

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) made as of the _____ day of September, 2016, by and between the Plaintiffs to consolidated cases 2011 CH 29744 and 2011 CH 34266 (the REGIONAL TRANSPORTATION AUTHORITY (the RTA); the COUNTY OF COOK; the VILLAGE OF FOREST VIEW; the VILLAGE OF TINLEY PARK; the VILLAGE OF LEMONT; the VILLAGE OF ORLAND PARK; ELK GROVE VILLAGE; the VILLAGE OF MELROSE PARK; the VILLAGE OF HAZEL CREST; and the VILLAGE OF NORTHBROOK (collectively, “PLAINTIFFS”)) and Defendants the CITY OF KANKAKEE (KANKAKEE); the VILLAGE OF CHANNAHON (CHANNAHON); and related entities INSPIRED DEVELOPMENT, LLC (INSPIRED) and RYAN, LLC (RYAN), WITNESSETH:

WHEREAS, the RTA is a special purpose unit of local government and municipal corporation of the State of Illinois with service to and jurisdiction over the following counties in respect to mass ground public transit: Cook, DuPage, Kane, Lake, McHenry, and Will;

WHEREAS, the COUNTY of COOK is a body politic and corporate of the State of Illinois;

WHEREAS, the Villages of FOREST VIEW; TINLEY PARK; ORLAND PARK; ELK GROVE VILLAGE; HAZEL CREST; and NORTHBROOK are Illinois home rule municipalities;

WHEREAS, the Villages of LEMONT and MELROSE PARK are Illinois non-home rule municipalities;

WHEREAS, the PLAINTIFFS are entitled to certain shares of retailers’ occupation taxes imposed on the business of selling tangible personal property within their jurisdictions pursuant to state law (“sales tax”);

WHEREAS, INSPIRED is an involuntarily dissolved Illinois limited liability company. At all times relevant, INSPIRED was party to economic development agreements (“EDAs”) with KANKAKEE and CHANNAHON to attract retail entities (the “RETAILERS”) to participate in sales tax rebate programs in those municipalities;

WHEREAS, RYAN is a Delaware limited liability company in the business of providing tax and consulting services. Through a Marketing Agreement with INSPIRED, RYAN also attracted RETAILERS to participate in sales tax rebate programs in KANKAKEE and CHANNAHON;

WHEREAS, KANKAKEE is an Illinois home rule municipality in Kankakee County, Illinois;

WHEREAS, CHANNAHON is an Illinois home rule municipality in Will and Grundy Counties, Illinois;

WHEREAS, on or around August 21, 2000, INSPIRED entered into an EDA with KANKAKEE (the “Kankakee-Inspired EDA”). Pursuant to the terms of the Kankakee-Inspired EDA, INSPIRED attracted RETAILERS to participate in a sales tax rebate program in KANKAKEE through Agency Agreements with INSPIRED;

WHEREAS, on or around February 5, 2001, INSPIRED entered into an EDA with CHANNAHON (the “Channahon-Inspired EDA”). Pursuant to the terms of the Channahon-Inspired EDA, INSPIRED attracted RETAILERS to participate in a sales tax rebate program in CHANNAHON through Agency Agreements with INSPIRED;

WHEREAS, RETAILERS contracting with INSPIRED through Agency Agreements pursuant to the Kankakee-Inspired EDA and/or the Channahon-Inspired EDA reported to the Illinois Department of Revenue that certain of their sales took place in KANKAKEE and/or CHANNAHON, and thereafter received rebates of certain taxes collected from their reported retail sales in those municipalities;

WHEREAS, the PLAINTIFFS assert that the RETAILERS subject to Agency Agreements with INSPIRED pursuant to the Kankakee-Inspired EDA and/or the Channahon-Inspired EDA engaged in the business of selling within one or more of the PLAINTIFFS' taxing jurisdictions, but improperly reported those sales as taking place in KANKAKEE and/or CHANNAHON;

WHEREAS, the PLAINTIFFS assert that, as a result of the mis-reporting of retail sales as taking place in KANKAKEE and/or CHANNAHON, the PLAINTIFFS lost sales tax revenues that would otherwise have been paid to them by the State of Illinois, as well as a 30% Public Transportation Fund match payable to the RTA pursuant to 70 ILCS 3615/4.09(a)(1)-(2);

WHEREAS, INSPIRED, RYAN, KANKAKEE, and CHANNAHON deny the impropriety of entering into the EDAs; deny that there has been any mis-sourcing or mis-reporting of retail sales; deny that they facilitated any mis-sourcing or mis-reporting of retail sales in any respect; and further deny that the PLAINTIFFS lost any sales tax revenue as a result of their actions;

WHEREAS, KANKAKEE and CHANNAHON contend that each has continually followed and abided by the laws of the State of Illinois and the regulations promulgated by the Illinois Department of Revenue regarding the sourcing and reporting of retail sales for tax purposes;

WHEREAS, the PLAINTIFFS brought suit against KANKAKEE, CHANNAHON, INSPIRED and others in the Circuit Court of Cook County, Illinois, as consolidated cases 2011 CH 29744 and 2011 CH 34266 (the "Lawsuit") alleging violations of Illinois statutory and common law, including violations of 65 ILCS 5/8-11-21, and losses due to the improper sourcing of sales taxes;

WHEREAS, KANKAKEE, CHANNAHON, INSPIRED and RYAN deny any wrongdoing or violation of law, and further deny any liability to PLAINTIFFS; and

WHEREAS, the aforementioned parties are desirous of resolving all contested matters presently existing in regard to KANKAKEE's and CHANNAHON's EDAs with INSPIRED;

NOW, THEREFORE, IT IS AGREED as follows:

1. The recitals set forth above are incorporated herein by reference and are made a part of this Agreement.
2. KANKAKEE, CHANNAHON, INSPIRED and RYAN shall cause to be paid to the PLAINTIFFS the sum of four hundred fifty thousand dollars (\$450,000.00) within fourteen (14) days of the Court approval referred to in Paragraph 7 below. Said payment shall be delivered and made payable to the RTA and the County of Cook for distribution among the PLAINTIFFS in any manner agreed to by and between the PLAINTIFFS.
3. Commencing not later than the date of execution of this Agreement, INSPIRED, RYAN, KANKAKEE, and CHANNAHON will terminate any and all agreements between and among them regarding the sourcing of sales taxes to KANKAKEE and/or CHANNAHON and will not re-enter, renew, or otherwise make operational the EDAs previously entered or any other agreement between and among them regarding the sourcing of sales taxes.

4. KANKAKEE and CHANNAHON agree to follow and abide by the laws of the State of Illinois and the regulations promulgated by the Illinois Department of Revenue regarding the sourcing and reporting of retail sales for tax purposes, as now in effect and to be amended and/or enacted in the future.
5. Notwithstanding anything to the contrary herein, this Agreement shall not preclude or prohibit KANKAKEE and CHANNAHON from entering into EDAs allowed by law.
6. If KANKAKEE and/or CHANNAHON determine at any time in the future to enter into an EDA or like agreement with a retail entity that engages in the business of selling within the RTA's six-county taxing jurisdiction, each agree to provide the RTA and all other PLAINTIFFS where the retailer has a retail location or warehouse with written notice of the terms of the contemplated EDA or like agreement at least 30 days before said EDA or like agreement is to become effective. Said written notice shall describe the contemplated sales activity and shall be delivered by e-mail to the persons identified in Exhibit A, attached hereto.
7. Within ten (10) business days following the parties' execution of this Agreement, the PLAINTIFFS shall file a motion to approve the settlement and this Agreement, along with an Agreed Order dismissing with prejudice all claims against INSPIRED, KANKAKEE, and CHANNAHON that relate to the Kankakee-Inspired EDA and the Channahon-Inspired EDA or that otherwise relate to or arise out of the activities of INSPIRED, RYAN or any RETAILER that received sales tax rebates from KANKAKEE and/or CHANNAHON directly or indirectly as a result of the Kankakee-Inspired EDA or the Channahon-Inspired EDA (Counts II and VIII of the Sixth Amended Complaint in 2011 CH 29744 and Counts II and VII of the Third Amended Complaint in 2011 CH 34266).
8. All other claims now pending in the Lawsuit that are unrelated to INSPIRED and RYAN are unaffected by this settlement.
9. Release of KANKAKEE and CHANNAHON--In consideration for the above-described payment and the other consideration set forth herein, the PLAINTIFFS hereby fully and forever release, remise, acquit and discharge KANKAKEE and CHANNAHON, and their successors, affiliates, related entities, subsidiaries, divisions, departments, guarantors, sureties, insurers, members, principals, agents, past and present employees, representatives, attorneys, assigns, heirs, executors, officers and elected officials ("KANKAKEE/CHANNAHON RELEASED PARTIES") from any and all claims, actions, causes of action, suits, set-offs, contributions, counterclaims, damages, debts, costs, expenses, attorneys' fees or other fees whatsoever, based on any legal or equitable theory, right of action or otherwise, asserted or unasserted, foreseen or unforeseen, accrued or not accrued, which the PLAINTIFFS now hold or may at any time own or hold against the KANKAKEE/CHANNAHON RELEASED PARTIES by reason of any acts, circumstances, facts, events or transactions relating to the Kankakee-Inspired EDA or the Channahon-Inspired EDA, as well as the activities of INSPIRED, RYAN, and any RETAILER that received sales tax rebates from KANKAKEE and/or CHANNAHON directly or indirectly as a result of the Kankakee-Inspired EDA or the Channahon-Inspired EDA. Nothing herein shall be construed to release KANKAKEE and CHANNAHON from any obligations under this Agreement.

10. Release of INSPIRED, RYAN and the RETAILERS--In consideration for the above-described payment and the other consideration set forth herein, the PLAINTIFFS hereby fully and forever release, remise, acquit and discharge, INSPIRED, RYAN, and the RETAILERS and their successors, affiliates, related entities, subsidiaries, guarantors, sureties, insurers, members, principals, agents, past and present employees, representatives, attorneys, assigns, heirs, executors, officers and directors (the "INSPIRED RELEASED PARTIES") from any and all claims, actions, causes of action, suits, set-offs, contributions, counterclaims, damages, debts, costs, expenses, attorneys' fees or other fees whatsoever, based on any legal or equitable theory, right of action or otherwise, asserted or unasserted, foreseen or unforeseen, accrued or not accrued, which the PLAINTIFFS now hold or may at any time own or hold against the INSPIRED RELEASED PARTIES by reason of any acts, circumstances, facts, events or transactions occurring before the effective date of this Agreement governed by or implicating the Kankakee-Inspired EDA or the Channahon-Inspired EDA including, but not limited to, any matters relating in any way to the Lawsuit. Nothing herein shall be construed to release the INSPIRED RELEASED PARTIES from any obligations under this Agreement.
11. Release of PLAINTIFFS--In consideration of the rights, obligations and other terms as stated in this Agreement, KANKAKEE, CHANNAHON, INSPIRED and RYAN hereby fully and forever release, remise, acquit and discharge PLAINTIFFS and their successors, affiliates, related entities, subsidiaries, guarantors, sureties, insurers, members, principals, agents, past and present employees, representatives, attorneys, assigns, heirs, executors, officers and directors (collectively, "PLAINTIFF RELEASED PARTIES") from any and all claims, actions, causes of action, suits, set-offs, contributions, counterclaims, damages, debts, costs, expenses, attorneys' fees or other fees whatsoever, based on any legal or equitable theory, right of action or otherwise, asserted or unasserted, foreseen or unforeseen, accrued or not accrued, which KANKAKEE, CHANNAHON, INSPIRED or RYAN now hold or may at any time own or hold against the PLAINTIFF RELEASED PARTIES by reason of any acts, circumstances, facts, events or transactions relating to the Kankakee-Inspired EDA or the Channahon-Inspired EDA, as well as the activities of INSPIRED, RYAN and any RETAILER that received sales tax rebates from KANKAKEE and/or CHANNAHON directly or indirectly as a result of the Kankakee-Inspired EDA or the Channahon-Inspired EDA. Nothing herein shall be construed to release the PLAINTIFFS from any obligations under this Agreement.
12. The parties acknowledge and agree that this settlement shall in no way affect the distribution of funds or the assessment of liability that may be made pursuant to the Illinois Department of Revenue's pending and/or future audits of any of the released parties and/or related retailers.
13. The parties recognize that this Agreement is subject to disclosure upon request pursuant to the Illinois Freedom of Information Act.
14. Each and every term of this Agreement shall be binding upon and inure to the benefit of each party's successors and assigns.
15. Nothing in this Agreement can be construed as an admission or acknowledgement of wrongdoing or liability on behalf of KANKAKEE, CHANNAHON, INSPIRED, RYAN, or any RETAILER.

16. The RETAILERS are intended third-party beneficiaries of this Agreement, and may rely upon and avail themselves of the Release provided by this Agreement in any future litigation, or threatened litigation, with the PLAINTIFF RELEASED PARTIES. This Agreement may not be relied upon for any purpose by, or create any rights in, any other person who is not a party to this Agreement or a released party.
17. This Agreement constitutes the entire, complete and integrated statement of each and every term and provision agreed to by and among the parties and is not subject to any condition not provided for herein. This Agreement supersedes any prior representations, promises, or warranties (oral or otherwise) made by any party in respect to this matter, and no party shall be liable or bound to any other party for any prior representation, promise or warranty (oral or otherwise) except for those expressly set forth in this Agreement. This Agreement shall not be modified in any respect except by a writing executed by all parties hereto.
18. It is acknowledged that each party, with the assistance of competent counsel, has participated in the drafting of this Agreement. The parties agree that this Agreement has been negotiated at arms' length by parties of equal bargaining power, each of whom was represented by competent counsel of its own choosing. None of the parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.
19. The parties expressly declare and represent that they have read this Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The parties further expressly declare and represent that they fully understand the content and effect of this Agreement, that they approve and accept the terms and conditions contained herein, and that they enter into this Agreement willingly, knowingly, and without compulsion.
20. Should any of the provisions of this Agreement be declared or determined by any Court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provisions shall be deemed not to be a part of this Agreement, unless the illegality or invalidity of the illegal or invalid part, term or provision causes this Agreement to fail of its essential purpose, in which case, this entire Agreement shall become invalid and shall be null and void. Should the Court deny the PLAINTIFFS' motion to approve the settlement, as required by Paragraph 7 above, this Agreement shall likewise be rendered invalid, null and void.
21. Each of the undersigned further declares and represents that he or she is competent to execute this instrument and that he or she is duly authorized, and has the full legal right and authority, to execute this Agreement on behalf of the party for whom he or she is signing.
22. The parties shall bear their own expenses, including costs and attorneys' fees, incurred in connection with the negotiation, drafting, and execution of this Agreement, and all matters relating to the subject matter herein.
23. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Facsimile signatures shall be considered as valid signatures as of the date hereof, although the

original signature pages shall thereafter be appended to this Agreement.

24. The parties agree that the terms of this Agreement are contractual and that any dispute as to its interpretation shall be interpreted in accordance with the laws of the State of Illinois, without regard for its choice of law rules.
25. The parties agree that any disputes regarding or arising out of this Agreement must be brought and heard in the Circuit Court of Cook County, Illinois and the parties hereby consent to the venue and exercise of jurisdiction over them by such courts.
26. Should any court of law find any term or clause invalid, that term or clause only shall be omitted from enforcement and all other terms and conditions herein will remain enforceable.

WHEREFORE, the parties set their hands as of the date first above written.

REGIONAL TRANSPORTATION AUTHORITY

INSPIRED DEVELOPMENT, LLC

By: _____

By: _____

Its: _____

Its: _____

COUNTY OF COOK

RYAN, LLC

By: _____

By: _____

Its: _____

Its: _____

VILLAGE OF FOREST VIEW

CITY OF KANKAKEE

By: _____

By: _____

Its: _____

Its: _____

VILLAGE OF TINLEY PARK

By: _____

Its: _____

VILLAGE OF LEMONT

By: _____

Its: _____

ELK GROVE VILLAGE

By: _____

Its: _____

VILLAGE OF HAZEL CREST

By: _____

Its: _____

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VILLAGE OF CHANNAHON

By: _____

Its: _____

VILLAGE OF ORLAND PARK

By: _____

Its: _____

VILLAGE OF MELROSE PARK

By: _____

Its: _____

VILLAGE OF NORTHBROOK

By: _____

Its: _____

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

The REGIONAL TRANSPORTATION)
AUTHORITY, an Illinois special purpose unit)
of government and municipal corporation,)
et al.,)
)
Plaintiffs,) Case No. 2011 CH 29744
)
vs.) (Consolidated with Case No.
) 2011 CH 34266)
The CITY OF KANKAKEE, an Illinois home)
rule municipality, *et al.*,) Calendar 4 – Hon. Peter Flynn
)
Defendants.)

**EXHIBIT A TO SETTLEMENT AGREEMENT AND RELEASE
PLAINTIFFS' CONTACT LIST**

1. The Regional Transportation Authority

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6. Village of Lemont

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9. Village of Hazel Crest

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10. Village of Melrose Park

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