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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** WALTER MAGDZIARZ, COMMUNITY DEVELOPMENT DIRECTOR  
**SUBJECT:** RESOLUTION: AUTHORIZING SALES TAX INDUCEMENT AGREEMENT (GRAHAM'S MARKET)  
**AGENDA:** OCTOBER 4, 2016 REGULAR MEETING  
**DATE:** SEPTEMBER 30, 2016

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**ISSUE**

Shall the Village Board approve a sales tax inducement agreement with Graham's C-Store Company.

**DISCUSSION**

This is the second of two related items requiring Board action; the other being a resolution approving an economic development agreement between the Village and Graham C-Stores.

The Applicant, Graham's C-Stores Company, is requesting approval of a sales tax inducement agreement that would apply to their property at 36 E. Galena Boulevard.

The Applicant is presently in the midst of rehabilitating the demised Citgo gas station facility at the above address. Improvements will include updated outdoor illumination under the pump island canopies, adding more fuel pumps, replacing the underground fuel storage tanks, improving surface drainage, demolition of the kiosk building under the canopy, and renovating the convenience store on the property. The Applicant is seeking financial assistance from the Village with respect to the property improvements, some of which were not known when the property was purchased.

The Village has long desired to see the subject property undergo a facelift of the kind the Applicant is providing. The sales tax inducement agreement is the only means available to the Village to provide financial assistance to a business that provides meaningful benefit to the community.

The sales tax inducement agreement is similar to others the Village Board has approved for Ace Hardware and Dunkin Donuts.

Since the redevelopment of the site does not require any zoning approval, there is no Planning Commission recommendation. However, the Architecture Review and Resources Group reviewed the Applicant's building elevations and accepted them.

**COST**

The Agreement calls for the Village to return up to \$200,000 in retail sales tax collected from the user according to a diminishing schedule which will end after 7 years. In years 1 and 2 the Applicant will receive 100% of the municipal portion of the sales tax paid by the user; in years 3 thru 5 the Applicant will receive 75% of the retail sales tax; and, in years 6 and 7 the Applicant will receive 50% of the retail sales tax paid by the user. Payments to the Applicant will end when the maximum \$200,000 is paid or the end of year 7, whichever occurs first.

**RECOMMENDATION**

That the Village Board approve Resolution authorizing execution of the sales tax inducement agreement with Graham's C-Stores Company, subject to Attorney's review.



Resolution # 2016-1004\_

**RESOLUTION OF AUTHORIZATION TO ENTER INTO  
INDUCEMENT AGREEMENT  
WITH GRAHAM'S C-STORES COMPANY**

**WHEREAS**, the Village is not a home rule municipality within Article VII, Section 6A of the Illinois Constitution; and

**WHEREAS**, the Village of Sugar Grove desire to enter in an Inducement Agreement with Graham's C-Stores Company; and

**WHEREAS**, it is in the Village's best interest to enter into the inducement agreement; and

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees that the Village Board hereby authorizes acceptance and execution of Inducement Agreement with Graham's C-Stores Company, attached hereto as **Exhibit A** and made a part hereof by this reference, and that the Village President and Village Clerk are hereby directed to execute said document on behalf of the Village.

Passed by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, at a regular meeting thereof held on the 4th day of October, 2016.

\_\_\_\_\_  
P. Sean Michels,  
President of the Board of Trustees of the  
Village of Sugar Grove, Kane County, Illinois

ATTEST: \_\_\_\_\_  
Cynthia Galbreath,  
Village Clerk

	Aye	Nay	Absent	Abstain
Trustee Kevin M. Geary	_____	_____	_____	_____
Trustee Sean Herron	_____	_____	_____	_____
Trustee Mari Johnson	_____	_____	_____	_____
Trustee Ted Koch	_____	_____	_____	_____
Trustee Rick Montalto	_____	_____	_____	_____
Trustee David Paluch	_____	_____	_____	_____

## EXHIBIT A

### INDUCEMENT AGREEMENT – GRAHAM'S MARKET

**THIS AGREEMENT** (hereinafter referred to as the “Agreement”) is entered into this \_\_\_\_ day of October, 2016, by and between the **VILLAGE OF SUGAR GROVE**, Kane County, Illinois, an Illinois municipal corporation (hereinafter referred to as “Village”) and **GRAHAM C-STORES COMPANY**, (hereinafter referred to as “Developer”) (hereinafter as sometimes may be individually referred to as “Party” or collectively as “Parties”).

#### WITNESSETH:

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

#### **1. Preliminary Statements**

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

(a) Developer is the owner of the real estate legally described on **EXHIBIT A** attached hereto and made a part hereof (such property is referred to as the “Subject Property”). The Subject Property will be redeveloped into a Graham’s Market with pumps for dispensing gasoline and diesel fuels, a car wash, and a convenience store, including parking and customary site improvements (all collectively referred to as the “Project”), all as fully set forth on the Plat of Survey prepared by Cemcon, Ltd. and dated July 20, 2016, (hereinafter referred to as the “Site Plan”) and attached hereto and hereby made a part hereof as **EXHIBIT B** (the “Site Plan”).

(b) The Village is desirous of having the Subject Property developed in accordance with the approved Site Plan in order to service the needs of the Village and its residents, and the Project, if completed, will increase employment opportunities in the Village, improve economic conditions existing in the Village, stimulate commercial growth and increase and stabilize the tax base of the Village, and, in furtherance thereof, the Village contemplates certain incentives and continuing incentives under the terms and conditions hereinafter set forth to assist in the development of the Subject Property.

(c) The Parties hereto acknowledge, and Developer represents and warrants, that the Project requires economic assistance from the Village in order to acquire and complete the same, and, but for the economic assistance to be given by the Village, the Project as contemplated would not be economically viable nor eligible for the funding necessary for its completion.

(d) The Corporate Authorities have made the following findings, as required by 65 ILCS 5/8-11-20 (“Enabling Statute”):

- i. That the property has remained vacant for at least one year;
- ii. The Project is expected to create or retain job opportunities within the Village;
- iii. The development of the Subject Property will serve to further the development of adjacent areas;
- iv. But for this Agreement, the development of the Subject Property would not be possible;
- v. Developer meets the high standards of creditworthiness as demonstrated by one or more of the following:
  - (A) Corporate debenture ratings of BBB or higher by Standard & Poor’s Corporation or Baa or higher by Moody’s Investor Services, Inc.
  - (B) A letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of Developer, and/or
  - (C) Specific evidence of equity financing for not less than 10% of the total project costs
- vi. The development of the Subject Property will strengthen the commercial sector of the Village;
- vii. The development of the Subject Property will enhance the tax base of the Village;
- viii. This Agreement is in the best interest of the Village.

(e) For purposes of this Agreement, the use of the terms “sales tax” and “sales tax revenue” shall be construed to refer to that net portion of taxes collected by the State of Illinois for distribution to the Village pursuant to the Retailers’ Occupation Tax Act and the Service Occupation Tax Act (as said acts may be amended) and which are collected by the State and distributed to the Village, but specifically excludes any separate sales tax revenue received by the Village, specifically the Village’s current non-home rule sales tax (or any future such sales tax levies) or a separate home rule sales tax if the Village ever becomes a home rule municipality and levies such a sales tax under home rule powers that does not replace in part or in whole the current sales tax, or any other sales tax, business district tax or property tax levy that the Village may in the future enact.

## **2. Conditions Precedent to the Undertakings on the Part of the Village**

All undertakings on the part of the Village pursuant to this Agreement are subject to satisfaction of the following conditions by the Developer on or before the date of the Initial Payment provided for in Paragraph 3 below, or such other date specifically hereinafter stated:

(a) On or before the date of this Agreement, Developer shall provide the Village with written documentation that it owns the subject property described on **EXHIBIT A** by attaching a copy of the warranty deed hereto on **EXHIBIT C**.

(b) The Developer shall have obtained approval of its development plan for the Project by the Village.

(c) Prior to any disbursement of sales tax revenue funds hereunder, the Developer and/or its assignees shall have:

(i) obtained such approvals from the Village as are reasonably required for issuance of building permits.

(ii) obtained final approval of its plans from any other governmental unit or agency which has jurisdiction or authority over any portion of the Developer's Project and/or plans.

(iii) obtained a Certificate of Occupancy by November 30, 2016 provided however that if there is an event(s) that delay(s) the issuance of a Certificate of Occupancy by November 30, 2016, which event(s) have not been caused by the actions of the Developer, that the Village and Developer shall work together to extend the time to obtain a Certificate of Occupancy to a date reasonably necessary to complete construction of the gasoline station and convenience store on the Subject Property and obtain occupancy of same. The grant of any such extension shall be in writing.

(iv) certified to the Village that there exists no material default under this Agreement, and the Developer has not received any notice of any violation of any Village ordinance, rules and regulations or any applicable law of the State of Illinois and any agency thereof, as well as any ordinances and resolutions of the Village pertaining to the Project which by their respective terms are to have been complied with prior to the commencement of construction of the Project.

(d) Developer may at any time assign, sell or lease any or all of the Subject Property to another person, firm or corporation, in which case such assignee, purchaser or lessee shall become the Developer for that portion of the Subject Property; provided, however, no assignment of the right to

receive sales tax revenues shall accompany such assignment, sale or lease unless the Village is specifically notified in writing by the assigning Developer of the assignment of the right to receive sales tax revenues. Developer shall notify the Village in writing within thirty (30) days after such assignment, sale or lease. Developer may, as part of any assignment, sale or lease of any portion of the Subject Property and/or any building or facility constructed thereon, also assign all or any portion of any sales tax revenues that would otherwise be paid by the Village to Developer under this Agreement. Developer shall notify the Village in writing within thirty (30) days after such assignment of revenue. Any notice of sale, assignment or lease shall specify the name and address of the assignee, purchaser or lessee and the nature of the interest transferred, including any rights to receive payments of sales tax revenue.

Notwithstanding the foregoing, Developer may also assign, mortgage or pledge its interests hereunder for financing purposes and shall notify the Village of the same within thirty (30) days after the completion of any financing transaction.

No sale, assignment, or lease of any portion of the Subject Property shall effect an assignment of the economic incentive payments provided for in paragraph 3(b) of this Agreement unless it is specifically provided for as part of such assignment, sale or lease transaction and until the Village has been notified of the assignment of such revenue.

### **3. Undertakings on the Part of the Village**

(a) Upon satisfaction by the Developer of all conditions set forth in paragraph 2 hereof, the Village hereby undertakes to make the payments set forth in subparagraph (b) below.

(b) Subject to subparagraph (a) hereof, the Village hereby agrees to pay the Developer the inducement costs (“Inducement Costs”) as are hereinafter defined in Section 4(a) by quarterly installments payable over the Term of this Agreement (as hereinafter defined), subject to and in accordance with the following conditions and restrictions:

- (i) Each amount will be due and payable solely from the proceeds of sales tax revenues received by the Village from the Project and shall not be a general obligation of the Village. If the Village ever becomes a home rule municipality and levies a sales tax pursuant to its home rule powers that replaces in whole or in part the current sales tax, it is understood and agreed that such replacement sales tax revenue shall be available for payment of the amounts provided in this Agreement. It is acknowledged and understood by the Parties hereto that the Village receives sales tax revenue monthly, and that the taxes generated by sales in any one month are distributed to the Village approximately 4 months later (e.g. taxes generated by sales in January are received normally in June) and any monthly installment of sales tax due by the Village in any quarterly payment hereunder shall only be remitted by the Village if said amount is received by the Village at least one month prior to said quarterly remittance, otherwise to be included in the next remittance.

The period during which a portion of the sales tax paid by Developer's convenience store, GRAHAM'S MARKET (hereinafter referred to as "User") of the Subject Property shall be paid to Developer as described in this Agreement, shall commence on the date of the issuance of a final Certificate of Occupancy by the Village to a retail user of the Subject Property.

The initial payment ("Initial Payment") date for User shall be on the first day of the seventh month of User's first year (e.g. if the first day of the initial 12 month period is January 1 and the Village has received sales tax revenue from the Project by June 30, the Initial Payment shall be made on July 1 of the same year) and then quarterly thereafter. User's first year shall be measured from the date of issuance of the Certificate of Occupancy for the Subject Property. During the payment term, the Developer shall be entitled to receive and the Village shall pay one hundred percent (100%) of the sales tax revenues paid by such User and received by the Village, and the Village shall be entitled to retain the remaining zero percent (0%) of such sales tax revenue generated by such User for years 1 and 2 of this agreement (commencing on the date of the issuance of the final Certificate of Occupancy to the retail user of the Subject Property); in years 3, 4 and 5 the Developer shall be entitled to receive and the Village shall pay seventy-five percent (75%) of the sales tax revenues paid by such User and received by the Village, and the Village shall be entitled to retain the remaining twenty-five percent (25%) of such sales tax revenue generated by such User; In years 6 and 7 the Developer shall be entitled to receive and the Village shall pay fifty percent (50%) of the sales tax revenues paid by such User and received by the Village, and the Village shall be entitled to retain the remaining fifty percent (50%) of such sales tax revenue generated by such User until the earlier of either 1) the total amount of \$200,000.00 is paid to the Developer by the Village under this agreement, 2) until the seventh (7<sup>th</sup>) year ("end date"), or 3) the cessation of use of the Subject Property as a bona fide Graham's Market (open for business on a daily basis) for a continuous period in excess of 3 months. Upon the amount of \$200,000.00 having been paid, the end date being reached, or the Subject property ceasing being used as a bona fide Graham's Market restaurant, the Village shall have no further obligation to pay any amounts under this agreement.

Upon receipt by Developer of all sums to be paid pursuant to this Agreement or after the end date, the Village will retain all sales tax revenues.

- (ii) In the event of a change of law with regard to the sales tax revenues generated as the result of the sales activities from the Project to be paid to the Village, and if any successor or substitute tax revenue is made available to the Village as the result of such change in the law, including without limitation, with regard to sales tax revenues, the Village agrees to share such successor or substitute tax revenues on the same proportion as set forth above to the extent that such successor or substitute tax revenues are equal to or less than the sales tax revenues that the Village otherwise would have received from the Project if the law had not changed (i.e., if the successor or substitute tax revenues are in excess of the sales tax revenues that would have been received from the Project, then the Village shall be entitled to all of any such excess). If there is any such change in state law and if the Village becomes a Home Rule municipality at any time during the Term of this Agreement and at any time adopts a Home Rule Sales Tax, then to the extent Developer has not received the sales tax revenue that it would have otherwise received but for the change in law (the "Deficiency"), the Home Rule Sales Tax revenue generated from the Project shall be paid first to Developer in order to pay the amount of the Deficiency to Developer and any amounts in excess thereof shall be retained by the Village. The Parties agree that in the event of any such change in law that they will meet and attempt to agree on a specific amendment to this Agreement relating to and resulting from such change in the law.

(iii) The calculation of the quarterly payment amount due to the Developer shall be determined quarterly by the Village based upon this Agreement and the information and sales tax revenues received by the Village from the Illinois Department of Revenue. Such quarterly calculation shall be prepared using the Illinois Department of Revenue Form setting forth the amount of monthly sales tax that is generated from the Project and from each of the users of the Project or from other information as set forth in Section 4 (d). If either the Village or the Developer question the amount of sales tax revenue received by the Village and/or paid to the Developer, each shall have the right to challenge the amount of such sales tax revenue that it is entitled to pursuant to Illinois law and this Agreement. The Village and Developer will cooperate with one another in obtaining access to the necessary books and records evidencing the sales tax revenue generated as a result of the sales activities from the Project and the information used by the Illinois Department of Revenue to calculate the sales tax revenue payable to the Village pursuant to Illinois law. Each of the Village and Developer agree to hold such information as confidential, except to the extent required under applicable law. The Village agrees that, to the extent necessary, it will join in any action by the Developer, assign (to the extent applicable) to the Developer any of its rights to permit the Developer to prosecute an action in the name of the Village in order to permit the Developer to bring a good faith challenge to the amount of sales tax revenue due the Village pursuant to Illinois law and/or the amount due the Developer pursuant to paragraph 3(b) hereof.

(iv) Upon receipt of the sales tax revenue generated from sales activities from the Project, the Village will place the portion of such revenue that is due to Developer pursuant to paragraph 3(b) hereof in a separate liability account on the books solely relating to this Project. As security for the payment of the amount due to the Developer under paragraph 3(b) herein, the Village hereby pledges to Developer that portion of the sales tax revenue received by the Village and which is due and payable to the Developer pursuant to subparagraph 3(b) hereof.

(c) To the extent permitted by law, the Village shall provide for payments required under subparagraph (b) by adopting at the time this Agreement is approved, a continuing appropriation therefore which shall be part of the Village's annual appropriation pursuant to the budget ordinance to be adopted for each fiscal year in which payments may be due hereunder.

(d) In the event the conditions to payment as provided in Paragraph 2 hereof have not been satisfied or waived by the Village, then in such event, the Village shall have no obligation to make any current payment to Developer and such payment shall be suspended until such time as all of such conditions have been satisfied or waived, by the Village, and all rights of the Developer to demand sales tax payment from the Village shall be deemed suspended until such conditions have been satisfied or waived by the Village.

#### **4. Undertakings on the Part of the Developer**

(a) The Developer shall renovate and rehabilitate the existing structures and improvements on the Subject Property, including, but not limited to, demolition of the kiosk building under the fuel island canopy, fuel islands and pumps, fuel island canopies paved surfaces, trash enclosure, parking spaces, car wash facilities, outdoor illumination, and the convenience store building on the premises in

accordance with demolition and building plans approved by the Village, and shall not cause or permit the existence of any violation of Village ordinances, including but not limited to, the Building Code, Zoning Ordinance, Fire Code, and all rules and regulations there under. If the Developer complies with all the provisions of this Agreement, then the Village shall pay the inducement cost amount of up to two hundred thousand dollars (\$200,000.00) (“Inducement Cost”).

(b) The Developer recognizes and agrees that the Village has the sole authority with regard to all approvals and permits relating to the Project, including but not limited to approval of the final development plan, grading permit, building permit and occupancy permit, and failure on the part of the Village to grant any required approval or issue any required permit shall not be deemed as the cause of a default by the Village under this Agreement or give rise to any claim against or liability to the Village pursuant to this Agreement.

(c) Developer shall include in all leases of any space within the Project a provision that each tenant must provide the Village with an irrevocable power of attorney letter addressed to, and in a form satisfactory to, the Illinois Department of Revenue authorizing the Illinois Department of Revenue to release all gross revenue and sales tax information to the Village relating to the premises leased by such tenant in the Project, which letter shall authorize such information to be released to the Village as long as such tenant or owner continues to operate or own a business on the Subject Property. Such letter shall be in the form attached hereto as **EXHIBIT D** or such other or additional forms as required from time to time by the Illinois Department of Revenue in order to release such information to the Village. Further, in the event the Developer sells or transfers any interest in any portion of the Subject Property, the Developer shall require, under the provisions of the contract of sale or transfer, the buyer to provide the Village with the same form power of attorney letter addressed to the Illinois Department of Revenue authorizing the release of the sales tax information. No business license and/or certificate of occupancy shall be issued by the Village to any tenant or owner in the Project until such power of attorney letter is received by the Illinois Department of Revenue and approved by it for release of such information to the Village. At the request of the Developer and subject to any legal restrictions on distributing such information that are binding on the Village by any applicable law, the Village shall share with the Developer any sales tax information concerning the users of the Project that the Village receives from any source. The obligations set forth in this subparagraph shall apply only during the Term of this Agreement. It is agreed that the Village’s obligation to distribute sales taxes pursuant to this Agreement is limited to those funds attributable to the Project and which are identified on or may be compiled from any return, list or break down from the Illinois Department of Revenue, or its successor or agent, or records supplied by Developer which are reasonably acceptable to the Village, of the sales taxes from each user of the

Project, and the Village shall not be required to distribute the sales taxes for a user of the Project for a month until receipt of such user's return, list or break down (or such return, list or break down that contains such user's information) for such monthly sales taxes.

(e) Nothing in this Agreement shall be construed as an express or implied covenant by Developer to construct, open or operate a business on the Subject Property; provided, however, that if Developer shall not satisfy the conditions set forth in this Agreement, including without limitation those set forth in Paragraph 2, the Village shall have no obligation to make the payments set forth in Paragraph 3.

**5. Representations and Warranties of the Developer.** The Developer represents and warrants as follows:

(a) The Project requires economic assistance from the Village in order to complete the acquisition and construction of the Project in accordance with the approved development plan, and, but for the economic assistance to be given by the Village as heretofore stated, the Project as contemplated would not be economically viable nor eligible for the financing necessary for its completion.

(b) At all times Developer shall comply with all applicable local zoning ordinances and regulations, and all building and fire code regulations, and all other applicable Village ordinances, resolutions and regulations.

(c) The Developer shall comply with all applicable laws, rules and regulations of the State of Illinois, County of Kane and the United States and all agencies thereof. This provision shall not preclude any challenge by Developer to the applicability or reasonableness of any law, rule or regulation.

(d) The Developer shall comply with all terms, provisions and conditions and shall not default or permit a default under this Agreement.

(e) The Developer is an individual qualified to conduct business in the State of Illinois. The Developer has the power to enter into this Agreement and carry out its obligations hereunder and is duly authorized to execute, deliver and perform all of the provisions of this Agreement. The Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms.

(f) The execution, delivery and performance of this Agreement by the Developer does not conflict with or result in a violation of the Developer's organizational documents or any judgment, order or decree of any court or arbiter or any contract to which the Developer is a party.

(g) The Developer shall construct and install the Site Improvements pursuant to the terms and conditions of this Agreement.

(h) The Developer has provided the legal description of the Subject Property set forth in this Agreement and that said legal description is accurate and correct.

**6. Representations and Warranties of the Village.** The Village represents and warrants as follows:

(a) The Village is a public body corporate and politic duly organized and existing under the laws of the State of Illinois. The Village has the power to enter into this Agreement and carry out its obligations hereunder and has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of the Village, enforceable against the Village in accordance with its terms.

(b) The execution, delivery and performance of this Agreement by the Village does not conflict with or result in a violation of the Village's organizational documents or any judgment, order or decree of any court or arbiter or any contract to which the Village is a party.

(c) The Village shall comply with all terms, provisions and conditions and shall not default or permit a default under this Agreement.

(d) The Village has held all public meetings or hearings required by law in connection with the approval of this Agreement.

(e) The Village will reasonably cooperate with the Developer with regard to the construction and installation of the Site Improvements.

**7. Defaults**

(a) The occurrence of any one of the following shall constitute a default by the Village or the Developer under this Agreement:

(i) Failure to comply with any term, provision or condition of this Agreement; or

(ii) A representation or warranty of the Developer or the Village contained herein is not true and correct.

(b) In the event of any default under or violation of this Agreement, the party not in default or violation shall serve written notice upon the party or Parties in default or violation, which notice shall be in writing and shall specify the particular violation or default. All Parties hereto reserve the right to cure any violation of this Agreement or default by it hereunder within thirty (30) days from written notice of such default. If a non-monetary default under this Agreement cannot be reasonably cured within said thirty (30) days, then so long as the defaulting party has commenced such cure within the said thirty (30) day period and is proceeding diligently thereafter to cure such default, the time period within which the default must be cured shall be extended until the default has been cured. If the default has not been cured within the applicable grace period as hereinbefore provided, then an “Event of Default” shall have occurred under this Agreement.

(c) Upon an occurrence of an Event of Default by the Developer or the Village, as the case may be, as hereinabove set forth, the non-defaulting party may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, undertaking, covenant or agreement of the defaulting party set forth in this Agreement. Either party may bring an action for specific performance for any Event of Default under this Agreement within six (6) months of the Event of Default or exercise any other remedy in equity. No default by either party hereto or any other party under the Annexation Agreement or any other agreement shall be a default by Developer or the Village under this Agreement.

(d) If an Event of Default occurs and a legal action is commenced to enforce the terms of this Agreement, each party shall pay its own attorneys’ fees and costs.

## **8. Notices**

All notices, demands and requests required pursuant to this Agreement shall be sufficiently given or delivered if it is the dispatched by registered or certified mail, postage pre-paid, return receipt requested or personally delivered as follows:

For the Village:

Village of Sugar Grove  
10 S. Municipal Drive  
Sugar Grove, Illinois 60554  
Attention: Village Administrator and Village Clerk

With a copy to:

Mickey, Wilson, Weiler, Renzi & Andersson, P.C.  
2111 Plum Street, Suite 201  
Aurora, Illinois, 60506  
Attention: Steven A. Andersson.

For the Developer:

Mike Graham  
Graham's C-Stores Company  
33978 N. US Highway 45  
Gages Lake, IL 60030

With a copy to:

Thomas R. Raines  
Attorney at Law, LLC  
20 N. Wacker Drive  
Suite 556  
Chicago, IL 60606

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof. Notice shall be deemed to be effective two (2) days after mailing registered or certified mail, postage pre-paid, return receipt requested or upon delivery if delivered personally.

**9. Law Governing**

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Proper venue for any controversies arising under this Agreement shall be in the County of Kane.

**10. Time**

Time is of the essence unless this Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance or unless otherwise specified herein.

**11. Binding Effect**

This Agreement shall inure to the benefit of and shall be binding upon the Village, the Developer, and their respective successors and assigns, subject however to the provisions of Paragraph 2(e) hereof.

**12. Limitation of Liability**

No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against (i) the Village in excess of any amount agreed by the Village to be paid to the Developer hereunder, subject to the terms and conditions herein, or (ii) the officers, agents and employees of the Village and no liability, right or claim at law or in equity shall attach to or shall be incurred by (i) the Village in excess of such amounts or (ii) the officers, agents and employees of the Village and all and any such rights or claims of the Developer against the Village in excess of the amounts as herein provided or against its officers, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the (i) Developer, in excess of its obligations to the Village hereunder, or (ii) directors, officers, agents and employees of Developer, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the (i) Developer, in excess of its obligations hereunder or (ii) directors, officers, agents and employees of Developer, and all and any such rights or claims of the Village against the Developer, in excess of its obligations hereunder, or against its officers, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Developer.

**13. No Waiver or Relinquishment of Right to Enforce Agreement**

Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

**14. Village Approval or Direction**

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or

required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

**15. Section Headings and Subheadings**

All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

**16. Authorization to Execute**

The officers of the Developer who have executed this Agreement warrant that they have been lawfully authorized by the Developer to execute this Agreement on behalf of the Developer. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Agreement. The Developer and Village shall deliver, upon request, to each other at the respective time such entities cause their authorized agents to affix their signatures hereto copies of all articles of incorporation, bylaws, resolutions, partnership agreements, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties.

**17. Amendment**

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Developer and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

**18. Counterparts**

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

**19. Conflict Between the Text and Exhibits**

In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

**20. Severability**

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the

other provisions contained herein, and such judgment or decree shall relieve the Village from performance under such invalid provision of this Agreement, provided, however, if the judgment or decree relieves the Village of all or any portion of its monetary obligations under Paragraph 3(b) of this Agreement, then the Developer will be relieved of all of its obligations under this Agreement, including, without limitation, its obligation to construct the Site Improvements.

**21. Definition of Village**

When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

**22. Term of Agreement**

This Agreement shall be in effect for a term commencing as of the date of issuance of the Certificate of Occupancy (i.e. commencement of User's first year) and terminating on the date that the last payment due the Developer pursuant to paragraph 3(b) hereof has been paid to Developer.

**23. Execution of Agreement**

This Agreement shall be signed last by the Village and the President (Mayor) of the Village shall affix the date on which he signs this Agreement on page 1 hereof which date shall be the effective date of this Agreement.

**IN WITNESS WHEREOF**, this Agreement as of the date and year first written above.

**VILLAGE OF SUGAR GROVE,**  
A municipal corporation

ATTEST:

By: \_\_\_\_\_  
Village Clerk

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

**GRAHAM'S C-STORE COMPANY**

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_  
President

**EXHIBIT A**

*(Legal Description)*

Lot 1 in Phillips 66 Resubdivision, being a part of the East Half of Section 16, Township 38 North, Range 7 East of the Third Principal Meridian, according to the Plat of thereof recorded February 17, 1999 as Document Number 1999K017787, in Kane County, Illinois.



**EXHIBIT C**

(Warranty Deed)



2016K030541  
SANDY WEGMAN  
RECORDER - KANE COUNTY, IL

RECORD D: 6/20/2016 00:34 AM  
REC FEE: 49.00 REC'S FEE: 9.00  
STATE TAX: 3,350.00 C  
COUNTY TAX: 1,675.00 C  
PAGES: 5

**WARRANTY DEED**

This Instrument was prepared by:

Reda & Des Jardins, LLC  
736 North Western Ave., Suite 353  
Lake Forest, Illinois 60045  
[www.rdlawyers.com](http://www.rdlawyers.com)

After recording, mail to:

Thomas Raines  
20 North Wacker Drive, Suite 550  
Chicago, Illinois 60606

UND  
10036-15NW711897EST.

W. STEPHEN SAWLE and CORNELIA B. SAWLE (collectively, "Grantor"), whose address is 201 North Route 47, Sugar Grove, Illinois 60554, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, conveys and warrants<sup>ii</sup> to MACKIN LAND COMPANY, LLC - 201 N. ROUTE 47, series of an Illinois limited liability company, whose address is 33978 N. Highway 45, Gages Lake, Illinois 60030, all interest in the following described real estate situated in the county of Kane, in the state of Illinois<sup>iii</sup>, to wit:

Legal Description:                    See Legal Description attached hereto as Exhibit "A"

Property Address:                    201 North Route 47, Sugar Grove, Illinois 60554

Property Index Number:            14-16-401-004-0000

SUBJECT TO: The following, if any: See attached Exhibit "B".

DATED this 8<sup>th</sup> of June, 2016

W. Stephen Sawle  
By: W. Stephen Sawle

Cornelia B. Sawle  
By: Cornelia B. Sawle

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STATE OF ILLINOIS<sup>iv</sup> )  
 ) SS.  
COUNTY OF LAKE )

I, the undersigned, a notary public in and for the county and state above, do hereby certify that W. Stephen Sawle, who proved to my satisfaction that he is the person described in and who executed the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the instrument, as his free and voluntary act, for the uses and purposes stated above.

Given under my hand and notarial seal this 8<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_  
Notary Public

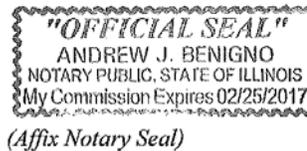


STATE OF ILLINOIS<sup>v</sup> )  
 ) SS.  
COUNTY OF LAKE )

I, the undersigned, a notary public in and for the county and state above, do hereby certify that Cornelia B. Sawle, who proved to my satisfaction that she is the person described in and who executed the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the instrument, as her free and voluntary act, for the uses and purposes stated above.

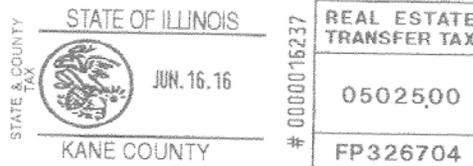
Given under my hand and notarial seal this 13<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_  
Notary Public



**MAIL SUBSEQUENT TAX BILLS TO:**

MACKIN LAND COMPANY, LLC – 201 N. ROUTE 47  
33978 N. Highway 45  
Gages Lake, Illinois 60030



**EXHIBIT "A"**  
**(Legal Description)**

PARCEL 1:

LOT 1 IN PHILLIPS 66 RESUBDIVISION, IN THE VILLAGE OF SUGAR GROVE, KANE COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS, EGRESS, USE AND ENJOYMENT AS CREATED BY THE PLAT OF SUBDIVISION RECORDED AS DOCUMENT NUMBER 1999K017787.

**EXHIBIT "B"**  
**(Exceptions)**

1. All zoning and building laws, ordinances, resolutions, and regulations of all governmental authorities having jurisdiction which affect the property and the use and improvement thereof;
2. All leases;
3. General real estate taxes not due and payable at the time of Closing;
4. Terms, provisions and conditions contained in the no further remediation letter recorded July 30, 2008 as document number 2008K061730;
5. Grant of easement to the Illinois Bell Telephone Company recorded July 20, 1970 as document 1168850 upon, under, and across the North 1/2 of the highway known as Aurora-Galena Road;
6. Memorandum of public improvement and recapture agreement recorded August 14, 1997 as document 97K054021;
7. Notation on the plat of subdivision recorded February 17, 1999 as document 1999K017787: "a cross access easement is hereby granted to the owners of Lots 1 and 2... their successors and assigns, over the that portion of Lots 1 and 2 lying between the right of way lines and the building setback line, as shown hereon for the right to attach an internal driveway for the purpose of ingress and egress to the adjacent driveways, parking lots and highway access.";
8. 25 foot building line along the South line of the land as shown on the plat of subdivision recorded February 17, 1999 as document 1999K017787;
9. Public utilities and drainage easements shown on the plat of subdivision recorded February 17, 1999 as document 1999K017787, granted to the Village of Sugar Grove, the Illinois Bell Telephone Company, Northern Illinois Gas Company, the Commonwealth Edison Company, Triax Cablevision, and their respective successors and assigns, over the West 5 feet and the North, East and South 10 feet of the land;
10. Covenants and restrictions (but omitting any such covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (A) is exempt under chapter 42, section 3607 of the United States Code or (B) relates to handicap but does not discriminate against handicapped persons), relating to perpetual cross easement, as shown on plat of subdivision, reservation of an easement to access, replace, repair, operate, install, inspect, construct, maintain and utilize the water well and septic field in an 80 X 110 foot section of the Northwest corner of the property, and that for a period of 20 years from date of deed or until grantor ceases to utilize Lot 1 for sale of gasoline, and a convenience store, that grantee, its successors and/or assigns will not use the land for same, contained in the deed recorded March 1, 1999 as Document No. 1999K021512, which does not contain a reversionary or forfeiture clause;
11. Easement in favor of the Illinois Bell Telephone Company, and its/their respective successors and assigns, to install, operate and maintain all equipment necessary for the purpose of serving the land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the grant recorded/filed as Document No. 928401 over the following: The North 5 feet of the South 109.08 Feet of the East 310.30 feet of the West 669.30 feet of the Northeast 1/4 of section 16 and the

East 5 feet of the West 673.20 feet of the South 104 feet of the Northeast 1/4 of section 16 and the East 5 feet of the West 673.20 feet of the North 199.91 feet of the Southeast 1/4 of section 16;

12. Easement in favor of the Illinois Bell Telephone Company and the Commonwealth Edison Company, and its/their respective successors and assigns, to install, operate and maintain all equipment necessary for the purpose of serving the land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the plat recorded/filed as Document No. 1999K017787;
13. Encroachment of the chain link fence located mainly on the land onto the property North and adjoining by approximately 0.68 feet, as shown on plat of survey prepared by Michael J. Emmert dated December 8, 2004;
14. Encroachment of the concrete curb located mainly on the property South and adjoining onto the land as shown on plat of survey prepared by Michael J. Emmert dated December 8, 2004;
15. Encroachment of the concrete pad located mainly on the land onto the property South and adjoining, as shown on plat of survey prepared by Michael J. Emmert dated December 8, 2004;
16. Covenants and conditions as shown in deed recorded as document 2005K032076 attached as permitted exceptions, (but omitting any such covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under chapter 42, section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons);
17. Terms and provisions contained in the notice by the Illinois Environmental Protection Agency recorded September 11, 2009 as document 2009K069098; and
18. Terms and provisions contained in the notice by the Illinois Environmental Protection Agency recorded July 25, 2013 as document 2013K054689.

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<sup>i</sup> 765 ILCS 5/35e

<sup>ii</sup> 765 ILCS 5/9

<sup>iii</sup> 765 ILCS 5/9

<sup>iv</sup> 765 ILCS 5/26

<sup>v</sup> 765 ILCS 5/26

**EXHIBIT D**

(Letter Format)



**Illinois Department of Revenue  
IL-2848 Power of Attorney**

**Read this information first**

Attach a copy of this form to each specific tax return or item of correspondence for which you are requesting power of attorney. **Do not send this form separately.**

**Step 1: Complete the following taxpayer information**

1 _____ Taxpayer's name	3 _____ Taxpayer's street address
2 _____ Taxpayer's identification number(s)	City _____ State _____ ZIP _____

**Step 2: Complete the following information**

4 The taxpayer named above appoints the following to represent him before the Illinois Department of Revenue.

_____ Name	_____ Name	_____ Name
_____ Name of firm	_____ Name of firm	_____ Name of firm
_____ Street address	_____ Street address	_____ Street address
City _____ State _____ ZIP _____ (_____) _____	City _____ State _____ ZIP _____ (_____) _____	City _____ State _____ ZIP _____ (_____) _____
_____ Daytime phone number	_____ Daytime phone number	_____ Daytime phone number
_____ E-mail address	_____ E-mail address	_____ E-mail address
_____ Specific tax type      Year or period	_____ Specific tax type      Year or period	_____ Specific tax type      Year or period

5 The attorneys-in-fact named above shall have, subject to revocation, full power and authority to perform any act that the principals can and may perform, including the authority to receive confidential information.

The attorneys-in-fact named above **do not** have the power to – Check only the items below you **do not** wish to grant.

- \_\_\_\_\_ endorse or collect checks in payment of refunds.
- \_\_\_\_\_ receive checks in payment of any refund of Illinois taxes, penalties, or interest.
- \_\_\_\_\_ execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- \_\_\_\_\_ execute consents extending the statutory period for assessments or collection of taxes.
- \_\_\_\_\_ delegate authority or substitute another representative.
- \_\_\_\_\_ file a protest to a proposed assessment.
- \_\_\_\_\_ execute offers in compromise or settlement of tax liability.
- \_\_\_\_\_ represent the taxpayer before the department in all proceedings including hearings (requiring representation by an attorney) pertaining to matters specified above.
- \_\_\_\_\_ obtain a private letter ruling on behalf of the taxpayer.
- \_\_\_\_\_ perform other acts (explain) \_\_\_\_\_

6 This power of attorney revokes all prior powers of attorney on file with the department with respect to the same matters and years or periods covered by this form, except for the following:

_____ Name	_____ Name	_____ Name
_____ Street address	_____ Street address	_____ Street address
City _____ State _____ ZIP _____ (_____) _____	City _____ State _____ ZIP _____ (_____) _____	City _____ State _____ ZIP _____ (_____) _____
_____ Daytime phone number	_____ Daytime phone number	_____ Daytime phone number
_____ Date granted	_____ Date granted	_____ Date granted



7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

Name	Name	Name
Street address	Street address	Street address
City State ZIP	City State ZIP	City State ZIP
( )	( )	( )
Daytime phone number	Daytime phone number	Daytime phone number

### Step 3: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Taxpayer's signature	Title, if applicable	Date
Spouse's signature	Title, if applicable	Date
If corporation or partnership, signature of officer or partner	Title, if applicable	Date

### Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

I declare that I am **not** currently under suspension or disbarment and that I am

- a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
- duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
- enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date

### Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following.

Any person signing as or for the taxpayer

\_\_\_\_\_ is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

Signature of witness Date

Signature of witness Date

\_\_\_\_\_ appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary Date

**Notary seal**

