

**THIS INSTRUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO:**

Thorntons LLC
Attn: Legal Department
2600 James Thornton Way
Louisville, Kentucky 40245

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS FOR THE
AYLEEN PLAT OF RESUBDIVISION**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE AYLEEN PLAT OF RESUBDIVISION (the "Declaration") is made as of this ____ day of _____, 20__ (the "Effective Date"), by and between TZBP Warrenville LLC, an Illinois limited liability company, as owner of Lot 1 ("Lot 1 Owner"), City of Warrenville, a home rule municipal corporation of the State of Illinois, as owner of Lot 2 ("Lot 2 Owner"), and Thorntons LLC, a Delaware limited liability company, as tenant of Lot 1 ("Tenant") pursuant to a land lease agreement between Lot 1 Owner and Tenant dated October 23, 2018.

RECITALS

- A. Lot 1 Owner, is the owner of that certain real property situated in the City of Warrenville, County of DuPage, State of Illinois legally described on Exhibit "A-1" attached hereto and made a part hereof ("Lot 1") and commonly referred to as Lot 1 on the Ayleen Resubdivision Plat (as such term is hereinafter defined).
- B. Lot 2 Owner, is the owner of that certain real property situated in the City of Warrenville, County of DuPage, State of Illinois legally described on Exhibit "A-2" attached hereto and made a part hereof ("Lot 2") and commonly referred to as Lot 2 of the Ayleen Resubdivision Plat, such property having been formerly owned by Lot 1 Owner and recently conveyed to Lot 2 Owner. (Lot 1 and Lot 2 are referred to herein individually as a "Parcel" and, collectively as the "Parcels.")
- C. Lot 1 Owner (as Landlord) has entered into a long-term land lease with Thorntons LLC (as Tenant) dated October 23, 2018 as amended pursuant to that certain First Amendment to Land Lease dated April 16, 2019 (as amended, the "Lot 1 Land Lease") for the operation of a convenience store and fuel center on Lot 1 (the "Fuel Center").

- D. Prior to the conveyance of Lot 2 to Lot 2 Owner, Lot 1 Owner recorded that certain Ayleen Plat of Resubdivision as Document Number R202__ - _____ in the Office of the Recorder of Deeds for DuPage County, Illinois (the "Ayleen Resubdivision Plat"), creating Lots 1 and 2 as separate legal parcels, such plat containing depictions of certain easements upon, over, through and across Lot 1 for the benefit of Lot 2 (collectively, the "Lot 1 Easements").
- E. Lot 1 Owner, Lot 2 Owner and Tenant (collectively, along with their successors and assigns, the "Parties" and each a "Party") desire to enter into this Declaration (i) to further define the Lot 1 Easements; (ii) to grant certain additional easements and rights-of-way upon, over, through and across Lot 2 and (iii) to further define the maintenance obligations of the Parties with respect to such easements.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Parties hereby declares that the Parcels and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions, conditions, rights and obligations hereinafter set forth in this Declaration, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith, the Parties covenant and agree as follows:

AGREEMENTS

1. Grant of Lot 1 Easements. Subject to any express conditions, limitations or reservations contained herein, Lot 1 Owner hereby declares that Lot 1, shall be burdened by the following nonexclusive, perpetual easements in favor of Lot 2 and for the benefit Lot 2 Owner, including its successors, assigns, tenants and subtenants, such easements being depicted on the Ayleen Resubdivision Plat and collectively referred to herein as the "Lot 1 Easements":

(a) **Access.** A perpetual, non-exclusive easement and right-of-way over that portion of Lot 1 identified as "Access Easement Hereby Granted" on the Ayleen Resubdivision Plat in favor of Lot 2 for ingress, egress, and passageway for vehicular and pedestrian traffic over, through and across the driveways constructed within such area by Tenant and for the use of that certain access point providing ingress and egress between Lot 1 and Duke Parkway, as the same may exist from time-to-time so as to provide for the passage of motor vehicles and pedestrians between Lot 2 and Duke Parkway (collectively, the "Access Easement"). The Access Easement shall be for the purpose of accessing Lot 2 for the conduct of business and the operation and maintenance of the City facilities thereupon and shall in no event include rights for parking for delivery or truck parking, employee or customer parking, or overnight parking or storage, or similar parking purposes on Lot 1 in favor of Lot 2. The rights herein granted for the benefit of Lot 2 are expressly limited to the matters set forth herein and may not be expanded without the prior written consent of Lot 1 Owner and, during the term of the Lot 1 Land Lease, Tenant. Notwithstanding the foregoing or any other provision of this Declaration to the contrary, Lot 1 Owner and Tenant may utilize the portion of Lot 1 which is subject to the Access Easement for any purpose which is not inconsistent with the ingress and egress rights granted herein, including without limitation the right to allow vehicular parking within the Access Easement excluding that portion of such area that

provides direct access between Lot 1 and Lot 2 (i.e., the curb cuts serving Lot 2). Lot 1 Owner hereby agrees that no barriers, fences or other obstructions shall be erected so as to impede or interfere with the free flow of vehicular or pedestrian traffic within the Access Easement except (i) for any temporary closure of the Access Easement for the purposes of preventing a public dedication of the same, provided that such closure shall be for the minimum amount of time necessary to prevent such dedication, (ii) as otherwise required by the applicable governmental authorities and/or under applicable law, ordinance, rule or regulation, or (iii) by mutual agreement of the Parties, such agreement to be incorporated into an amendment to this Declaration and recorded in the Office of the Recorder of Deeds for DuPage County, Illinois. The Access Easement may be relocated by Lot 1 Owner or Tenant, subject to the same rights and restrictions contained in this subsection (a), upon delivery of prior written notice to Lot 2 Owner, upon approval from the appropriate governing agencies, and so long as rights of ingress and egress between Lot 2 and Duke Parkway shall be maintained and not materially diminished during any period of relocation and thereafter.

(b) **Utilities.** A perpetual, non-exclusive easement ten (10) feet in width, upon, over, across, and under that portion of Lot 1 depicted on the Ayleen Resubdivision Plat as “10’ Utility Easement Hereby Granted” (the “Utility Easement”) for the installation, maintenance, repair and replacement of any utility facilities (electric, gas, telecommunication, etc.) servicing the improvements to be constructed upon Lot 2. To the extent any such facilities are not already existing within the Utility Easement, Lot 2 Owner shall be solely responsible for the installation of the same, such work to comply with the provisions of subsection 1(f) and Section 4 below, including without limitation the obligation to restore any improvements upon Lot 1 that are disturbed during such installation promptly upon completion of such work. Notwithstanding the foregoing or any other provision of this Declaration to the contrary, Lot 1 Owner and Tenant may utilize the portion of Lot 1 which is subject to the Utility Easement for any purpose which is not inconsistent with the easement rights granted herein, including without limitation the installation and maintenance of landscaping and/or driveways, curb cuts, parking areas and related improvements; provided, however, that no buildings may be constructed on or within the Utility Easement. Lot 2 Owner’s use and enjoyment of the Utility Easement shall be subject to and shall be in compliance with the requirements set forth in Section 1(f) below. Lot 1 Owner or Tenant may relocate the Utility Easement, subject to the same rights and restrictions contained in this subsection (b), and any facilities constructed therein upon delivery of prior written notice to Lot 2 Owner, and upon obtaining the approval of the appropriate governing agencies and the applicable utility companies and so long as the relocation of the Utility Easement and such facilities shall not interrupt or degrade utility service to Lot 2.

(c) **Water.** A perpetual, non-exclusive easement ten (10) feet in width, upon, over, across and under that portion of Lot 1 depicted on the Ayleen Resubdivision Plat as “10’ Water Main Easement Hereby Granted” (the “Water Main Easement”) for the installation, maintenance, repair and replacement of a water main facility servicing the improvements to be constructed on Lot 2. To the extent any such facilities are not already existing within the Water Main Easement, Lot 2 Owner shall be solely responsible for the installation of the same, such work to comply with the provisions of subsection 1(f) and Section 4 below, including without limitation the obligation to restore any improvements upon Lot 1 that are disturbed during such installation promptly upon completion of such work. Notwithstanding the foregoing or any other provision of this Declaration to the contrary, Lot 1 Owner and Tenant may utilize the portion of Lot 1 which is subject to the

Water Main Easement for any purpose which is not inconsistent with the easement rights granted herein, including without limitation the installation and maintenance of landscaping and/or driveways, curb cuts, parking areas and related improvements; provided, however, that no buildings may be constructed on or within the Water Main Easement. Lot 2 Owner's use and enjoyment of the Water Main Easement shall be subject to and shall be in compliance with the requirements set forth in Section 1(f) below. Lot 1 Owner or Tenant may relocate the Water Main Easement, subject to the same rights and restrictions contained in this subsection (c), and any facilities constructed therein upon delivery of prior written notice to Lot 2 Owner, and upon obtaining the approval of the appropriate governing agencies and the applicable utility companies and so long as the relocation of the Water Main Easement and such facilities shall not interrupt or degrade water service to Lot 2 and such facilities comply with all applicable federal, state, and local regulations and specifications.

(d) **Sanitary Sewer.** A perpetual, non-exclusive easement ten (10) feet in width, upon, over, across and under that portion of Lot 1 depicted on the Ayleen Resubdivision Plat as "10' Sanitary Sewer Easement Hereby Granted" (the "Sanitary Sewer Easement") for the installation, maintenance, repair and replacement of a sanitary sewer main facility servicing the improvements to be constructed on Lot 2. To the extent any such facilities are not already existing within the Sanitary Sewer Easement, Lot 2 Owner shall be solely responsible for the installation of the same, such work to comply with the provisions of subsection 1(f) and Section 4 below, including without limitation the obligation to restore any improvements upon Lot 1 that are disturbed during such installation promptly upon completion of such work. Notwithstanding the foregoing or any other provision of this Declaration to the contrary, Lot 1 Owner and Tenant may utilize the portion of Lot 1 which is subject to the Water Main Easement for any purpose which is not inconsistent with the easement rights granted herein, including without limitation the installation and maintenance of landscaping and/or driveways, curb cuts, parking areas and related improvements; provided, however, that no buildings may be constructed on or within the Water Main Easement. Lot 2 Owner's use and enjoyment of the Sanitary Sewer Easement shall be subject to and shall be in compliance with the requirements set forth in Section 1(f) below. Lot 1 Owner or Tenant may relocate the Sanitary Sewer Easement, subject to the same rights and restrictions contained in this subsection (d), and any facilities constructed therein upon delivery of prior written notice to Lot 2 Owner, and upon obtaining the approval of the appropriate governing agencies and the applicable utility companies and so long as the relocation of the Sanitary Sewer Easement and such facilities shall not interrupt or degrade sanitary sewer service to Lot 2 and such facilities comply with all applicable federal, state, and local regulations and specifications.

(e) **Well-Head Protection Easement.** Lot 2 Owner might construct a community potable water well upon Lot 2 in the location specified on the Ayleen Resubdivision Plat. In contemplation of Lot 2 Owner's installation of a community potable water well upon Lot 2 as provided above, a perpetual, well head protection zone easement (the "Well Protection Zone Easement") establishing a 400-foot minimum setback on Lots 1 and 2 from Lot 2 Owner's proposed community well on the Lot 2, such Well Protection Zone Easement being intended to ensure compliance with Section 14.1 of the Illinois Environmental Protection Act (see 415 ILCS 5/14.1(b), 3.345 and 3.355), which prevents any potential future primary or secondary potential pollution sources, including underground storage tanks from being installed within 400 feet of a community well; provided, however, the Lot 2 Owner hereby acknowledges and agrees that: (i)

the underground storage tanks installed by Tenant upon Lot 1 prior to the Effective Date (the “Existing Tanks”) have been installed in the location specified in those certain Final Engineering Plans prepared by Webster, McGrath & Ahlberg, Ltd. dated January 18, 2019 as thereafter amended including Revision No. 9 dated April 30, 2020 which have previously approved by Lot 2 Owner in connection with the issuance of Tenant’s building permits and certificate of occupancy for its development project on Lot 1 (the “Approved Plan Set”), and (ii) Lot 2 Owner is prohibited from relocating its community well from its initial location as specified on the Ayleen Subdivision Plat to any portion of Lot 2 which is located within a 400 foot radius of the Existing Tanks without the prior written consent of Lot 1 Owner and Tenant, such consent not to be unreasonably withheld. Lot 1 Owner and Tenant hereby agree that such parties are prohibited from relocating the Existing Tanks from the initial location therefor as specified in the Approved Plan Set to any portion of Lot 1 which is located within a 400 foot radius of Lot 2 Owner’s proposed community well location as shown on the Ayleen Plat of Resubdivision without the prior written consent of the Lot 2 Owner, such consent not to be unreasonably withheld. To the extent that parties have mutually agreed to the relocation of the Existing Tanks or Lot 2 Owner’s community well, such agreement shall be incorporated into an amendment to this Declaration signed by all parties hereto and/or their respective successors and/or assigns, and recorded in the Office of the Recorder of Deeds for DuPage County, Illinois.

(f) **Non-Interference.** The Lot 1 Easements herein above granted shall be used and enjoyed by Lot 2 Owner, and its successors, assigns, tenants and subtenants, in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of Lot 1 Owner, Tenant or their respective successors, assigns, tenants or subtenants at any time conducted on Lot 1. In furtherance of the preceding sentence the Lot 2 Owner hereby agrees for itself and for its successors, assigns, tenants or subtenants that, under no circumstances, shall (i) any utility, water, sanitary sewer or other facilities be constructed upon any portion of Lot 1 other than within those portions of Lot 1 encumbered by the Lot 1 Easements as specified above and as shown on the Ayleen Resubdivision Plat; (ii) non-emergency installation, construction, maintenance, repair or replacement of any utility, water, sanitary sewer or other facilities upon Lot 1 by Lot 2 Owner commence until the Lot 2 Owner has provided at least thirty (30) days’ prior written notice to Lot 1 Owner and Tenant, which notice shall include detailed plans and specifications for such Parties’ reasonable prior approval (which approval shall be deemed granted if such notice is not responded to within thirty (30) days of receipt of same); (iii) emergency maintenance, repair, or replacement of any utility, water, sanitary sewer or other facilities upon Lot 1 by Lot 2 Owner may commence immediately, without prior notice to the Lot 2 Owner, provided that the Lot 1 Owner notifies the Lot 2 Owner of such emergency maintenance, repair, or replacement as soon as practicable; (iv) the staging or storage of equipment or materials by Lot 2 Owner on Lot 1 be permitted during the construction process without Lot 1 Owner’s and Tenant’s prior written consent, such consent not to be unreasonably withheld; and (v) Lot 2 Owner commence construction of any utility, water, sanitary sewer or other facilities upon Lot 1 until Lot 2 Owner has delivered a certificate of insurance evidencing that Lot 1 Owner and Tenant have been named as an additional insured on all policies required to be carried by Lot 2 Owner under Section 5 of this Declaration for the period of time that construction is underway. The Parties shall not take any action which would materially and adversely affect any other Party’s access, right to use and enjoy, or availability of, the easements granted hereunder. Each Party further covenants and agrees that, except to the limited extent and as temporarily necessary in connection

with any construction activities or to make repairs to the improvements and subject to those rights retained by Lot 1 Owner and Tenant under this Section 1, access through and across the easement areas shall not be obstructed, nor shall any fence, wall, barricade or other permanent obstruction be placed on the Parcels so as to interfere with the other party's access through and across, and the right to use, the same as set forth herein. Subject to the foregoing, each Party hereby recognizes, acknowledges and agrees that: (i) the other party has reserved the right to use its Parcel in any manner which is not inconsistent with the easements herein granted; and (ii) the exercise of the rights in favor of each Party as granted pursuant to this Declaration shall be exercised in cooperation with the other Parties, acting reasonably and in good faith, and in a manner which will only interfere with the use and enjoyment of the Parcels by the other Party in the least intrusive manner in light of all the circumstances under which such rights are being exercised.

2. Landscape Maintenance Easement. Subject to any express conditions, limitations or reservations contained herein, Lot 2 Owner hereby declares that Lot 2, shall be burdened by a perpetual, non-exclusive easement and right-of-way twenty (20) feet in width, upon, over, across, and under that portion of Lot 2 depicted on the Ayleen Resubdivision Plat as "20' Landscape Easement Hereby Granted" (the "Landscape Maintenance Easement"), such easement to be granted in favor of Lot 1 and for the benefit of Lot 1 Owner and Tenant for the installation, maintenance and as necessary, replacement of certain wetland buffer plantings on that portion of the slopes of the Detention Pond Maintenance Area (as such term is defined below) which are located within the Landscape Maintenance Easement. To the extent any such plantings are not already existing within the Landscape Maintenance Easement, Tenant shall be solely responsible for the installation of the same in accordance with that certain Declaration of Landscape Maintenance Agreement and Covenant dated September 28, 2017 and recorded as Document Number R2017-112466, and re-recorded as Document Numbers R2017-112467 and R2017-112468 on October 31, 2017 in the Office of the Recorder of Deeds for DuPage County, Illinois (the "Landscaped Maintenance Agreement") and in accordance with applicable law, such work to comply with the provisions of Section 4 below.

3. Maintenance Obligations of the Parties. The Parties shall be responsible for maintaining those portions of the Parcels subject the easements granted pursuant to this Declaration, and to those certain additional easements granted prior to the Effective Date, as set forth below:

(a) **Access Easement.** The Access Easement on Lot 1 and all driveways, curbing, site lighting and related improvements constructed within such easement shall be maintained by Tenant, at its sole cost and expense for so long as the Lot 1 Land Lease is in effect, and thereafter by Lot 1 Owner, in a good and passable condition under all weather conditions and shall be kept open for fire-fighting equipment and other emergency vehicles. Tenant, and thereafter Lot 1 Owner and/or its tenant, shall be responsible for managing the daily maintenance of the Access Easement, including but not limited to snow removal, debris removal, surface or subsurface repairs to driveway, and pavement replacement, along with the maintenance, repair, and replacement of the storm sewer improvements appurtenant thereto, such maintenance, repair and replacement to be completed at Tenant's sole cost and expense at all times while the Lot 1 Land Lease is in effect and thereafter by Lot 1 Owner and/or its tenant, at such parties' sole cost and expense.

(b) **Utility Easement.** The Utility Easement on Lot 1 and all utility facilities

constructed within such easement by Lot 2 Owner shall be maintained, repaired and/or replaced by Lot 2 Owner, at its sole cost and expense, in a good condition, reasonable wear and tear accepted. Any maintenance, repair and replacement of utility facilities within the Utility Easement shall comply with the provisions of subsection 1(f) and Section 4 below, including without limitation the obligation to promptly restore any improvements upon Lot 1 that are disturbed during the completion of such work.

(c) **Water Main Easement.** The Water Main Easement on Lot 1 and all water mains and other service facilities constructed within such easement by Lot 2 Owner shall be maintained, repaired and/or replaced by Lot 2 Owner, at its sole cost and expense, in a good condition, reasonable wear and tear accepted. Any maintenance, repair and replacement of water mains and other service facilities within the Water Main Easement shall comply with the provisions of subsection 1(f) and Section 4 below, including without limitation the obligation to promptly restore any improvements upon Lot 1 that are disturbed during the completion of such work.

(d) **Sanitary Sewer Easement.** The Sanitary Sewer Easement on Lot 1 and all sanitary sewer mains and other service facilities constructed within such easement by Lot 2 Owner shall be maintained, repaired and/or replaced by Lot 2 Owner, at its sole cost and expense, in a good condition, reasonable wear and tear accepted. Any maintenance, repair and replacement of sanitary sewer mains and other service facilities within the Sanitary Sewer Easement shall comply with the provisions of subsection 1(f) and Section 4 below, including without limitation the obligation to promptly restore any improvements upon Lot 1 that are disturbed during the completion of such work.

(e) **Detention Pond and Detention Pond Maintenance Area.** Tenant hereby acknowledges and agrees that during the term of the Lot 1 Land Lease, Tenant shall be solely responsible for the maintenance of that certain detention pond area (the “Detention Pond Maintenance Area”) as depicted on the Ayleen Resubdivision and on the Detention Pond Plat recorded on October 31, 2017 as Document No. R2017-112462 and the detention pond previously constructed by Tenant thereupon (the “Detention Pond”) as set forth in the Shared Detention Pond and Access Easement Agreement dated September 19, 2017 and recorded as Document No. R2017-098288 both in the Office of the Recorder of Deeds for DuPage County, Illinois, such maintenance obligations to include mowing, regular maintenance of vegetation located therein (including the naturally vegetated floor/bottom of the Detention Pond), and annual cleaning of the same to ensure that the Detention Pond shall remain in proper working condition. From and after the expiration or earlier termination of the Lot 1 Land Lease, Lot 1 Owner hereby agrees that it or its tenant shall be responsible for the ongoing maintenance of the Detention Pond Maintenance Area at such parties sole cost and expense.

(f) **Landscape Maintenance Easement.** All wetland buffer plantings installed within the Landscape Maintenance Easement on Lot 2 shall be maintained by Tenant during the term of the Lot 1 Land Lease, at its sole cost and expense, in a good condition, and shall be replaced as and when necessary in accordance with the Landscape Maintenance Agreement. From and after the expiration or earlier termination of the Lot 1 Land Lease, Lot 1 Owner hereby agrees that it or its tenant shall be responsible for the ongoing maintenance of the wetland buffer plantings located within the Landscape Maintenance Easement at its sole cost and expense. Notwithstanding any other provision of this Section 3 or this Declaration to the contrary, in the event Lot 2 Owner elects

to install a fence around the improvements to be constructed upon Lot 2, such fence shall be placed at the top of the slope of the Detention Pond Maintenance Area such that all wetland buffer plantings will be located outside of the fenced area and accessible to Tenant and/or Lot 1 Owner or its tenant, so as to permit such parties to perform their obligations under this Section 3(f).

(g) **Right of Contract.** Each Party shall have the right, without consent of the other Parties, to enter into any contracts to carry out the maintenance obligations contained in this Section 2 relating to those easement areas for which such Party is responsible.

(h) **Management Compensation.** The Parties shall not be compensated for their management and oversight of the maintenance obligations contained in this Section 2 relating to those easements areas for which such Parties are responsible.

4. Temporary Easements for Construction; Easements for Repair, Maintenance, Services and Emergency. Each of Lot 1 Owner and Lot 2 Owner hereby grants to the other and to Tenant during the term of the Lot 1 Land Lease, for the joint use and benefit of the Parties, their successors, assigns, tenants and subtenants, a non-exclusive limited ground and aerial easement, right-of-way, right-of-access, right-of-entry and right-of-use and for ingress and egress over, upon and through the Parcels, as applicable, for the purpose of: (i) Tenant's and/or Lot 1 Owner's installation, maintenance, and replacement of the wetland buffer plantings within the Landscape Maintenance Area on Lot 2 pursuant to Section 3(f) above, (ii) Lot 2 Owner's entry upon Lot 1 for the installation, tapping into, connecting with and/or utilizing any of the water main, sanitary sewer main, or other utility facility located within the Lot 1 Easements; (iv) Lot 2 Owner's operation, inspection, testing, repair and replacement of any facility, equipment, line, system and the like which is located within the Lot 1 Easements; (v) exercising any self-help rights or other remedies in accordance with the terms and conditions of this Declaration; and (vi) as otherwise necessitated by any emergency involving danger to life, limb or property as reasonably determined in good faith by the party availing itself of the easements described in this Section 4. The Parties intend that the easements and rights granted pursuant to this Section 4 shall be temporary in nature for each application thereof and the use of the Parties' Parcels in connection therewith shall be limited in duration in each instance, and shall be utilized only for such period and only to such limited extent as is reasonably necessary in order to complete the activity for which the temporary use is claimed. Except as otherwise provided in this Declaration, the initial construction costs associated with any improvements constructed pursuant to the easements granted herein shall be borne by the constructing Lot Owner or by Tenant, as the case may be.

5. Insurance. Each Party shall procure and maintain, at its sole cost and expense, or cause its tenant to procure and maintain, with a company or companies authorized to do business in Illinois, general and/or comprehensive public liability and property damage insurance against claims for personal injury, death, or property damage occurring upon its respective Parcel and at all times during any period where a Party is conducting construction and/or maintenance activities upon another Party's Parcel, such insurance to name the other Parties (including Tenant) as additional insureds. The minimum amount of coverage under any such policy of insurance referenced herein shall be \$1,000,000.00 for each single occurrence and \$2,000,000.00 in the aggregate. Each Party shall deliver a certificate of insurance issued by its insurance carrier to the other Parties, evidencing the insurance coverage required hereunder. In addition to the foregoing, prior to the commencement of any construction activity upon any Parcel, the Party undertaking

such activity shall cause its contractor to provide a “builder’s all-risk” policy of insurance naming all Parties as additional insureds thereunder. All of the policies of insurance and any certificates evidencing the same shall be in a form reasonably acceptable in the insurance industry.

6. Indemnification. Each Party hereunder shall indemnify, defend and hold the other Parties harmless from and against all claims, liabilities, judgments, suits, fees, costs and expenses (including reasonable attorneys' fees) arising out of (i) accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Party, its contractors, employees, agents, or others acting on behalf of such Party; and (ii) any breach or default on the part of any such indemnifying party in the performance of any term, covenant, condition, obligation or agreement on the part of such indemnitor to be performed or met under this Declaration.

7. Taxes and Assessments. Each Party shall pay prior to delinquency all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel.

8. Default and Remedies. If a Party fails to perform its obligations under this Declaration, the other Parties shall notify the defaulting Party (and Tenant) in writing of the failure. If the defaulting Party fails to remedy the default within thirty (30) days after receipt of the notice (or, if the default cannot be cured within thirty (30) days, such longer period as is necessary to cure the default provided that the defaulting Party has commenced the cure of the default within such thirty (30) day period and diligently pursuing the cure to completion), the other Parties may, at its/their option, perform the obligation that the defaulting Party has failed to properly perform, and the defaulting Party shall reimburse the other Parties upon demand for the cost of performing that obligation. In addition to the foregoing, if any Party shall have failed to cure a default after the expiration of the applicable notice and cure period, the other Parties shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance in addition to the self-help provisions below.

9. Self-Help Rights. Should any Party fail to perform its maintenance obligations hereunder, then any other Party (the “Performing Party”) shall be entitled to perform such maintenance obligations and bill the defaulting Party for any costs incurring in performing the defaulting Party’s maintenance obligations provided that, except in the case of an emergency, the Performing Party shall first notify the defaulting Party of its failure, specifying the nature of such failure, and the defaulting Party shall have thirty (30) days after receipt of the notice to perform the obligations, or such additional time as may be reasonably required so long as the defaulting Party has commenced the performance of its maintenance obligations within such thirty (30) day period is diligently pursuing performance of such obligations, before the Performing Party may proceed to correct the failure itself. The Performing Party will bill the defaulting Party within ninety (90) days of full completion of such maintenance work and the defaulting Party shall reimburse the Performing Party within thirty (30) days of receipt of such invoice. After thirty (30) days such invoice will accrue interest at twelve percent (12%) per annum (the “Default Rate”) until paid, provided that any such rate shall not exceed the highest rate permitted by applicable law. All invoiced amounts due shall constitute a charge on and lien against the applicable Parcel, and pursuant to Section 10 below, the Performing Party may foreclose the lien against the Parcel

and improvements thereon, and interest, costs and reasonable attorneys' fees and court costs of such action or foreclosure shall be added to the amount of the invoiced amount. Notwithstanding the foregoing, any default notice sent to Tenant pursuant to this Section 9 or this Declaration generally, shall be delivered concurrently to Lot 1 Owner and Lot 1 Owner shall have the right, but not the obligation, to cure Tenant's default within the cure periods specified herein and Lot 2 Owner shall not pursue any remedy available to it as a result of any Tenant default unless Lot 1 Owner fails to cure same within the time period specified above.

10. Lien Rights. Any claim for reimbursement, including interest at the Default Rate as defined in Section 9 above, and all costs and expenses including reasonable attorneys' fees awarded to any Party in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Party in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Party until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the Recorder of Deeds for DuPage County, Illinois; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Office of the Recorder of Deeds for DuPage County, Illinois prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Party of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

11. Use Restrictions on Lot 2. The Parties hereby agree that Lot 2 Owner shall be prohibited from using and/or operating Lot 2 for (i) the operation of a retail convenience store (similar to 7-11 or Circle K), (ii) any use that is engaged in retail sale of motor fuels, or (iii) the retail sale of tobacco products; or (iv) the sale of alcoholic beverages for off-site consumption. The foregoing restrictive covenants shall constitute covenants running with the land for the benefit of Tenant and Lot 1 Owner and their respective successors and assigns and shall be binding upon Lot 2 Owner, its successors, and assigns and any future owner, tenant or occupant of Lot 2. The restrictions contained herein may be enforced by proceedings at law or in equity against any person or persons violating or attempting to violate the terms of such restrictions, either to restrain such violation or to recover damages.

12. Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

13. No Termination for Breach. Notwithstanding any other provision of this Declaration to the contrary, no breach hereunder shall entitle any Party to cancel, rescind, or otherwise terminate this Declaration.

14. Duration; Term. It is intended by the Parties, that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the Parcel and create equitable servitudes in favor of the Parcel benefitted thereby and shall bind every person having any fee, leasehold or other interest in said Parcel and shall inure to the benefit of the Lot 1 Owner, Lot 2 Owner, and Tenant and their respective successors, assigns, heirs, tenants and personal

representatives. The easements, covenants, conditions and restrictions, rights and obligations set forth herein shall be effective commencing on the date of recordation of this Declaration in the Office of the Recorder of Deeds for DuPage County, Illinois and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record owners of the Parcels in accordance with Section 15.7 hereof. Notwithstanding the foregoing, Tenant shall be relieved of any obligations hereunder from and after the expiration or earlier termination of the Lot 1 Land Lease, excluding those obligations which first arose prior to such expiration or termination date, and thereafter, Lot 1 Owner (or its tenant) shall be solely responsible for such obligations.

15. Miscellaneous.

(a) **Notices and Consents.** Any and all notices, demands, consents, requests for reimbursement or other communications required under this Declaration shall be deemed to be properly served if delivered in writing personally, or sent by certified U.S. mail with return receipt requested, or by nationally recognized overnight delivery service, pre-paid, for overnight delivery with receipt requested, to the parties hereto at the addresses set forth below or to any subsequent address which such parties may designate in writing for such purpose. Any notice required under this Declaration shall be deemed to have been delivered and received on the date of actual receipt, or if receipt is refused, then (i) on the day of the email transmission (ii) one (1) business day following deposit with such nationally recognized overnight courier, (iii) five (5) business days after deposit in the U.S. mails by certified mail, return receipt requested, and/or (iv) on the date of delivery or refusal if by hand delivery.

Lot 1 Owner:	TZBP Warrenville LLC Attn: Robert A. Iezzi, Manager 12701 Covered Bridge Rd. Sellersburg, Indiana 47172
With a copy to:	David A. Bridgers Attorney at Law 1203 Navajo Court Louisville, Kentucky 40207
To Lot 2 Owner:	City of Warrenville 28W701 Stafford Place Warrenville, IL 60555 ATTN: Cristina White, City Administrator
With a copy to:	Elrod Friedman LLP 325 N. LaSalle St. Suite 450 Chicago, IL 60654 ATTN: Brooke D. Lenneman
If to Tenant:	Thorntons LLC 2600 James Thornton Way Louisville, KY 40245

Attn: Vice President of Development – LEGAL
NOTICE ENCLOSED

With a copy to:

Thorntons LLC
2600 James Thornton Way
Louisville, KY 40245
Attn: General Counsel – LEGAL NOTICE
ENCLOSED

(b) **Successors and Assigns.** It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall bind every person having any fee, leasehold or other interest in Lot 1 or Lot 2; and inure to the benefit of the respective parties and their successors and assigns.

(c) **Applicable Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Illinois.

(d) **Attorneys' Fees.** In the event of any dispute hereunder resulting in a lawsuit, the prevailing Party in such suit, upon the entry of a final, unappealable judgment order, shall be entitled to reimbursement for all reasonable costs and expenses, including without limitation, a reasonable sum for attorneys' fees and court costs.

(e) **Entire Agreement.** This Declaration constitutes the entire agreement and understanding of the parties hereto, and each of them, with respect to the subject matter hereof, and it supersedes off prior agreements, negotiations, discussions and understandings relating to the subject matter hereof.

(f) **Exhibits.** All exhibits referred to herein and attached hereto shall be deemed part of this Declaration.

(g) **Modifications.** Upon mutual agreement of Lot 1 Owner, Lot 2 Owner and Tenant, the Parties expressly reserve the right to modify or terminate the provisions of this Declaration in their sole discretion; provided, however, this Declaration may only be so modified, amended, changed, supplemented, or terminated by a written document entered into and executed by all signatories to this Declaration, including Lot 1 Owner, Lot 2 Owner and Tenant (so long as the Lot 1 Land Lease shall be in effect), including their respective successors and assigns, and recorded in the official records in the Office of the Recorder of Deeds for DuPage County, Illinois. Upon the expiration or earlier termination of the Lot 1 Land Lease the benefits and obligations of Tenant under this Declaration shall automatically be assigned, transferred and inure to the benefit of the Lot 1 Owner at the time of such expiration or termination. Each party shall reasonably cooperate with the other Parties hereto, to enter into and record an instrument to be recorded in the Office of the Recorder of Deeds for DuPage County, Illinois memorializing such expiration or termination of the Lot 1 Land Lease and the subsequent automatic modification of this Declaration as a result of such event.

(h) **No Dedication.** Notwithstanding any other provision of this Declaration to the contrary and notwithstanding that Lot 2 Owner is a home rule municipal corporation of the State of Illinois, in no event shall this Declaration be interpreted as a public dedication or as granting

any rights whatsoever to the public at large and the Parties do not intend to grant, and in no event shall this Declaration be interpreted as granting, rights or easements over the Parcels in favor of the public.

(i) **Third-Parties.** Except as may otherwise be expressly referred to herein, the Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the Parties hereto, their successors, assigns, tenants and subtenants.

(j) **Counterparts.** This Declaration may be executed in counterparts, each of which shall be deemed an original and all of which, when construed together, shall be one in the same instrument.

(k) **No Waiver.** No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

(l) **Grantee's Acceptance.** The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original Party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein.

(m) **Severability.** Each provision of this Declaration and the application thereof to the Parcels are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration.

(n) **Estoppel Certificates.** Each Party, within ten (10) days of its receipt of a written request from the other Parties, shall from time to time provide the requesting Party a certificate binding upon such Party stating: (a) to the best of such Party's knowledge, whether any Party to this Declaration is in default or violation of this Declaration and if so identifying such default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to this Declaration as of the date of such certificate.

(o) **Recordation.** This Declaration shall be recorded in the Office of the Recorder of Deeds for DuPage County, Illinois and costs will be at the expense of the recording party.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK. SIGNATURES TO FOLLOW.]

TENANT:

THORNTONS LLC,
a Delaware limited liability company

By: _____
Name: Rodney Loyd
Title: Chief Development Officer

COMMONWEALTH OF KENTUCKY §
 §
COUNTY OF JEFFERSON §

Before me, the undersigned authority, on this day personally appeared Rodney Loyd, the Chief Development Officer of Thorntons LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited liability company.

Given under my hand and seal of office on this ____ day of _____,
202__.

Notary Public, State of

Printed Name

My Commission Expires: _____

EXHIBIT "A-1"

Legal Description of Lot 1 of Ayleen Plat of Resubdivision

BEING LOT 1 IN THE AYLEEN PLAT OF RESUBDIVISION, BEING IN THE EAST HALF OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED _____, 202__ AS DOCUMENT R202__ - _____.

PIN NUMBERS: 04-33-405-035-0000 (affecting the above described property and other property)

COMMON ADDRESS: 3S660 Route 59
Warrenville, Illinois 60555

EXHIBIT "A-2"

Legal Description of Lot 2 of Ayleen Plat of Resubdivision

BEING LOT 2 IN THE AYLEEN PLAT OF RESUBDIVISION, BEING IN THE EAST HALF OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED _____, 202__ AS DOCUMENT R202__ - _____.

PIN NUMBERS: 04-33-405-035-0000 (affecting the above described property and other property)

COMMON ADDRESS: 3S660 Route 59
Warrenville, Illinois 60555