

RESOLUTION NO. 2020-49

**A RESOLUTION APPROVING AN ACCESS, INDEMNITY, AND RELEASE AGREEMENT  
WITH TZBP WARRENVILLE LLC AND THORNTONS LLC-ILLINOIS**

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

WHEREAS, TZBP Warrenville LLC ("**Owner**") is the owner of that certain real property commonly known as 3S660 Route 59, Warrenville, IL ("**Property**"); and

WHEREAS, Thorntons LLC-Illinois ("**Tenant**") is the ground lessee of a larger parcel of real estate that contains the Property; and

WHEREAS, the City proposes to enter onto the Property for the purpose of conducting certain due diligence inspections, including surveying, soil borings, and other inspections, in connection with the City's potential purchase of the Property (collectively, "**Inspections**"); and

WHEREAS, the City, Owner, and Tenant propose to enter into an Access, Indemnity, and Release Agreement ("**Agreement**") to set forth their respective rights and obligations regarding the City's access to the Property for the performance of the Inspections; and

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to approve the Agreement with Owner and Tenant;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Recitals. The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

SECTION 2: Approval of Agreement. The Agreement with Owner and Tenant is hereby approved substantially in the form attached to this Resolution as Exhibit A, and in a final form to be approved by the City Administrator and the City Attorney.

SECTION 3: Execution. The City Council hereby authorizes and directs the Mayor and the City Clerk to execute the final Agreement on behalf of the City.

SECTION 4: Effective Date. This Resolution shall be in full force and effect following its passage and approval in the manner provided by law.

PASSED THIS \_\_\_\_ day of \_\_\_\_\_, 2020.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS \_\_\_\_ day of \_\_\_\_\_, 2020.

---

MAYOR

ATTEST:

---

CITY CLERK

#62245518\_v1

**EXHIBIT A**  
**AGREEMENT**

## ACCESS, INDEMNITY AND RELEASE AGREEMENT

This Access, Indemnity and Release Agreement (the “**Agreement**”) is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2020 by [i] the City of Warrenville, a municipal corporation of the State of Illinois (the “**Indemnitor**”) having a principal address of 28W701 Stafford Road, Warrenville, Illinois 60555, in favor of [ii] Thorntons LLC, a Delaware limited liability company registered to do business in Illinois under the assumed name of Thorntons LLC-Illinois, having a principal address of 2600 James Thornton Way, Louisville, Kentucky 40245 (“**Thorntons**”) and [iii] TZBP Warrenville LLC, having a principal address of 12701 Covered Bridge Road, Sellersburg, Indiana 47172 (“**Seller**”), with each of Thorntons and Seller is sometimes being referred to herein as an “**Indemnitee**” and collectively as the “**Indemnitees**” with reference to the following:

**WHEREAS**, Seller is the current owner of that certain real property containing approximately 1.23 +/- acres portion of larger tract of vacant land located at the southwest corner of the intersection of Illinois Route 59 and Duke Parkway, in the City of Warrenville, DuPage County, Illinois, being commonly known as 3S660 Route 59, Warrenville, IL and having a tax parcel identification number of 04-33-405-035, such property being more particularly described in Exhibit “A” attached hereto (the “**Property**”).

**WHEREAS**, Thorntons is the current ground lessee of the larger parent tract containing the Property, such property being more particularly described in Exhibit “B” attached hereto and incorporated herein (the “**Parent Tract**”), and is in exclusive possession thereof pursuant to that certain Land Lease Agreement between Thorntons and Seller dated October 23, 2018 (the “**Lease**”), pursuant to which Thorntons has an option to acquire fee simple title to the Property from Seller (the “**Thorntons Option**”).

**WHEREAS**, Indemnitor, Thorntons, and Seller are negotiating an agreement pursuant to which Thorntons would exercise its Thorntons Option under the Lease and Thorntons and Seller would enter into a real estate contract for the purchase and sale of the Property (the “**Real Estate Contract**”), with the intention of Thorntons assigning all of its right, title and interest in, under and to the Real Estate Contract to Indemnitor just prior to the closing of the transaction contemplated thereunder.

**WHEREAS**, Indemnitor desires to enter onto the Property for the purpose of conducting certain due diligence inspections in connection with their potential purchase and development of such Property pursuant to the Real Estate Contract following Thorntons assignment thereof to Indemnitor as contemplated above.

**WHEREAS**, Indemnitees are agreeable to permitting Indemnitor to enter upon the Property for such purposes upon the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the mutual obligations, representations and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereby agree as follows:

1. **RECITALS; DEFINITIONS.** The recital paragraphs of this Agreement are hereby acknowledged by the parties to be true and accurate in all material respects and are made a part hereof. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Real Estate Contract upon its full execution by all of the parties to said Real Estate Contract.

2. **ACCESS.** Subject to the terms and conditions of this Agreement and those provisions of the Real Estate Contract upon its full execution relating to Indemnitor's physical inspection of the Property which are hereby incorporated herein by this reference, Indemnitees hereby permit Indemnitors and its employees, agents, contractors and subcontractors (each an "**Indemnitor Party**" and collectively the "**Indemnitor Parties**") to access and enter upon the Property for the sole purpose of conducting due diligence inspections of the Property; provided, however, that (i) such inspections shall not include any invasive physical examination of the Property (including without limitation any collection and/or testing of the soil or groundwater on the Property for environmental, geotechnical or other purposes) except as expressly permitted in writing by Thorntons or under the Real Estate Contract and (ii) Indemnitor shall have no right to conduct any due diligence activities or inspections on any portion of the Parent Tract located outside of the Property. The City shall repair any material damage to the Property resulting from any such due diligence and/or inspection activities and shall return the Property to substantially the same condition as existed prior to the conduct of the activities.

3. **INDEMNITY AND RELEASE.** Indemnitor hereby agrees to indemnify, pay, protect, defend (at Indemnitor's cost and with attorneys reasonably acceptable to Indemnitee) and save and hold each Indemnitee and its respective past, current and future parents, subsidiaries, owners, shareholders, affiliates, members, officers, directors, employees, representatives, agents, customers, attorneys, insurers, successors and assigns (collectively, the "**Indemnitee Parties**") harmless from and against any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, attorneys' fees), causes of action, suits, claims, demands and judgments of any nature or description whatsoever (collectively, "**Costs**") which may at any time be imposed upon, incurred by or awarded against the Indemnitee Parties as a result of the entry upon and/or inspection, but not as a result of the discovery of any pre-existing condition through such inspection, of the Property by any Indemnitor Party. Indemnitor does hereby remise, release, waive, and forever discharge the Indemnitee Parties from any and all manner of claims, demands, damages, and any causes of action of any nature, whether at law or in equity, whether known or unknown, accrued or unaccrued, existing or to be acquired, as a result of the entry upon and/or inspection of the Property by any Indemnitor Party (collectively, the "**Claims**"). Notwithstanding any provision in this Agreement to the contrary, the Indemnitee Parties are not assuming any responsibility for, and shall not be liable for, the condition of the Property during any inspection thereof by any Indemnitor Party.

1. **NOTICES.** All notices to be given hereunder shall be personally delivered, sent by facsimile transmission, sent by overnight courier, sent by electronic mail, or sent by U.S. mail, with postage prepaid, to the parties at the following addresses (or to such other or further addresses as the parties may hereafter designate by like notice similarly sent):

TO SELLER: TZBP Warrenville LLC  
Attn: Robert A. Lezzi, Manager

12701 Covered Bridge Rd.  
Sellersburg, Indiana 47172  
Email:

With a copy to: David A. Bridgers  
Attorney at Law  
1203 Navajo Court  
Louisville, Ky. 40207  
Email: [Bridgers@twc.com](mailto:Bridgers@twc.com)

TO THORNTONS: Thorntons LLC  
Attn: Chief Development Officer – Legal Notice Enclosed  
2600 James Thornton Way  
Louisville, KY 40245  
Email: [Rodney.Loyd@mythorntons.com](mailto:Rodney.Loyd@mythorntons.com)

With a copy to: Thorntons LLC  
Attn: Chief Legal Officer – Legal Notice Enclosed  
2600 James Thornton Way  
Louisville, KY 40245  
Email: [Legal.Department@mythorntons.com](mailto:Legal.Department@mythorntons.com)

*All notices will also be delivered to the CITY:*

To CITY: City of Warrenville  
28W701 Stafford Road  
Warrenville, IL 60555  
ATTN: John M. Coakley  
FAX NO: 630-393-6948  
Email: [jcoakley@warrenville.il.us](mailto:jcoakley@warrenville.il.us)  
Email: [pkuchler@warrenville.il.us](mailto:pkuchler@warrenville.il.us)

With a copy to: Elrod Friedman LLP  
325 N. LaSalle St. Suite 405  
Chicago, IL 60654  
ATTN: Brooke D. Lenneman  
FAX NO: 312-528-5192  
Email: [brooke.lenneman@elrodfriedman.com](mailto:brooke.lenneman@elrodfriedman.com)

Elrod Friedman LLP  
325 N. LaSalle St. Suite 405  
Chicago, IL 60654  
ATTN: Megan R. Cawley  
FAX NO: 312-528-5198  
Email: [megan.cawley@elrodfriedman.com](mailto:megan.cawley@elrodfriedman.com)

All notices sent by mail shall be deemed effectively given on the business day next

following the date of such mailing. All notices personally delivered, sent by facsimile transmission, sent by electronic mail or sent by overnight courier shall be deemed effectively given on the date of such delivery.

6. **ACKNOWLEDGMENTS.** This Agreement sets forth the terms and conditions pursuant to which Indemnitors shall be granted access to the Property for purposes of conducting due diligence inspections. The parties further agree that by virtue of this Agreement, except as otherwise expressly set forth herein, (a) no party is creating, admitting or undertaking any responsibility or liability, nor waiving any liability which may pre-exist or may be asserted subsequent to this Agreement, and (b) no party is waiving or releasing any rights or defenses it may have in connection with this matter or with respect to the enforcement or termination of this Agreement. Additionally, Indemnitee is not agreeing to be responsible for any expenses incurred by Indemnitors for any activities or services performed by or on behalf of Indemnitors or any other person upon the Property.

7. **COMPLETE AGREEMENT.** This Agreement may be extended, modified or terminated only by a written amendment signed by each party; is not assignable by any party and shall be governed by the laws of the State in which the Property is located; is the complete agreement between the parties regarding the subject matter hereof; and may be executed in any number of counterparts, each of which shall be deemed to be an original.

8. **ENFORCEABILITY.** If any provision of this Agreement shall be deemed to be invalid or unenforceable to any extent, the remainder of this Agreement and the application of the provisions shall be enforced to the greatest extent permitted by law. The captions used in each section of this Agreement are for convenience only and shall not be deemed to affect, enlarge, limit or otherwise modify the meaning or the language of this Agreement. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective heirs, successors and permitted assigns.

9. **AUTHORIZATION.** The undersigned specifically represent that they are authorized to execute this Agreement and that the parties have the right and capacity to perform the acts contemplated by this Agreement.

*[Remainder of Page Left Intentionally Blank.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth above.

**INDEMNITOR:**

**CITY OF WARRENVILLE**  
a municipal corporation of the State of Illinois

By: \_\_\_\_\_  
David Brummel, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**INDEMNITEE (THORNTONS):**

THORNTONS LLC, a Delaware limited liability corporation registered to do business in Illinois under the assumed name of **Thorntons LLC-Illinois**

By: \_\_\_\_\_  
Rodney Loyd, Vice President

ATTEST:

\_\_\_\_\_

**INDEMNITEE (SELLER):**

**TZBP Warrenville, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Robert A. Iezzi, Manager

ATTEST:

\_\_\_\_\_

**EXHIBIT A TO ACCESS, INDEMNITY AND RELEASE AGREEMENT**

**LEGAL DESCRIPTION OF THE PROPERTY**

LOT 1 IN DUKE REALTY UNIT 6 PLAT OF CONSOLIDATION, 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 NOVEMBER 15, 2017 AS DOCUMENT R2017-117524, IN DUPAGE COUNTY, ILLINOISINSERT LEGAL

PIN: **04-33-405-035**

Commonly Known As: 3S660 Route 59, Warrenville, IL 60555

**EXHIBIT B TO ACCESS, INDEMNITY AND RELEASE AGREEMENT**

**LEGAL DESCRIPTION OF THE PARENT TRACT**

THAT PORTION OF LOT 1 IN DUKE REALTY UNIT 6 PLAT OF CONSOLIDATION, 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 NOVEMBER 15, 2017 AS DOCUMENT R2017-117524, IN DUPAGE COUNTY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1, THENCE SOUTH 84 DEGREES 13 MINUTES 24 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 1 A DISTANCE OF 130.30 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 57 MINUTES 33 SECONDS EAST A DISTANCE OF 117.65 FEET; THENCE SOUTH 83 DEGREES 03 MINUTES 25 SECONDS EAST A DISTANCE OF 437.31 FEET; THENCE SOUTH 05 DEGREES 46 MINUTES 36 SECONDS WEST A DISTANCE OF 108.49 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1; THENCE NORTH 84 DEGREES 13 MINUTES 24 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1 A DISTANCE OF 429.38 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

CONTAINING 1.123 ACRES MORE OR LESS.

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

Commonly Known As: 3S660 Route 59, Warrenville, IL 60555