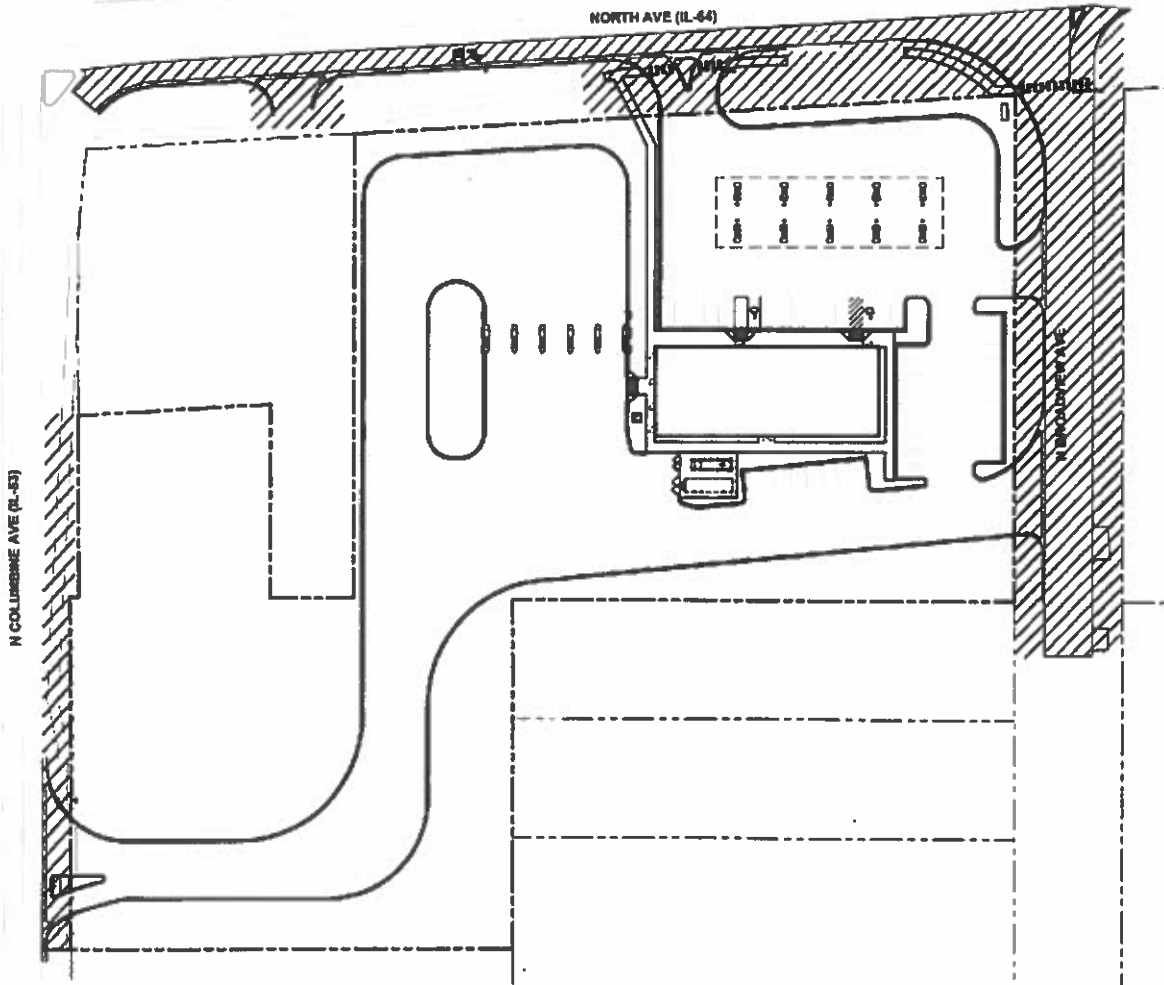
**EXHIBIT A-2**

**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 Public Improvements Costs		<u>\$ 615,000</u>
<b>TOTAL ESTIMATED PROJECT COSTS</b>		<b>\$ 7,000,000</b>