

Ordinance Number 12- 12

**AN ORDINANCE OF THE VILLAGE OF EAST DUNDEE APPROVING  
AGREEMENTS RELATING TO THE REDEVELOPMENT OF  
750 DUNDEE AVENUE, EAST DUNDEE, ILLINOIS**

**WHEREAS**, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the “*TIF Act*”), the President and Board of Trustees of the Village (collectively, the “*Corporate Authorities*”) are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a “blighted area,” as such term is defined in the TIF Act; and,

**WHEREAS**, in accordance with the requirements of the TIF Act, on September 18, 2006, the Corporate Authorities adopted Ordinance No. 06-40, which approved a redevelopment plan and project, entitled the Redevelopment Project Plan and Eligibility Report (the “*Redevelopment Plan*”), for the Route 25 Redevelopment Project Area (the “*Redevelopment Project Area*”); and,

**WHEREAS**, also in accordance with the requirements of the TIF Act, on September 18, 2006, the Corporate Authorities adopted Ordinances No. 06-41 and No. 06-42, which designated the Redevelopment Project Area as a “redevelopment project area,” as that term is defined under the TIF Act, and approved tax increment financing for the purpose of implementing the Redevelopment Plan for the Redevelopment Project Area; and,

**WHEREAS**, the Corporate Authorities have determined that the blighting factors described in the Redevelopment Plan are detrimental to the public and impair development and growth in the Redevelopment Project Area, with the result that it is necessary to incur extraordinary costs in order to develop the Redevelopment Project Area; and,

**WHEREAS**, Zeburg Brown Dundee, LLC, an Illinois limited liability company d/b/a J.D. Byrider (the “*Developer*”) proposes to acquire and redevelop certain real estate located within the Village and within the Redevelopment Project Area, commonly known as 750 Dundee Avenue, East Dundee, Illinois (the “*Subject Property*”) for use as a used car retailer and other compatible commercial operations (the “*Project*”); and,

**WHEREAS**, the Project will result in over \$2,000,000 in private investment and is anticipated to result in the creation of 10 jobs during construction and 25 jobs upon completion; and,

**WHEREAS**, in order to induce the Developer to complete the Project, it has been determined that it is in the best interests of the Village and the health, safety, morals and welfare of the residents of the Village, to make certain economic development incentives available to the Developer on the terms and conditions as provided in the Agreements attached hereto; and,

**WHEREAS**, such economic development incentives for the benefit of the Developer and the completion of the Project are in the best interests of the Village and the health, safety, morals and welfare of its residents and taxpayers and will be in furtherance of the Redevelopment Plan, thereby providing for economic development, enhancing the tax base of the Village and other taxing districts and adding to the welfare and prosperity of the Village and its inhabitants.

**NOW, THEREFORE**, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

*Section 1.* The Redevelopment Agreement By and Between this Village and Zeburg Brown Dundee, LLC, an Illinois limited liability company, in the form attached hereto and

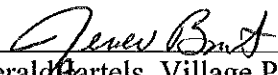
presented to this meeting, setting forth the terms and conditions pertaining to the redevelopment of 750 Dundee Avenue, East Dundee, including the Loan Documents (as defined therein) all being attached hereto, are hereby approved and the Village President and Village Clerk are hereby authorized to execute and deliver said Agreement.

*Section 2.* The Recapture Agreement and the Guarantee Agreement in the form attached hereto and presented to this meeting by and among this Village and Zeburg Brown Dundee, LLC, an Illinois limited liability company, Auto Resources Dundee, Inc., an Illinois corporation, Thomas Burgstone, Michael Burgstone, James F. Brown and Charles M. Zalenek are hereby approved and the Village President and Village Clerk are hereby authorized to execute and deliver said Agreements.

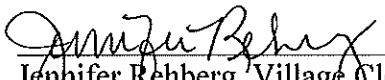
*Section 3.* This Ordinance shall be in effect upon its passage, approval and publication as provided by law.

**PASSED** this 27<sup>th</sup> day of February, 2012.

**APPROVED:**

  
\_\_\_\_\_  
Jerald Bartels, Village President

*Attest:*

  
\_\_\_\_\_  
Jennifer Rehberg, Village Clerk

## REDEVELOPMENT AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into this 23<sup>rd</sup> day of March, 2012, by and between the VILLAGE OF EAST DUNDEE, ILLINOIS, an Illinois municipal corporation (the "Village"), and ZEBURG BROWN DUNDEE, LLC, an Illinois limited liability company (the "Developer").

### PREAMBLES

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the "TIF Act"), the President and Board of Trustees of the Village (collectively, the "Corporate Authorities") are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a "blighted area," as such term is defined in the TIF Act; and

WHEREAS, in accordance with the requirements of the TIF Act, on September 18, 2006, the Corporate Authorities adopted Ordinance No. 06-40, which approved a redevelopment plan and project, entitled the Redevelopment Project Plan and Eligibility Report (the "Redevelopment Plan"), for the Route 25 Redevelopment Project Area (the "Redevelopment Project Area"); and

WHEREAS, also in accordance with the requirements of the TIF Act, on September 18, 2006, the Corporate Authorities adopted Ordinances No. 06-41 and No. 06-42, which designated the Redevelopment Project Area as a "redevelopment project area," as that term is defined under the TIF Act, and approved tax increment financing for the purpose of implementing the Redevelopment Plan for the Redevelopment Project Area; and

WHEREAS, the Corporate Authorities have determined that the blighting factors described in the Redevelopment Plan are detrimental to the public and impair development and growth in the Redevelopment Project Area, with the result that it is necessary to incur extraordinary costs in order to develop the Redevelopment Project Area; and

WHEREAS, the blighting factors in the Redevelopment Project Area will continue to impair growth and development but for the use of tax increment financing to pay Redevelopment Project Costs, as that term is defined in Section 5 of this Agreement, which necessarily must be incurred to implement the aforesaid program of redevelopment; and

WHEREAS, the Developer proposes to acquire and redevelop within the Redevelopment Project Area certain real estate located within the Village commonly known as 750 Dundee Avenue, East Dundee, Illinois, for use as a used car retailer and, possibly, other compatible commercial operations (the "Project"). Said real estate is legally described on *Exhibit A*, attached hereto and incorporated herein (the "Subject Property"); and

WHEREAS, the Project will result in over \$2,000,000 in private investment and is anticipated to result in the creation of 10 jobs during construction and 15 jobs upon completion; and

WHEREAS, the Project is consistent with the Redevelopment Plan and is located within the Redevelopment Project Area; and

WHEREAS, the Village is authorized under the TIF Act to enter into redevelopment agreements and to reimburse developers who incur redevelopment project costs as negotiated and as set forth in a redevelopment agreement; and

WHEREAS, the Village is also authorized under the TIF Act to issue obligations to provide for redevelopment project costs; and

WHEREAS, the Village is also authorized under the TIF Act to exercise any and all other powers necessary to effectuate the purposes of the TIF Act; and

WHEREAS, in order to induce the Developer to complete the Project, the Corporate Authorities have determined that it is in the best interests of the Village and the health, safety, morals and welfare of the residents of the Village, on the terms and subject to the conditions set forth in this Agreement, to make certain economic development incentives available to the Developer; and

WHEREAS, the Corporate Authorities have determined that such economic development incentives for the benefit of the Developer and the completion of the Project by the Developer pursuant to this Agreement are in the best interests of the Village and the health, safety, morals and welfare of its residents and taxpayers and will be in furtherance of the Redevelopment Plan, thereby providing for economic development, enhancing the tax base of the Village and other taxing districts and adding to the welfare and prosperity of the Village and its inhabitants.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

*Section 1. Incorporation of Recitals.* The recitals contained in the Preambles to this Agreement are true and correct and are hereby incorporated into this Agreement as though they were fully set forth in this Section 1.

*Section 2. Term.* Unless earlier terminated pursuant to Section 14 hereof, the term of this Agreement shall commence on the date of execution and terminate on the earlier of (i) December 31, 2030, and (ii) the date the Developer repays the Loan (as hereafter defined) in full to the Village.

*Section 3. Acquisition of Subject Property; Description of Project; Project Financing; Development of the Project.*

(a) The Developer represents and warrants to the Village that, as of the date of this Agreement, the Developer has secured an exclusive option to purchase the Subject Property.

(b) The Project consists of the acquisition of the Subject Property and the renovation and rehabilitation thereof, which is substantially due to the fact that the Subject Property has been vacant since 2009.

(c) It is the intention of the parties that the acquisition, renovation and rehabilitation of the Subject Property would be financed through bonds to be issued by the Village in an amount not to exceed \$2,360,000 including closing costs (the "*TIF Revenue Bonds*"). Incremental real estate taxes generated from the Redevelopment Project Area shall be pledged to pay all principal and interest on such Bonds (the "*Bond Debt Service*") and the Village shall also pledge its full faith and credit to the Bond Debt Service requirements on the condition that the Developer provides the Village with its guarantee and provides security in the Subject Property through a note and mortgage (the "*Loan Documents*") in the form attached hereto as *Exhibit C*, all as hereafter generally described in this subparagraph (c). It is understood and agreed that the TIF Revenue Bonds shall be taxable.

Upon the Village's issuance of the TIF Revenue Bonds, the Village agrees to do the following: first, the Village shall loan to the Developer the amount of the TIF Revenue Bonds equal to the Developer's costs of acquiring, renovating and rehabilitating the Subject Property (the "*Loan*"). The Loan shall not exceed \$1,839,500 and shall be evidenced and secured by the Loan Documents. The proceeds of the Loan shall be disbursed to the Developer through a construction loan escrow agreement with a title company mutually agreeable to the Village and the Developer.

Second, the Village shall pay to the Developer a sum equal to 30% of the amount of the Loan for the purpose of reimbursing the Developer's TIF-eligible Project costs pursuant to the procedures set forth in *Section 5* hereof (the "*TIF Payment*"). The TIF payment shall not exceed \$520,500 and shall be disbursed to the Developer through the construction escrow. The TIF Payment shall not exceed \$520,500. The TIF Payment shall be subject to recapture from the Developer in the event the Project permanently ceases operations during the five (5) year period commencing with the Village's issuance of a certificate of occupancy for the Project. Notwithstanding the foregoing, the amount subject to recapture shall be reduced 20% for each year the Project remains open during said five (5) year period. The recapture arrangement shall be more fully described in the recapture agreement attached hereto as *Exhibit D* (the "*Recapture Agreement*").

(d) The Project shall be completed in conformance with the plans and specifications as approved by the Village. The Developer shall comply with the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 *et seq.* (the "*Prevailing Wage Act*"), to the extent, if any, that the same is applicable to the Project.

#### *Section 4. Developer's Obligations.*

(a) Unless another date is provided for below, on or before the date of closing of the TIF Revenue Bonds, the Developer shall have delivered the following documents to the Village in connection with the acquisition of the Subject Property:

- (i) Copy of the contract for the purchase of the Subject Property stating that the closing of the acquisition by the buyer is conditioned upon financial

incentives from the Village (to be delivered on or before March 15, 2012);

- (ii) Commitment for Title Insurance in the amount of the Loan (to be delivered on or before March 15, 2012). Permissible exceptions to title shall include only: (i) the lien of general taxes not yet payable; (ii) zoning and building laws and ordinances; (iii) easements of record for utilities, drainage and public roads, highways and improvements; and (iv) conditions and restrictions of record except as reasonably objected to by the Village;
- (iii) Copy of closing statement for the Subject Property signed by the seller of the Subject Property (or later if the closing of the Subject Property does not occur until after the closing of the TIF Revenue Bonds);
- (iv) Copy of construction loan escrow agreement by and among the Title Company, Developer and the Village fully executed by all of said parties thereto;
- (v) Fully executed and notarized guarantee agreement, mortgage and note in the form attached hereto as *Exhibit C*;
- (vi) Fully executed and notarized recapture agreement in the form attached hereto as *Exhibit D*; and,
- (vii) Date of the closing of the acquisition of the Subject Property.

(b) On or before March 10, 2012, the Developer shall have delivered to the Village the following documents in connection with the rehabilitation and renovation of the Subject Property:

- (i) Itemized list of each component of the rehabilitation and renovation program for the Subject Property, including all exterior improvements;
- (ii) Estimate of the cost of each component of the rehabilitation and renovation program for the Subject Property including all exterior improvements; and,
- (iii) Schedule for the commencement of construction of the rehabilitation and renovation program for the subject Property.

#### *Section 5. Developer TIF Payments.*

(a) As long as no event described in Section 14 of this Agreement shall have occurred and be continuing, and the Developer has satisfied all of its obligations under Section 4 hereof, the Village shall pay or reimburse the Developer in an amount not to exceed \$520,500 for Project costs incurred by the Developer as itemized in the schedule of costs to be incurred by the Developer in connection with the rehabilitation and renovation of the Subject Property set forth in Section 4(b) hereof, to the extent such costs are "Redevelopment Project Costs as hereinafter defined. For purposes of this Agreement, "Redevelopment Project Costs" shall mean and include all costs defined as "redevelopment project costs" in Section 11-74.4-3(q) of the TIF Act which are eligible for reimbursement under the TIF Act.

(b) The parties acknowledge that the determination of Redevelopment Project Costs and qualification for reimbursement under this Agreement are subject to the TIF Act, all amendments to the TIF Act after the date of this Agreement, and administrative rules and judicial interpretations rendered during the term of this Agreement. The Village has no obligation to the Developer to attempt to modify said rules or decisions.

(c) To establish a right of reimbursement for a specific Redevelopment Project Cost under this Agreement, the Developer shall submit to the Village Administrator a written statement in the form attached to this Agreement as *Exhibit B* (a "*Request for Reimbursement*") setting forth the amount of reimbursement and the specific Redevelopment Project Costs for which reimbursement is sought. Each Request for Reimbursement shall be accompanied by such bills, paid receipts, contracts, invoices, lien waivers or other evidence as the Village shall reasonably require to evidence the right of the Developer to reimbursement under this Agreement. All receipts shall contain the date of service, type of service, location of service, amount paid, name/address/telephone number of the service provider and other information as necessary to establish the identity of the provider, type of service and amount invoiced / paid. The Village Administrator shall have thirty (30) days after receipt of any Request for Reimbursement from the Developer to approve or disapprove of any of the expenditures for which reimbursement is sought. If said Request for Reimbursement is not approved, the Village Administrator shall provide to the Developer a written explanation setting forth the reason or reasons for the denial. Provided, however, the only reasons for disapproval of any expenditure for which reimbursement is sought shall be that (i) such expenditure is not an expenditure of the nature contemplated in the Developer's submission of Project Costs pursuant to Section 4 hereof; or (ii) such expenditure was not incurred by the Developer in accordance with the Village Code, the Legal Requirements or the provisions of this Agreement. If approved, payment may be made from the construction escrow established with proceeds from the TIF Revenue Bonds if issued, all as herein provided.

(d) All payments to the Developer under this Section 5 are intended to qualify as contributions to the capital of the Developer pursuant to Section 118(a) of the Internal Revenue Code, as from time to time amended.

#### *Section 6. TIF Revenue Bonds.*

(a) The Village shall issue the TIF Revenue Bonds as soon as practical and the proceeds of which shall be made available to the Developer for use and disbursed as set forth in *Section 3(c)* hereof. The TIF Revenue Bonds shall be a general obligation of the Village on the condition that the Developer execute and deliver to the Village the Loan Documents and the Recapture Agreement. All closing costs allocated to the Developer by agreement of the parties, including costs of bond counsel and other costs of issuance, shall be incorporated into the amount of the TIF Revenue Bonds. It is anticipated that the amount of the TIF Revenue Bonds shall be \$2,360,000.

(b) The Village shall not be required to issue and close on the TIF Revenue Bonds until the Developer has demonstrated, to the reasonable satisfaction of the Village, or will be in a position to do so upon the closing of the TIF Revenue Bonds, that (i) the Developer has satisfied all of its obligations under Section 4 of this Agreement; (ii) the Developer has applied



for all necessary permits and approvals for construction of the Project from the Village; (iii) there exists ready, willing and able buyers for the TIF Revenue Bonds; (iv) the Developer has executed and delivered to the Village the Loan Documents and the Recapture Agreement; and, (v) there exists no defaults under the terms of this Agreement.

(c) The proceeds of the TIF Revenue Bonds may only be used to pay Redevelopment Project Costs.

*Section 7. No Liability of Village to Others for Developer's Expenses.*

Except as otherwise provided in this Agreement with respect to economic development incentives, the Village shall have no obligations to pay costs of the Project or to make any payments to any person other than the Developer, nor shall the Village be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to the Developer for the Project.

*Section 8. Compliance with Applicable Laws.*

The Developer shall at all times construct and maintain the Project in a good and workmanlike manner and in conformance with all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, zoning, building codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village (collectively referred to as the "*Legal Requirements*"), which are applicable generally throughout the Village.

*Section 9. The Developer's Representations and Warranties.*

In addition to the other representations, warranties, covenants and agreements of the Developer set forth in this Agreement, the Developer represents and warrants as follows:

(a) The Developer is a limited liability company duly organized and existing under the laws of the State of Illinois and is authorized to enter into, and by proper corporate action has been duly authorized to execute, deliver and perform this Agreement. The Developer is now and at all times hereafter shall be solvent, able to pay its debts as they mature and financially able to perform all of the terms of this Agreement. To the Developer's knowledge, there are no actions, suits or similar proceedings pending or threatened before any court or governmental or administrative body or agency affecting the Developer which would result in any material adverse change to the Developer's financial condition or which would materially and adversely affect the ability of the Developer to undertake and complete the Project.

(b) The Developer covenants that no officer, employee or agent of the Developer, or any other person connected with the Developer, has made, offered or given, either directly or indirectly, to the Corporate Authorities or any other person connected with the Village, except for payments for which adequate and fair consideration was received in return, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her official capacity with the Village.

*Section 10. Insurance.* At all times during the term of this Agreement, the

Developer shall procure and maintain policies of insurance as follows at its sole cost and expense:

(a) During the construction of the Project, the Developer shall procure and maintain the following: (i) builder's risk insurance from all risks of physical loss, including collapse, and covering the total value of work performed and all equipment, supplies and materials furnished in connection with the construction of the Project; and (ii) comprehensive general liability insurance from any liability incidental to the use of or resulting from any claim for injury or damage occurring in or about the Project or the Subject Property. All contractors working on the Project shall be required to procure and maintain contractor's insurance policies covering matter (ii) above and also workers' compensation insurance in amounts no less than the minimum coverage required by the laws of the State of Illinois.

(b) After completion of construction of the Project, and for so long as the Developer owns the Subject Property, the Developer shall procure and maintain the following: (i) fire insurance and extended coverage on a replacement basis for the full insurable value covering all of the Project; and (ii) comprehensive general liability insurance from any liability incidental to the use of or resulting from any claim for injury or damage occurring in or about the Project or the Subject Property.

#### *Section 11. No Discrimination.*

(a) The Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. To the fullest extent permitted by law, the Developer shall take affirmative action to require that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex or national origin. Notwithstanding the foregoing, the Developer may employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

(b) There shall be no discrimination against or segregation of any person or group of persons on account of sex, race, color, creed, national original or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Subject Property. Neither the Developer nor any person claiming under or through the Developer shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of any portion of the Subject Property.

*Section 12. Developer Indemnification.* The Developer shall indemnify and hold harmless the Village, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorneys' fees) which may arise directly or indirectly from (i) the failure of the Developer to timely pay any contractor, subcontractor, laborer or materialman or any claim or cause of action whatsoever brought by a third party arising out of the construction or operation of the Project; (ii) the failure of the Developer to comply with the Prevailing Wage Act (to the extent the same is applicable to the Project) or any Legal Requirements; (iii) any material default or breach of the terms of this Agreement by the Developer; or (iv) any negligence or reckless or willful misconduct of the Developer or any

contractor, subcontractor or agent or employee thereof. The Developer shall, at its own cost and expense, appear, defend and pay all charges of attorneys, costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against the Village, its agents, officers, officials or employees in any such action, the Developer shall, at its own expense, satisfy and discharge the same. This paragraph shall not apply, and the Developer shall have no obligation whatsoever, with respect to any acts of negligence or reckless or willful misconduct on the part of the Village or any of its, officers, officials, agents, employees or contractors.

*Section 13. No Liens.* In connection with the construction of the Project, the Developer shall neither cause nor permit any mechanic's or other liens to attach to or encumber the Project or the Subject Property, except for the liens of the Village. The Developer hereby agrees and covenants to indemnify and hold the Village harmless in the event that any liens are filed against the Project or the Subject Property as a result of the acts of the Developer, its agents, independent contractors or assigns. In the event a mechanic's or other lien is filed which attaches to or encumbers the Project or Subject Property, the Developer shall immediately institute such proceedings necessary to have the lien claim adjudicated and removed. The Developer shall pay within ten (10) days any final judgment awarded to a lien claimant so as to prevent a foreclosure sale. Notwithstanding the foregoing, the Developer shall have the right to bond over any lien or obtain a title insurance endorsement in order to satisfy its obligations pursuant to this Section.

*Section 14. Default – Remedies.*

(a) If the Developer defaults in the performance of any material covenant, warranty, representation or obligation set forth in this Agreement, the Village shall provide the Developer with a written statement setting forth the default of the Developer. Except as required to protect against further damages, the Village may not exercise any remedies against the Developer in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as the Developer is diligently proceeding to cure such default. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Village in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.

(b) If the Developer fails to cure any default after the expiration of the cure period described in subparagraph (a), the Village may elect to terminate this Agreement or exercise any other right or remedy it may have at law or in equity, including the right to specifically enforce the terms and conditions of this Agreement. If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy or insolvency act shall be filed by or against the Developer, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Developer insolvent or unable to pay the debts of the Developer, or the Developer makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Developer or for the major part of the Developer's property, the Village may elect, to the extent such election is permitted by law, but is not required, with or without notice of such election, to terminate this Agreement. In the case of an involuntary petition, action or proceeding for the adjudication as a bankrupt or for the appointment of a trustee or receiver as

set forth above, the Developer shall have sixty (60) days after the service of such petition or pleading or the commencement of such action or proceeding within which to obtain a dismissal of such petition, pleading, action or proceeding.

(c) If the Village defaults in the performance of any material covenant, warranty, representation or obligation set forth in this Agreement, the Developer shall provide the Village with a written statement setting forth the default. The Developer may not exercise any remedies against the Village in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as the Village is diligently proceeding to cure such default. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Developer in asserting any of its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach. Notwithstanding the foregoing, the sole remedy of the Developer in the event of a breach of this Agreement is to institute legal action for specific performance or injunctive relief against the Village. Under no circumstances shall the Village have any liability for monetary damages, whether compensatory, punitive or otherwise, under the provisions, terms and conditions of this Agreement.

(d) Upon any dispute between the parties under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses incurred in contesting such dispute.

(e) Notwithstanding anything to the contrary contained in this Agreement, in the event of a termination of this Agreement by the Village, the Village shall continue to make any and all payments pledged in connection with the TIF Revenue Bonds.

(f) It is hereby agreed by the Developer that no recourse for any claim under or upon any obligation contained in the Agreement shall be had against the Village, its officers, agents, attorneys, representatives, or employees, in any amount in excess of any specific sum agreed to be paid by the Village pursuant to this Agreement; and no liability, right, or claim at law or in equity shall be attached to or incurred by the Village, its officers, agents, attorneys, representatives or employees in any amount in excess of any specific sums agreed by the Village to be paid hereunder, and any such claim is hereby expressly waived and released as a condition of and in consideration for the execution of this Agreement by the Village.

#### *Section 15. Verification of Increment and Sales Taxes .*

The Developer shall use its best efforts to cooperate with the Village in obtaining certified copies of all real estate tax bills for the year 2011 (payable in 2012) and each year thereafter during which amounts in the STAF are used to pay Redevelopment Project Costs or TIF Revenue Bonds pursuant to this Agreement.

Further, the Developer shall provide (or cause its lessees to provide) such authorization and take such additional actions as may reasonably be required to obtain necessary information from the Illinois Department of Revenue (the "Department") to enable the Village to ascertain the amount of sales taxes generated by all taxable retail sales activities of the Project on the Subject

Property during the term of this Agreement. Such authorization shall include such forms as are required from time to time by the Department in order to release such information to the Village. In consideration of the foregoing, the Village covenants and agrees that the Village's use, distribution, retention and disclosure of such sales tax information (including by any trustee, officer, employee or agent of the Village) shall at all times comply with all laws, rules and regulations of the Department and the State of Illinois regarding such matters, including those relating to the confidentiality thereof. The Village further covenants and agrees to use its best efforts to maintain the confidentiality of such sales tax information, which shall include, but not be limited to, a prohibition against the use, distribution or disclosure of such information (including by any trustee, officer, employee or agent of the Village) in any of the following manners: (i) at any public meeting or hearing of the Village; (ii) to the media; or (iii) to any person or entity who is not a trustee, officer, employee or agent of the Village.

*Section 16. Notices.* All notices, demands, requests, consents, approvals or other communications required or permitted by this Agreement shall be given in writing at the addresses set forth below and shall be deemed to have been given (i) on the day of actual delivery if delivered personally, (ii) on the day immediately following deposit with overnight courier, or (iii) as of the third (3<sup>rd</sup>) day from and including the date of posting if mailed by registered or certified first class mail, postage prepaid, return receipt requested. The parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals or other communications shall be sent.

If to Village: Village of East Dundee  
c/o Village Administrator  
120 Barrington Ave.  
East Dundee, IL 60118

With a copy to: Kathleen Field Orr & Associates  
53 West Jackson Blvd., Suite 935  
Chicago, Illinois 60604

If to Developer: Zeburg Brown Dundee, LLC  
800 North Avenue  
Glendale Heights, Illinois 60139  
Attn: Mike Burgstone

With a copy to: Ward, Murray, Pace & Johnson, P.C.  
202 E. 5<sup>th</sup> St., P.O. Box 400  
Sterling, Illinois 61081  
Attn: Rob LeSage

*Section 17. Time is of the Essence; Force Majeure.* Time is of the essence of this Agreement; provided, however, a party shall not be deemed in material breach of this Agreement with respect to any obligations of this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages,

accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("Force Majeure"). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate the same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

*Section 18. Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

*Section 19. 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.

*Section 20. Choice of Law/Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois with venue lying in the Circuit Court for Kane County, Illinois.

*Section 21. Amendments.* This Agreement (together with the Exhibits attached hereto) constitutes the entire agreement between the Village and the Developer and supersedes all prior agreements, negotiations and discussions between them relating to the subject matter hereof. This Agreement may not be modified or amended except by a written instrument executed by all the parties or their permitted successors or assigns.

*Section 22. Third Parties.* Except as specifically set forth in this Agreement, nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the parties, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party, nor shall any provision give any third parties any rights of subrogation or action over or against any party.

*Section 23. Waiver.* Any party 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.

*Section 24. Assignment.* The Developer may not assign its rights or obligations under this Agreement without the express written consent of the Village, which it is under no obligation to give. Notwithstanding the foregoing, the Developer may freely assign its rights and obligations under this Agreement to any entity in the ownership structure of the Project.

*Section 25. No Joint Venture, Agency or Partnership Created.* Nothing in this Agreement, nor any actions of the parties, 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.

*Section 26. No Personal Liability of Officials of the Village.* No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member of the Corporate Authorities or any official, officer, agent, employee or attorney of the Village, in his or her individual capacity, and no official, officer, agent, employee or attorney of the Village shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement.

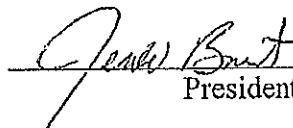
*Section 27. Actions Contesting the Validity and/or Enforceability of the Redevelopment Plan.* In the event a third party brings an action contesting the validity or legality of this Agreement, or the Ordinances approving any of the above, then the Village agrees to defend the same and the Developer shall reimburse the Village for all costs in connection therewith. At its option, Developer may assume, at its cost, such defense with counsel acceptable to the Village. If Developer assumes such defense, then the Village agrees that all costs of defense are eligible Redevelopment Project Costs and shall be reimbursable to the Developer in addition to the amounts set forth in Section 5 hereof.

*Section 28. Special Provisions Relating to Repayment of Note.* Notwithstanding anything to the contrary contained in this Agreement, the Note or any of the other Loan Documents, the parties acknowledge and agree that, upon completion of construction of the Project, any monies then remaining of the Loan that have not otherwise been disbursed to pay costs of the Project or the Developer's share of costs of issuance of the Bonds (as set forth in Section 6(a) hereof) shall be utilized by the Village to make payments due under the terms of the Note. The intent and purpose of the preceding sentence is that the Developer shall not be required to make any further payments on the Note until such remaining monies have been exhausted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at East Dundee, Illinois.

VILLAGE OF EAST DUNDEE, ILLINOIS,  
an Illinois municipal corporation

ZEBURG BROWN DUNDEE, LLC

  
\_\_\_\_\_  
President

By \_\_\_\_\_  
Its \_\_\_\_\_

Attest:

  
\_\_\_\_\_  
Village Administrator

*Section 25. No Joint Venture, Agency or Partnership Created.* Nothing in this Agreement, nor any actions of the parties, 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.

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*Section 27. Actions Contesting the Validity and/or Enforceability of the Redevelopment Plan.* In the event a third party brings an action contesting the validity or legality of this Agreement, or the Ordinances approving any of the above, then the Village agrees to defend the same and the Developer shall reimburse the Village for all costs in connection therewith. At its option, Developer may assume, at its cost, such defense with counsel acceptable to the Village. If Developer assumes such defense, then the Village agrees that all costs of defense are eligible Redevelopment Project Costs and shall be reimbursable to the Developer in addition to the amounts set forth in Section 5 hereof.

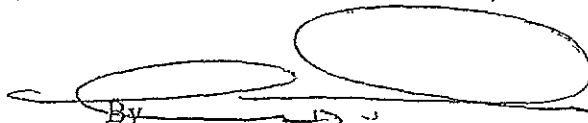
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VILLAGE OF EAST DUNDEE, ILLINOIS,  
an Illinois municipal corporation

ZEBURG BROWN DUNDEE, LLC

\_\_\_\_\_  
President

By   
Its Manager

Attest:

\_\_\_\_\_  
Village Administrator



*Exhibit A*

*Legal Description*

Lot 1 in Saturn Resubdivision, being a resubdivision of Lot 2 in resubdivision of part of Lot 2 of Gateway Subdivision, being a resubdivision of Lot 2 of Gateway Subdivision, being a subdivision of part of Section 25, Township 42 North, Range 8 East of the Third Principal Meridian being situated in the Village of the East Dundee, Kane County, Illinois, as shown on the plat of Saturn Resubdivision, which was recorded with the Kane County Recorder of Deeds as Document 93K77117, on October 5, 1993.

*Exhibit B*

Form of Request for Reimbursement

REQUEST FOR REIMBURSEMENT

[DATE]

Village of East Dundee  
120 Barrington Ave.  
East Dundee, IL 60118  
Attention: Village Administrator

Re:                *Redevelopment Agreement, dated \_\_\_\_\_, 2012,  
by and between the Village of East Dundee, Illinois, and  
Zeburg Brown Dundee, LLC (the "Developer")*

Dear Village Administrator:

You are requested to disburse funds from the Special Tax Allocation Fund or, if applicable, from the construction escrow account pursuant to Section 4 of the Redevelopment Agreement described above in the amount(s), to the person(s) and for the purpose(s) set forth in this Request for Reimbursement. The terms used in this Request for Reimbursement shall have the meanings given to those terms in the Redevelopment Agreement.

1.     REQUEST FOR REIMBURSEMENT NO.: \_\_\_\_\_
2.     AMOUNT TO BE DISBURSED: \_\_\_\_\_
3.     The amount requested to be disbursed pursuant to this Request for Reimbursement will be used to reimburse the Developer for those Redevelopment Project Costs for the development of the Project detailed in Schedule 1 attached to this Request for Reimbursement.
4.     The undersigned certifies that:
  - (i)     the amounts included in 3 above were made or incurred and were necessary for the development of the Project and were made or incurred in accordance therewith;
  - (ii)    the amounts paid or to be paid, as set forth in this Request for Reimbursement, represents a part of the funds due and payable for Redevelopment Project Costs;

- (iii) the expenditures for which amounts are requisitioned represent proper Redevelopment Project Costs identified in the Eligible Redevelopment Project Cost Schedule described in Section 4 of the Redevelopment Agreement, have not been included in any previous Request for Reimbursement, have been properly recorded on the Developer's books and are set forth in Schedule 1, with paid invoices attached for all sums for which reimbursement is requested;
  - (iv) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Developer for its funds actually advanced for Redevelopment Project Costs; and
  - (v) the Developer is not in default under the Redevelopment Agreement and nothing has occurred to the knowledge of the Developer that would prevent the performance of its obligations under the Redevelopment Agreement.
5. Attached to this Request for Reimbursement is Schedule 1, together with copies of invoices or bills of sale covering all items for which reimbursement is being requested, and a copy of the Eligible Redevelopment Project Cost Schedule on which it has been noted all Eligible Redevelopment Project Costs heretofore reimbursed to the Developer.

APPROVED:

VILLAGE OF EAST DUBUQUE, ILLINOIS

By: \_\_\_\_\_  
Village Administrator

Date: \_\_\_\_\_

ZEBURG BROWN DUNDEE, LLC

By \_\_\_\_\_  
Its \_\_\_\_\_

*Exhibit C*

*Loan Documents*

(See Attached)

## NOTE

Principal Amount

Interest

\$1,839,500.00

4.3548%

For value received, ZEBURG BROWN DUNDEE, LLC, an Illinois limited liability company ("Developer"), promises to pay to the order of the Village of East Dundee ("Village"), a municipal corporation duly organized and existing under the laws of the State of Illinois located in Kane County in the State of Illinois, at the times and in the manner hereinafter provided, the principal sum of \$1,839,500.00, with interest at the rate hereafter specified.

Principal and interest payments on this Note are due and payable on the dates and in the amounts as set forth on *Exhibit 1* attached hereto. The applicable interest rate is shown on *Exhibit 1*.

The indebtedness evidenced by this Note is secured by a Mortgage dated as of the same date hereof, applicable to the real property located in Kane County, State of Illinois, which is more fully described in the Legal Description, attached as *Exhibit A* to said Mortgage and the terms of which are hereby incorporated for additional rights as to acceleration of the indebtedness evidenced by this Note and further rights and remedies of Village and obligations and liabilities of the Developer.

Developer (or its successors or assigns) shall have the right to prepay the obligation set forth in this Note in whole or in part at any time without penalty; provided, however, that in the event of a partial prepayment, the Developer (or its successors or assigns) shall be obligated to continue making regular and uninterrupted payments for the amount and on the payment date specified in this Note so long as any portion of the indebtedness remains unpaid. Demand, presentment, protest, notice or protest, and notice of dishonor are hereby waived.

In the event of nonpayment when due of any payment due under this Note or in the event a default occurs under the Redevelopment Agreement, the Village shall notify Developer (or its successors or assigns) within five (5) days of such nonpayment or default and the required action to cure such default. If such nonpayment or event of default continues for a period of thirty (30) days (or any further extension of time provided for hereunder) following due notice given to the Developer (or its successors or assigns) at their last known address, then at the option of the Village of this Note, all of the amount then owing under this Note shall immediately become due and payable. The failure to assert this right shall not be deemed a waiver. Notwithstanding the foregoing, if such default cannot be cured within such thirty (30) day period, said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as Developer is diligently proceeding to cure such default.

The Developer shall pay a late charge on any payment not made within ten (10) days of the date it becomes due as originally scheduled or otherwise. The late charge shall be computed on the amount of the late payment from the due date at the rate of .1% per day.

Amounts received on account of indebtedness evidenced by this Note shall be applied as follows: first to interest, second to principal, third to late charges, and fourth to expenses and costs.

The undersigned or any successor or assign to this Note agrees to pay all reasonable costs incurred by the Village in the collection of any sums due under this Note, including, but not limited to, the Village's attorneys' fees, court costs and other reasonable costs of collection if incurred in the collection on this Note.

Should the Developer fail in its obligations under the terms of this Note, the Village shall have the right to seek judgment against the Developer, to foreclose upon the Mortgage, and any other remedies that may be available to the Village.

The parties acknowledge that any legal action that arises from this Note shall be filed and prosecuted in the Circuit Court of Kane County, Illinois, and that the laws of the State of Illinois shall govern and control all legal issues presented in said proceedings.

This Note is given in accordance with, and is required by, the terms and conditions of the Redevelopment Agreement between the parties dated as of March 23, 2012, and evidences indebtedness created by a loan made by the Village of East Dundee to Developer as of the same date hereof for the purpose of promoting economic development as a tax increment financing project pursuant to the above-referenced Redevelopment Agreement.

The Developer's obligations under the Note and Mortgage may be assigned only to persons, as approved by a vote of the Village President and Board of Trustees (the "Corporate Authorities"), at the earliest meeting of the Corporate Authorities after written notice is given to the Village by the Developer or as otherwise provided in the Redevelopment Agreement.

IN WITNESS WHEREOF the Village of East Dundee and the Developer have caused this Note to be executed by the duly authorized individuals below.

ZEBURG BROWN DUNDEE, LLC, an Illinois limited liability company

By [Signature]  
Its Manager

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF Kendall )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Michael D. Burgstone personally known to me to be the manager of Zeburg Brown Dundee, LLC, an Illinois limited liability company, whose names is subscribed to the foregoing instrument and stated that he is duly authorized to execute the foregoing instrument on behalf of said limited liability company and acknowledged that he has executed the foregoing instrument as his own free act and deed and as the free act and deed of said limited liability company for the uses and purposes set forth therein.

Given under my hand an official seal, this 20 day of March, 20 12.



[Signature]  
Notary Public

# EXHIBIT 1

Beginning Balance:	1,839,500
Term:	187 months
Rate:	4.3548%
Monthly Payment:	(\$13,566.49)

	<u>Principal</u>	<u>Interest</u>	<u>Balance</u>
5/1/2012	6,890.94	6,675.55	1,832,609.06
6/1/2012	6,915.95	6,650.54	1,825,693.10
7/1/2012	6,941.05	6,625.44	1,818,752.05
8/1/2012	6,966.24	6,600.25	1,811,785.81
9/1/2012	6,991.52	6,574.97	1,804,794.29
10/1/2012	7,016.89	6,549.60	1,797,777.40
11/1/2012	7,042.36	6,524.13	1,790,735.05
12/1/2012	7,067.91	6,498.58	1,783,667.13
1/1/2013	7,093.56	6,472.93	1,776,573.57
2/1/2013	7,119.30	6,447.19	1,769,454.27
3/1/2013	7,145.14	6,421.35	1,762,309.13
4/1/2013	7,171.07	6,395.42	1,755,138.06
5/1/2013	7,197.09	6,369.40	1,747,940.96
6/1/2013	7,223.21	6,343.28	1,740,717.75
7/1/2013	7,249.43	6,317.06	1,733,468.32
8/1/2013	7,275.73	6,290.76	1,726,192.59
9/1/2013	7,302.14	6,264.35	1,718,890.45
10/1/2013	7,328.64	6,237.85	1,711,561.82
11/1/2013	7,355.23	6,211.26	1,704,206.58
12/1/2013	7,381.92	6,184.57	1,696,824.66
1/1/2014	7,408.71	6,157.78	1,689,415.95
2/1/2014	7,435.60	6,130.89	1,681,980.35
3/1/2014	7,462.58	6,103.91	1,674,517.76
4/1/2014	7,489.67	6,076.82	1,667,028.10
5/1/2014	7,516.85	6,049.64	1,659,511.25
6/1/2014	7,544.12	6,022.37	1,651,967.13
7/1/2014	7,571.50	5,994.99	1,644,395.63
8/1/2014	7,598.98	5,967.51	1,636,796.65
9/1/2014	7,626.56	5,939.94	1,629,170.09
10/1/2014	7,654.23	5,912.26	1,621,515.86
11/1/2014	7,682.01	5,884.48	1,613,833.85
12/1/2014	7,709.89	5,856.60	1,606,123.97
1/1/2015	7,737.87	5,828.62	1,598,386.10
2/1/2015	7,765.95	5,800.54	1,590,620.15
3/1/2015	7,794.13	5,772.36	1,582,826.02
4/1/2015	7,822.41	5,744.08	1,575,003.61
5/1/2015	7,850.80	5,715.69	1,567,152.81
6/1/2015	7,879.29	5,687.20	1,559,273.51
7/1/2015	7,907.89	5,658.60	1,551,365.63
8/1/2015	7,936.58	5,629.91	1,543,429.04

	<u>Principal</u>	<u>Interest</u>	<u>Balance</u>
9/1/2015	7,965.39	5,601.10	1,535,463.66
10/1/2015	7,994.29	5,572.20	1,527,469.36
11/1/2015	8,023.30	5,543.19	1,519,446.06
12/1/2015	8,052.42	5,514.07	1,511,393.64
1/1/2016	8,081.64	5,484.85	1,503,312.00
2/1/2016	8,110.97	5,455.52	1,495,201.03
3/1/2016	8,140.41	5,426.08	1,487,060.62
4/1/2016	8,169.95	5,396.54	1,478,890.67
5/1/2016	8,199.60	5,366.89	1,470,691.08
6/1/2016	8,229.35	5,337.14	1,462,461.72
7/1/2016	8,259.22	5,307.27	1,454,202.51
8/1/2016	8,289.19	5,277.30	1,445,913.32
9/1/2016	8,319.27	5,247.22	1,437,594.05
10/1/2016	8,349.46	5,217.03	1,429,244.59
11/1/2016	8,379.76	5,186.73	1,420,864.83
12/1/2016	8,410.17	5,156.32	1,412,454.65
1/1/2017	8,440.69	5,125.80	1,404,013.96
2/1/2017	8,471.32	5,095.17	1,395,542.64
3/1/2017	8,502.07	5,064.42	1,387,040.57
4/1/2017	8,532.92	5,033.57	1,378,507.65
5/1/2017	8,563.89	5,002.60	1,369,943.77
6/1/2017	8,594.96	4,971.53	1,361,348.80
7/1/2017	8,626.16	4,940.33	1,352,722.65
8/1/2017	8,657.46	4,909.03	1,344,065.19
9/1/2017	8,688.88	4,877.61	1,335,376.31
10/1/2017	8,720.41	4,846.08	1,326,655.90
11/1/2017	8,752.06	4,814.43	1,317,903.84
12/1/2017	8,783.82	4,782.67	1,309,120.03
1/1/2018	8,815.69	4,750.80	1,300,304.33
2/1/2018	8,847.69	4,718.80	1,291,456.65
3/1/2018	8,879.79	4,686.70	1,282,576.85
4/1/2018	8,912.02	4,654.47	1,273,664.83
5/1/2018	8,944.36	4,622.13	1,264,720.47
6/1/2018	8,976.82	4,589.67	1,255,743.65
7/1/2018	9,009.40	4,557.09	1,246,734.26
8/1/2018	9,042.09	4,524.40	1,237,692.17
9/1/2018	9,074.91	4,491.58	1,228,617.26
10/1/2018	9,107.84	4,458.65	1,219,509.42
11/1/2018	9,140.89	4,425.60	1,210,368.53
12/1/2018	9,174.06	4,392.43	1,201,194.47
1/1/2019	9,207.36	4,359.13	1,191,987.11
2/1/2019	9,240.77	4,325.72	1,182,746.34
3/1/2019	9,274.30	4,292.19	1,173,472.04
4/1/2019	9,307.96	4,258.53	1,164,164.08
5/1/2019	9,341.74	4,224.75	1,154,822.34
6/1/2019	9,375.64	4,190.85	1,145,446.70
7/1/2019	9,409.66	4,156.83	1,136,037.04
8/1/2019	9,443.81	4,122.68	1,126,593.23
9/1/2019	9,478.08	4,088.41	1,117,115.14
10/1/2019	9,512.48	4,054.01	1,107,602.66
11/1/2019	9,547.00	4,019.49	1,098,055.66



	<u>Principal</u>	<u>Interest</u>	<u>Balance</u>
12/1/2019	9,581.65	3,984.84	1,088,474.02
1/1/2020	9,616.42	3,950.07	1,078,857.60
2/1/2020	9,651.32	3,915.17	1,069,206.28
3/1/2020	9,686.34	3,880.15	1,059,519.94
4/1/2020	9,721.49	3,845.00	1,049,798.45
5/1/2020	9,756.77	3,809.72	1,040,041.68
6/1/2020	9,792.18	3,774.31	1,030,249.50
7/1/2020	9,827.71	3,738.78	1,020,421.78
8/1/2020	9,863.38	3,703.11	1,010,558.41
9/1/2020	9,899.17	3,667.32	1,000,659.23
10/1/2020	9,935.10	3,631.39	990,724.13
11/1/2020	9,971.15	3,595.34	980,752.98
12/1/2020	10,007.34	3,559.15	970,745.64
1/1/2021	10,043.65	3,522.84	960,701.99
2/1/2021	10,080.10	3,486.39	950,621.89
3/1/2021	10,116.68	3,449.81	940,505.20
4/1/2021	10,153.40	3,413.09	930,351.81
5/1/2021	10,190.24	3,376.25	920,161.56
6/1/2021	10,227.22	3,339.27	909,934.34
7/1/2021	10,264.34	3,302.15	899,670.00
8/1/2021	10,301.59	3,264.90	889,368.41
9/1/2021	10,338.97	3,227.52	879,029.44
10/1/2021	10,376.49	3,190.00	868,652.95
11/1/2021	10,414.15	3,152.34	858,238.80
12/1/2021	10,451.94	3,114.55	847,786.86
1/1/2022	10,489.87	3,076.62	837,296.99
2/1/2022	10,527.94	3,038.55	826,769.05
3/1/2022	10,566.15	3,000.34	816,202.90
4/1/2022	10,604.49	2,962.00	805,598.41
5/1/2022	10,642.97	2,923.52	794,955.44
6/1/2022	10,681.60	2,884.89	784,273.84
7/1/2022	10,720.36	2,846.13	773,553.48
8/1/2022	10,759.26	2,807.23	762,794.22
9/1/2022	10,798.31	2,768.18	751,995.91
10/1/2022	10,837.50	2,728.99	741,158.41
11/1/2022	10,876.83	2,689.66	730,281.58
12/1/2022	10,916.30	2,650.19	719,365.29
1/1/2023	10,955.91	2,610.58	708,409.37
2/1/2023	10,995.67	2,570.82	697,413.70
3/1/2023	11,035.58	2,530.91	686,378.12
4/1/2023	11,075.62	2,490.87	675,302.50
5/1/2023	11,115.82	2,450.67	664,186.68
6/1/2023	11,156.16	2,410.33	653,030.52
7/1/2023	11,196.64	2,369.85	641,833.88
8/1/2023	11,237.28	2,329.22	630,596.61
9/1/2023	11,278.06	2,288.44	619,318.55
10/1/2023	11,318.98	2,247.51	607,999.57
11/1/2023	11,360.06	2,206.43	596,639.51
12/1/2023	11,401.29	2,165.20	585,238.22
1/1/2024	11,442.66	2,123.83	573,795.56
2/1/2024	11,484.19	2,082.30	562,311.38

	<u>Principal</u>	<u>Interest</u>	<u>Balance</u>
3/1/2024	11,525.86	2,040.63	550,785.52
4/1/2024	11,567.69	1,998.80	539,217.83
5/1/2024	11,609.67	1,956.82	527,608.16
6/1/2024	11,651.80	1,914.69	515,956.36
7/1/2024	11,694.08	1,872.41	504,262.27
8/1/2024	11,736.52	1,829.97	492,525.75
9/1/2024	11,779.11	1,787.38	480,746.64
10/1/2024	11,821.86	1,744.63	468,924.77
11/1/2024	11,864.76	1,701.73	457,060.01
12/1/2024	11,907.82	1,658.67	445,152.19
1/1/2025	11,951.03	1,615.46	433,201.16
2/1/2025	11,994.40	1,572.09	421,206.76
3/1/2025	12,037.93	1,528.56	409,168.83
4/1/2025	12,081.62	1,484.87	397,087.21
5/1/2025	12,125.46	1,441.03	384,961.75
6/1/2025	12,169.46	1,397.03	372,792.28
7/1/2025	12,213.63	1,352.86	360,578.66
8/1/2025	12,257.95	1,308.54	348,320.71
9/1/2025	12,302.43	1,264.06	336,018.27
10/1/2025	12,347.08	1,219.41	323,671.19
11/1/2025	12,391.89	1,174.60	311,279.31
12/1/2025	12,436.86	1,129.63	298,842.45
1/1/2026	12,481.99	1,084.50	286,360.46
2/1/2026	12,527.29	1,039.20	273,833.17
3/1/2026	12,572.75	993.74	261,260.42
4/1/2026	12,618.38	948.11	248,642.04
5/1/2026	12,664.17	902.32	235,977.88
6/1/2026	12,710.13	856.36	223,267.75
7/1/2026	12,756.25	810.24	210,511.50
8/1/2026	12,802.54	763.95	197,708.95
9/1/2026	12,849.00	717.49	184,859.95
10/1/2026	12,895.63	670.86	171,964.32
11/1/2026	12,942.43	624.06	159,021.88
12/1/2026	12,989.40	577.09	146,032.48
1/1/2027	13,036.54	529.95	132,995.95
2/1/2027	13,083.85	482.64	119,912.10
3/1/2027	13,131.33	435.16	106,780.77
4/1/2027	13,178.98	387.51	93,601.79
5/1/2027	13,226.81	339.68	80,374.98
6/1/2027	13,274.81	291.68	67,100.17
7/1/2027	13,322.98	243.51	53,777.18
8/1/2027	13,371.33	195.16	40,405.85
9/1/2027	13,419.86	146.63	26,985.99
10/1/2027	13,468.56	97.93	13,517.44
11/1/2027	13,517.44	49.05	0.00

*This instrument was prepared by:*

Kathleen Field Orr  
Kathleen Field Orr & Associates  
53 West Jackson Blvd., Suite 935  
Chicago, Illinois 60604

Village of East Dundee  
120 Barrington Avenue  
East Dundee, Illinois 60118

## MORTGAGE

THIS MORTGAGE ("*Security Instrument*") is given on the 23<sup>rd</sup> day of March, 2012, by ZEBURG BROWN DUNDEE, LLC, an Illinois limited liability company ("Borrower"), to the Village of East Dundee, whose address is 120 Barrington Avenue, East Dundee, Illinois 60118 ("*Lender*"). Borrower owes Lender the principal sum of \$1,839,500.00. This debt is evidenced by a promissory note dated the same date as this Security Instrument ("*Note*"), which provides for monthly payments, with the full debt, if not paid earlier, due on the 1<sup>st</sup> day of November, 2027, and by a Redevelopment Agreement dated the same date as this Security Instrument ("*Agreement*") which more fully explains the obligations due by Borrower.

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note and all renewals, extensions and modifications of the Note; (b) the payment of all other sums to protect the security of this Security Instrument and; (c) the performance of Borrower's covenants and agreements under this Security Instrument, and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the property described on *Exhibit A*, located in Kane County, Illinois.

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Prepayment and Late Charges. Borrower shall promptly pay when due the principal amount of the debt evidenced by the Note, with interest thereon at the rate set forth in the Note, and any prepayment and late charges due under the Note.

2. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations on time directly to the person owed payment.

Borrower shall promptly discharge any lien (other than Senior Mortgage Indebtedness) which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument; or (d) bonds over or insures the lien as set forth in the Redevelopment Agreement. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

3. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys fees and entering on the Property to make repairs. Although Lender may take action under paragraph 3, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 3 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall be payable upon notice from Lender to Borrower requesting payment.

Unless an emergency condition exists which requires the immediate action of Lender, Lender shall provide Borrower with the same notice and cure rights set forth in Section 14(a) of the Agreement prior to taking any action or disbursing any funds pursuant to this Section 3.

4. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower such prior notice as is given to other owners of property under the codes and ordinances of Lender prior to inspection.

5. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by

the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured, immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

6. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower, shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

7. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

8. Loan Charges. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

9. Notices. Any notice required or permitted to be given under this Security Instrument shall be

made and deemed to be given pursuant to the same procedures set forth in Section 16 of the Agreement.

10. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

11. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

12. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

13. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However this right to reinstate shall not apply in the case of acceleration under paragraph 16.

14. **Intentionally Deleted.**

15. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal

residential uses and to maintenance of the Property and also to the usual, customary and lawful operation of a business of the type being operated on the Property by Borrower.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 15, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 15, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

16. Default; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument, the Note, or Agreement. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. If such default cannot be cured within such 30 day period, said 30 day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as Borrower is diligently proceeding to cure such default. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, or any extension of time provided for hereunder, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 16, including, but not limited to, reasonable attorneys' fees and cost of title evidence.

17. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

18. Non-Cumulative Remedies. The rights and remedies granted by this Security Instrument are cumulative with other rights granted by the Note, and the election by the Lender to pursue a particular remedy under this or any other agreement between Borrower and Lender shall not be deemed, directly or indirectly, to prohibit the Lender's use of any other remedies in said agreements or otherwise available at law or in equity.

19. Assignment of Leases and Rents. In consideration of the making of the loan by Lender to Borrower and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower absolutely and unconditionally assigns the Leases and Rents to

Lender. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Borrower to Lender of all of Borrower's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no default shall have occurred hereunder beyond all applicable notice and cure periods, however, Borrower shall have a license (which license shall terminate upon the occurrence of a default hereunder beyond all applicable notice and cure periods) to collect, but not more than thirty (30) days prior to accrual, all Rents. Borrower agrees to collect and hold all Rents in trust for Lender and to use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the indebtedness evidenced by the Note as the same becomes due and payable before using the Rents for any other purpose.

For purposes of this Security Agreement, the term "Rents" means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases. Further, the term "Leases" means all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder.

(Signatures appear on the next page).



BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

ZEBURG BROWN DUNDEE, LLC, an Illinois  
limited liability company

By [Signature]  
Its Manager

STATE OF ILLINOIS )  
COUNTY OF Kendall )

SS:

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY THAT Michael D. Burgstone, personally known to me  
to be the Manager of Zeburg Brown Dundee, LLC, an  
Illinois limited liability company, whose name is subscribed to the foregoing instrument and stated  
that he is duly authorized to execute the foregoing instrument on behalf of said limited liability  
company and acknowledged that he has executed the foregoing instrument as his own free act and  
deed and as the free act and deed of said limited liability company for the uses and purposes set  
forth therein.

Given under my hand an official seal 20 day of March, 2012.



A Kingsmill  
Notary Public

Exhibit "A"

Lot 1 in Saturn Resubdivision, being a resubdivision of Lot 2 in resubdivision of part of Lot 2 of Gateway Subdivision, being a resubdivision of Lot 2 of Gateway Subdivision, being a subdivision of part of Section 25, Township 42 North, Range 8 East of the Third Principal Meridian being situated in the Village of the East Dundee, Kane County, Illinois, as shown on the plat of Saturn Resubdivision, which was recorded with the Kane County Recorder of Deeds as Document 93K77117, on October 5, 1993.



## RECAPTURE AGREEMENT

THIS AGREEMENT is made and entered into this 23<sup>rd</sup> day of March, 2012, by and among the Village of East Dundee, an Illinois municipal corporation (the "*Village*"), and Zeburg Brown Dundee, LLC, an Illinois limited liability company; Auto Resources Dundee, Inc., an Illinois corporation; Thomas Burgstone of Plainfield, Illinois; Michael D. Burgstone of Chicago, Illinois; James F. Brown of Orland Park, Illinois; and, Charles M. Zdenek of Lemont, Illinois (collectively, the "*Recipients*").

### RECITALS:

WHEREAS, the Village is a home rule municipality of the State of Illinois pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois; and,

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the "*TIF Act*"), the President and Board of Trustees of the Village (collectively, the "*Corporate Authorities*") are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a "blighted area," as such term is defined in the TIF Act; and,

WHEREAS, in accordance with the requirements of the TIF Act, on September 18, 2006, the Corporate Authorities adopted Ordinance No. 06-40, which approved a redevelopment plan and project, entitled the Redevelopment Project Plan and Eligibility Report (the "*Redevelopment Plan*"), for the Route 25 Redevelopment Project Area (the "*Redevelopment Project Area*"); and,

WHEREAS, also in accordance with the requirements of the TIF Act, on September 18, 2006, the Corporate Authorities adopted Ordinances No. 06-41 and No. 06-42, which designated the Redevelopment Project Area as a "redevelopment project area," as that term is

defined under the TIF Act, and approved tax increment financing for the purpose of implementing the Redevelopment Plan for the Redevelopment Project Area; and,

WHEREAS, the Corporate Authorities have determined that the blighting factors described in the Redevelopment Plan are detrimental to the public and impair development and growth in the Redevelopment Project Area, with the result that it is necessary to incur extraordinary costs in order to develop the Redevelopment Project Area; and,

WHEREAS, the blighting factors in the Redevelopment Project Area will continue to impair growth and development but for the use of tax increment financing to pay Redevelopment Project Costs, as that term is defined in the TIF Act, which necessarily must be incurred to implement the aforesaid program of redevelopment; and,

WHEREAS, Zeburg Brown Dundee, LLC proposes to acquire and redevelop within the Redevelopment Project Area certain real estate commonly known as 750 Dundee Avenue, East Dundee, Illinois (the "*Subject Property*"), for use as a used car retailer and other compatible commercial operations (the "*Project*"); and,

WHEREAS, the Project will result in a private investment of over \$2,000,000 and is anticipated to result in the creation of 10 jobs during construction and 15 jobs upon completion; and,

WHEREAS, the Village is authorized under the TIF Act to enter into redevelopment agreements and to enter into any contracts with any property owner, developer or others and to reimburse developers who incur redevelopment project costs as deemed necessary and incidental to the implementation and in furtherance of the Redevelopment Plan for the Redevelopment Project Area and to that end has entered into a Redevelopment Agreement with Zeburg Brown Dundee, LLC (the "*Redevelopment Agreement*") wherein the Village has agreed to provide incentives in order to induce Zeburg Brown Dundee, LLC to proceed to acquire the Subject Property and undertake the Project; and,

WHEREAS, the Corporate Authorities have determined that economic development incentives to ensure the completion of the Project by Zeburg Brown Dundee, LLC, are in the best interests of the Village and the health, safety, morals and welfare of its residents and taxpayers and in furtherance of the Redevelopment Plan, and has, therefore, pursuant to the Redevelopment Agreement provided Zeburg Brown Dundee, LLC with, among other incentives, a grant (the "*Grant*") in the amount of \$520,500 to assist with the acquisition of the Subject Property and the completion of the Project.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

*Section 1. Incorporation of Recitals.* The recitals contained in the Preambles to this Agreement are true and correct and are hereby incorporated into this Agreement as though they were fully set forth in this *Section 1*.

*Section 2. Grant Amount.* The Parties acknowledge that the Village, on an even date herewith, disbursed the proceeds of the Grant to Zeburg Brown Dundee, LLC in the amount of

\$520,500 in order to assist with the acquisition of the Subject Property and the completion of the Project.

*Section 3. Recapture of Grant.* If the Recipients cease to operate their used car business and/or sell the Subject Property at any time prior to the end of the term of this Agreement, the Recipients agree to repay the Village one hundred percent (100%) of the Grant (the "*Recapture Payment*") less twenty percent (20%) of the balance due and owing as of the date the Recipients cease operation and/or sell the Subject Property for each twelve (12) consecutive months of operation after the date of commencement of operations.

4. *Term.* The term of this Agreement shall commence with the date of execution hereof and continue thereafter in full force and effect for a period of five (5) consecutive years.

5. *Notice.* During the term of this Agreement, the Recipients agree to promptly notify the Village of any sale of the Subject Property or any contract entered into by the Recipients or anyone relating to the sale of the Subject Property. Notice shall be in writing and delivered to the Village at the following address:

Village of East Dundee  
120 Barrington Avenue  
East Dundee, Illinois 60118  
Attention: Village Administrator.

6. *Indemnification.* The Recipients hereby agree to fully and unconditionally indemnify, defend and hold harmless the Village from and against any judgments, losses, repayment, liabilities, damages, costs, expenses of whatsoever kind or nature, including, without limitation, attorney's fees, expert witness fees, and any other professional fees and litigation expenses or other obligations incurred by the Village that may arise in any manner out of actions or omissions which result from the Recipient's performance or failure to perform pursuant to the terms of this Agreement.

7. *Joint and Several.* Each and every Recipient hereunder shall be jointly and severally liable for the obligations set forth in this Agreement.

8. *Counterpart.* This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement in East Dundee, Illinois, on the date first written above.

VILLAGE OF EAST DUNDEE

By \_\_\_\_\_  
Village President

Attested By

\_\_\_\_\_  
Village Administrator

RECIPIENTS:

ZEBURG BROWN DUNDEE, LLC

By \_\_\_\_\_  
Its Manager

AUTO RESOURCES DUNDEE, INC.

By \_\_\_\_\_  
Its President

\_\_\_\_\_  
Michael D. Burgstone

\_\_\_\_\_  
Thomas Burgstone

\_\_\_\_\_  
James F. Brown

\_\_\_\_\_  
Charles M. Zdenek

*Prepared by and return to:*  
Kathleen Field Orr  
Kathleen Field Orr & Associates  
53 West Jackson Blvd., Suite 935  
Chicago, Illinois 60604

IN WITNESS WHEREOF, the parties have executed this Agreement in East Dundee, Illinois, on the date first written above.

VILLAGE OF EAST DUNDEE

By \_\_\_\_\_  
Village President

Attested By

\_\_\_\_\_  
Village Administrator

RECIPIENTS:

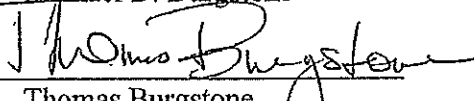
ZEBURG BROWN DUNDEE, LLC

By \_\_\_\_\_  
Its \_\_\_\_\_

AUTO RESOURCES DUNDEE, INC.

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Michael D. Burgstone

  
Thomas Burgstone

  
James F. Brown

\_\_\_\_\_  
Charles M. Zdenek

*Prepared by and return to:*  
Kathleen Field Orr  
Kathleen Field Orr & Associates  
53 West Jackson Blvd., Suite 935  
Chicago, Illinois 60604

IN WITNESS WHEREOF, the parties have executed this Agreement in East Dundee, Illinois, on the date first written above.

VILLAGE OF EAST DUNDEE

By \_\_\_\_\_  
Village President

Attested By

\_\_\_\_\_  
Village Administrator

RECIPIENTS:

ZEBURG BROWN DUNDEE, LLC

By \_\_\_\_\_  
Its \_\_\_\_\_

AUTO RESOURCES DUNDEE, INC.

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Michael D. Burgstone

\_\_\_\_\_  
Thomas Burgstone

\_\_\_\_\_  
James F. Brown

\_\_\_\_\_  
Charles M. Zdenek

*Prepared by and return to:*  
Kathleen Field Orr  
Kathleen Field Orr & Associates  
53 West Jackson Blvd., Suite 935  
Chicago, Illinois 60604



## GUARANTEE AGREEMENT

THIS GUARANTEE AGREEMENT is made this 23<sup>rd</sup> day of March, 2012, by and among the Village of East Dundee, an Illinois municipal corporation (the "*Village*"), and Auto Resources Dundee, Inc., an Illinois corporation; Thomas Burgstone of Plainfield, Illinois; Michael D. Burgstone of Chicago, Illinois; James F. Brown of Orland Park, Illinois; and, Charles M. Zdenek of Lemont, Illinois (collectively, the "*Guarantors*").

### WITNESSETH:

WHEREAS, the Village has agreed to make a loan to Zeburg Brown Dundee, LLC, an Illinois limited liability company ("*Borrower*"), in the aggregate principal amount of \$1,814,500 (the "*Loan*") in connection with the acquisition of 750 Dundee Avenue in the Village and the rehabilitation and renovation thereof in order to house a used retailer and other compatible commercial operations.

NOW, THEREFORE, in consideration of the foregoing and it being in Guarantors' direct interest and financial advantage to assist Borrower in securing the Loan, the parties agree as follows:

1. When used herein, the following terms shall have the following meanings:

(i) "*Default*" shall include the occurrence or existence of any one or more of the following events: (a) Borrower fails to pay the "*Indebtedness*" (as hereinafter defined), or any installment or portion thereof, on or before thirty (30) days after payment becomes due or is declared due; (b) Borrower fails or neglects to perform, keep or observe the "*Obligations*" (as hereinafter defined) or any of the covenants, conditions, promises or agreements contained herein or in the Transaction Agreements (as hereinafter defined), and such failure continues for more than thirty (30) days after written notice to Borrower (or such other applicable grace or cure period as provided under the Transaction Agreements); (c) any material inaccuracy in or breach of any warranty or representation made by Borrower in any of the Transaction Agreement that has a material adverse effect on Borrower's ability to repay the Loan; (d) a notice of lien, levy or assessment is filed or recorded with respect to the assets of Borrower by the United States, or any department, agency or instrumentality thereof or by any state, county, municipality or other governmental agency or any taxes or debts owing at any time or times hereafter to any one or more of them become a lien, upon all or a substantial part of the Collateral; (e) a proceeding under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt or receivership law or statute is filed against Guarantors or Borrower and such proceeding is not dismissed within sixty (60) days of the date of its filing; or a proceeding under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt or receivership law or statute is filed by Borrower or Guarantors; or Borrower or Guarantors make an assignment for the benefit of creditors; (f) Borrower voluntarily or involuntarily dissolves or is dissolved or voluntarily or involuntarily terminates or is terminated, which dissolution or termination

has, in the Village's reasonable discretion, a material adverse effect on Borrower or repayment of the Loan; and (g) a breach by Guarantors or Borrower beyond all applicable notice and cure periods under any provision of any of the Transaction Agreements.

(ii) "*Event of Default*" shall include an event which through the passage of time or the service of notice or both would (assuming no action is taken by Guarantors or Borrower to cure the same) mature into a Default.

(iii) "*Transaction Agreements*" shall include all agreements, instruments and documents in connection with the Loan, including, without limitation, the Loan and Security Agreement, the Promissory Note, the Mortgage, Redevelopment Agreement and all other written matter whether heretofore, now, or hereafter executed by or on behalf of Borrower or Guarantors and delivered to the Village, together with all agreements and documents referred to therein or contemplated thereby.

(iv) "*Obligations*" shall mean the obligations, duties and agreements of Borrower in respect of: (a) the Loan and any extensions, substitutions or renewals thereof; (b) the Note and any extensions, substitutions or renewals thereof; (c) the Mortgage and any extensions, substitutions or renewals thereof; (d) the Redevelopment Agreement and any extensions, substitutions or renewals thereof; and, (e) in the event of any proceeding to enforce the collection of the aforesaid, or any of them, after Default, the reasonable expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, or of any exercise by the Village of its rights in the Event of Default, together with reasonable attorneys' fees and court costs.

(v) "*Collateral*" shall mean the real estate legally described on *Exhibit A* attached hereto and such other real and personal property as may be pledged by Borrower to secure the Loan.

(vi) "*Redevelopment Agreement*" shall mean the agreement dated as of the same date hereof, by which the Village agreed to make the Loan to Borrower.

(vii) "*Note*" shall mean the note executed by Borrower payable to the Village dated as of the same date hereof, evidencing the obligation of Borrower to pay the Village the principal sum of \$1,839,500.00.

(viii) "*Mortgage*" shall mean the mortgage executed by Borrower, dated as of the same date hereof, wherein Borrower grants the Village a mortgage in the Collateral in connection with the Loan.

(ix) "*Indebtedness*" shall mean all amounts due, debts, liabilities and payment obligations on the part of Borrower described in subsections (vi), (vii) and (viii) of this Subsection 1.

All other terms contained in this Guarantee Agreement and which are not otherwise

specifically defined herein shall have the meanings provided by the Uniform Commercial Code of Illinois (the "*Code*") to the extent the same are used or defined therein.

2. Guarantors hereby unconditionally guarantee to the Village, that Borrower will promptly perform and observe every agreement and condition contained in the Obligations and the Transaction Agreements to be performed by Borrower, that all Indebtedness to be payable or which becomes payable and all other sums which may be owing by Borrower to the Village, now or hereafter, and howsoever evidenced, created or incurred, whether primary, secondary, direct or contingent, will be promptly paid in full when due, whether at maturity or earlier by reason of acceleration or otherwise, together with interest and any and all legal and other reasonable costs and expenses, including reasonable attorneys' fees, paid or incurred in connection therewith by the Village, and, in case of one or more extensions of time of payment or renewals, in whole or in part, or in addition with regard to any Obligation, that the same will be promptly paid or performed when due, or according to each such extension or renewal, whether at maturity or earlier by reason of acceleration or otherwise.

3. Guarantors hereby waive notice of the following events or occurrences: (a) the Village's acceptance of this Guarantee Agreement; (b) the Village's financial accommodation to or for the benefit of Borrower; (c) the Village's obtaining, amending, substituting for, releasing, waiving or modifying any security interests, liens or encumbrances granted to the Village by Borrower; (d) the Village's obtaining, releasing, waiving or modifying any other party's guaranty of the Obligations of Borrower or any security interest, lien or encumbrance on any other party's assets given to the Village to secure such other party's guaranty of the Obligations of Borrower; (e) the Village's obtaining, amending, substituting for, releasing, waiving or modifying the Obligations; (f) presentment, demand, notices or default, non-payment, partial payment and protest, and all other notices or formalities to which Guarantors may be entitled; (g) the Village's granting to Borrower (and any other party liable to the Village on account of the Obligations guaranteed hereunder) any indulgences or extensions of time of payment; and (h) the Village's accepting from Borrower or any other party any partial payment or payments on account of Obligations or any collateral securing the payment thereof, or the Village's settling, compromising, discharging or releasing the same.

Guarantors agree that the Village may heretofore, now or at any time or times hereafter do any or all of the foregoing events or occurrences in such manner, upon such terms and at such times as the Village, in its sole and absolute discretion, deems advisable, without in any way or respect impairing, affecting, reducing or releasing Guarantors from Guarantors' Obligations, and Guarantors hereby consents to each and all of the foregoing events or occurrences.

4. As a condition to payment or performance by Guarantors under this Guarantee Agreement, the Village is not required to (i) prosecute collection or seek to enforce or resort to any remedies against Borrower or any other party liable to the Village on account of the Obligations guaranteed hereunder; or (ii) seek to enforce or resort to any remedies with respect to any security interests, liens or encumbrances granted to the Village by Borrower or any other party liable to the Village on account of the Obligations or any guarantee thereof. The Village shall have no duty to protect, secure or insure any of the foregoing security interests, liens, or

encumbrances or the properties or interests in properties subject thereto. Guarantors' guarantee shall in no way be impaired, affected, reduced or released by reason of (i) the Village's failure or delay to do or take any of the acts or actions which are granted to the Village under the Obligations and Transaction Agreements; or (ii) the invalidity, unenforceability, loss of or change in priority or reduction in or loss of value of any of the aforesaid security interests, liens or encumbrances.

5. In the Event of Default, notwithstanding any Collateral that the Village may possess of Borrower, at the Village's election and without additional notice thereof to Borrower (beyond that which is required under the Transaction Agreements or Loan Documents), or demand therefor, the Indebtedness hereunder shall become due and payable and enforceable against Guarantors. Guarantors from time to time shall pay to the Village, on demand, at the Village's address as set forth herein, the Indebtedness hereunder as it becomes or is declared due and in the event such payment is not made forthwith, the Village may proceed to suit against Guarantors. At the Village's election, one or more and successive or concurrent suits may be brought hereon by the Village against Guarantors, whether or not suit has been commenced against Borrower, and in any such suit Borrower may be joined as a party with Guarantors. Guarantors agrees to pay all reasonable expenses, including court costs and reasonable attorneys' fees, paid or incurred by the Village in endeavoring to enforce this Guarantee Agreement.

6. This shall be a continuing guarantee and any other party liable upon or in respect of any Obligation hereby guaranteed may be released without affecting the liability of Guarantors. The Guarantors agree that they are jointly and severally liable for all Obligations and provisions of all of the Transaction Agreements.

7. Whenever in this Guarantee Agreement there is reference made to any of the parties hereto, such reference shall be deemed to include, wherever applicable, a reference to the successors and assigns of Guarantors and the successors and assigns of the Village.

8. This Guarantee Agreement shall be construed in all respects in accordance with, and governed by, the laws and decisions of the State of Illinois without regard to its choice of law or conflict of law provisions. Wherever possible, each provision of this Guarantee Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guarantee Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Guarantee Agreement.

9. This Guarantee Agreement, the Village's security interests in any Collateral, and all of the other Transaction Agreements shall continue in full force and effect so long as any Indebtedness shall be owed to the Village or any Obligations outstanding.

10. This is an absolute, irrevocable, present and continuing guarantee of payment of the Indebtedness and the performance of the Obligations and not of collection.

11. Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in writing, and shall be deemed to have been validly served, given or delivered three (3) days after deposit in the United States mail, with proper postage prepaid, addressed to the party to be notified as follows:

If to Guarantors: 800 North Avenue  
Glendale Heights, IL 60139  
Attn: Mike Burgstone

If to the Village: Village of East Dundee  
120 South Barrington Avenue  
East Dundee, Illinois 60118

or to such other address as each party designates to the other in the manner herein prescribed.

12. The Village's failure, at any time or times hereafter, to require strict performance by Borrower of any provision of the Transaction Agreements shall not waive, affect or diminish any right of The Village thereafter to demand strict compliance and performance therewith. Any suspension or waiver by the Village of a Default by Guarantors or Borrower under this Guarantee Agreement or any of the other Transaction Agreements shall not suspend, waive or affect any other Default by Guarantors or Borrower under this Guarantee Agreement or any of the other agreements, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. None of the undertakings, agreements, warranties, covenants and representations of Guarantors contained in this Guarantee Agreement or any of the other Transaction Agreements and no Default by Borrower or Guarantors under this Guarantee Agreement or any of the other Transaction Agreements shall be deemed to have been suspended or waived by the Village unless such suspension or waiver is in writing signed by the Village, and directed to Guarantors or Borrower specifying such suspension or waiver.

13. This Guarantee Agreement shall inure to the benefit of and may be enforced by the Village and its assignees, and all of the covenants, agreements and obligations of Guarantors hereunder shall extend to and be binding upon and enforceable against Guarantors and the heirs, administrators, legal representatives, successors and assigns of Guarantors. This Guarantee Agreement and the obligations hereunder shall not be discharged, affected, or impaired, in whole or in part, upon the bankruptcy, insolvency or death of Guarantors.

14. Guarantors represent and warrant to, and covenant with, the Village, that this Guarantee Agreement has been duly executed and delivered by Guarantors and constitutes a legal, valid, and binding obligation of Guarantors, jointly and severally enforceable against Guarantors in accordance with its terms (subject only to the effect of bankruptcy, insolvency, reorganization, readjustment or debt, or other similar laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity).

15. This Guarantee Agreement may be executed using counterparts and shall be fully effective and enforceable upon exchange of such executed counterparts by facsimile transmittal.

Immediately following the exchange of executed counterparts by facsimile transmittal, the parties shall transmit signed original counterparts to each other but the failure of either party to comply with this requirement shall not render this Guarantee Agreement void or otherwise unenforceable.

16. GUARANTORS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHTS TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. GUARANTORS HEREBY EXPRESSLY ACKNOWLEDGE THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE VILLAGE TO ACCEPT THIS GUARANTEE AGREEMENT AND TO ENTER INTO THE LOAN AND TRANSACTION AGREEMENTS.

IN WITNESS WHEREOF, this Guarantee Agreement has been duly executed as of the day and year first above written.

VILLAGE OF EAST DUNDEE

By \_\_\_\_\_  
Village President

Attested By

\_\_\_\_\_  
Village Administrator

GUARANTORS:

AUTO RESOURCES DUNDEE, INC.

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Michael D. Burgstone

\_\_\_\_\_  
Thomas Burgstone

\_\_\_\_\_  
James F. Brown

\_\_\_\_\_  
Charles M. Zdenek

Immediately following the exchange of executed counterparts by facsimile transmittal, the parties shall transmit signed original counterparts to each other but the failure of either party to comply with this requirement shall not render this Guarantee Agreement void or otherwise unenforceable.

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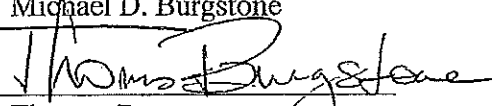
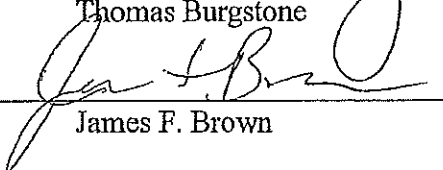
Attested By

\_\_\_\_\_  
Village Administrator

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By \_\_\_\_\_  
Its \_\_\_\_\_

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By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Michael D. Burgstone

\_\_\_\_\_  
Thomas Burgstone

\_\_\_\_\_  
James F. Brown

\_\_\_\_\_  
Charles M. Zdenek



Exhibit "A"

Lot 1 in Saturn Resubdivision, being a resubdivision of Lot 2 in resubdivision of part of Lot 2 of Gateway Subdivision, being a resubdivision of Lot 2 of Gateway Subdivision, being a subdivision of part of Section 25, Township 42 North, Range 8 East of the Third Principal Meridian being situated in the Village of the East Dundee, Kane County, Illinois, as shown on the plat of Saturn Resubdivision, which was recorded with the Kane County Recorder of Deeds as Document 93K77117, on October 5, 1993.