

ORDINANCE NO. 15-34

AN ORDINANCE AUTHORIZING THE EXECUTION OF A BUSINESS DEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF MANTENO AND MOMENCE TOWN & COUNTRY, INC. RELATED TO OCCUPATIONAL TAXES GENERATED FROM THE FRANK'S APPLIANCE CENTER AND SLEEPSOURCE TO BE LOCATED AT 131 NORTH MAIN STREET, MANTENO, ILLINOIS

WHEREAS, the Village of Manteno (the *Village*) is a non-home rule municipality duly existing under laws and Constitution of the State of Illinois;

WHEREAS, Momence Town & Country, Inc. d/b/a Frank's Appliance Center and Sleep Source (*Frank's Appliance*), has proposed to locate and renovate a commercial building (the *Project*) for its operations located at 131 North Main Street, Manteno, Illinois (the *Subject Property*) for the purpose of selling appliances and mattresses;

WHEREAS, the Project will expand business opportunities and provide economic development in the Village that would not otherwise occur in the absence of the parties' participation;

WHEREAS, the corporate authorities of the Village find that the building situated on the subject property no longer complies with current building codes and has remained less than significantly occupied or underutilized for a period of at least one year;

WHEREAS, the corporate authorities of the Village find that the Project will create job opportunities in the Village both to contractors who will improve the site and to individuals who may be employed by Frank's Appliance;

WHEREAS, the corporate authorities of the Village find that the Project will serve to further the development of adjacent areas, enhance the tax base of the Village, and strengthen its commercial base, by eliminating vacancies, establishing a new business, creating a more diversified commercial base to the downtown area;

WHEREAS, the corporate authorities of the Village find that Frank's Appliance meets high standards of creditworthiness and financial strength;

WHEREAS, the Village is authorized under the provisions of 65 ILCS 5/8-11-20 to provide economic incentives, including sharing a portion of the sales taxes generated by the development of new businesses;

WHEREAS, the Village has determined that it is in its best interest to enter into a business development agreement with Frank's Appliance to allow for the rebate of occupational taxes generated on the Subject Property in order to defer the costs of the Project, which Frank's

Appliance would not be willing to undertake absent such an agreement due to financial infeasibility; and,

WHEREAS, the corporate authorities of the Village find that the business development agreement with Frank's Appliance is in the best interest of the Village and, based on the representations in the agreement, will not violate the provisions of 65 ILCS 5/8-11-21.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Manteno, as follows:

Section 1

The recitals set forth above are incorporated herein by reference the same as if they were set forth herein verbatim and they are adopted as the findings of the corporate authorities of the Village of Manteno.

Section 2

The Business Development Agreement, which shall be in substantially the form attached hereto and made a part of this ordinance by reference as Exhibit "A," is hereby approved.

Section 3

The President and Village Clerk are hereby authorized and directed to execute the Business Development Agreement herein provided for, and to do all things necessary and essential, including the execution of any further agreements, instruments, documents and certificates incidental thereto or necessary to carry out the provisions and effectuate the purpose thereof.

Section 4

All ordinances or parts of ordinances and agreements in conflict herewith are hereby repealed.

Section 5

This ordinance shall be immediately in full force and effect after its passage and approval as provided by law.

PASSED by the President and Board of Trustees of the Village of Manteno, Illinois and deposited in the office of the Village Clerk this 21st day of December, 2015.

DEPOSITED with the Village Clerk
this 21st day of December, 2015.



ALISA BLANCHETTE, Village Clerk

APPROVED by me this 21st
day of December, 2015.




TIMOTHY O. NUGENT, Village Resident

December 16, 2015

To whom it may concern:

Frank's Appliance and Sleep Source Center is a customer of First Trust Bank of Illinois. As manager of the Frank's Appliance banking relationship, I affirm that this entity has in excess of \$10,000 Assets.

Sincerely,
FIRST TRUST BANK OF ILLINOIS



David G. West
Vice President

STATE OF ILLINOIS)
) SS
COUNTY OF KANKAKEE)

A F F I D A V I T

The undersigned, hereby under oath, states that Franks Appliance Center is a d/b/a for Momence Town and Country, Inc., an Illinois corporation. The corporation is in solid financial condition and creditworthiness. Attached hereto is a letter from a financial institution indicating that Frank's Appliance has more than \$10,000 of financial strength. Further, the Affiant specifically states that Momence Town and Country, Inc., d/b/a Frank's Appliance Center, has substantial financial equity in an amount not less than 10% of the project costs.

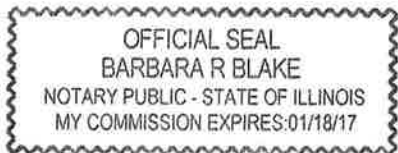


AFFIANT

Subscribed and sworn to before me
this 16 day of December, 2015.



NOTARY PUBLIC



BUSINESS DEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF MANTENO AND MOMENCE TOWN & COUNTRY, INC. RELATED TO OCCUPATIONAL TAXES GENERATED FROM FRANK'S APPLIANCE CENTER AND SLEEPSOURCE LOCATED AT 131 NORTH MAIN STREET, MANTENO, ILLINOIS

This Business Development Agreement (the *Agreement*) is made and entered into this 21st day of December, 2015 (the Effective Date), by and between the VILLAGE OF MANTENO (the *Village*), Kankakee County, Illinois, an Illinois municipal corporation, and MOMENCE TOWN & COUNTRY, INC. (*Frank's Appliance*), d/b/a Frank's Appliance Center and Sleepsource, an Illinois corporation, as follows:

PREAMBLE

WHEREAS, the Frank's Appliance has proposed to locate and renovate a commercial building for its operations located at 131 North Main Street, Manteno, Illinois ("Subject Property") for the purpose of selling appliances and mattresses (the "Project");

WHEREAS, the Project will expand business opportunities and provide economic development in the Village;

WHEREAS, the Village is authorized under the provisions of 65 ILCS 5/8-11-20 to provide economic incentives, including sharing a portion of the retailers' and service occupation tax revenue ("Sales Tax Revenue") generated by the development of new businesses;

WHEREAS, the Corporate Authorities of the Village have determined that it is essential to the economic and social welfare of the Village that economic vitality be promoted by assuring opportunities for the development and sound and stable commercial growth;

WHEREAS, the Village has determined that the buildings on subject property no longer comply with current building codes, and have remained less than significantly occupied or underutilized for at least one year prior to the date of this Agreement, that the Project is expected to create or retain job opportunities within the Village, that the Project will serve to further the development of adjacent areas, that the Project would not be possible without this Agreement, that Frank's Appliance meets high standards of creditworthiness and financial strength, that the Project will strengthen the commercial sector of the Village, that the Project will enhance the tax base of the Village, and that this Agreement is in the best interest of the Village;

WHEREAS, the Village finds that this agreement will not violate the provisions of 65 ILCS 5/8-11-21;

WHEREAS, the Village finds the powers exercised hereunder to be in furtherance of a public use and essential to the public interest; and

WHEREAS, in order to make it economically feasible for Frank's Appliance to undertake the Project, the Village has agreed to reimburse the Frank's Appliance for a portion of its development costs relative to the Project through the use of a rebate of a portion of the Sales Tax Revenue generated by it at the Subject Property.

WITNESSETH

NOW, THEREFORE, in consideration of the foregoing and the covenants hereinafter set forth, it is mutually agreed as follows:

Section 1. Recitals. That the recitals set forth in the preamble of this Agreement are incorporated herein by reference, as if fully set forth.

Section 2. Authority. The Village represents that the approval and execution of this Agreement is within its scope of authority under the provisions of 65 ILCS 5/8-11-20 and that it is duly authorized and empowered to enter into and carry out the terms of this Agreement. An ordinance authorizing the execution and approval of this Agreement was approved by the Corporate Authorities of the Village on December 21, 2015.

Section 3. Definitions. Unless the context hereof clearly indicates otherwise, the capitalized words, terms and phrases defined in the recitals and preambles hereto and elsewhere herein shall have the same meanings for all purposes of this Agreement. In all cases the singular includes the plural, the plural includes the singular and a reference to any gender includes both genders and the neuter, as the case may be. In addition, the following terms and phrases shall have the meanings ascribed to them below:

Parties means the Village and Frank's Appliance.

Party means either the Village or Frank's Appliance.

Payment Period means a four (4) month period commencing on January 1, May 1, and September 1 of each calendar year.

Sales Tax Revenue means the local share of total revenue from Retailers' and Service Occupation taxes, penalties and interest which are paid to the Village from the Local Government Tax Fund pursuant to 35 ILCS 120/3, as amended.

Section 4. Sales Tax Incentive. The Village shall rebate to Frank's Appliance 50% of the Sales Tax Revenue generated at the Subject Property for the fifteen (15) consecutive Payment Periods commencing January 1, 2016 and ending December 31, 2020.

Section 5. Alternative Revenue. If the Village no longer receives Sales Tax Revenue from Frank's Appliance or the Subject Property due to a change in the law by the State of Illinois, then the Village shall make payments to Frank's Appliance from any alternate sources of revenue provided to the Village by the State of Illinois specifically as a replacement or substitute for the Sales Tax Revenue presently received by the Village (the "Alternate Sales Tax Revenue") and, in that event, the payment to the Frank's Appliance shall be calculated as if the Village were continuing to receive the Sales Tax Revenue at a rate equal to the sales tax rate applicable to the Village's share of the State of Illinois sales tax immediately prior to the elimination of Frank's Appliance's gross sales that would have been subject to State of Illinois Sales Tax. The Alternate Sales Tax Revenue shall be subject to a proportionate reduction in the event that it does not constitute, or is not intended to constitute, a 100%, dollar for dollar, replacement of the Sales Tax Revenue previously received by the Village. Notwithstanding the foregoing, the payment to Frank's Appliance from Alternate Sales Tax Revenue is contingent upon the ability of the Village to obtain, and confirm as accurate, gross sales by Frank's Appliance that would have been subject to State of Illinois Sales Tax in the same form that such information would have been furnished to the Illinois Department of Revenue. In the event that said gross sales figures cannot be obtained or confirmed

as accurate by the Village, the Village shall have no obligation to tender any payments hereunder to Frank's Appliance.

Section 6. Sales Tax Reports. Within forty-five (45) days after each Payment Period, Frank's Appliance shall provide the Village with a statement from the Illinois Department of Revenue as to the dollar amount of Sales Tax Revenue paid to the State of Illinois for the benefit of the Village during the prior Payment Period. Additionally, Frank's Appliance shall maintain and make available for inspection by the Village copies of any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other appropriate governmental entity, for purposes of identifying Sales Tax Revenue collected pursuant to this Agreement. To the extent permitted by law, the Village shall endeavor to maintain the confidentiality of the information contained in such reports, but shall be permitted to disclose such information and documents to employees and consultants as the Village, in its sole discretion, deems appropriate in order to monitor compliance and audit this Agreement. Frank's Appliance understands and agrees that this Agreement shall be a matter of public record, as shall any and all payments to Frank's Appliance pursuant to this Agreement. Frank's Appliance also agrees to furnish such consents or waivers as may be required by the Illinois Department of Revenue to allow the Village to obtain Sales Tax Revenue information directly from the Illinois Department of Revenue.

Section 7. Reimbursement Mechanism. Not later than thirty (30) days after the receipt of the signed statement from Frank's Appliance for the applicable Payment Period has been verified by information supplied by the Illinois Department of Revenue, the Village shall remit in full to Frank's Appliance, the applicable share of the Sales Tax Revenue for that particular Payment Period. The Village shall be under no obligation to remit any monies whatsoever until Sales Tax Revenue is received from the Illinois Department of Revenue, but the Village reserves the right to make such earlier and additional payments in such amounts and at such times as the Village, in its sole discretion, deems appropriate. Any payments determined to be due to Frank's Appliance from the Village based upon its statement or its sales tax returns shall be reduced by the amount of any and all collection fees imposed upon the Village by the State of Illinois or the Illinois Department of Revenue for collection of the Sales Tax Revenue, if any. The accounting for Sales Tax Revenue shall be made on the basis of when the Sales Tax Revenue is actually paid to the Village, not when Frank's Appliance or any retailer on the Subject Property actually pays sales tax to the Illinois Department of Revenue.

Section 8. Limited Obligation; Not General Obligation. The sole and only source of funds available for payment to Frank's Appliance is Sales Tax Revenue, the receipt of which shall be a condition precedent to any obligation of the Village to rebate Sales Tax Revenue to Frank's Appliance and, as such, no debt from the Village to Frank's Appliance shall exist unless the Village has first received the Sales Tax Revenue. No other pledge of money or revenue is made for the payments herein provided, and no lien or other secured interest in any other property, funds or accounts of the Village is created or shall exist for the payment thereof. Neither Frank's Appliance nor any other person shall have the right to compel the exercise of any taxing power of the Village for any payment under this Agreement. The obligations of the Village under this Agreement do not constitute an indebtedness of the Village or a loan of credit thereof within the meaning of any statutory or constitutional limitation.

Section 9. Additional Limitations. The Village's obligation to rebate Sale Tax Revenue under this Agreement, and Frank's Appliance's entitlement to receive the same, shall be subject to the following: (a) all real estate taxes due and payable which were assessed against or attributable to the Subject Property must be paid in full; (b) Frank's Appliance shall not be in default under this Agreement; (c) there shall be no unsatisfied mechanics liens asserted against Frank's Appliance or the Subject Property on account of the Project.

Section 10. Existing Retail Locations. Frank's Appliance acknowledges and discloses that it currently operates similar businesses in the State of Illinois. Frank's Appliance promises, covenants and warrants that none of the Sales Tax Revenue that is proposed to be generated from or at the Subject Property would have been paid to another jurisdiction in the absence of this Agreement. Frank's Appliance further promises, covenants, and warrants that none of its sales of tangible personal property occurring in the Village will be delivered to purchasers at its retail locations or warehouses in other jurisdictions. In support of the aforementioned, Frank's Appliance expressly promises, covenants and warrants that the sales to occur on the Subject Property, and within the Village, shall be new and additional sales to Frank's Appliance, and the consequence of an expanded business enterprise, which its locations in other jurisdictions will not support.

Section 11. No Situs Shopping or Competing Agreements. Frank's Appliance, its officers, and its now existing or hereinafter created parent, subsidiary, or affiliated entities (collectively the *Frank's Appliance Entities*), promise, covenant, warrant they shall not, and they shall otherwise be prohibited from, sourcing any of the sales originating or subject to negotiations in any way on the Subject Property to a situs in another unit of local government other than the Village. Frank's Appliance Entities promise, covenant, warrant that they shall not, and they shall otherwise be prohibited to, enter into or execute any agreements, or extensions or amendments to existing agreements, which call for, discuss, contemplate, or may result in the sourcing of Illinois sales to any place other than the Village, or which call for, discuss, contemplate a disbursement of or a rebate to it of any portion of sales tax revenue, or measured thereby, distributable to a unit of local government other than the Village, as a result of sales sourced thereto, either directly with a unit of local government or indirectly with or through a broker or other third-party, during the term of this Agreement. Notwithstanding the above, nothing herein shall preclude Frank's Appliance Entities from entering into or extending agreements of a similar nature provided no sales that would be sourced to the Village are diverted to the other unit of local government under such agreements or extensions.

Section 12. Duty to Defend, Indemnify and Hold Harmless. Frank's Appliance shall defend, indemnify and hold harmless the Village, its officers and employees, for any cause of action arising from a violation of 65 ILCS 5/8-11-21. The Village may, but shall not be obligated to, defend any court action that may be brought attacking the Village's power or authority under this Agreement or to perform any of its provisions, including any appeals reasonably required. In the event the Village elects not to defend such actions, the Frank's Appliance shall defend, indemnify and hold harmless the Village from any and all claims and damages claimed thereby. In the event the provisions of this Agreement or any material provision contained herein is deemed by a court to be illegal or in violation of the laws of the State of Illinois, such decision/judgment shall relieve the Village from past/future performance and the provisions of this Agreement shall terminate without recourse from the Village to the Frank's Appliance.

Section 13. Reporting of Agreement. Frank's Appliance shall, no later than ten (10) days after the execution of this Agreement, provide to the Village such information sufficient to permit the Village to file its report to the Illinois Department of Revenue pursuant 65 ILCS 5/8-11-21 including, but not limited to, whether or not Frank's Appliance maintains additional places of business in the State of Illinois other than on the Subject Property, the common address of such locations, and the name of any business who is not a party to this Agreement but who directly or indirectly receives a share, refund, or rebate of the Sales Tax Revenue.

Section 14. Default. Except as otherwise provided in this Agreement, the failure on the part of either Party to comply with any material term, representation, warranty, covenant, agreement, or condition of this Agreement, or any other document to be required to be executed by this Agreement, within thirty (30) days after written notice thereof (unless a different time period is specified in the separate document for curing non-performance of a specific task or event) shall constitute an "Event of

Default.” provided, however, that in the event such default is incapable of being cured within said thirty (30) day period and the defaulting Party commences to cure the default within said thirty (30) day period and proceeds with due diligence to cure the same, such Party shall not be deemed to be in default under this Agreement. In the Event of Default by the either Party in the performance of any of its respective obligations under this Agreement, each Party’s sole remedy shall be specific performance of the Agreement. Neither Party shall be liable to the other for consequential damages or lost profits.

Section 15. Limitations 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 the Village, its officers, agents and employees, in excess of any specific sum agreed by the Village to be paid to Frank’s Appliance hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Village, its officers, agents and employees in excess of such amounts, and all and any such rights or claims of Frank’s Appliance against the Village, 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 Frank’s Appliance and its respective directors, officers, members, managers, agents and employees, in excess of their obligations to the Village hereunder, subject to the terms and conditions herein, and no liability or claim at law or in equity shall attach to or shall be incurred by Frank’s Appliance, its respective directors, officers, members, managers agents and employees, in excess of their obligations hereunder.

Section 16. Disclosures. The provisions of Section 3.1 of the Public Officer Prohibited Activities Act, 50 ILCS 105/0.01 are incorporated herein by reference and Frank’s Appliance shall deliver any and all disclosures required thereby prior to and as a condition of the Village’s approval and execution of this Agreement. Upon written request of the Village upon the anniversary of the Effective date of this Agreement, and each year thereafter so long as the Agreement shall remain in effect, Frank’s Appliance shall update the disclosures required above. The updated disclosures shall provide information as is current as of the date of disclosure, and such information as applicable for any time between the current and last disclosure.

Section 17. Mutual Assistance. The Village and Frank’s Appliance agree to do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.

Section 18. Governmental Powers. Frank’s Appliance recognizes and agrees that the Village has sole discretion with regard to all governmental approvals and permits including, but not limited to, approval of the final development plan, demolition and excavation permits, grading permits, building permits and occupancy permits, 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 default under this Agreement, or give rise to any claim against or liability to the Village pursuant to this Agreement.

Section 19. Warranties. The Village hereby warrants and represents to Frank’s Appliance that the persons executing this Agreement on its behalf have been properly authorized to do so by the Corporate Authorities. Frank’s Appliance hereby warrants and represents to the Village that it has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement, that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken, and that neither the execution of this Agreement nor the performance of the obligations assumed by Frank’s Appliance will (a) result in a breach or default under any agreement to which Frank’s Appliance is a party or to which it or the Subject Property is bound or (b) violate any statute, law, restriction, court order, or agreement to which Frank’s

Appliance or the Subject Property is subject. The Village and Frank's Appliance shall deliver to each other, upon request, copies of all articles of incorporation, by-laws, resolutions, ordinances or other documents required to legally evidence the authority of the persons signing this Agreement to so execute this Agreement on behalf of the respective Parties.

Section 20. Notices and Communications. All notices, demands, requests for reimbursement or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (i) deposited in the United States mail and sent by first class mail, postage prepaid or (ii) delivered, in each case, to Village and Frank's Appliance at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (1) if to Village: Village of Manteno
Attn: Mayor
98 East 3rd Street
Manteno, Illinois 60950

- (2) copy to: Joseph Cainkar
Louis F. Cainkar, Ltd.
30 North LaSalle, Suite 3922
Chicago, Illinois 60602

- (3) if to Frank's Appliance: Momence Town & Country, Inc.
Attn: JoAnne Keen
131 North Main Street
Manteno, Illinois 60950

- (4) copy to: J. Dennis Marek
Marek, Meyer and Coghlan, Ltd.
One Dearborn Square, Suite 400
Kankakee, IL 60901

Whenever any Party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such Party shall do so in such number of copies as shall be reasonably specified.

Section 21. Time of the Essence. Time is of the essence in the performance of this Agreement.

Section 22. Binding Effect. The terms and conditions of this Agreement shall be a covenant running with the land and shall be binding upon and inure to the benefit of the Parties hereto, their grantees, nominees, successors in interest, assignees, heirs, executors, or lessees.

Section 23. Assignment. Frank's Appliance shall not assign this Agreement, or the right to receive any payment hereunder, to any person or entity without the prior written consent of the Village. No such assignment shall be effective, even if consented to by the Village, unless and until the Assignee assumes in writing the obligations of its assignor hereunder.

Section 24. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

Section 25. Illinois Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois.

Section 26. Written Modification. Neither this Agreement nor any provisions hereof may be changed, revised, modified, waived, discharged, terminated or otherwise abrogated, diminished or impaired other than by an instrument in writing duly authorized and executed by both Village and Frank's Appliance.

Section 27. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 28. Non-Waiver. Neither Party hereto shall be under any obligation to exercise any of the rights granted to it in this Agreement. The failure of a Party to exercise at any time any right granted to such Party shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect such Party's right to enforce that right or any other right.

Section 29. Estoppel. Nothing in this Agreement, shall constitute the Village's warranty that the Project and Subject Property conform to applicable laws. Frank's Appliance shall be required to exercise its own due diligence in reviewing the legality of such issues including, without limitation, obtaining permits, licenses, or relief necessary to conform the Project and Subject Property to applicable laws. Frank's Appliance acknowledges that no official, employee or agent of the Village has the authority bind the Village as to decisions respecting the Project and Subject Property unless specifically authorized by this Agreement or a resolution passed by the Corporate Authorities of the Village with specific reference to the Project. Frank's Appliance's reliance on any statement, act or omission by any Village official, employee or agent shall be deemed unreasonable unless Frank's Appliance inquires into and confirms, if not in this Agreement by obtaining a copy of said resolution, the individual's express authority to bind the Village on the subject at issue.

Section 30. Severability. It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

Section 31. Entire Agreement. This Agreement constitutes the entire agreement of Village and Frank's Appliance on the subject matter hereof, except as to those documents specifically identified and referenced in this Agreement. Village and Frank's Appliance represent, warrant, covenant and agree that no representation, warranty, covenant or agreement shall be binding on the other Party unless expressed in writing herein or by written modification pursuant to Section 26 hereof.

Section 32. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

Section 33. Third-Party Beneficiaries. Nothing in this Agreement is intended, nor shall it be interpreted, to create any rights or remedies to and in any third party. No claim as a third party beneficiary under this Agreement by any person shall be made, or be valid, against the Village or Frank's Appliance.

Section 34. Personal Liability. No covenant or agreement contained in this Agreement shall be deemed to be the agreement of any official, officer, partner, member, director, agent, employee, planning consultant or attorney of the Village or Frank's Appliance, in his or her individual capacity, and no official, officer, partner, member, manager, director, agent, employee or attorney of the Village or Frank's Appliance shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery, and performance of this Agreement, or any failure in connection therewith.

Section 35. Term. The term of this Agreement shall commence on the Effective Date and terminate upon the Village's payment of Sales Tax Revenue for the final Payment Period.

Section 36. Relationship. Neither this Agreement nor any actions of the Parties or any third-party shall be construed to or create a partnership, agency relationship or joint venture.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Village and Frank's Appliance have each caused this Agreement to be executed by proper officers duly authorized to execute the same as of the date set forth beneath the signatures of their respective officers set forth below.

VILLAGE OF MANTENO


Timothy O. Nugent, Village President


Alisa Blanchette, Village Clerk

MOMENCE TOWN & COUNTRY, INC.


JoAnne Keen, President