

FY 2011 ANNUAL TAX INCREMENT FINANCE REPORT



STATE OF ILLINOIS
COMPTROLLER
AUDY BAAR TOPINKA

Name of Municipality: Clarendon Hills Reporting Fiscal Year: 2011
County: DuPage Fiscal Year End: 04 / 30 /2011
Unit Code: 022/035/32

TIF Administrator Contact Information

First Name: Randall	Last Name: Recklaus
Address: 1 N. Prospect Avenue	Title: Village Manager
Telephone: 630-286-5400	City: Clarendon Zip: 60514
E-Mail: rrecklaus@clarendonhills.us	

I attest to the best of my knowledge, this report of the redevelopment project areas in: City/Village of Village of Clarendon Hills is complete and accurate at the end of this reporting Fiscal year under the Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-3 et. seq.] Or the Industrial Jobs Recovery Law [65 ILCS 5/11-74.6 et. seq.]

Written signature of TIF Administrator

Date

Section 1 (65 ILCS 5/11-74.4-5 (d) (1.5) and 65 ILCS 5/11-74.6-22 (d) (1.5)*)

FILL OUT ONE FOR EACH TIF DISTRICT

*All statutory citations refer to one of two sections of the Illinois Municipal Code: the Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-3 et. seq.] or the Industrial Jobs Recovery Law [65 ILCS 5/11-74.6-10 et. seq.]

SECTION 2 [Sections 2 through 5 must be completed for each redevelopment project area listed in Section 1.]

Name of Redevelopment Project Area: Ogden Avenue Redevelopment Project
Primary Use of Redevelopment Project Area*: Retail
If "Combination/Mixed" List Component Types:
Under which section of the Illinois Municipal Code was Redevelopment Project Area designated? (check one): Tax Increment Allocation Redevelopment Act <u>X</u> Industrial Jobs Recovery Law _____

	No	Yes
Were there any amendments to the redevelopment plan, the redevelopment project area, or the State Sales Tax Boundary? [65 ILCS 5/11-74.4-5 (d) (1) and 5/11-74.6-22 (d) (1)] <u>If yes, please enclose the amendment labeled Attachment A</u>	X	
Certification of the Chief Executive Officer of the municipality that the municipality has complied with all of the requirements of the Act during the preceding fiscal year. [65 ILCS 5/11-74.4-5 (d) (3) and 5/11-74.6-22 (d) (3)] <u>Please enclose the CEO Certification labeled Attachment B</u>		X
Opinion of legal counsel that municipality is in compliance with the Act. [65 ILCS 5/11-74.4-5 (d) (4) and 5/11-74.6-22 (d) (4)] <u>Please enclose the Legal Counsel Opinion labeled Attachment C</u>		X
Were there any activities undertaken in furtherance of the objectives of the redevelopment plan, including any project implemented in the preceding fiscal year and a description of the activities undertaken? [65 ILCS 5/11-74.4-5 (d) (7) (A and B) and 5/11-74.6-22 (d) (7) (A and B)] <u>If yes, please enclose the Activities Statement labeled Attachment D</u>		X
Were any agreements entered into by the municipality with regard to the disposition or redevelopment of any property within the redevelopment project area or the area within the State Sales Tax Boundary? [65 ILCS 5/11-74.4-5 (d) (7) (C) and 5/11-74.6-22 (d) (7) (C)] <u>If yes, please enclose the Agreement(s) labeled Attachment E</u>		X
Is there additional information on the use of all funds received under this Division and steps taken by the municipality to achieve the objectives of the redevelopment plan? [65 ILCS 5/11-74.4-5 (d) (7) (D) and 5/11-74.6-22 (d) (7) (D)] <u>If yes, please enclose the Additional Information labeled Attachment F</u>		X
Did the municipality's TIF advisors or consultants enter into contracts with entities or persons that have received or are receiving payments financed by tax increment revenues produced by the same TIF? [65 ILCS 5/11-74.4-5 (d) (7) (E) and 5/11-74.6-22 (d) (7) (E)] <u>If yes, please enclose the contract(s) or description of the contract(s) labeled Attachment G</u>	X	
Were there any reports or meeting minutes submitted to the municipality by the joint review board? [65 ILCS 5/11-74.4-5 (d) (7) (F) and 5/11-74.6-22 (d) (7) (F)] <u>If yes, please enclose the Joint Review Board Report labeled Attachment H</u>		X
Were any obligations issued by municipality? [65 ILCS 5/11-74.4-5 (d) (8) (A) and 5/11-74.6-22 (d) (8) (A)] <u>If yes, please enclose the Official Statement labeled Attachment I</u>	X	
Was analysis prepared by a financial advisor or underwriter setting forth the nature and term of obligation and projected debt service including required reserves and debt coverage? [65 ILCS 5/11-74.4-5 (d) (8) (B) and 5/11-74.6-22 (d) (8) (B)] <u>If yes, please enclose the Analysis labeled Attachment J</u>		X
Cumulatively, have deposits equal or greater than \$100,000 been made into the special tax allocation fund? [65 ILCS 5/11-74.4-5 (d) (2) and 5/11-74.6-22 (d) (2)] <u>If yes, please enclose Audited financial statements of the special tax allocation fund labeled Attachment K</u>		X
Cumulatively, have deposits of incremental revenue equal to or greater than \$100,000 been made into the special tax allocation fund? [65 ILCS 5/11-74.4-5 (d) (9) and 5/11-74.6-22 (d) (9)] <u>If yes, please enclose a certified letter statement reviewing compliance with the Act labeled Attachment L</u>		X
A list of all intergovernmental agreements in effect in FY 2010, to which the municipality is a part, and an accounting of any money transferred or received by the municipality during that fiscal year pursuant to those intergovernmental agreements. [65 ILCS 5/11-74.4-5 (d) (10)] <u>If yes, please enclose list only of the intergovernmental agreements labeled Attachment M</u>	X	

* Types include: Central Business District, Retail, Other Commercial, Industrial, Residential, and Combination/Mixed.

SECTION 3.1 - (65 ILCS 5/11-74.4-5 (d) (5) and 65 ILCS 5/11-74.6-22 (d) (5))

Provide an analysis of the special tax allocation fund.

	Reporting Year	Cumulative
Fund Balance at Beginning of Reporting Period	\$ (8,935)	

Revenue/Cash Receipts Deposited in Fund During Reporting FY:

	%	of Total
Property Tax Increment	\$ 30,570	\$ 147,412
State Sales Tax Increment	100%	0%
Local Sales Tax Increment	0%	0%
State Utility Tax Increment	0%	0%
Local Utility Tax Increment	0%	0%
Interest	\$ 1	\$ 86
Land/Building Sale Proceeds	0%	0%
Bond Proceeds	0%	0%
Transfers from Municipal Sources	0%	0%
Private Sources	0%	0%
Other (identify source _____; if multiple other sources, attach schedule)		0%

Total Amount Deposited in Special Tax Allocation

Fund During Reporting Period \$ 30,571

Cumulative Total Revenues/Cash Receipts \$ 147,498 100%

Total Expenditures/Cash Disbursements (Carried forward from Section 3.2) \$ 509,515

Distribution of Surplus

Total Expenditures/Disbursements \$ 509,515

NET INCOME/CASH RECEIPTS OVER/(UNDER) CASH DISBURSEMENTS \$ (478,944)

FUND BALANCE, END OF REPORTING PERIOD \$ (487,879)

- if there is a positive fund balance at the end of the reporting period, you must complete Section 3.3

SECTION 3.2 A- (65 ILCS 5/11-74.4-5 (d) (5) and 65 ILCS 5/11-74.6-22 (d) (5))
 ITEMIZED LIST OF ALL EXPENDITURES FROM THE SPECIAL TAX ALLOCATION FUND
 (by category of permissible redevelopment cost, amounts expended during reporting period)

FOR AMOUNTS >\$10,000 SECTION 3.2 B MUST BE COMPLETED

Category of Permissible Redevelopment Cost [65 ILCS 5/11-74.4-3 (q) and 65 ILCS 5/11-74.6-10 (o)]

		Reporting Fiscal Year
1. Costs of studies, administration and professional services—Subsections (q)(1) and (o) (1)		
Gruen, Gruen & Associates LLC	4,950	
Speer Financial Inc.	1,500	
Klein, Thorpe and Jenkins LTD	3,065	
		\$ 9,515
2. Cost of marketing sites—Subsections (q)(1.6) and (o)(1.6)		
		\$ -
3. Property assembly, demolition, site preparation and environmental site improvement costs. Subsection (q)(2), (o)(2) and (o)(3)		
Infiniti of Clarendon Hills, Inc. - reimburse developer for a portion of land assembly and demolition.	500,000	
		\$ 500,000
4. Costs of rehabilitation, reconstruction, repair or remodeling and replacement of existing public buildings. Subsection (q)(3) and (o)(4)		
		\$ -
5. Costs of construction of public works and improvements. Subsection (q)(4) and (o)(5)		
		\$ -
6. Costs of removing contaminants required by environmental laws or rules (o)(6) - Industrial Jobs Recovery TIFs ONLY		
		\$ -

7. Cost of job training and retraining, including "welfare to work" programs Subsection (q)(5), (o)(7) and (o)(12)		
		\$ -
8. Financing costs. Subsection (q) (6) and (o)(8)		
		\$ -
9. Approved capital costs. Subsection (q)(7) and (o)(9)		
		\$ -
10. Cost of Reimbursing school districts for their increased costs caused by TIF assisted housing projects. Subsection (q)(7.5) - Tax Increment Allocation Redevelopment TIFs ONLY		
		\$ -
11. Relocation costs. Subsection (q)(8) and (o)(10)		
		\$ -
12. Payments in lieu of taxes. Subsection (q)(9) and (o)(11)		
		\$ -
13. Costs of job training, retraining advanced vocational or career education provided by other taxing bodies. Subsection (q)(10) and (o)(12)		
		\$ -
14. Costs of reimbursing private developers for interest expenses incurred on approved redevelopment projects. Subsection (q)(11)(A-E) and (o)(13)(A-E)		

Section 3.2 B

List all vendors, including other municipal funds, that were paid in excess of \$10,000 during the current reporting year.

There were no vendors, including other municipal funds, paid in excess of \$10,000 during the current reporting period.

SECTION 3.3 - (65 ILCS 5/11-74.4-5 (d) (5) 65 ILCS 11-74.6-22 (d) (5))

Breakdown of the Balance in the Special Tax Allocation Fund At the End of the Reporting Period
(65 ILCS 5/11-74.4-5 (d) (5) (D) and 65 ILCS 5/11-74.6-22 (d) (5) (D))

FUND BALANCE, END OF REPORTING PERIOD

\$	(487,879)
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Amount of Original Issuance	Amount Designated
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1. Description of Debt Obligations

Total Amount Designated for Obligations

\$	-	\$	-
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2. Description of Project Costs to be Paid

Total Amount Designated for Project Costs

\$	-
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TOTAL AMOUNT DESIGNATED

\$	-
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SURPLUS*/(DEFICIT)

\$	(487,879)
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* NOTE: If a surplus is calculated, the municipality may be required to repay the amount to overlapping taxing districts (See instructions and statutes)

SECTION 4 [65 ILCS 5/11-74.4-5 (d) (6) and 65 ILCS 5/11-74.6-22 (d) (6)]

Provide a description of all property purchased by the municipality during the reporting fiscal year within the redevelopment project area.

X **No property was acquired by the Municipality Within the Redevelopment Project Area**

Property Acquired by the Municipality Within the Redevelopment Project Area

Property (1):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (2):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (3):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (4):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

SECTION 5 - 65 ILCS 5/11-74.4-5 (d) (7) (G) and 65 ILCS 5/11-74.6-22 (d) (7) (G)

Please include a brief description of each project.

 No Projects Were Undertaken by the Municipality Within the Redevelopment Project Area

	11/1/99 to Date	Estimated Investment for Subsequent Fiscal Year	Total Estimated to Complete Project
TOTAL:			
Private Investment Undertaken (See Instructions)	\$ 9,200,000	\$ 13,000,000	\$ 22,200,000
Public Investment Undertaken	\$ 821,689	\$ 60,000	\$ 5,621,689
Ratio of Private/Public Investment	11 11/56		3 93/98
Project 1: Ogden Avenue Watermain Replacement			
Private Investment Undertaken (See Instructions)	\$ -	\$ -	\$ -
Public Investment Undertaken	\$ 312,174	\$ -	\$ 312,174
Ratio of Private/Public Investment	0		0
Project 2: Infiniti Auto Dealer - Land purchase, demolition, site development, construction and equipment.			
Private Investment Undertaken (See Instructions)	\$ 9,200,000	\$ 13,000,000	\$ 22,200,000
Public Investment Undertaken	\$ 509,515	\$ 60,000	\$ 5,309,515
Ratio of Private/Public Investment	18 4/71		4 2/11
Project 3:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0
Project 4:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0
Project 5:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0
Project 6:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 7:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 8:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 9:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 10:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 11:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 12:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 13:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 14:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 15:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 16:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 17:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 18:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 19:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 20:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 21:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 22:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 23:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 24:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 25:			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Optional: Information in the following sections is not required by law, but would be helpful in evaluating the performance of TIF in Illinois.

SECTION 6

Provide the base EAV (at the time of designation) and the EAV for the year reported for the redevelopment project area

Year redevelopment project area was designated	Base EAV	Reporting EAV	Fiscal Year
2005	\$ 3,667,550	\$ 4,060,270	

List all overlapping tax districts in the redevelopment project area.

If overlapping taxing district received a surplus, list the surplus.

The overlapping taxing districts did not receive a surplus.

SECTION 7

Provide information about job creation and retention

Number of Jobs Retained	Number of Jobs Created	Description and Type (Temporary or Permanent) of Jobs	Total Salaries Paid
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -

SECTION 8

Provide a general description of the redevelopment project area using only major boundaries:

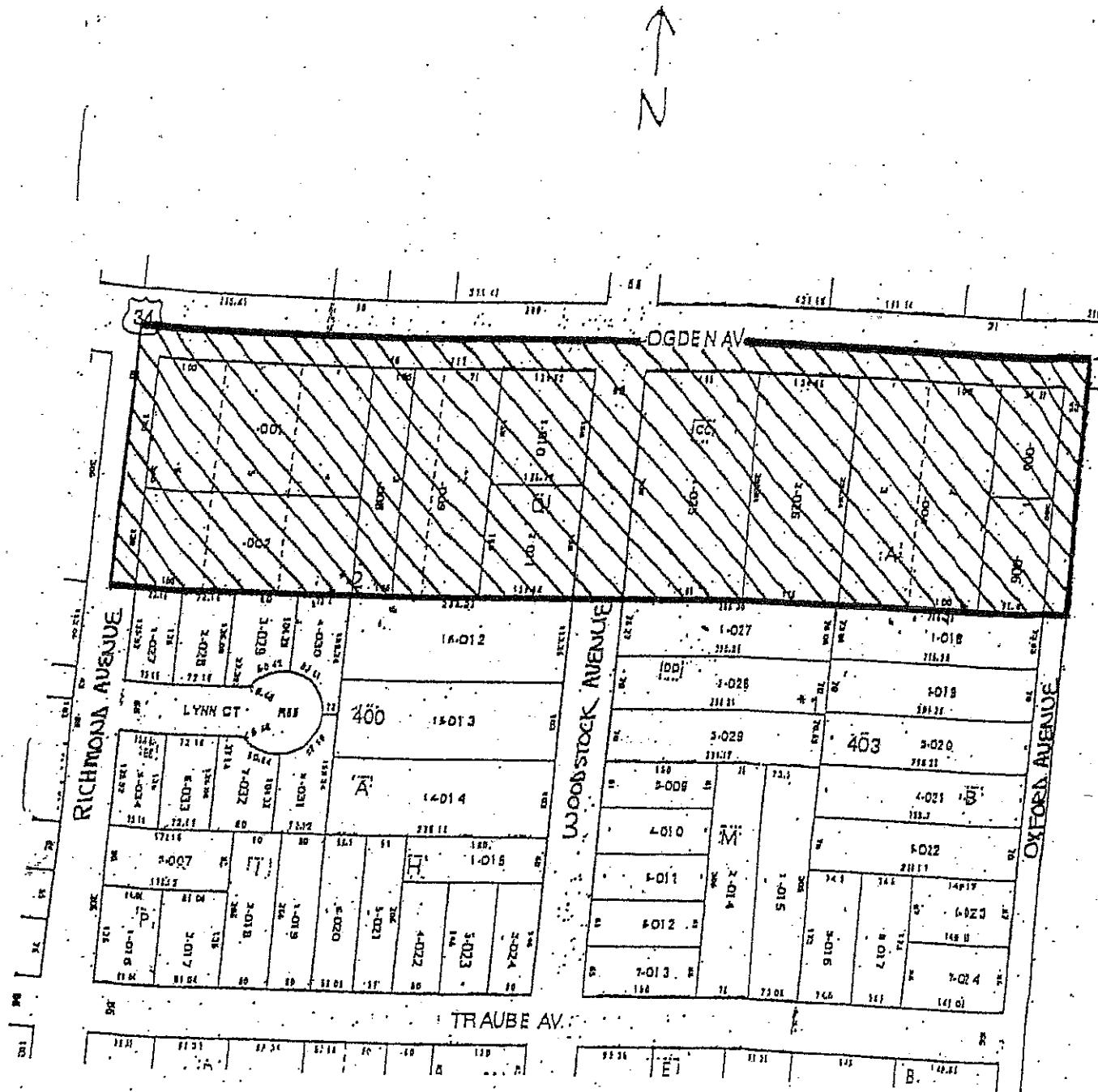
Provides a general description of the facility.

Optional Documents	Enclosed	
Legal description of redevelopment project area	X	
Map of District	X	

Lots 1, 2 and 3 in Block 1, the West 71 feet of Lot 2 in Block 2, and Lots 3, 4, 5 and 6 in Block 2, all in Arthur T. McIntosh & Company's Westmont Acres, a subdivision of part of the Southeast 1/4 of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, as provided by document number 145100; Lots 1 and 2 in Broberg's Resubdivision of Lot 1 and the East 29 feet of Lot 2 in Block 2 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, as provided for by document number 947033; Lots 1 and 2 in Adolf's Resubdivision of Lots 4, 5 and 6 in Block 1 in Arthur T. McIntosh & Company's Westmont Acres, aforesaid, as provided for by document number R1993-119973; along with the East 1/2 of the Richmond Avenue right-of-way, from the Westerly extension of the South line of Lot 6 in Block 2 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, to the South right-of-way line of Ogden Avenue; the 66 foot wide right-of-way of Woodstock Avenue, from the Westerly extension of the South line of Lot 1 in Adolf's Resubdivision, aforesaid, to the South right-of-way line of Ogden Avenue; the 33 foot wide right-of-way of Oxford Avenue, from the Easterly extension of the South line of Lot 1 in Block 1 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, to the South right-of-way line of Ogden Avenue; and the South 1/2 of the Ogden Avenue right-of-way from the Northerly extension of the center line of Richmond Avenue to the Northerly extension of the East right-of-way line of Oxford Avenue; all in DuPage County, Illinois;

P.I.N.'s: 09-03-400-001, -002, -008, -009, -010 and -011; 09-03-403-004, -005, -006, -025 and -026;

Commonly known as: 285 Richmond Avenue; 284 Woodstock Avenue; 403, 407, 415, 419, 427, 431, 433 and 435-45 Ogden Avenue; and 288 Oxford Avenue; all in Clarendon Hills, Illinois.



TAXING DISTRICTS
OGDEN AVENUE TIF DISTRICT

County of DuPage
421 N. County Farm Road
Wheaton, IL 60187

DuPage Airport Authority
2700 International Drive
Suite 200
West Chicago, IL 60185

Downers Grove Township
4340 Prince Street
Downers Grove, IL 60515

Downers Grove Township Highway
Department
4340 Prince Street
Downers Grove, IL 60515

Forest Preserve District of DuPage
County
3 S. 580 Naperville Road
Wheaton, IL 60187

DuPage Water Commission
600 E. Butterfield Road
Elmhurst, IL 60126

Consolidated Elementary School
District #181
5905 South County Line Road
Hinsdale, IL 60521

Hinsdale Township High School
District #86
55th and Grant Streets
Hinsdale, IL 60521

Clarendon Hills Library
7 North Prospect Avenue
Clarendon Hills, IL 60514

Clarendon Hills Park District
315 Chicago Avenue
Clarendon Hills, IL 60514

College of DuPage Community
School District #502
425 Fawell Boulevard
Glen Ellyn, IL 60137

Village of Clarendon Hills
1 North Prospect Avenue
Clarendon Hills, IL 60514

DuPage County Health Department
111 N. County Farm Road
Wheaton, IL 60187

Flagg Creek Water Reclamation
District
7001 Frontage Road
Burr Ridge, IL 60527

Clarendon Blackhawk Mosquito
Abatement District
P.O. Box 77
Clarendon Hills, IL 60514



Village of Clarendon Hills

1 NORTH PROSPECT AVENUE CLARENDON HILLS, ILLINOIS 60514-1292
 TEL (630) 286-5400 FAX (630) 286-5409 www.clarendonhills.us
 EMAIL: admin@clarendonhills.us

September 6, 2011

TO: Those Taxing Districts Affected by the
 Village of Clarendon Hills Ogden Avenue
 Tax Increment Financing District

RE: Village of Clarendon Hills Ogden Avenue Tax Increment Financing District
 Certificate of Compliance for Fiscal Year Ending April 30, 2011

Ladies and Gentlemen:

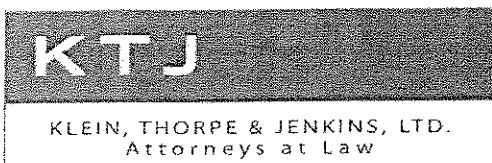
In accordance with the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.* (hereinafter the "Act") and, more specifically, 65 ILCS 5/11-74.4-5(d)(3), I am submitting this certified statement as to the following:

I have reviewed the 2010-2011 fiscal year audit performed by and on behalf of the Village of Clarendon Hills, as well as such public records, proceedings and related matters of and with respect to the Village as I consider necessary. Based on said consideration and examination of said records, including the legal opinion of the Village Attorney issued pursuant to 65 ILCS 5/11-74.4-5(d)(4), I certify that the Village of Clarendon Hills is, to the best of my knowledge, in full compliance with the Act.

Sincerely,

Thomas F. Karaba
 Village President
 Village of Clarendon Hills

ATTACHMENT C



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Chicago, Illinois 60606-2903
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tpbayer@ktjlaw.com
DD 312-984-6422

15010 S. Ravinia Avenue, Ste 10
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MEMORANDUM

TO: Attached List of Taxing Districts Affected by the
Village of Clarendon Hills Ogden Avenue TIF District

RE: Village of Clarendon Hills
Ogden Avenue Tax Increment Financing District

Ladies and Gentlemen:

This opinion is being delivered pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.* (hereinafter the "Act") and, more specifically, 65 ILCS 5/11-74.4-5(d)(4).

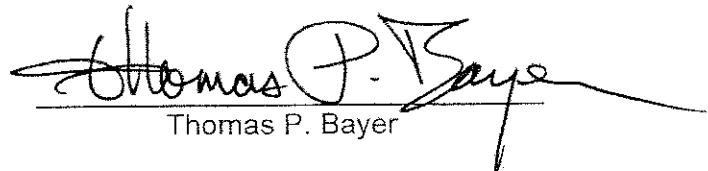
Please be advised that our office serves as Village Attorney for the Village of Clarendon Hills, DuPage County, Illinois (hereinafter the "Village"). On December 5, 2005, the Village adopted by Ordinance Tax Increment Financing for its Village of Clarendon Hills Ogden Avenue TIF District Redevelopment Project Area, and by separate Ordinance authorized the DuPage County Clerk to annually certify and cause to be paid to the Village incremental tax revenues generated by the above-captioned Tax Increment Financing District.

In rendering this opinion, we have examined and considered such public records, proceedings and related matters of and with respect to the Village as we deemed necessary. Based on the foregoing, and on such other information and documents as we believe necessary to enable us to render this opinion, we are of the opinion that:

1. The Village is a municipality duly constituted and validly existing under the Constitution and laws of the State of Illinois; and
2. As of April 30, 2011, the close of the Village's 2010-2011 fiscal year, to the best of our knowledge and belief, the Village was in compliance with the provisions of the Act.

Very truly yours,

KLEIN, THORPE AND JENKINS, LTD.



Thomas P. Bayer

cc: President and Board of Trustees
Randy Recklaus, Village Manager
Peg Hartnett, Finance Director
Michael Brown, Director of Community Development

ATTACHMENT D

Redevelopment Plan Activities

Staff negotiated with a local Infiniti automobile dealer to purchase three properties in the east half of the Ogden Avenue TIF District upon which to locate a new car dealership. As part of the negotiations, the Village Board reached a Redevelopment Agreement with Ogden Clarendon, LLC, an affiliate of Infiniti of Lisle. That agreement was later amended and restated to include the new operating company, Infiniti of Clarendon Hills, Inc. Ogden Clarendon, LLC, purchased the three properties, which included a deteriorated and crime-prone motel and two vacant commercial buildings. In order to bring about the redevelopment, the Village agreed to provide a TIF incentive from future anticipated property tax increment as well as a 15-year sales tax sharing agreement. These steps were necessary to overcome obstacles to redevelopment which included the high costs of land assembly and demolition. The Redevelopment Agreement was approved November 15, 2010. Demolition took place in December 2010 and construction of the new dealership facility began in March 2011. The new Infiniti of Clarendon Hills dealership is scheduled to open in November 2011.

The Village of Clarendon Hills completed a project to replace and upgrade the Ogden Avenue watermain that serves most properties within the TIF. The project was 75% complete at April 30, 2010 and finished in the fiscal year ending April 30, 2011. It was funded by the Village's Water Fund, with 25% being received from an IEPA grant made possible by the American Recovery and Reinvestment Act.

Village of Clarendon Hills staff met with brokers representing other properties for sale within the Ogden TIF and prospective purchasers to discuss redevelopment opportunities and the goals of the TIF.

ORDINANCE NO. 10-11-36

**AN ORDINANCE AUTHORIZING
A REDEVELOPMENT AGREEMENT BETWEEN
THE VILLAGE OF CLARENDON HILLS AND
OGDEN CLARENDON, LLC IN REGARD TO
THE INFINITI DEVELOPMENT COMPRISING
A PART OF THE OGDEN AVENUE TIF DISTRICT**

BE IT ORDAINED, by the President and Board of Trustees of the Village of Clarendon Hills, DuPage County, Illinois, as follows:

SECTION 1: The President and Board of Trustees of the Village of Clarendon Hills (hereinafter referred to as the "VILLAGE") find as follows:

- A. The VILLAGE is a non-home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois.
- B. The VILLAGE is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (hereinafter referred to as the "ACT"), to finance redevelopment in accordance with the conditions and requirements set forth in the ACT.
- C. Pursuant to Ordinance Numbers 05-12-76, 05-12-77 and 05-12-78, adopted December 9, 2005, the VILLAGE approved a tax increment redevelopment plan and project (hereinafter referred to as the "TIF PLAN"), designated the tax increment redevelopment project area (hereinafter referred to as the "REDEVELOPMENT PROJECT AREA"), and adopted tax increment financing relative to the VILLAGE'S Ogden Avenue tax increment financing district (hereinafter referred to as the "OGDEN AVENUE TIF DISTRICT"); said OGDEN AVENUE TIF DISTRICT being legally described and depicted as set forth in EXHIBIT A-1 and EXHIBIT A-2 attached hereto and made part hereof.
- D. Ogden Clarendon, LLC (hereinafter referred to as the "DEVELOPER") is the fee owner of, or has entered into a contract to purchase, certain real property, a portion of which is located within the REDEVELOPMENT PROJECT AREA, and a portion of which is located outside of the REDEVELOPMENT PROJECT AREA, said property being legally described on EXHIBIT B attached hereto and made part hereof (hereinafter referred to as the "DEVELOPER PARCEL").

- E. The DEVELOPER desires to redevelop the DEVELOPER PARCEL by constructing a commercial retail project thereon, consisting of an Infiniti new motor vehicle dealership, along with used motor vehicle sales and the provision of motor vehicle maintenance and repair services, including the sale of motor vehicle parts (hereinafter referred to as the "PROJECT").
- F. That attached hereto as EXHIBIT C and made part hereof is a redevelopment agreement, between the DEVELOPER and the VILLAGE, which sets forth the terms and conditions pursuant to which the DEVELOPER will proceed with the PROJECT (hereinafter referred to as the "REDEVELOPMENT AGREEMENT").
- G. In accordance with the TIF ACT, it is in the best interest of the VILLAGE to approve the REDEVELOPMENT AGREEMENT, so that redevelopment within the OGDEN AVENUE TIF DISTRICT can continue.

SECTION 2: Based upon the foregoing, and pursuant to the TIF ACT, the REDEVELOPMENT AGREEMENT attached hereto as EXHIBIT C is hereby approved, and the President and Clerk of the VILLAGE be and they are hereby authorized and directed to execute and deliver such other instruments, including said REDEVELOPMENT AGREEMENT attached hereto as EXHIBIT C, as may be necessary or convenient to carry out the terms of said REDEVELOPMENT AGREEMENT.

SECTION 3: That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

ADOPTED this 15th day of November, 2010, pursuant to a roll call vote as follows:

Trustees Alongi, Cochran, Pedersen, Reid,
AYES: Wallace, and Williams

NAYS: None

ABSENT: None

APPROVED by me this 15th day of November, 2010.

Thomas F. Karaba

Thomas F. Karaba,
Village President

ATTEST:

Dawn D. Tandle

Dawn Tandle,
Village Clerk

Published by me in pamphlet form this 16th day of November, 2010.

Dawn D. Tandle

Dawn Tandle,
Village Clerk



EXHIBIT A-1

Legal Description of the
OGDEN AVENUE TIF DISTRICT

Lots 1, 2 and 3 in Block 1, the West 71 feet of Lot 2 in Block 2, and Lots 3, 4, 5 and 6 in Block 2, all in Arthur T. McIntosh & Company's Westmont Acres, a subdivision of part of the Southeast 1/4 of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, as provided by document number 145100; Lots 1 and 2 in Broberg's Resubdivision of Lot 1 and the East 29 feet of Lot 2 in Block 2 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, as provided for by document number 947033; Lots 1 and 2 in Adolf's Resubdivision of Lots 4, 5 and 6 in Block 1 in Arthur T. McIntosh & Company's Westmont Acres, aforesaid, as provided for by document number R1993-119973; along with the East 1/2 of the Richmond Avenue right-of-way, from the Westerly extension of the South line of Lot 6 in Block 2 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, to the South right-of-way line of Ogden Avenue; the 66 foot wide right-of-way of Woodstock Avenue, from the Westerly extension of the South line of Lot 1 in Adolf's Resubdivision, aforesaid, to the South right-of-way line of Ogden Avenue; the 33 foot wide right-of-way of Oxford Avenue, from the Easterly extension of the South line of Lot 1 in Block 1 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, to the South right-of-way line of Ogden Avenue; and the South 1/2 of the Ogden Avenue right-of-way from the Northerly extension of the center line of Richmond Avenue to the Northerly extension of the East right-of-way line of Oxford Avenue; all in DuPage County, Illinois;

P.I.N.s: 09-03-400-001, -002, -008, -009, -010 and -011;
09-03-403-004, -005, -006, -025 and -026;

Commonly known as: 285 Richmond Avenue; 284 Woodstock Avenue;
403, 407, 415, 419, 427, 431, 433 and 435-45 Ogden Avenue;
and 288 Oxford Avenue; all in Clarendon Hills, Illinois.

EXHIBIT A-2

Depiction of the
OGDEN AVENUE TIF DISTRICT

EXHIBIT A-2

Depiction of the
OGDEN AVENUE TIF DISTRICT

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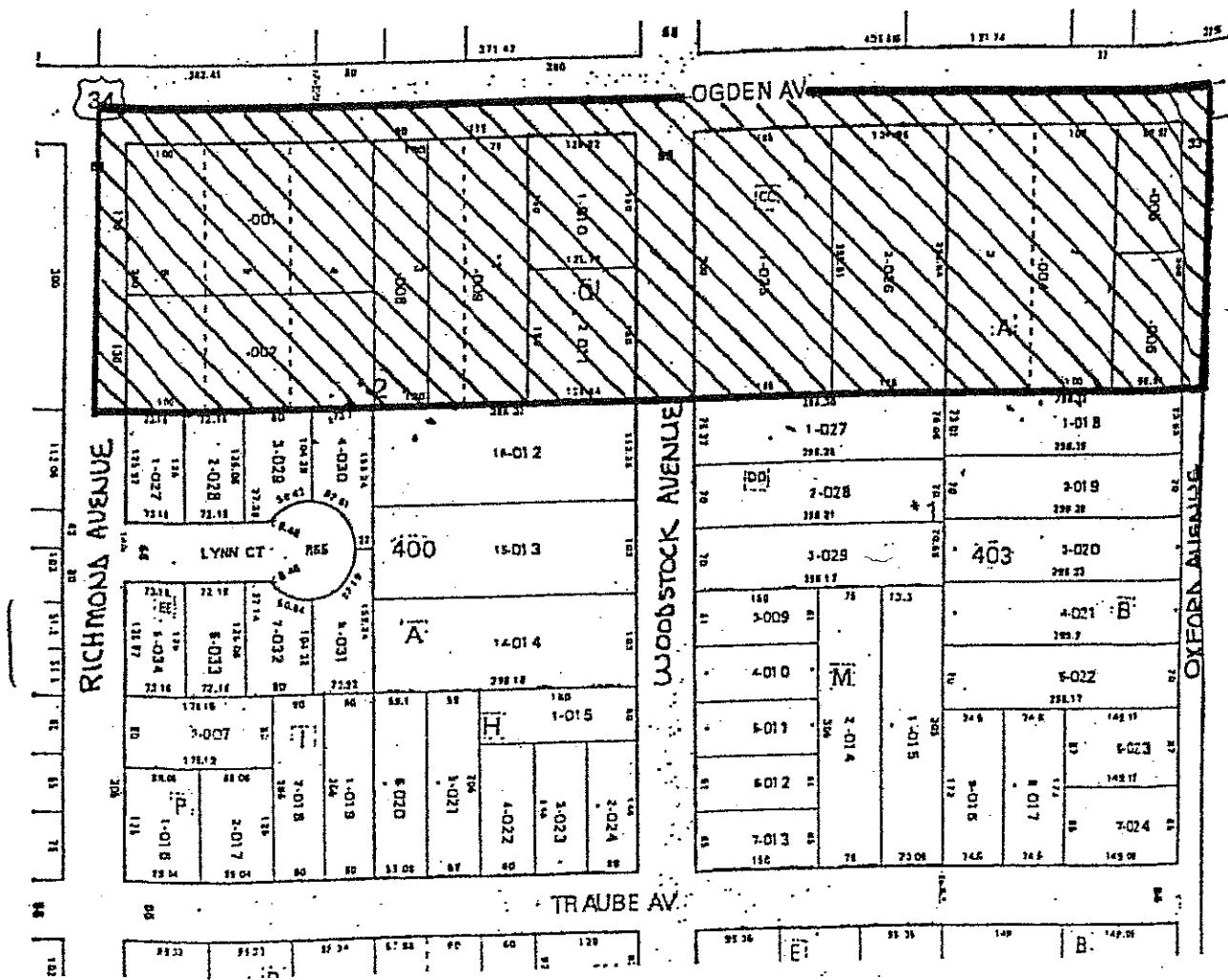


EXHIBIT B

Legal Description of the
DEVELOPER PARCEL

PORTION WITHIN THE REDEVELOPMENT PROJECT AREA:

Lots 2 and 3 in Block 1 in Arthur T. McIntosh and Company's Westmont Acres in the Southwest $\frac{1}{4}$ and the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded November 4, 1920 as Document 145100, in DuPage County, Illinois; and

Lots 1 and 2 in Adolf's Resubdivision of Lots 4, 5 and 6 in Block 1 in Arthur T. McIntosh and Company's Westmont Acres in the Southwest $\frac{1}{4}$ and the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said Adolf's Resubdivision recorded June 10, 1993 as Document R1993-119973, in DuPage County, Illinois;

P.I.N.s: 09-03-403-004, -025 and -026;

Common Addresses: 407, 415 and 419 Ogden Avenue,
Clarendon Hills, Illinois.

PORTION NOT WITHIN THE REDEVELOPMENT PROJECT AREA:

Lot 1 in Regal Court Subdivision, being a Subdivision in the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded April 11, 1994 as Document R1994-084418, in DuPage County, Illinois; and

Lot 1 in Oxford Hill Subdivision of Lot 1 in Block 12 and Lots 12 to 16, inclusive, in Block 1 in Westmont Acres, being a Subdivision in the South $\frac{1}{2}$ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded February 27, 1953 as Document 675104, in DuPage County, Illinois;

P.I.N.s: 09-03-403-018 and -027;

Common Addresses: 279 Woodstock Avenue and 280 Oxford Avenue,
Clarendon Hills, Illinois.

EXHIBIT C

REDEVELOPMENT AGREEMENT

(attached)

**REDEVELOPMENT AGREEMENT
FOR THE INFINITI DEVELOPMENT
COMPRISING A PART OF
THE OGDEN AVENUE TIF DISTRICT OF
THE VILLAGE OF CLARENDON HILLS, ILLINOIS**

This Redevelopment Agreement (the "Agreement") is made and entered into as of the 15th day of November, 2010 (the "Effective Date") by and between the Village of Clarendon Hills, Illinois, an Illinois municipal corporation (the "Village"), and Ogden Clarendon, LLC, an Illinois limited liability company (the "Developer"). (The Village and the Developer are sometimes referred to herein individually as a "Party," and collectively as the "Parties.")

WITNESSETH:

IN CONSIDERATION of the Preliminary Statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereto agree as follows:

I. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The Village is a non-home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois.
- B. The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the Village, to foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village.
- C. The Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the "TIF Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the TIF Act.

D. Pursuant to Ordinance Numbers 05-12-76, 05-12-77 and 05-12-78, adopted December 9, 2005, the Village approved a tax increment redevelopment plan and project (the "TIF Plan"), designated the tax increment redevelopment project area (the "Redevelopment Project Area"), and adopted tax increment financing relative to the Village's Ogden Avenue tax increment financing district (the "Ogden Avenue TIF District"); said Ogden Avenue TIF District being legally described and depicted as set forth in EXHIBIT A-1 and EXHIBIT A-2 attached hereto and made part hereof.

E. The Developer is the fee owner of, or has entered into a contract to purchase, certain real property, a portion of which is located within the Redevelopment Project Area (the "TIF Parcel"), and a portion of which is located outside of the Redevelopment Project Area (the "Non-TIF Parcel") (the TIF Parcel and the Non-TIF Parcel being hereinafter collectively referred to as the "Property"), said Property being legally described on EXHIBIT B attached hereto and made part hereof.

F. The Developer desires to redevelop the Property by constructing a commercial retail project thereon, consisting of an Infiniti new motor vehicle dealership, along with used motor vehicle sales and the provision of motor vehicle maintenance and repair services, including the sale of motor vehicle parts, all as depicted on the site plan attached hereto as EXHIBIT C and made part hereof, and as described in further detail on EXHIBIT D attached hereto and made part hereof (the "Project").

G. It is necessary for the successful completion of the Project that the Village enter into this Agreement with Developer to provide for the redevelopment of the Property, and in particular the TIF Parcel, thereby implementing the TIF Plan.

H. Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Property with the Project, but for certain tax increment financing ("TIF") and other incentives, to be provided by the Village in accordance with the TIF Act and 65 ILCS 5/8-11-20 (the "Rebate Statute"), which the Village is willing to provide under the terms and conditions contained herein. The Parties acknowledge and agree that but for the TIF and other incentives, to be provided by the Village, Developer cannot successfully and economically develop the Property with the Project, in a manner satisfactory to the Village. The Village has determined that it is desirable and in the Village's best interests to assist Developer in the manner set forth herein and as this Agreement may be supplemented and amended from time to time.

I. The Village, in order to stimulate and induce development of the Property with the Project, has agreed to finance certain TIF eligible redevelopment

project costs through incremental property taxes, and has agreed to finance certain other Project costs with other revenue sources, all in accordance with the terms and provisions of the TIF Act, the Rebate Statute and this Agreement.

J. Pursuant to the Rebate Statute, the Village finds as follows:

1. The buildings on the Property no longer comply in all respects with current building codes;
2. The buildings on the Property 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) 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.

K. This Agreement has been submitted to the Corporate Authorities of the Village (as defined below) for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof, and any and all actions of the Corporate Authorities of the Village precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

L. This Agreement has been submitted to the board of directors, corporate officers, shareholders, members and/or managers of the Developer for consideration and review, the Developer's board of directors, corporate officers, shareholders, members and/or managers have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Developer's board of directors, corporate officers, shareholders, members and/or managers precedent to the

execution of this Agreement have been undertaken and performed in the manner required by law.

M. The Village is desirous of having the Redevelopment Project Area rehabilitated, developed and redeveloped in accordance with the TIF Plan, and particularly the Project as a part thereof, in order to serve the needs of the Village, arrest physical decay and decline in the Redevelopment Project Area, increase employment opportunities, stimulate commercial growth and stabilize the tax base of the Village and, in furtherance thereof, the Village is willing to undertake certain incentives, under the terms and conditions hereinafter set forth, to assist such development.

II. DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, and as follows:

A. **"Change in Law"** means the occurrence, after the Effective Date, of an event described below in this definition, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon:

Change in Law means any of the following: (1) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the Village or with respect to those made by the Village, only if they violate the terms of this Agreement); (2) the order or judgment of any federal or state court, administrative agency or other governmental body (other than the Village); or (3) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village, or, with respect to those made by the Village, only if they violate the terms of this Agreement). Change in Law, for purposes of this Agreement, shall also include the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the actions to be performed under this Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the Village, except as provided herein).

B. **"Corporate Authorities"** means the President and Board of Trustees of the Village of Clarendon Hills, Illinois.

C. **"Effective Date"** means the date on which this Agreement is executed on behalf of the Village, with said date being inserted in the opening paragraph of this Agreement.

D. **"Incremental Property Taxes"** means that portion of the ad valorem real estate taxes, if any, arising from the taxes levied upon the Redevelopment Project Area, which taxes are actually collected and which are attributable to the increase in the equalized assessed valuation ("EAV") of the Redevelopment Project Area over and above the EAV of the Redevelopment Project Area at the time of the formation of the Ogden Avenue TIF District, all as determined by the County Clerk of the County of DuPage, Illinois, pursuant to and in accordance with the TIF Act, the TIF Ordinances and this Agreement, and which have been received by the Village prior to or after the Effective Date of this Agreement.

E. **"Person"** means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

F. **"Sales Taxes"** means taxes generated from the Project, and received by the Village, from the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq. and the Service Occupation Tax Act, 35 ILCS 115/1 et seq.

G. **"TIF Eligible Redevelopment Costs"** means the demolition and property acquisition costs of the Project, relative to the TIF Parcel, to be paid or reimbursed from the TIF Fund, pursuant to the TIF Act, by the Village, as provided in this Agreement.

H. **"TIF Fund"** means the special fund set up by the Village into which the Village has deposited, and will continue to deposit, Incremental Property Taxes, and such other revenues as determined by the Village.

I. **"Uncontrollable Circumstance"** means any event which:

1. is beyond the reasonable control of and without the fault of the Party relying thereon; and
2. is one or more of the following events:
 - a. a Change in Law;
 - b. insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;
 - c. epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;

- d. governmental condemnation or taking other than by the Village;
- e. strikes or labor disputes, or work stoppages not initiated by the Developer;
- f. unreasonable delay in the issuance of building or other permits or approvals by the Village or other governmental authorities having jurisdiction other than the Village;
- g. shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;
- h. unknown or unforeseeable geo-technical or environmental conditions;
- i. major environmental disturbances;
- j. vandalism; or
- k. terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in subsection g. above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

For each day that the Village or Developer is delayed in its performance under this Agreement by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day.

III. CONSTRUCTION OF TERMS

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.
- C. The word "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".
- D. Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the Agreement shall control.

- F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- G. The Village Manager, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. Developer is entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village.
- H. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates Horst Korallus as its authorized representative, who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Developer and with the effect of binding Developer in that connection (such individual being designated as the "Authorized Developer Representative"). Developer shall have the right to change its Authorized Developer Representative by providing the Village with written notice of such change which notice shall be sent in accordance with subsection XVI.B. of this Agreement.

IV. COOPERATION OF THE PARTIES

The Village and the Developer agree to cooperate in implementing the Project in accordance with the Parties' respective obligations set forth in this Agreement.

V. DEVELOPMENT OF THE PROPERTY

- A. Within three (3) months of the Effective Date, Developer shall apply for all necessary permits and approvals from all governmental agencies having jurisdiction over the Project as may be required to commence construction of the Project. Upon receipt of all required approvals, and permits from the Village and any other federal, state, regional or county agencies having jurisdiction over the Project, the Developer shall commence

demolition of the buildings on the Property and thereafter commence construction of the Project.

B. The Parties acknowledge that the Developer is constructing a development similar to the Project in Naperville, Illinois. In this regard, the Developer represents and warrants that the construction of the Project shall take precedence over, shall be completed prior to, and shall be opened for business prior to, the development in Naperville, Illinois.

VI. UNDERTAKINGS ON THE PART OF THE VILLAGE

A. **Village Cooperation.** The Village agrees to cooperate with Developer in Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the Village and, upon request of Developer, will promptly execute any applications or other documents (upon their approval by the Village) which Developer intends to file with such other governmental or quasi-governmental entities in regard to the Project. The Village shall further promptly respond to, and/or process, and consider reasonable requests of Developer for applicable demolition permits, building permits, driveway permits, curb cut permits, or other permits necessary for the construction of the Project. Approval of any building permit applications and/or engineering plans shall be contingent on the Developer providing all required and requested documentation including but not limited to engineering reports, calculations and plans required to substantiate that said improvements fully conform with all applicable state statutes and all Village ordinances and codes, as well as receipt of all required approvals from any federal, state, regional or county agencies having applicable jurisdiction.

B. **TIF Incentive.** In relation to the Project, the Village shall reimburse Developer in an amount not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "TIF Funding Cap"), from the TIF Fund, for TIF Eligible Redevelopment Project Costs associated with demolition and property acquisition costs, associated with the TIF Parcel, relative to the Project. Said TIF Funding Cap shall be paid to the Developer as follows:

1. Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) shall be paid to the Developer upon the completion of the demolition of the buildings on the TIF Parcel necessary to proceed with the Project, to reimburse the Developer for a portion of said demolition costs, as documented by the Developer, in writing to the Village, (including copies of all lien waivers), to have been incurred by the Developer in relation to the demolition of the buildings on the TIF Parcel.

2. Provided all building permits necessary for the construction of the Project have been obtained by the Developer from the Village, and construction of the Project has commenced, Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) shall be paid to the Developer on June 1, 2011, as reimbursement for property acquisition costs incurred by the Developer relative to the acquisition of the TIF Parcel. In the event that said building permits have not been obtained by the Developer by June 1, 2011, and/or construction of the Project has not commenced by June 1, 2011, the Developer shall be deemed to have forfeited the payment from the Village under this subsection 2, and the Village shall not be obligated to make said payment.

C. **Sales Tax Incentive.** Beginning as of the first day of the month following the issuance by the Village of the final occupancy permit for the Project, or October 1, 2011, whichever occurs first (the "Commencement Date"), the Village shall reimburse to the Developer a portion of the Sales Taxes generated by the Project (the "Sales Tax Rebate"), subject to the following terms and conditions:

1. The Sales Tax Rebate shall be in an amount not to exceed Four Million Eight Hundred Thousand and No/100 Dollars (the "Rebate Cap").
2. The Sales Tax Rebate shall remain in effect for a period of not more than fifteen (15) years after the Commencement Date.
3. During the first ten (10) twelve (12) month periods following the Commencement Date, the Sales Taxes shall be divided as follows:
 - a. Fifty percent (50%) to the Village and fifty percent (50%) to the Developer, relative to the first Two Hundred Seventy-Five Thousand and No/100 Dollars (\$275,000.00) in Sales Taxes generated in each twelve (12) month period following the Commencement Date.
 - b. Sixty percent (60%) to the Developer and forty percent (40%) to the Village, relative to any Sales Taxes in excess of Two Hundred Seventy-Five Thousand and No/100 Dollars (\$275,000.00), that are generated in each twelve (12) month period following the Commencement Date.
4. During the eleventh (11th) through fifteenth (15th) twelve (12) month periods following the Commencement Date, all Sales Taxes shall be allocated fifty percent (50%) to the Village and fifty percent (50%) to the Developer.

5. The Village shall make Sales Tax Rebate payments to the Developer on a quarterly basis (the "Quarterly Payment") after the Commencement Date, with each such payment covering the Sales Taxes received by the Village during a three (3) month period (the "Payment Period"). Each Quarterly Payment to be made by the Village shall be made by the fifteenth (15th) day of the second month following the Payment Period to which it relates.
6. The Developer shall take all necessary actions to cause the Illinois Department of Revenue to release the Sales Taxes information /documentation, relative to the Project, to the Village. In this regard, until such time as the Village obtains the information/documentation necessary to verify the Sales Taxes generated by the Project, the Village shall not be obligated to provide the Developer with the Sales Tax Rebate.
7. The Sales Tax Rebate to the Developer shall only be made from Sales Taxes actually received by the Village from the Project.
8. The term Sales Taxes shall include future revenues derived during the period of this Agreement from taxes enacted by law or ordinance by any governmental authority which are intended to replace the Sales Taxes generated by the Project.
9. In the event that the Village ceases to receive Sales Taxes from the Project, as a result of a Change in the Law, and no alternate tax is enacted to replace the Sales Taxes, the Village shall not be obligated to make any further Sales Tax Rebate payments hereunder.
10. The Sales Tax Rebate shall cease upon the Developer's receipt of the full amount of the Rebate Cap or the expiration of fifteen (15) years from the Commencement Date, whichever occurs first, subject to the Developer's receipt of the Sales Tax Rebate relative to the last Payment Period of said fifteen (15) year period, if necessary.
11. Subject to Uncontrollable Circumstances, if at any time the Project ceases to operate during the term of this Agreement, the Sales Tax Rebate shall cease, and shall not be reinstated thereafter.

VII. DEVELOPER'S OBLIGATIONS

Developer shall have the obligations set forth below, in addition to those set forth elsewhere in this Agreement, for the development, construction, financing, completion and furtherance of the Project:

- A. The Developer will construct the Project in full conformance with the approvals therefor from the Village.
- B. Developer shall at all times acquire, install, construct, operate and maintain the Project in substantial conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall substantially conform to all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village, or any of its rules or regulations or amendments thereto which are in effect from time to time during the construction and maintenance of the Project and/or during the term of this Agreement.
- C. During the construction of the Project, the Developer shall provide such notices and attend such community and neighborhood meetings as may be necessary or desirable, as reasonably determined by either the Village or the Developer, to keep all the residents fully informed of progress on the Project and any measures that residents should take to minimize any inconvenience. The Developer shall also stage its construction of the Project to avoid to the fullest extent possible any such community disruption. During construction, the Developer shall also keep all public streets clean on a daily basis, and for each day in which such public streets are not properly clean, the Developer shall pay the Village the sum of Two Hundred Fifty and No/100 Dollars (\$250.00) for each such violation.

VIII. ADDITIONAL COVENANTS OF DEVELOPER

- A. **Developer Existence.** Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as an Illinois limited liability company, so long as Developer maintains an interest in the Property or has any other remaining obligation pursuant to the terms of this Agreement.

B. **Further Assistance and Corrective Instruments.** The Village and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the Village's and the Developer's sound legal discretion.

C. **No Gifts.** Developer covenants that no officer, stockholder, employee, member, manager or agent of Developer, or any other Person connected with Developer, has made, offered or given, either directly or indirectly, to any member of the Corporate Authorities, or any officer, employee or agent of the Village, or any other Person connected with the Village, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the Village.

D. **Disclosure.** Concurrently with execution of this Agreement, Developer shall disclose to the Village the names, addresses and ownership interests of all Persons that have an ownership interest in the Developer, together with such supporting documentation that may be requested by the Village. Developer further agrees to notify the Village throughout the term of this Agreement of the names, addresses and ownership interests of any new owners of the Developer.

E. **Prevailing Wage.** Developer shall comply with the Prevailing Wage Act to the extent public improvements are constructed with the funds being provided to the Developer by the Village hereunder.

IX. ADHERENCE TO VILLAGE CODES AND ORDINANCES

All development and construction of the Project shall comply in all material respects with the provisions in the building, plumbing, mechanical, electrical, storm water management, fire prevention, property maintenance, zoning and subdivision codes of the Village and all other germane codes and ordinances of the Village in effect from time to time during the course of construction of the Project. Developer, by executing this Agreement, expressly warrants that it has examined and is familiar with all the covenants, conditions, restrictions, building regulations, zoning ordinances, property maintenance regulations, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter) and land use regulations, codes, ordinances, federal, state and local ordinances, and the like, currently in effect.

X. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Developer represents, warrants and agrees as the basis for the undertakings on its part herein contained that as of the date hereof and until completion of the Project:

- A. **Organization and Authorization.** Developer is an Illinois limited liability company duly organized and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.
- B. **Non-Conflict or Breach.** Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its partners or venturers is now a party or by which Developer or any of its partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party or any of its venturers is bound.
- C. **Financial Resources.** Developer has sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement.
- D. **Notice of Violations.** The Developer represents and warrants that it has not received any notice from any local, state or federal official that the activities of the Developer with respect to the Property and/or the Project may or will be in violation of any environmental law or regulation. The Developer is not aware of any state or federal claim filed or planned to be

filed by any party relating to any violation of any local, state or federal environmental law, regulation or review procedure, and the Developer is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any person a valid claim under any state or federal environmental statute.

XI. REPRESENTATIONS AND WARRANTIES OF THE VILLAGE

The Village represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

- A. **Organization and Authority.** The Village is an Illinois municipal corporation duly organized and validly existing under the laws of the State of Illinois, and has all requisite corporate power and authority to enter into this Agreement.
- B. **Authorization.** The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement:
 1. have been duly authorized by all necessary corporate action on the part of the Village;
 2. require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement; and
 3. shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the Village is subject.
- C. **Litigation.** To the best of the Village's knowledge, there are no proceedings pending or threatened against or affecting the Village or the Ogden Avenue TIF District in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement.

XII. INSURANCE

- A. The Developer, and any successor in interest to the Developer, shall obtain and continuously maintain insurance on the Property and the Project and, from time to time at the request of the Village, furnish proof to the Village that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and

continuously maintain, provided that the Developer shall obtain the insurance described in subsection 1. below prior to the commencement of construction of any portion of the Project (excluding excavation and footings):

1. Builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis", in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the Village and its officers, agents and employees as additional insureds, with limits against bodily injury and property damage of not less than \$5,000,000.00 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
3. Workers compensation insurance, with statutory coverage.

B. All insurance required in this Section XII. shall be obtained and continuously maintained through responsible insurance companies selected by the Developer or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Section XII., each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured and the Village at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section XII. In lieu of separate policies, the Developer or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

XIII. INDEMNIFICATION, HOLD HARMLESS AND RELEASE PROVISIONS

A. The Developer releases from and covenants and agrees that the Village, its governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to

property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the Property or arising under this Agreement or actions in furtherance thereof to the extent not attributable to the gross negligence or willful misconduct of the Indemnified Parties.

- B. Except for gross negligence or willful misconduct of the Indemnified Parties, the Developer agrees to indemnify the Indemnified Parties, now and forever, and further agree to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the Village in this Agreement.
- C. No liability, right or claim at law or inequity shall attach to or shall be incurred by the Village's president, trustees, officers, officials, agents and/or employees, and any such rights or claims of the Developer against the Village's president, trustees, officers, officials, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the Village.

XIV. EVENTS OF DEFAULT AND REMEDIES

- A. **Developer Events of Default.** The following shall be Events of Default with respect to this Agreement:

1. If any material representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by the Developer, in writing and delivered to the Village pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within sixty (60) days after written notice from the Village.
2. Default by Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant contained in this Agreement, or any other agreement, financing or otherwise, concerning the existence, structure or financial condition of Developer and/or the Project and Property; provided, however, that such default or breach shall not constitute

an Event of Default if such default cannot be cured within said thirty (30) days and Developer, within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within thirty (30) days after such notice.

3. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days, and the Project ceases to operate as a result thereof.
4. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer or of any substantial part of Developer's property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within sixty (60) consecutive days, and the Project ceases to operate as a result thereof.
5. Failure to have funds to meet Developer's obligations; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within sixty (60) days after written notice from the Village.
6. Developer abandons the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than sixty (60) days for any reason other than: (a) Uncontrollable Circumstances or (b) if Developer is ahead of its planned construction schedule.
7. Developer materially fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the Project, and the Project ceases to operate as a

result thereof; provided, however, that such default shall constitute an Event of Default only if the Developer does not, within sixty (60) days after written notice from the Village, remedy the default.

B. **Village Events of Default.** The following shall be Events of Default with respect to this Agreement:

1. If any representation made by the Village in this Agreement, or in any certificate, notice, demand or request made by the Village, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the Village does not remedy the default within thirty (30) days after written notice from Developer.
2. Default by the Village in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the Village; provided, however, that such default or breach shall constitute an Event of Default only if the Village does not, within thirty (30) days after written notice from Developer, initiate and diligently pursue appropriate measures to remedy the default, or if the Village fails to cure such default within thirty (30) days of written notice of such default.
3. Default by the Village in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the Village, commences cure within thirty (30) days after written notice from Developer and in any event cures such default within sixty (60) days after such notice, subject to Uncontrollable Circumstances.

C. **Remedies for Default.** In the case of an Event of Default hereunder:

1. The defaulting Party shall, upon written notice (in accordance with the provisions of Section XVI.B. of this Agreement) from the non-defaulting Party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured within thirty (30) days, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than thirty (30) additional days after receipt of such notice, unless extended by mutual agreement, the non-defaulting Party may institute such proceedings as may be

necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement. The non-defaulting Party shall be entitled to reasonable attorney fees in the event a court action is filed and the non-defaulting Party is the prevailing Party.

2. In case the Village shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, Developer and the Village shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the Village shall continue as though no such proceedings had been taken.
3. In the case of an Event of Default by Developer, and its failure to cure such default after due notice and within the time frames provided for in this Agreement, in addition to any other remedies at law or in equity, the Village shall be entitled to terminate this Agreement, and shall thereafter be relieved of its obligations under this Agreement, including but not limited to its obligation to pay any incentive amounts to the Developer. Notwithstanding the foregoing, provided the Project is continuing to operate, an Event of Default under Sections XIV.A.3., 4. or 7. above shall not result in the termination of this Agreement.
4. In the case of an Event of Default by the Village and its failure to cure such default after due notice and within the time period provided for in this Agreement, in addition to any other remedies at law or in equity, the Developer shall be relieved of its obligations under this Agreement if it so elects, and the Developer shall have the right to terminate this Agreement.

D. Reimbursement of Village for Legal and Other Fees and Expenses.

1. In the event that any third party or parties institute any legal proceedings against the Developer and/or the Village, which relate to the terms of this Agreement and is not attributable to the gross negligence or willful misconduct of the Indemnified Parties (as referenced in Section XIII.A. above), then, in that event, the Developer, on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

- a. Developer shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.
- b. If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and the Developer, on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Developer shall reimburse the Village from time to time on written demand from the Village Manager of the Village and notice of the amount due for any expenses, including but not limited to court costs, attorneys' fees and witnesses' fees, and other expenses of litigation, incurred by the Village in connection therewith.

E. **No Waiver by Delay or Otherwise.** Any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither Party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

F. **Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

XV. EQUAL EMPLOYMENT OPPORTUNITY

- A. **No Discrimination.** Developer will comply with all federal, state and local laws relating to equal employment opportunity. To the extent permitted by law, Developer will use reasonable efforts to employ qualified residents of the Village.
- B. **Advertisements.** Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified

applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

C. **Contractors.** Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in the first sentence of subsection A. and in subsection B. above.

XVI. MISCELLANEOUS PROVISIONS

A. **Cancellation.** In the event Developer or the Village shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the TIF Plan, including Developer's duty to build the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the TIF Act, the Rebate Statute, or any ordinance adopted by the Village in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Project or the covenants and agreements or rights and privileges of Developer or the Village, then and in any such event, the Party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other within sixty (60) days after such final decision or amendment. If the Village terminates this Agreement pursuant to this subsection A., to the extent it is then appropriate, the Village, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided. Further, the cancellation or termination of this Agreement shall have no effect on the authorizations granted to Developer for buildings permitted and under construction to the extent permitted by said Court order; and the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded, properly executed document.

B. **Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service, (2) overnight courier, or (3) registered or certified first class mail, postage prepaid, return receipt requested.

With a copy to: Village Manager
Village of Clarendon Hills
1 North Prospect Avenue
Clarendon Hills, Illinois 60514-1292

and: Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606-2903
Attention: Thomas P. Bayer

If to Developer: Ogden Clarendon, LLC
4325 Lincoln Avenue
Lisle, Illinois 60532
Attn: Horst Korallus

With a copy to: Much Shelist
191 North Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attn: Michael Viner

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to clause (1) hereof shall be deemed received upon such personal service. Any notice, demand or request sent pursuant to clause (2) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (3) shall be deemed received forty-eight (48) hours following deposit in the mail.

- C. **Time is of the Essence.** Time is of the essence of this Agreement.
- D. **Integration.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
- E. **Counterparts.** This Agreement may be executed in two (2) counterparts, each of which shall be an original and each of which shall constitute but one and the same Agreement.
- F. **Recordation of Agreement.** The Parties agree to record a memorandum of this Agreement, executed by the then current owners of the Property in the appropriate land or governmental records. Developer shall pay the recording charges.

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

H. **Choice of Law / Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and any court proceedings between the Parties hereto shall be brought in DuPage County, Illinois.

I. **Entire Contract and Amendments.** This Agreement (together with the exhibits attached hereto) is the entire contract between the Village and Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and Developer, and may not be modified or amended except by a written instrument executed by the Parties hereto.

J. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the Village and Developer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

K. **Waiver.** Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

L. **Cooperation and Further Assurances.** The Village and Developer each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village or Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

M. **Successors in Interest.** At any time, the Developer may assign its rights or obligations under this Agreement for the purpose of obtaining financing for the Project or any portion thereof to any entity in which the Developer owns a controlling interest.

N. **No Joint Venture, Agency or Partnership Created.** Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

O. **Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

P. **Term.** This Agreement shall remain in full force and effect until fifteen (15) years from the Commencement Date, subject to the payment of the Sales Tax Rebate for the last Payment Period as provided for in Section VI.C.10. above, or until the full amount of the Rebate Cap has been paid to the Developer, whichever occurs first.

Q. **Assignment.** This Agreement and the rights and obligations hereunder, may not be assigned by Developer prior to completion of the Project (as evidenced by issuance of certificate(s) of occupancy for the entire Project by the Village to the Developer) unless the Village in the exercise of its sole and absolute discretion consents in writing to such assignment. After the issuance of the aforesaid certificate(s) of occupancy by the Village, the Developer shall have the right to assign this Agreement and its rights and obligations hereunder:

1. to Infiniti of Lisle, Inc., or to the owner or operator of another approved Infiniti dealership, without Village consent; or
2. to a person other than as set forth in subsection 1. above, subject to the consent in writing of the Village, such consent not to be unreasonably withheld.

SIGNATURE PAGE TO FOLLOW

XVII. EFFECTIVE DATE

The Effective Date for this Agreement shall be the day on which this Agreement is approved by the Village, with said date being inserted on page 1 hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

Village of Clarendon Hills,
an Illinois municipal corporation

By: Thomas J. Karaba
Thomas Karaba, Village President

ATTEST:

By: Dawn R. Tandle
Dawn Tandle, Village Clerk

Ogden Clarendon, LLC,
an Illinois limited liability company

By: H. Korallus
Name: H. KORALLUS
Title: PRES.



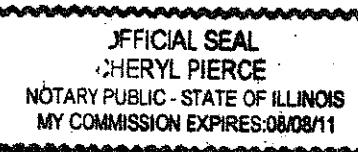
ACKNOWLEDGMENT

State of Illinois)
) SS
County of DuPage)

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

GIVEN under my hand and official seal, this 15th day of November, 2010.

Cheryl Pierce
Notary Public



ACKNOWLEDGMENT

State of Illinois)
) SS
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that H. Korallus, personally known to me to be the President of Ogden Clarendon, LLC., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such H. Korallus he/she signed and delivered the said instrument and caused the seal of said Illinois limited liability company to be affixed thereto, as his/her free and voluntary act, and as the free and voluntary act and deed of said Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 17th day of November, 2010.

Cheryl Pierce
Notary Public

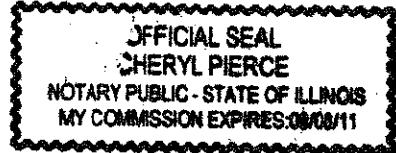


EXHIBIT A-1

Legal Description of the
OGDEN AVENUE TIF DISTRICT

Lots 1, 2 and 3 in Block 1, the West 71 feet of Lot 2 in Block 2, and Lots 3, 4, 5 and 6 in Block 2, all in Arthur T. McIntosh & Company's Westmont Acres, a subdivision of part of the Southeast 1/4 of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, as provided by document number 145100; Lots 1 and 2 in Broberg's Resubdivision of Lot 1 and the East 29 feet of Lot 2 in Block 2 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, as provided for by document number 947033; Lots 1 and 2 in Adolf's Resubdivision of Lots 4, 5 and 6 in Block 1 in Arthur T. McIntosh & Company's Westmont Acres, aforesaid, as provided for by document number R1993-119973; along with the East 1/2 of the Richmond Avenue right-of-way, from the Westerly extension of the South line of Lot 6 in Block 2 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, to the South right-of-way line of Ogden Avenue; the 66 foot wide right-of-way of Woodstock Avenue, from the Westerly extension of the South line of Lot 1 in Adolf's Resubdivision, aforesaid, to the South right-of-way line of Ogden Avenue; the 33 foot wide right-of-way of Oxford Avenue, from the Easterly extension of the South line of Lot 1 in Block 1 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, to the South right-of-way line of Ogden Avenue; and the South 1/2 of the Ogden Avenue right-of-way from the Northerly extension of the center line of Richmond Avenue to the Northerly extension of the East right-of-way line of Oxford Avenue; all in DuPage County, Illinois;

P.I.N.s: 09-03-400-001, -002, -008, -009, -010 and -011;
09-03-403-004, -005, -006, -025 and -026;

Commonly known as: 285 Richmond Avenue; 284 Woodstock Avenue;
403, 407, 415, 419, 427, 431, 433 and 435-45 Ogden Avenue;
and 288 Oxford Avenue; all in Clarendon Hills, Illinois.

EXHIBIT A-2

Depiction of the
OGDEN AVENUE TIF DISTRICT

EXHIBIT A-2

Depiction of the
OGDEN AVENUE TIF DISTRICT

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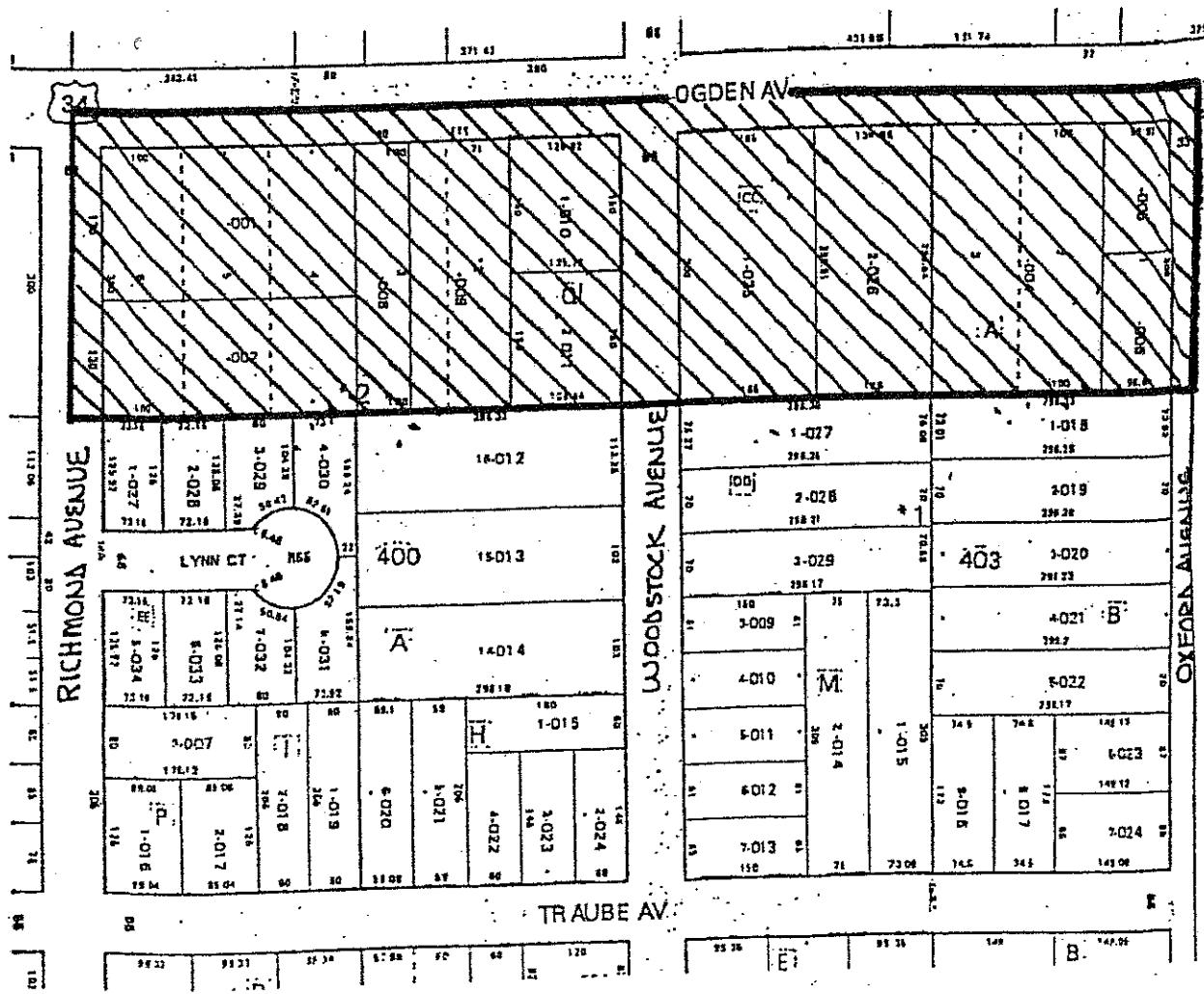


EXHIBIT B

Legal Description of the Property

Legal Description of the TIF Parcel Portion of the Property:

Lots 2 and 3 in Block 1 in Arthur T. McIntosh and Company's Westmont Acres in the Southwest ¼ and the West ½ of the Southeast ¼ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded November 4, 1920 as Document 145100, in DuPage County, Illinois; and

Lots 1 and 2 in Adolf's Resubdivision of Lots 4, 5 and 6 in Block 1 in Arthur T. McIntosh and Company's Westmont Acres in the Southwest ¼ and the West ½ of the Southeast ¼ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said Adolf's Resubdivision recorded June 10, 1993 as Document R1993-119973, in DuPage County, Illinois;

P.I.N.s: 09-03-403-004, -025 and -026;

Common Addresses: 407, 415 and 419 Ogden Avenue,
Clarendon Hills, Illinois.

Legal Description of the Non-TIF Parcel Portion of the Property:

Lot 1 in Regal Court Subdivision, being a Subdivision in the West ½ of the Southeast ¼ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded April 11, 1994 as Document R1994-084418, in DuPage County, Illinois; and

Lot 1 in Oxford Hill Subdivision of Lot 1 in Block 12 and Lots 12 to 16, inclusive, in Block 1 in Westmont Acres, being a Subdivision in the South ½ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded February 27, 1953 as Document 675104, in DuPage County, Illinois;

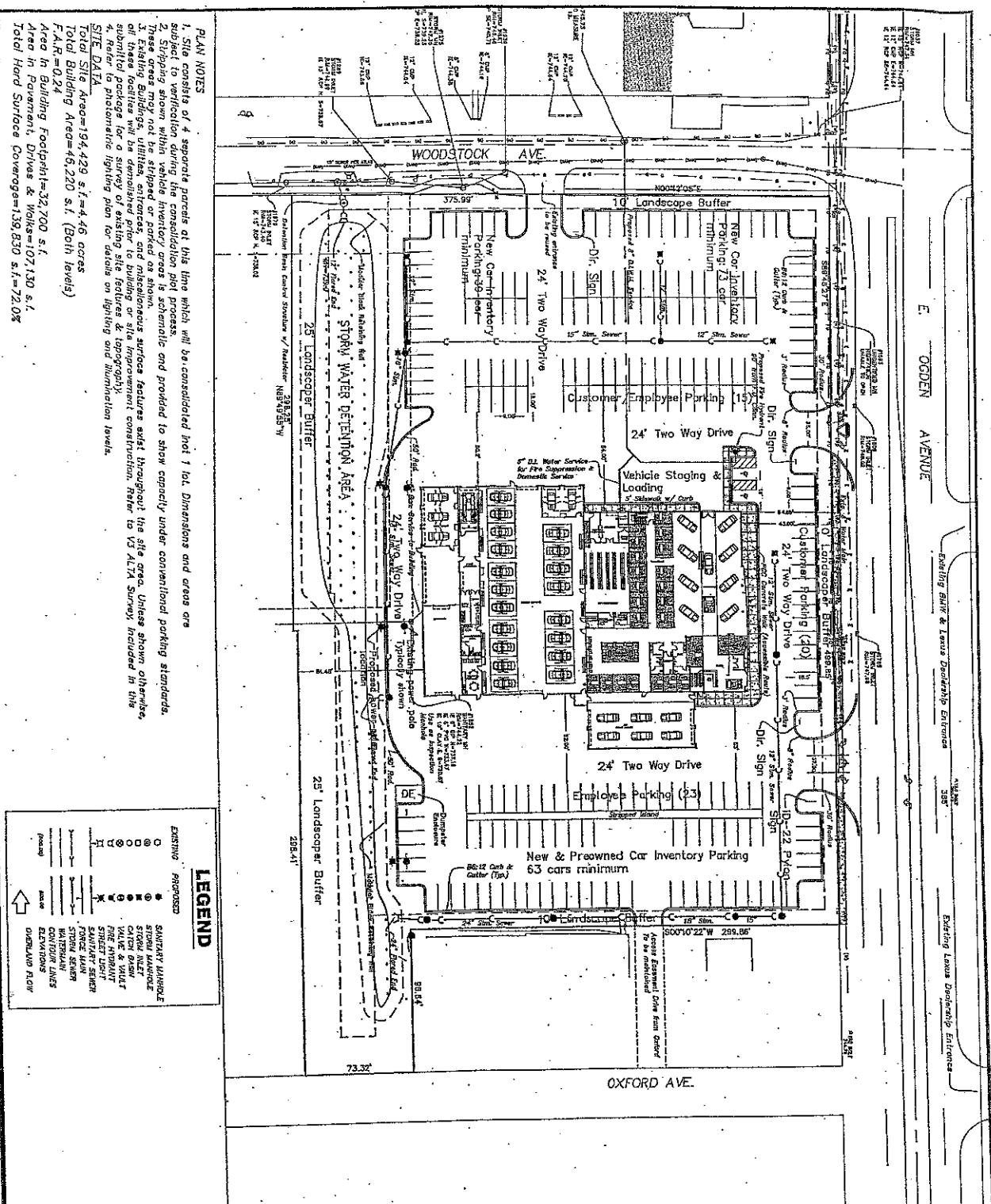
P.I.N.s: 09-03-403-018 and -027;

Common Addresses: 279 Woodstock Avenue and 280 Oxford Avenue,
Clarendon Hills, Illinois.

EXHIBIT C

Site Plan for the Project

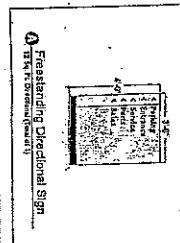
(attached)



LEGEND

EXISTING PROPOSED

- EXISTING SANITARY MANHOLE
- PROPOSED SANITARY MANHOLE
- EXISTING STORM MANHOLE
- PROPOSED STORM MANHOLE
- EXISTING SANITARY SEWER
- PROPOSED SANITARY SEWER
- EXISTING STORM SEWER
- PROPOSED STORM SEWER
- EXISTING WATER MAIN
- PROPOSED WATER MAIN
- EXISTING CABLE LINES
- PROPOSED CABLE LINES
- EXISTING OVERHEAD POWER
- PROPOSED OVERHEAD POWER



Infiniti of Clarendon Hills
Clarendon Hills, Illinois
Preliminary Site & Utility Plan

DOHERTY & ASSOCIATES
1160 Oak Lane (507) 352-5730
Schuabberg, R. 50133 FAX: (507) 352-6979
ENGINEERS SURVEYORS PLANNERS
LANDSCAPE ARCHITECTS



1. Additional site notes and	10/12/10
2. Per Village Review	10/25/10
3. DATE	

EXHIBIT D

Detailed Description of the Project

(attached)

EXHIBIT D

Detailed Description of the Project

APPLICANT	Infiniti of Lisle 4325 Lincoln Avenue Lisle, IL 60532
OWNER (and contract purchaser of 280 Oxford)	Ogden Clarendon LLC 4325 Lincoln Avenue Lisle, IL 60532
REQUEST	The applicant, an affiliate of the owner, is requesting rezoning the parcels on Woodstock and Oxford Avenues to the B-3 Highway Business District and a special use permit, under Section 20.11.2 of the Zoning Ordinance, to allow operation of an automobile sales and service agency in the B-3 District. In addition, the applicant seeks approval of a plat of consolidation to make the existing five lots into a single lot.
PROPERTY LOCATION	The subject property is located on the southeast corner of Ogden Avenue and Woodstock Avenue, with partial frontage on Oxford Avenue.
SIZE OF PROPERTY	The parcel has 500 feet of frontage on Ogden Avenue and is about 370 feet deep, for an area of 4.465 acres.
EXISTING ZONING LAND USE	The three Ogden Avenue parcels on the property are zoned B-3 (Highway Business District) and contain a precast concrete commercial service building, two metal frame commercial buildings, a 60-room masonry motel building, paved parking lots, fences, and a small stormwater detention basin. The properties have been used until recently for a glass sales and service business, a patio furniture store and warehouse, and a motel. The parcels on Oxford and Woodstock Avenues are both zoned R-1 Single Family Residence District and contain two residences.
ADJACENT ZONING LAND USES	To the north are Village of Westmont commercially-zoned properties, improved with automotive sales and service buildings. The properties to the south are zoned R-1 Single Family Residence District and are improved with two residences. The properties to the east and the west are zoned B-3 and R-4 Multiple Family Residential and improved with a commercial building and an apartment building on each side.

PURPOSE	The applicant is requesting the rezoning and special use permit in order to construct a new building with approximately 46,220 square feet for new car sales, associated used car sales, service, parking and auto inventory space, and stormwater detention facility.
DEVELOPMENT PROPOSAL	The applicant proposes to demolish all the buildings and structures on the five parcels that make up the site and construct a one- to two-story new building and related facilities for the sales and service of new and used cars. The applicant proposes a building with approximately 46,220 square feet of floor area, including a partial second floor. The front (north) portion of the building would include showroom and sales office uses. The center part of the building, on first and second floors, would hold service drop-off/pick-up areas, parts inventory, and other back-office functions. Service bays, detail area and car wash would be within the rear (south) part of the building. Overhead doors are planned on the east and west sides of the service area. The building would be approximately 25' tall at its highest point in the front section. The service areas and customer drop-off areas would be lower in height. The front of the building would have a large, curved wall of glass. The service drop-off area would be finished in brushed aluminum, with glass overhead doors. The remainder of the building would be constructed of scored, precast concrete panels with a sandstone texture.
TRAFFIC & PARKING	The site currently contains five commercial entrances on Ogden Avenue, one on Woodstock and a driveway on an ingress/egress easement to Oxford. In addition, there is one residential driveway on both Woodstock and Oxford. The proposed site plan shows one full access entrance from Ogden east of the building, with separate outbound right and left turn lanes, and a right-in/right-out access point west of the building. The site will also retain its access from Woodstock Avenue for customer use. The driveway to Oxford would be retained for inventory management needs, such as staging and moving vehicles after a delivery. The access drive around the building will provide adequate emergency access to the site. Currently, vehicle transport companies deliver vehicles to the surrounding dealerships within the median of Ogden Avenue, and that will be the procedure with this proposed facility. Part and supply deliveries will take place along the west side of the building.

The applicant outlines the employment, traffic and parking patterns of the proposed facility in its written narrative. They have agreed not to permit test drives on residential streets. Their total of 62 employees would never be present at the same time, arriving for staggered shifts during their hours of operation, 7:00 am to 9:00 pm, Monday through Saturday.

Employee parking, totaling approximately 30 spaces, would be located to the immediate east and west of the building. Customer parking of about 28 spaces, would be located immediately north and west of the building. New car inventory would be located along Woodstock and Ogden, with new and preowned vehicles stored at the east end of the property. Any customer vehicles left overnight for repairs would be kept indoors. There are 233 vehicle spaces proposed outside and 37 spaces inside the building, for a total of 270. The remaining spaces not required for parking customer, serviced and employee vehicles will be available for display and storage of new and used vehicle inventory.

There is currently sidewalk along the Woodstock Avenue frontage of the property and the Ogden Avenue frontage of 419 Ogden. The applicant proposes to extend sidewalk along Ogden to the east edge of the property.

SIGNS

The applicant proposes a ground sign near the east entrance. It would consist of a rectangular panel 22' 2" high and about 7' 6" wide, with a message area of approximately 38 square feet.

Based on the building width, the total maximum wall sign area is 240 square feet and the maximum number of wall signs is three, based on the number of streets the site abuts. The proposal shows the words "Clarendon Hills" in the upper left corner of the north wall of the sales area and the Infiniti word and logo in the upper right corner. In addition, there are small "Service" signs above the two customer drop-off doors facing Ogden.

LANDSCAPING & SCREENING

The site will contain approximately 24 shade trees and several clusters of low shrubs located on the perimeter of the parking/inventory lot. A row of arbor vitae is proposed along the adjacent apartment building to the east. A six-foot high cedar fence is proposed to separate the site from adjacent residential uses to the east and south. In addition, there will be a landscaped detention area and a solid row of trees and shrubs between the stormwater area and the south property line. This planting will be especially important on the south lot line of the Oxford parcel, as the detention area will be several feet higher than the adjacent lot.

The dumpsters would be stored near the southeast corner of the proposed building within a screened enclosure. Painted metal panels would screen rooftop mechanical units.

LIGHTING & SOUND

The site will be lit as shown on the photometric plan. Light will be provided on a number of poles located throughout the parking and inventory lot. The luminaires shown would direct light downward. Those located around the perimeter of the site would have internal shades to further restrict light spillover. Light levels would be substantial over the

interior of the lot, but drop off dramatically at the property lines. The only area that currently exceeds the maximum spillover level of 0.5 footcandles at residential property lines is adjacent to the apartment building on Oxford.

The applicants discuss their noise abatement plans in their narrative. The service shop doors will be oriented to the east and west. They will not install outside speakers for paging or other purposes.

UTILITIES & STORMWATER MANAGEMENT

The site will be served by new 12" watermains installed on Ogden and Woodstock Avenues with grant funds and no-interest loans funded by the federal stimulus program. The Village replaced the older, smaller watermains in order to facilitate development of this area. The applicant proposes to connect to the new valve vault on Woodstock Avenue for the Glass America building. The service would provide sufficient capacity for fire sprinklers in the building and an on-site fire hydrant.

The sanitary sewer running north between the rear lot lines of 279 Woodstock and 280 Oxford will serve the building. The stub running west will likely be abandoned, while the stub running east will need to remain or be rerouted to serve the eye doctor's office and apartment building along Oxford. An easement may be required for this sewer, as well as any overhead utility distribution lines that need to remain. Wired utility service to the new building will be underground, as required.

The existing site has a small detention basin serving only the 419 Ogden property. The proposed development will include a linear stormwater detention area over most of the 279 Woodstock and 280 Oxford properties. The base of the detention area will have wetland plantings, as one of the "best management practices" required to address the water quality standards of the DuPage County stormwater ordinance. Much of the north edge of the basin will consist of a block retaining wall. All site runoff will be directed into this basin, which will use the 15" storm sewer on Woodstock as its outflow. The addition of stormwater detention to serve the four properties that formerly had unrestrained runoff will result in reduced peak flow conditions for downstream properties to the south.

ORDINANCE NO. 11-05-19

AN ORDINANCE AUTHORIZING
AN AMENDED AND RESTATED REDEVELOPMENT AGREEMENT
FOR THE INFINITI DEVELOPMENT
COMPRISING A PART OF THE OGDEN AVENUE TIF DISTRICT
OF THE VILLAGE OF CLARENDON HILLS, ILLINOIS

BE IT ORDAINED, by the President and Board of Trustees of the Village of Clarendon Hills, DuPage County, Illinois, as follows:

SECTION 1: The President and Board of Trustees of the Village of Clarendon Hills (hereinafter referred to as the "VILLAGE") find as follows:

- A. The VILLAGE is a non-home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois.
- B. The VILLAGE is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (hereinafter referred to as the "ACT"), to finance redevelopment in accordance with the conditions and requirements set forth in the ACT.
- C. Pursuant to Ordinance Numbers 05-12-76, 05-12-77, and 05-12-78, adopted December 9, 2005, the VILLAGE approved a tax increment redevelopment plan and project (hereinafter referred to as the "TIF PLAN"), designated the tax increment redevelopment project area (hereinafter referred to as the "REDEVELOPMENT PROJECT AREA"), and adopted tax increment financing relative to the VILLAGE'S Ogden Avenue tax increment financing district (hereinafter referred to as the "OGDEN AVENUE TIF DISTRICT"); said OGDEN AVENUE TIF DISTRICT being legally described and depicted as set forth in EXHIBIT A-1 and EXHIBIT A-2 attached hereto and made part hereof.
- D. Ogden Clarendon, LLC (hereinafter referred to as the "OWNER") is the fee owner of certain real property, a portion of which is located within the REDEVELOPMENT PROJECT AREA, and a portion of which is located outside of the REDEVELOPMENT PROJECT AREA, said property being legally described on EXHIBIT B attached hereto and made part hereof (hereinafter referred to as the "DEVELOPER PARCEL").
- E. The OWNER desires to redevelop the DEVELOPER PARCEL by constructing a commercial retail project thereon, consisting of an Infiniti new motor vehicle dealership, along with used motor vehicle sales and the

ADOPTED this 2nd day of May, 2011, pursuant to a roll call vote as follows:

AYES: Trustees Alongi, Cochran, Pedersen, Reid,
wallace, and Williams

NAYS: None

ABSENT: None

APPROVED by me this 2nd day of May, 2011.

Thomas F. Karaba

Thomas F. Karaba,
Village President

ATTEST:

Dawn M. Tandle

Dawn Tandle,
Village Clerk



Published by me in pamphlet form this 3rd day of May, 2011.

Dawn M. Tandle

Dawn Tandle,
Village Clerk

EXHIBIT A-2

**Depiction of the
OGDEN AVENUE TIF DISTRICT**

(attached)

EXHIBIT B

**Legal Description of the
DEVELOPER PARCEL**

PORTION WITHIN THE REDEVELOPMENT PROJECT AREA:

Lots 2 and 3 in Block 1 in Arthur T. McIntosh and Company's Westmont Acres in the Southwest 1/4 and the West 1/2 of the Southeast 1/4 of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded November 4, 1920 as Document 145100, in DuPage County, Illinois; and

Lots 1 and 2 in Adolf's Resubdivision of Lots 4, 5 and 6 in Block 1 in Arthur T. McIntosh and Company's Westmont Acres in the Southwest 1/4 and the West 1/2 of the Southeast 1/4 of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said Adolf's Resubdivision recorded June 10, 1993 as Document R1993-119973, in DuPage County, Illinois;

P.I.N.s: 09-03-403-004, -025 and -026;

Common Addresses: 407, 415 and 419 Ogden Avenue,
Clarendon Hills, Illinois.

PORTION NOT WITHIN THE REDEVELOPMENT PROJECT AREA:

Lot 1 in Regal Court Subdivision, being a Subdivision in the West 1/2 of the Southeast 1/4 of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded April 11, 1994 as Document R1994-084418, in DuPage County, Illinois; and

Lot 1 in Oxford Hill Subdivision of Lot 1 in Block 12 and Lots 12 to 16, inclusive, in Block 1 in Westmont Acres, being a Subdivision in the South 1/2 of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded February 27, 1953 as Document 675104, in DuPage County, Illinois;

P.I.N.s: 09-03-403-018 and -027;

Common Addresses: 279 Woodstock Avenue and 280 Oxford Avenue,
Clarendon Hills, Illinois.

**AMENDED AND RESTATED REDEVELOPMENT AGREEMENT
FOR THE INFINITI DEVELOPMENT
COMPRISING A PART OF
THE OGDEN AVENUE TIF DISTRICT OF
THE VILLAGE OF CLARENDON HILLS, ILLINOIS**

This Amended and Restated Redevelopment Agreement (the "Agreement") is made and entered into as of the 2nd day of May, 2011 (the "Effective Date") by and between the Village of Clarendon Hills, Illinois, an Illinois municipal corporation (the "Village"), Ogden Clarendon, LLC, an Illinois limited liability company (the "Owner"), Infiniti of Clarendon Hills, Inc. an Illinois corporation (the "Operator" and together with the Owner, the "Developer"). (The Village, the Owner and the Operator are sometimes referred to herein individually as a "Party," and collectively as the "Parties.")

WITNESSETH:

IN CONSIDERATION of the Preliminary Statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereto agree as follows:

I. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The Village is a non-home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois.
- B. The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the Village, to foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village.
- C. The Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (the "TIF Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the TIF Act.

D. Pursuant to Ordinance Numbers 05-12-76, 05-12-77 and 05-12-78, adopted December 9, 2005, the Village approved a tax increment redevelopment plan and project (the "TIF Plan"), designated the tax increment redevelopment project area (the "Redevelopment Project Area"), and adopted tax increment financing relative to the Village's Ogden Avenue tax increment financing district (the "Ogden Avenue TIF District"); said Ogden Avenue TIF District being legally described and depicted as set forth in EXHIBIT A-1 and EXHIBIT A-2 attached hereto and made part hereof.

E. The Owner is the fee owner of certain real property, a portion of which is located within the Redevelopment Project Area (the "TIF Parcel"), and a portion of which is located outside of the Redevelopment Project Area (the "Non-TIF Parcel") (the TIF Parcel and the Non-TIF Parcel being hereinafter collectively referred to as the "Property"), said Property being legally described on EXHIBIT B attached hereto and made part hereof.

F. The Operator is, or will shortly be, the tenant of the Property pursuant to a lease with the Owner.

G. The Developer desires to redevelop the Property by constructing a commercial retail project thereon, consisting of an Infiniti new motor vehicle dealership, along with used motor vehicle sales and the provision of motor vehicle maintenance and repair services, including the sale of motor vehicle parts, all as depicted on the site plan attached hereto as EXHIBIT C and made part hereof, and as described in further detail on EXHIBIT D attached hereto and made part hereof (the "Project").

H. It is necessary for the successful completion of the Project that the Village enter into this Agreement with Developer to provide for the redevelopment of the Property, and in particular the TIF Parcel, thereby implementing the TIF Plan.

I. Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Property with the Project, but for certain tax increment financing ("TIF") and other incentives, to be provided by the Village in accordance with the TIF Act and 65 ILCS 5/8-11-20 (the "Rebate Statute"), which the Village is willing to provide under the terms and conditions contained herein. The Parties acknowledge and agree that but for the TIF and other incentives, to be provided by the Village, Developer cannot successfully and economically develop the Property with the Project, in a manner satisfactory to the Village. The Village has determined that it is desirable and in the Village's best interests to assist Developer in the manner set forth herein and as this Agreement may be supplemented and amended from time to time.

- J. The Village, in order to stimulate and induce development of the Property with the Project, has agreed to finance certain TIF eligible redevelopment project costs through incremental property taxes, and has agreed to finance certain other Project costs with other revenue sources, all in accordance with the terms and provisions of the TIF Act, the Rebate Statute and this Agreement.
- K. Pursuant to the Rebate Statute, the Village finds as follows:
 - 1. The buildings on the Property no longer comply in all respects with current building codes;
 - 2. The buildings on the Property 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) 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.
- L. This Agreement has been submitted to the Corporate Authorities of the Village (as defined below) for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof, and any and all actions of the Corporate Authorities of the Village precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.
- M. This Agreement has been submitted to the board of directors, corporate officers, shareholders, members and/or managers of the Developer for consideration and review, the Developer's board of directors, corporate officers, shareholders, members and/or managers have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof,

and any and all action of the Developer's board of directors, corporate officers, shareholders, members and/or managers precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

N. The Village is desirous of having the Redevelopment Project Area rehabilitated, developed and redeveloped in accordance with the TIF Plan, and particularly the Project as a part thereof, in order to serve the needs of the Village, arrest physical decay and decline in the Redevelopment Project Area, increase employment opportunities, stimulate commercial growth and stabilize the tax base of the Village and, in furtherance thereof, the Village is willing to undertake certain incentives, under the terms and conditions hereinafter set forth, to assist such development.

II. DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, and as follows:

A. **"Change in Law"** means the occurrence, after the Effective Date, of an event described below in this definition, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon:

Change in Law means any of the following: (1) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the Village or with respect to those made by the Village, only if they violate the terms of this Agreement); (2) the order or judgment of any federal or state court, administrative agency or other governmental body (other than the Village); or (3) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village, or, with respect to those made by the Village, only if they violate the terms of this Agreement). Change in Law, for purposes of this Agreement, shall also include the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the actions to be performed under this Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the Village, except as provided herein).

B. **"Corporate Authorities"** means the President and Board of Trustees of the Village of Clarendon Hills, Illinois.

C. **"Effective Date"** means the date on which this Agreement is executed on behalf of the Village, with said date being inserted in the opening paragraph of this Agreement.

D. **"Incremental Property Taxes"** means that portion of the ad valorem real estate taxes, if any, arising from the taxes levied upon the Redevelopment Project Area, which taxes are actually collected and which are attributable to the increase in the equalized assessed valuation ("EAV") of the Redevelopment Project Area over and above the EAV of the Redevelopment Project Area at the time of the formation of the Ogden Avenue TIF District, all as determined by the County Clerk of the County of DuPage, Illinois, pursuant to and in accordance with the TIF Act, the TIF Ordinances and this Agreement, and which have been received by the Village prior to or after the Effective Date of this Agreement.

E. **"Person"** means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

F. **"Sales Taxes"** means taxes generated from the Project, and received by the Village, from the Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.* and the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*

G. **"TIF Eligible Redevelopment Costs"** means the demolition and property acquisition costs of the Project, relative to the TIF Parcel, to be paid or reimbursed from the TIF Fund, pursuant to the TIF Act, by the Village, as provided in this Agreement.

H. **"TIF Fund"** means the special fund set up by the Village into which the Village has deposited, and will continue to deposit, Incremental Property Taxes, and such other revenues as determined by the Village.

I. **"Uncontrollable Circumstance"** means any event which:

1. is beyond the reasonable control of and without the fault of the Party relying thereon; and
2. is one or more of the following events:
 - a. a Change in Law;
 - b. insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;

- c. epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
- d. governmental condemnation or taking other than by the Village;
- e. strikes or labor disputes, or work stoppages not initiated by the Developer;
- f. unreasonable delay in the issuance of building or other permits or approvals by the Village or other governmental authorities having jurisdiction other than the Village;
- g. shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;
- h. unknown or unforeseeable geo-technical or environmental conditions;
- i. major environmental disturbances;
- j. vandalism; or
- k. terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in subsection g. above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

For each day that the Village or Developer is delayed in its performance under this Agreement by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day.

III. CONSTRUCTION OF TERMS

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.
- C. The word "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".
- D. Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by

reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the Agreement shall control.

- F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- G. The Village Manager, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. Developer is entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village.
- H. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates Horst Korallus as its authorized representative, who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Developer and with the effect of binding Developer in that connection (such individual being designated as the "Authorized Developer Representative"). Developer shall have the right to change its Authorized Developer Representative by providing the Village with written notice of such change which notice shall be sent in accordance with subsection XVI.B. of this Agreement.

IV. COOPERATION OF THE PARTIES

The Village and the Developer agree to cooperate in implementing the Project in accordance with the Parties' respective obligations set forth in this Agreement.

V. DEVELOPMENT OF THE PROPERTY

- A. Developer has applied for all necessary permits and approvals from all governmental agencies having jurisdiction over the Project as may be required to commence construction of the Project. Upon receipt of all

required approvals, and permits from the Village and any other federal, state, regional or county agencies having jurisdiction over the Project, the Developer shall commence demolition of the buildings on the Property and thereafter commence construction of the Project.

B. The Parties acknowledge that an affiliate of the Developer is constructing a development similar to the Project in Naperville, Illinois. In this regard, the Developer represents and warrants that the construction of the Project shall take precedence over, shall be completed prior to, and shall be opened for business prior to, the development in Naperville, Illinois.

VI. UNDERTAKINGS ON THE PART OF THE VILLAGE

A. **Village Cooperation.** The Village agrees to cooperate with Developer in Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the Village and, upon request of Developer, will promptly execute any applications or other documents (upon their approval by the Village) which Developer intends to file with such other governmental or quasi-governmental entities in regard to the Project. The Village shall further promptly respond to, and/or process, and consider reasonable requests of Developer for applicable demolition permits, building permits, driveway permits, curb cut permits, or other permits necessary for the construction of the Project. Approval of any building permit applications and/or engineering plans shall be contingent on the Developer providing all required and requested documentation including but not limited to engineering reports, calculations and plans required to substantiate that said improvements fully conform with all applicable state statutes and all Village ordinances and codes, as well as receipt of all required approvals from any federal, state, regional or county agencies having applicable jurisdiction.

B. **TIF Incentive.** In relation to the Project, the Village shall reimburse Developer in an amount not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "TIF Funding Cap"), from the TIF Fund, for TIF Eligible Redevelopment Project Costs associated with demolition and property acquisition costs, associated with the TIF Parcel, relative to the Project. Said TIF Funding Cap shall be paid to the Developer as follows:

1. Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) shall be paid to the Developer upon the completion of the demolition of the buildings on the TIF Parcel necessary to proceed with the Project, to reimburse the Developer for a portion of said demolition costs, as documented by the Developer, in writing to the Village, (including copies of all lien waivers), to have been incurred

by the Developer in relation to the demolition of the buildings on the TIF Parcel.

2. Provided all building permits necessary for the construction of the Project have been obtained by the Developer from the Village, and construction of the Project has commenced, Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) shall be paid to the Developer on June 1, 2011, as reimbursement for property acquisition costs incurred by the Developer relative to the acquisition of the TIF Parcel. In the event that said building permits have not been obtained by the Developer by June 1, 2011, and/or construction of the Project has not commenced by June 1, 2011, the Developer shall be deemed to have forfeited the payment from the Village under this subsection 2, and the Village shall not be obligated to make said payment.

C. **Sales Tax Incentive.** Beginning as of the first day of the month following the issuance by the Village of the final occupancy permit for the Project, or October 1, 2011, whichever occurs first (the "Commencement Date"), the Village shall reimburse to the Operator a portion of the Sales Taxes generated by the Project (the "Sales Tax Rebate"), subject to the following terms and conditions:

1. The Sales Tax Rebate shall be in an amount not to exceed Four Million Eight Hundred Thousand and No/100 Dollars (the "Rebate Cap").
2. The Sales Tax Rebate shall remain in effect for a period of not more than fifteen (15) years after the Commencement Date.
3. During the first ten (10) twelve (12) month periods following the Commencement Date, the Sales Taxes shall be divided as follows:
 - a. Fifty percent (50%) to the Village and fifty percent (50%) to the Operator, relative to the first Two Hundred Seventy-Five Thousand and No/100 Dollars (\$275,000.00) in Sales Taxes generated in each twelve (12) month period following the Commencement Date.
 - b. Sixty percent (60%) to the Operator and forty percent (40%) to the Village, relative to any Sales Taxes in excess of Two Hundred Seventy-Five Thousand and No/100 Dollars (\$275,000.00), that are generated in each twelve (12) month period following the Commencement Date.

4. During the eleventh (11th) through fifteenth (15th) twelve (12) month periods following the Commencement Date, all Sales Taxes shall be allocated fifty percent (50%) to the Village and fifty percent (50%) to the Operator.
5. The Village shall make Sales Tax Rebate payments to the Operator on a quarterly basis (the "Quarterly Payment") after the Commencement Date, with each such payment covering the Sales Taxes received by the Village during a three (3) month period (the "Payment Period"). Each Quarterly Payment to be made by the Village shall be made by the fifteenth (15th) day of the second month following the Payment Period to which it relates.
6. The Operator shall take all necessary actions to cause the Illinois Department of Revenue to release the Sales Taxes information /documentation, relative to the Project, to the Village. In this regard, until such time as the Village obtains the information/documentation necessary to verify the Sales Taxes generated by the Project, the Village shall not be obligated to provide the Operator with the Sales Tax Rebate.
7. The Sales Tax Rebate to the Operator shall only be made from Sales Taxes actually received by the Village from the Project.
8. The term Sales Taxes shall include future revenues derived during the period of this Agreement from taxes enacted by law or ordinance by any governmental authority which are intended to replace the Sales Taxes generated by the Project.
9. In the event that the Village ceases to receive Sales Taxes from the Project, as a result of a Change in the Law, and no alternate tax is enacted to replace the Sales Taxes, the Village shall not be obligated to make any further Sales Tax Rebate payments hereunder.
10. The Sales Tax Rebate shall cease upon the Operator's receipt of the full amount of the Rebate Cap or the expiration of fifteen (15) years from the Commencement Date, whichever occurs first, subject to the Operator's receipt of the Sales Tax Rebate relative to the last Payment Period of said fifteen (15) year period, if necessary.
11. Subject to Uncontrollable Circumstances, if at any time the Project ceases to operate during the term of this Agreement, the Sales Tax Rebate shall cease, and shall not be reinstated thereafter.

VII. DEVELOPER'S OBLIGATIONS

Developer shall have the obligations set forth below, in addition to those set forth elsewhere in this Agreement, for the development, construction, financing, completion and furtherance of the Project:

- A. The Developer will construct the Project in full conformance with the approvals therefor from the Village.
- B. Developer shall at all times acquire, install, construct, operate and maintain the Project in substantial conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall substantially conform to all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village, or any of its rules or regulations or amendments thereto which are in effect from time to time during the construction and maintenance of the Project and/or during the term of this Agreement.
- C. During the construction of the Project, the Developer shall provide such notices and attend such community and neighborhood meetings as may be necessary or desirable, as reasonably determined by either the Village or the Developer, to keep all the residents fully informed of progress on the Project and any measures that residents should take to minimize any inconvenience. The Developer shall also stage its construction of the Project to avoid to the fullest extent possible any such community disruption. During construction, the Developer shall also keep all public streets clean on a daily basis, and for each day in which such public streets are not properly clean, the Developer shall pay the Village the sum of Two Hundred Fifty and No/100 Dollars (\$250.00) for each such violation.

VIII. ADDITIONAL COVENANTS OF DEVELOPER

- A. **Developer Existence.** Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as an Illinois limited liability company and an Illinois corporation, as the case may be, so long as Developer maintains an interest in the Property or has any other remaining obligation pursuant to the terms of this Agreement.

B. **Further Assistance and Corrective Instruments.** The Village and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the Village's and the Developer's sound legal discretion.

C. **No Gifts.** Developer covenants that no officer, stockholder, employee, member, manager or agent of Developer, or any other Person connected with Developer, has made, offered or given, either directly or indirectly, to any member of the Corporate Authorities, or any officer, employee or agent of the Village, or any other Person connected with the Village, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the Village.

D. **Disclosure.** Concurrently with execution of this Agreement, Developer shall disclose to the Village the names, addresses and ownership interests of all Persons that have an ownership interest in the Developer, together with such supporting documentation that may be requested by the Village. Developer further agrees to notify the Village throughout the term of this Agreement of the names, addresses and ownership interests of any new owners of the Developer.

E. **Prevailing Wage.** Developer shall comply with the Prevailing Wage Act to the extent public improvements are constructed with the funds being provided to the Developer by the Village hereunder.

IX. ADHERENCE TO VILLAGE CODES AND ORDINANCES

All development and construction of the Project shall comply in all material respects with the provisions in the building, plumbing, mechanical, electrical, storm water management, fire prevention, property maintenance, zoning and subdivision codes of the Village and all other germane codes and ordinances of the Village in effect from time to time during the course of construction of the Project. Developer, by executing this Agreement, expressly warrants that it has examined and is familiar with all the covenants, conditions, restrictions, building regulations, zoning ordinances, property maintenance regulations, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter) and land use regulations, codes, ordinances, federal, state and local ordinances, and the like, currently in effect.

X. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Developer represents, warrants and agrees as the basis for the undertakings on its part herein contained that as of the date hereof and until completion of the Project:

- A. **Organization and Authorization.** Owner is an Illinois limited liability company duly organized and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Operator is an Illinois corporation duly organized and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.
- B. **Non-Conflict or Breach.** Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its partners or venturers is now a party or by which Developer or any of its partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party or any of its venturers is bound.
- C. **Financial Resources.** Developer has sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement.
- D. **Notice of Violations.** The Developer represents and warrants that it has not received any notice from any local, state or federal official that the

activities of the Developer with respect to the Property and/or the Project may or will be in violation of any environmental law or regulation. The Developer is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any local, state or federal environmental law, regulation or review procedure, and the Developer is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any person a valid claim under any state or federal environmental statute.

XI. REPRESENTATIONS AND WARRANTIES OF THE VILLAGE

The Village represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

- A. **Organization and Authority.** The Village is an Illinois municipal corporation duly organized and validly existing under the laws of the State of Illinois, and has all requisite corporate power and authority to enter into this Agreement.
- B. **Authorization.** The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement:
 1. have been duly authorized by all necessary corporate action on the part of the Village;
 2. require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement; and
 3. shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the Village is subject.
- C. **Litigation.** To the best of the Village's knowledge, there are no proceedings pending or threatened against or affecting the Village or the Ogden Avenue TIF District in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement.

XII. INSURANCE

- A. The Developer, and any successor in interest to the Developer, shall obtain and continuously maintain insurance on the Property and the Project and, from time to time at the request of the Village, furnish proof to

the Village that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and continuously maintain, provided that the Developer shall obtain the insurance described in subsection 1. below prior to the commencement of construction of any portion of the Project (excluding excavation and footings):

1. Builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis", in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the Village and its officers, agents and employees as additional insureds, with limits against bodily injury and property damage of not less than \$5,000,000.00 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
3. Workers compensation insurance, with statutory coverage.

B. All insurance required in this Section XII. shall be obtained and continuously maintained through responsible insurance companies selected by the Developer or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Section XII., each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured and the Village at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section XII. In lieu of separate policies, the Developer or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

XIII. INDEMNIFICATION, HOLD HARMLESS AND RELEASE PROVISIONS

A. The Developer releases from and covenants and agrees that the Village, its governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees

thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the Property or arising under this Agreement or actions in furtherance thereof to the extent not attributable to the gross negligence or willful misconduct of the Indemnified Parties.

- B. Except for gross negligence or willful misconduct of the Indemnified Parties, the Developer agrees to indemnify the Indemnified Parties, now and forever, and further agree to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the Village in this Agreement.
- C. No liability, right or claim at law or inequity shall attach to or shall be incurred by the Village's president, trustees, officers, officials, agents and/or employees, and any such rights or claims of the Developer against the Village's president, trustees, officers, officials, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the Village.

XIV. EVENTS OF DEFAULT AND REMEDIES

- A. **Developer Events of Default.** The following shall be Events of Default with respect to this Agreement:

1. If any material representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by the Developer, in writing and delivered to the Village pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within sixty (60) days after written notice from the Village.
2. Default by Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant contained in this Agreement, or any other agreement,

financing or otherwise, concerning the existence, structure or financial condition of Developer and/or the Project and Property; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and Developer, within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within thirty (30) days after such notice.

3. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days, and the Project ceases to operate as a result thereof.
4. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer or of any substantial part of Developer's property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within sixty (60) consecutive days, and the Project ceases to operate as a result thereof.
5. Failure to have funds to meet Developer's obligations; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within sixty (60) days after written notice from the Village.
6. Developer abandons the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than sixty (60) days for any reason other than: (a) Uncontrollable Circumstances or (b) if Developer is ahead of its planned construction schedule.

7. Developer materially fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the Project, and the Project ceases to operate as a result thereof; provided, however, that such default shall constitute an Event of Default only if the Developer does not, within sixty (60) days after written notice from the Village, remedy the default.

B. **Village Events of Default.** The following shall be Events of Default with respect to this Agreement:

1. If any representation made by the Village in this Agreement, or in any certificate, notice, demand or request made by the Village, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the Village does not remedy the default within thirty (30) days after written notice from Developer.
2. Default by the Village in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the Village; provided, however, that such default or breach shall constitute an Event of Default only if the Village does not, within thirty (30) days after written notice from Developer, initiate and diligently pursue appropriate measures to remedy the default, or if the Village fails to cure such default within thirty (30) days of written notice of such default.
3. Default by the Village in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the Village commences cure within thirty (30) days after written notice from Developer and in any event cures such default within sixty (60) days after such notice, subject to Uncontrollable Circumstances.

C. **Remedies for Default.** In the case of an Event of Default hereunder:

1. The defaulting Party shall, upon written notice (in accordance with the provisions of Section XVI.B. of this Agreement) from the non-defaulting Party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured within thirty (30) days, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but

in no event more than thirty (30) additional days after receipt of such notice, unless extended by mutual agreement, the non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement. The non-defaulting Party shall be entitled to reasonable attorney fees in the event a court action is filed and the non-defaulting Party is the prevailing Party.

2. In case the Village shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, Developer and the Village shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the Village shall continue as though no such proceedings had been taken.
3. In the case of an Event of Default by Developer, and its failure to cure such default after due notice and within the time frames provided for in this Agreement, in addition to any other remedies at law or in equity, the Village shall be entitled to terminate this Agreement, and shall thereafter be relieved of its obligations under this Agreement, including but not limited to its obligation to pay any incentive amounts to the Developer. Notwithstanding the foregoing, provided the Project is continuing to operate, an Event of Default under Sections XIV.A.3., 4. or 7. above shall not result in the termination of this Agreement.
4. In the case of an Event of Default by the Village and its failure to cure such default after due notice and within the time period provided for in this Agreement, in addition to any other remedies at law or in equity, the Developer shall be relieved of its obligations under this Agreement if it so elects, and the Developer shall have the right to terminate this Agreement.

D. Reimbursement of Village for Legal and Other Fees and Expenses.

1. In the event that any third party or parties institute any legal proceedings against the Developer and/or the Village, which relate to the terms of this Agreement and is not attributable to the gross negligence or willful misconduct of the Indemnified Parties (as referenced in Section XIII.A. above), then, in that event, the Developer, on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

- a. Developer shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.
- b. If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and the Developer, on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Developer shall reimburse the Village from time to time on written demand from the Village Manager of the Village and notice of the amount due for any expenses, including but not limited to court costs, attorneys' fees and witnesses' fees, and other expenses of litigation, incurred by the Village in connection therewith.

E. **No Waiver by Delay or Otherwise.** Any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither Party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

F. **Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

XV. EQUAL EMPLOYMENT OPPORTUNITY

A. **No Discrimination.** Developer will comply with all federal, state and local laws relating to equal employment opportunity. To the extent permitted by law, Developer will use reasonable efforts to employ qualified residents of the Village.

- B. **Advertisements.** Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. **Contractors.** Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in the first sentence of subsection A. and in subsection B. above.

XVI. MISCELLANEOUS PROVISIONS

A. **Cancellation.** In the event Developer or the Village shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the TIF Plan, including Developer's duty to build the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the TIF Act, the Rebate Statute, or any ordinance adopted by the Village in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Project or the covenants and agreements or rights and privileges of Developer or the Village, then and in any such event, the Party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other within sixty (60) days after such final decision or amendment. If the Village terminates this Agreement pursuant to this subsection A., to the extent it is then appropriate, the Village, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided. Further, the cancellation or termination of this Agreement shall have no effect on the authorizations granted to Developer for buildings permitted and under construction to the extent permitted by said Court order; and the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded, properly executed document.

B. **Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service, (2) overnight courier, or (3) registered or certified first class mail, postage prepaid, return receipt requested.

With a copy to: Village Manager
Village of Clarendon Hills
1 North Prospect Avenue
Clarendon Hills, Illinois 60514-1292

and: Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606-2903
Attention: Thomas P. Bayer

If to Developer: Ogden Clarendon, LLC/Infiniti of Clarendon Hills, Inc.
4325 Lincoln Avenue
Lisle, Illinois 60532
Attn: Horst Korallus

With a copy to: Much Shelist
191 North Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attn: Michael Viner

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to clause (1) hereof shall be deemed received upon such personal service. Any notice, demand or request sent pursuant to clause (2) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (3) shall be deemed received forty-eight (48) hours following deposit in the mail.

- C. **Time is of the Essence.** Time is of the essence of this Agreement.
- D. **Integration.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
- E. **Counterparts.** This Agreement may be executed in two (2) counterparts, each of which shall be an original and each of which shall constitute but one and the same Agreement.
- F. **Recordation of Agreement.** The Parties agree to record a memorandum of this Agreement, executed by the then current owners of the Property in

the appropriate land or governmental records. Developer shall pay the recording charges.

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

H. **Choice of Law / Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and any court proceedings between the Parties hereto shall be brought in DuPage County, Illinois.

I. **Entire Contract and Amendments.** This Agreement (together with the exhibits attached hereto) is the entire contract between the Village and Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and Developer, and may not be modified or amended except by a written instrument executed by the Parties hereto.

J. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the Village and Developer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

K. **Waiver.** Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

L. **Cooperation and Further Assurances.** The Village and Developer each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village or Developer or other

appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

M. **Successors in Interest.** At any time, the Developer may assign its rights or obligations under this Agreement for the purpose of obtaining financing for the Project or any portion thereof to any entity in which the Developer owns a controlling interest.

N. **No Joint Venture, Agency or Partnership Created.** Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

O. **Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

P. **Term.** This Agreement shall remain in full force and effect until fifteen (15) years from the Commencement Date, subject to the payment of the Sales Tax Rebate for the last Payment Period as provided for in Section VI.C.10. above, or until the full amount of the Rebate Cap has been paid to the Developer, whichever occurs first.

Q. **Amendment and Restatement.** This Agreement amends and restates, in its entirety, that certain Redevelopment Agreement between Village and Owner dated as of November 15, 2010.

R. **Assignment.** This Agreement and the rights and obligations hereunder, may not be assigned by Developer prior to completion of the Project (as evidenced by issuance of certificate(s) of occupancy for the entire Project by the Village to the Developer) unless the Village in the exercise of its sole and absolute discretion consents in writing to such assignment. After the issuance of the aforesaid certificate(s) of occupancy by the Village, the Developer shall have the right to assign this Agreement and its rights and obligations hereunder:

1. to the owner or operator of another approved Infiniti dealership, without Village consent; or
2. As set forth in Section XVI.M above; or
3. to a person other than as set forth in subsection 1. above, subject to the consent in writing of the Village, such consent not to be unreasonably withheld.

XVII. EFFECTIVE DATE

The Effective Date for this Agreement shall be the day on which this Agreement is approved by the Village, with said date being inserted on page 1 hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

Village of Clarendon Hills,
an Illinois municipal corporation

By: Thomas J. Karaba
Thomas Karaba, Village President

ATTEST:

By: Dawn D. Tandle
Dawn Tandle, Village Clerk

Ogden Clarendon, LLC,
an Illinois limited liability company

By: H. Koeller X
Name: HORST KOELLER
Title: PRESIDENT Manager

Infiniti of Clarendon Hills, Inc.,
an Illinois corporation

By: H. Koeller X
Name: HORST KOELLER
Title: PRESIDENT

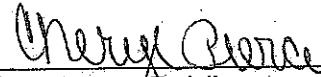


ACKNOWLEDGMENT

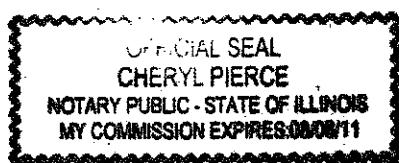
State of Illinois)
) SS
County of DuPage)

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

GIVEN under my hand and official seal, this 2nd day of May,
2011.



Notary Public

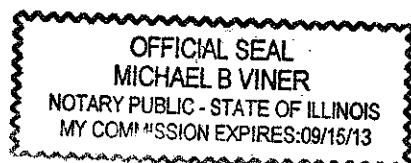


ACKNOWLEDGMENT

State of Illinois)
) SS
County of Cook)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Horst Korallus, personally known to me to be the Manager of Ogden Clarendon, LLC., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Manager he signed and delivered the said instrument and caused the seal of said Illinois limited liability company to be affixed thereto, as his/her free and voluntary act, and as the free and voluntary act and deed of said Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 21 day of April,
2011.



A handwritten signature of Michael B. Viner, which appears to be "M. B. Viner".

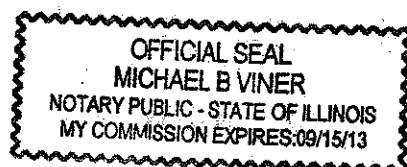
Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of Cook)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Horst Korallus personally known to me to be the President of Infiniti of Clarendon Hills, Inc., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such President he signed and delivered the said instrument and caused the seal of said Illinois limited liability company to be affixed thereto, as his/her free and voluntary act, and as the free and voluntary act and deed of said Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 27 day of April,
2011.



Notary Public

EXHIBIT A-1

**Legal Description of the
OGDEN AVENUE TIF DISTRICT**

Lots 1, 2 and 3 in Block 1, the West 71 feet of Lot 2 in Block 2, and Lots 3, 4, 5 and 6 in Block 2, all in Arthur T. McIntosh & Company's Westmont Acres, a subdivision of part of the Southeast 1/4 of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, as provided by document number 145100; Lots 1 and 2 in Broberg's Resubdivision of Lot 1 and the East 29 feet of Lot 2 in Block 2 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, as provided for by document number 947033; Lots 1 and 2 in Adolf's Resubdivision of Lots 4, 5 and 6 in Block 1 in Arthur T. McIntosh & Company's Westmont Acres, aforesaid, as provided for by document number R1993-119973; along with the East 1/2 of the Richmond Avenue right-of-way, from the Westerly extension of the South line of Lot 6 in Block 2 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, to the South right-of-way line of Ogden Avenue; the 66 foot wide right-of-way of Woodstock Avenue, from the Westerly extension of the South line of Lot 1 in Adolf's Resubdivision, aforesaid, to the South right-of-way line of Ogden Avenue; the 33 foot wide right-of-way of Oxford Avenue, from the Easterly extension of the South line of Lot 1 in Block 1 of Arthur T. McIntosh & Company's Westmont Acres, aforesaid, to the South right-of-way line of Ogden Avenue; and the South 1/2 of the Ogden Avenue right-of-way from the Northerly extension of the center line of Richmond Avenue to the Northerly extension of the East right-of-way line of Oxford Avenue; all in DuPage County, Illinois;

P.I.N.s: 09-03-400-001, -002, -008, -009, -010 and -011;
09-03-403-004, -005, -006, -025 and -026;

Commonly known as: 285 Richmond Avenue; 284 Woodstock Avenue;
403, 407, 415, 419, 427, 431, 433 and 435-45 Ogden Avenue;
and 288 Oxford Avenue; all in Clarendon Hills, Illinois.

EXHIBIT A-2

Depiction of the
OGDEN AVENUE TIF DISTRICT

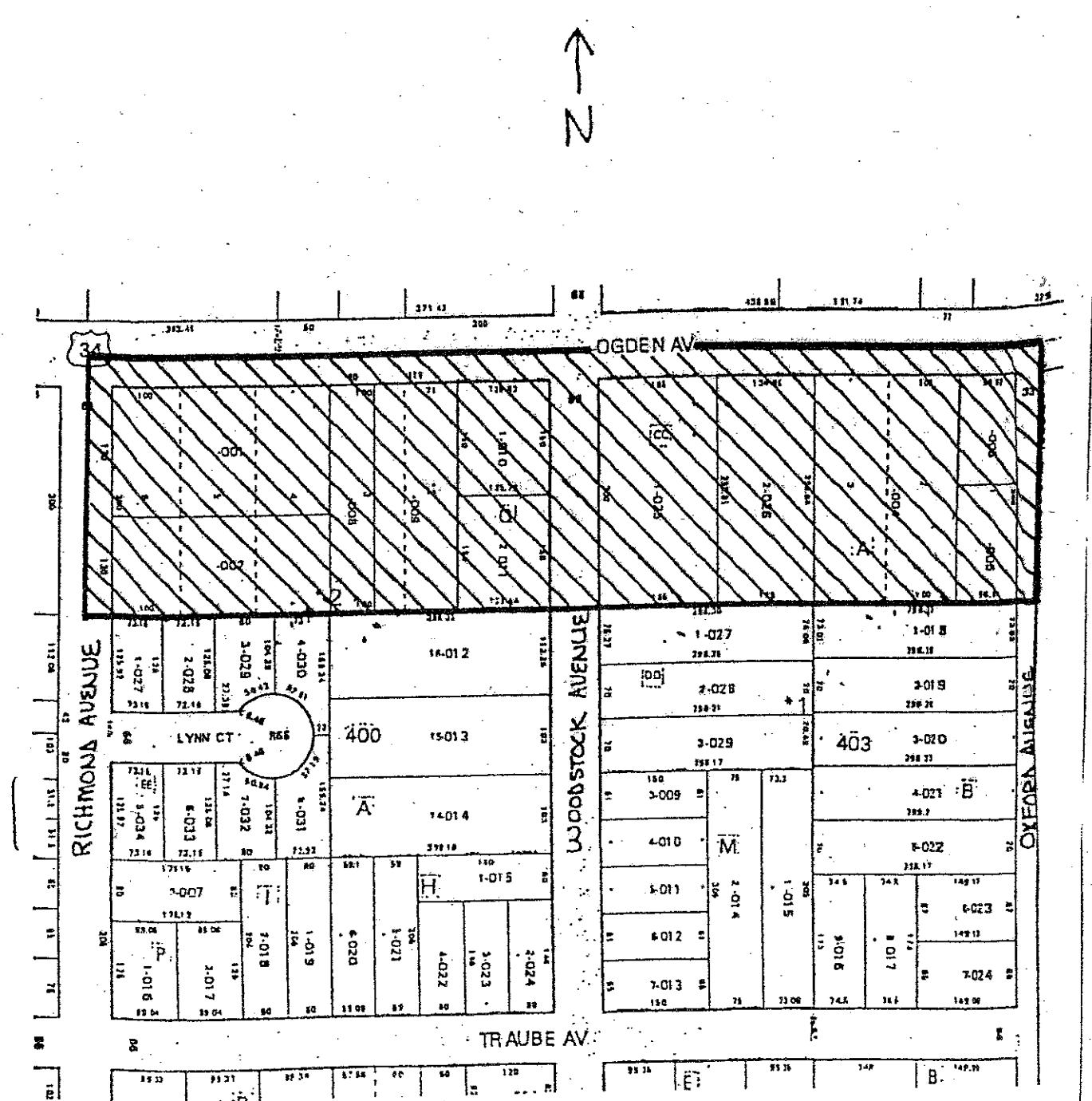


EXHIBIT B

Legal Description of the Property

Legal Description of the TIF Parcel Portion of the Property:

Lots 2 and 3 in Block 1 in Arthur T. McIntosh and Company's Westmont Acres in the Southwest $\frac{1}{4}$ and the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded November 4, 1920 as Document 145100, in DuPage County, Illinois; and

Lots 1 and 2 in Adolf's Resubdivision of Lots 4, 5 and 6 in Block 1 in Arthur T. McIntosh and Company's Westmont Acres in the Southwest $\frac{1}{4}$ and the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said Adolf's Resubdivision recorded June 10, 1993 as Document R1993-119973, in DuPage County, Illinois;

P.I.N.s: 09-03-403-004, -025 and -026;

Common Addresses: 407, 415 and 419 Ogden Avenue,
Clarendon Hills, Illinois.

Legal Description of the Non-TIF Parcel Portion of the Property:

Lot 1 in Regal Court Subdivision, being a Subdivision in the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded April 11, 1994 as Document R1994-084418, in DuPage County, Illinois; and

Lot 1 in Oxford Hill Subdivision of Lot 1 in Block 12 and Lots 12 to 16, inclusive, in Block 1 in Westmont Acres, being a Subdivision in the South $\frac{1}{2}$ of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat of said subdivision recorded February 27, 1953 as Document 675104, in DuPage County, Illinois;

P.I.N.s: 09-03-403-018 and -027;

Common Addresses: 279 Woodstock Avenue and 280 Oxford Avenue,
Clarendon Hills, Illinois.

EXHIBIT C

Site Plan for the Project

(attached)

EXHIBIT D

Detailed Description of the Project

APPLICANT	Infiniti of Lisle 4325 Lincoln Avenue Lisle, IL 60532
OWNER (and contract purchaser of 280 Oxford)	Ogden Clarendon LLC 4325 Lincoln Avenue Lisle, IL 60532
REQUEST	The applicant, an affiliate of the owner, is requesting rezoning the parcels on Woodstock and Oxford Avenues to the B-3 Highway Business District and a special use permit, under Section 20.11.2 of the Zoning Ordinance, to allow operation of an automobile sales and service agency in the B-3 District. In addition, the applicant seeks approval of a plat of consolidation to make the existing five lots into a single lot.
PROPERTY LOCATION	The subject property is located on the southeast corner of Ogden Avenue and Woodstock Avenue, with partial frontage on Oxford Avenue.
SIZE OF PROPERTY	The parcel has 500 feet of frontage on Ogden Avenue and is about 370 feet deep, for an area of 4.465 acres.
EXISTING ZONING LAND USE	The three Ogden Avenue parcels on the property are zoned B-3 (Highway Business District) and contain a precast concrete commercial service building, two metal frame commercial buildings, a 60-room masonry motel building, paved parking lots, fences, and a small stormwater detention basin. The properties have been used until recently for a glass sales and service business, a patio furniture store and warehouse, and a motel. The parcels on Oxford and Woodstock Avenues are both zoned R-1 Single Family Residence District and contain two residences.
ADJACENT ZONING LAND USES	To the north are Village of Westmont commercially-zoned properties, improved with automotive sales and service buildings. The properties to the south are zoned R-1 Single Family Residence District and are improved with two residences. The properties to the east and the west are zoned B-3 and R-4 Multiple Family Residential and improved with a commercial building and an apartment building on each side.

PURPOSE

The applicant is requesting the rezoning and special use permit in order to construct a new building with approximately 46,220 square feet for new car sales, associated used car sales, service, parking and auto inventory space, and stormwater detention facility.

DEVELOPMENT PROPOSAL

The applicant proposes to demolish all the buildings and structures on the five parcels that make up the site and construct a one- to two-story new building and related facilities for the sales and service of new and used cars. The applicant proposes a building with approximately 46,220 square feet of floor area, including a partial second floor. The front (north) portion of the building would include showroom and sales office uses. The center part of the building, on first and second floors, would hold service drop-off/pick-up areas, parts inventory, and other back-office functions. Service bays, detail area and car wash would be within the rear (south) part of the building. Overhead doors are planned on the east and west sides of the service area. The building would be approximately 25' tall at its highest point in the front section. The service areas and customer drop-off areas would be lower in height. The front of the building would have a large, curved wall of glass. The service drop-off area would be finished in brushed aluminum, with glass overhead doors. The remainder of the building would be constructed of scored, precast concrete panels with a sandstone texture.

TRAFFIC & PARKING

The site currently contains five commercial entrances on Ogden Avenue, one on Woodstock and a driveway on an ingress/egress easement to Oxford. In addition, there is one residential driveway on both Woodstock and Oxford. The proposed site plan shows one full access entrance from Ogden east of the building, with separate outbound right and left turn lanes, and a right-in/right-out access point west of the building. The site will also retain its access from Woodstock Avenue for customer use. The driveway to Oxford would be retained for inventory management needs, such as staging and moving vehicles after a delivery. The access drive around the building will provide adequate emergency access to the site. Currently, vehicle transport companies deliver vehicles to the surrounding dealerships within the median of Ogden Avenue, and that will be the procedure with this proposed facility. Part and supply deliveries will take place along the west side of the building.

The applicant outlines the employment, traffic and parking patterns of the proposed facility in its written narrative. They have agreed not to permit test drives on residential streets. Their total of 62 employees would never be present at the same time, arriving for staggered shifts during their hours of operation, 7:00 am to 9:00 pm, Monday through Saturday.

Employee parking, totaling approximately 30 spaces, would be located to the immediate east and west of the building. Customer parking of about 28 spaces, would be located immediately north and west of the building. New car inventory would be located along Woodstock and Ogden, with new and preowned vehicles stored at the east end of the property. Any customer vehicles left overnight for repairs would be kept indoors. There are 233 vehicle spaces proposed outside and 37 spaces inside the building, for a total of 270. The remaining spaces not required for parking customer, serviced and employee vehicles will be available for display and storage of new and used vehicle inventory.

There is currently sidewalk along the Woodstock Avenue frontage of the property and the Ogden Avenue frontage of 419 Ogden. The applicant proposes to extend sidewalk along Ogden to the east edge of the property.

SIGNS

The applicant proposes a ground sign near the east entrance. It would consist of a rectangular panel 22' 2" high and about 7' 6" wide, with a message area of approximately 38 square feet.

Based on the building width, the total maximum wall sign area is 240 square feet and the maximum number of wall signs is three, based on the number of streets the site abuts. The proposal shows the words "Clarendon Hills" in the upper left corner of the north wall of the sales area and the Infiniti word and logo in the upper right corner. In addition, there are small "Service" signs above the two customer drop-off doors facing Ogden.

LANDSCAPING & SCREENING

The site will contain approximately 24 shade trees and several clusters of low shrubs located on the perimeter of the parking/inventory lot. A row of arbor vitae is proposed along the adjacent apartment building to the east. A six-foot high cedar fence is proposed to separate the site from adjacent residential uses to the east and south. In addition, there will be a landscaped detention area and a solid row of trees and shrubs between the stormwater area and the south property line. This planting will be especially important on the south lot line of the Oxford parcel, as the detention area will be several feet higher than the adjacent lot.

The dumpsters would be stored near the southeast corner of the proposed building within a screened enclosure. Painted metal panels would screen rooftop mechanical units.

LIGHTING & SOUND

The site will be lit as shown on the photometric plan. Light will be provided on a number of poles located throughout the parking and inventory lot. The luminaires shown would direct light downward. Those located around the perimeter of the site would have internal shades to further restrict light spillover. Light levels would be substantial over the

interior of the lot, but drop off dramatically at the property lines. The only area that currently exceeds the maximum spillover level of 0.5 footcandles at residential property lines is adjacent to the apartment building on Oxford.

The applicants discuss their noise abatement plans in their narrative. The service shop doors will be oriented to the east and west. They will not install outside speakers for paging or other purposes.

UTILITIES & STORMWATER MANAGEMENT

The site will be served by new 12" water mains installed on Ogden and Woodstock Avenues with grant funds and no-interest loans funded by the federal stimulus program. The Village replaced the older, smaller water mains in order to facilitate development of this area. The applicant proposes to connect to the new valve vault on Woodstock Avenue for the Glass America building. The service would provide sufficient capacity for fire sprinklers in the building and an on-site fire hydrant.

The sanitary sewer running north between the rear lot lines of 279 Woodstock and 280 Oxford will serve the building. The stub running west will likely be abandoned, while the stub running east will need to remain or be rerouted to serve the eye doctor's office and apartment building along Oxford. An easement may be required for this sewer, as well as any overhead utility distribution lines that need to remain. Wired utility service to the new building will be underground, as required.

The existing site has a small detention basin serving only the 419 Ogden property. The proposed development will include a linear stormwater detention area over most of the 279 Woodstock and 280 Oxford properties. The base of the detention area will have wetland plantings, as one of the "best management practices" required to address the water quality standards of the DuPage County stormwater ordinance. Much of the north edge of the basin will consist of a block retaining wall. All site runoff will be directed into this basin, which will use the 15" storm sewer on Woodstock as its outflow. The addition of stormwater detention to serve the four properties that formerly had unrestrained runoff will result in reduced peak flow conditions for downstream properties to the south.

ATTACHMENT H

MINUTES OF A JOINT REVIEW BOARD MEETING CLARENDON HILLS OGDEN AVENUE TIF DISTRICT

Village of Clarendon Hills
One North Prospect Avenue, Clarendon Hills, Illinois
October 19, 2010

I. CALL MEETING TO ORDER - Chairman Karaba called the meeting to order at 3:36 p.m.

II. ROLL CALL

1. Village of Clarendon Hills – Village President Thomas Karaba (**via teleconference**)
2. County of DuPage – absent
3. Downers Grove Township – absent
4. College of DuPage/Community College District 502 – absent
5. Hinsdale Township High School District No. 86 – absent
6. Consolidated Elementary School District No. 181 – absent
7. Clarendon Hills Park District – Katie Gock
8. Public Member – absent

Also present: Village Manager Bahan, Attorney Bayer, Finance Director Hartnett, Community Development Director Brown, and Management Analyst Collison.

III. APPROVE MINUTES OF THE OCTOBER 28, 2009 JOINT REVIEW BOARD MEETING

Member Gock moved to approve the October 28, 2009 Joint Review Board Minutes, Chairman Karaba seconded.

Ayes: Member Karaba and Member Gock

Nays: None

Absent: Members of County of DuPage, Downers Grove Township, College of DuPage/Community College District 502, Hinsdale Township High School District No. 86, Consolidated Elementary School District No. 181, Clarendon Hills Park District, and Public Member.

MOTION CARRIED

IV. REVIEW OF ANNUAL TIF REPORT

Finance Director Hartnett reported that the EAV of the TIF District declined 7 percent from the previous fiscal year to \$4.3 million. The decline is attributable to the closure of several businesses within the TIF District. Director Hartnett stated that the TIF fund has available cash of \$105,030. Director Hartnett stated that \$113,965 is due to the Village for costs associated with the creation of the TIF District. She reported that because the cumulative revenues within the fund have reached \$100,000, a single audit will be required each year going forward. The report on Compliance with Public Act 85-1142 was provided for the meeting.

Community Development Director Brown stated that the Village prepared the way for development in the area by installing water mains along Ogden and Woodstock. The project was completed with the assistance of a no-interest loan and an IEPA grant. Director Brown said the Village is currently entertaining a development proposal for the TIF district from an Infiniti car dealership.

Village Manager Bahan stated that TIF regulations require investment within the area within the first seven years. The recent infrastructure improvements meet this **required** investment.

V. JOINT REVIEW BOARD QUESTION AND ANSWER PERIOD

There were no questions.

VI. ADJOURNMENT

Member Gock moved to adjourn the Joint Review Board Meeting at 3:44 p.m., Member Karaba seconded.

Ayes: Members Karaba and Gock

Nays: None

Absent: Members of County of DuPage, Downers Grove Township, College of DuPage/Community College District 502, Hinsdale Township High School District No. 86, Consolidated Elementary School District No. 181, Clarendon Hills Park District, and Public Member.

MOTION CARRIED

ATTACHMENTS K & L

VILLAGE OF CLARENDON HILLS, ILLINOIS

SPECIAL TAX ALLOCATION
TAX INCREMENT FINANCING FUND

REPORT ON COMPLIANCE
WITH PUBLIC ACT 85-1142

For the Year Ended
April 30, 2011

INDEPENDENT AUDITOR'S REPORTS



998 Corporate Boulevard • Aurora, IL 60502

INDEPENDENT AUDITOR'S REPORT
ON COMPLIANCE WITH PUBLIC ACT 85-1142

The Honorable Mayor
Members of the Board of Trustees
Village of Clarendon Hills, Illinois

We have audited the financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the Village of Clarendon Hills, Illinois, as of and for the year ended April 30, 2011, and have issued our report thereon dated August 16, 2011. These financial statements are the responsibility of the Village of Clarendon Hills, Illinois' management. Our responsibility is to express an opinion on these financial statements based on our audit.

We have also audited the Village of Clarendon Hill's compliance with the provisions of subsection (q) of Illinois Compiled Statutes 65 (ILCS) 5/11-74.4-3 of the Illinois Tax Increment Redevelopment Allocation Act (Illinois Public Act 85-1142) for the year ended April 30, 2011, for the Special Tax Allocation Tax Increment Financing District TIF Fund. The management of the Village of Clarendon Hills, Illinois, is responsible for the Village's compliance with those requirements. Our responsibility is to express an opinion on compliance with those requirements.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether material noncompliance with the requirements referred to above occurred. An audit includes examining, on a test basis, evidence about the Village of Clarendon Hills, Illinois' compliance with those requirements. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the Village of Clarendon Hills, Illinois, complied, in all material respects, with the requirements of subsection (q) of Illinois Compiled Statutes 65 (ILCS) 5/11-74.4-3 of the Illinois Tax Increment Redevelopment Allocation Act (Illinois Public Act 85-1142) for the year ended April 30, 2011, for the Special Tax Allocation TIF Fund.

Aurora, Illinois
August 16, 2011

A handwritten signature in black ink, appearing to read "John D. Doherty".



998 Corporate Boulevard • Aurora, IL 60502

INDEPENDENT AUDITOR'S REPORT
ON SUPPLEMENTARY INFORMATION

The Honorable Mayor
Members of the Board of Trustees
Village of Clarendon Hills, Illinois

We have audited the financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information, which collectively comprise the basic financial statements of the Village of Clarendon Hills, Illinois, as of and for the year ended April 30, 2011, and have issued our report thereon dated August 16, 2011. These financial statements are the responsibility of the Village of Clarendon Hills, Illinois' management. Our responsibility is to express an opinion on these financial statements based on our audit.

Our audit was made in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts, and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying schedules present only the Special Tax Allocation TIF Fund and are not intended to present fairly the financial position and changes in financial position of the Village of Clarendon Hills, Illinois in conformity with accounting principles generally accepted in the United States of America.

Our audit was made for the purpose of forming an opinion on the basic financial statements. The accompanying schedule of revenues, expenditures, and changes in fund balance and schedule of fund balance by source for the Special Tax Allocation TIF Fund are presented for purposes of additional analysis and are not a required part of the basic financial statements. The information in these schedules has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly presented in all material respects in relation to the basic financial statements taken as a whole.

Aurora, Illinois
August 16, 2011

A handwritten signature in black ink, appearing to read 'J. W. D. D.' or a similar variation.

SUPPLEMENTARY INFORMATION

VILLAGE OF CLARENDON HILLS, ILLINOIS

SPECIAL TAX ALLOCATION TIF FUND

SCHEDULE OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCE

For the Year Ended April 30, 2011

REVENUES

Property Taxes	\$ 30,570
Investment Income	<u>1</u>
 Total Revenues	 <u>30,571</u>

EXPENDITURES

General Government	9,515
Contractual Services	<u>500,000</u>
Capital Outlay	
 Total Expenditures	 <u>509,515</u>

NET CHANGE IN FUND BALANCE	(478,944)
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FUND BALANCE (DEFICIT), MAY 1	<u>(8,935)</u>
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FUND BALANCE (DEFICIT), APRIL 30	<u>\$ (487,879)</u>
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(See independent auditor's report.)

VILLAGE OF CLARENDON HILLS, ILLINOIS

SPECIAL TAX ALLOCATION TIF FUND

SCHEDULE OF FUND BALANCE BY SOURCE

For the Year Ended April 30, 2011

BEGINNING BALANCE (DEFICIT), MAY 1, 2010	\$ <u>(8,935)</u>
DEPOSITS	
Property Taxes	30,570
Investment Income	<u>1</u>
Total Deposits	<u>30,571</u>
Balance Plus Deposits	<u>21,636</u>
EXPENDITURES	
General Government	
Contractual Services	9,515
Capital Outlay	<u>500,000</u>
Total Expenditures	<u>509,515</u>
ENDING BALANCE (DEFICIT), APRIL 30, 2011	\$ <u>(487,879)</u>
ENDING BALANCE BY SOURCE	
Funding Requirement	\$ <u>487,879</u>
ENDING BALANCE, APRIL 30, 2011	\$ <u>-</u>

(See independent auditor's report.)

NOTICE OF MEETING

CLARENDON HILLS OGDEN AVENUE

TIF DISTRICT

JOINT REVIEW BOARD

Notice is hereby given to all interested parties that pursuant to the requirements of 65 ILCS 5/11-74.4-1 *et seq.*, a meeting of the Joint Review Board for the Clarendon Hills Ogden Avenue Tax Increment Financing District will be held on Monday, October 17, 2011, at 6:30 p.m., at the Clarendon Hills Village Hall, Board Room, 1 North Prospect Avenue, Clarendon Hills, Illinois. Said meeting will be open to the public. A copy of the Agenda for said meeting is attached.

VILLAGE OF CLARENDON HILLS

By: Dawn Tandle
Village Clerk

AGENDA
JOINT REVIEW BOARD MEETING
CLARENDON HILLS OGDEN AVENUE TIF DISTRICT
MONDAY, OCTOBER 17, 2011
6:30 P.M.

- I. Call meeting to order
- II. Roll Call of Joint Review Board Members

<u>Member</u>	<u>Representative</u>
1. Village of Clarendon Hills	Thomas F. Karaba (Chairperson)
2. County of DuPage	_____
3. Downers Grove Township	_____
4. College of DuPage Community College District 502	_____
5. Hinsdale Township High School District No. 86	_____
6. Consolidated Elementary School District No. 181	_____
7. Clarendon Hills Park District	_____
8. Public Member	David LaBrash
III. Approve Minutes of the October 19, 2010 Joint Review Board Meeting	
IV. Review of Annual TIF Report	
V. Joint Review Board Question and Answer Period	
VI. Adjournment	