

Ordinance No. 2015-18

**APPROVING A SALES TAX SHARING AGREEMENT BETWEEN
THE VILLAGE OF WEST DUNDEE AND SPRING HILL MALL, LLC**

WHEREAS, the Village of West Dundee, Kane County, Illinois (the "*Village*"), is a home rule municipality pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and as such has the power to perform any function pertaining to its government and affairs; and,

WHEREAS, Spring Hill Mall, LLC, a Delaware limited liability company (the "*Developer*") owns certain property commonly known as Spring Hill Mall and has approached the Village with a redevelopment plan for that portion of the Spring Hill Mall located within the Village boundaries and comprising approximately _____ acres (the "*Subject Property*"); and,

WHEREAS, said redevelopment plan contemplates the construction of a theater with approximately 35,000 square feet; the construction and renovation of approximately 173,745 square feet of commercial retail space; major renovation of the southwest entranceway to Spring Hill Mall; demolition of vacant space once used by a retail anchor to be replaced by restaurants and other commercial uses; and, parking areas associated with such improvements (collectively, the "*Project*"); and,

WHEREAS, the Developer has advised the Village that the Project shall require an investment in the Village of approximately \$32,000,000 and has demonstrated that the Project has a financial gap in excess of Eight Million Dollars (\$8,000,000) preventing the Developer from proceeding with the Project; and,

WHEREAS, after a thorough review of the proposed Project, and a review of the costs to be incurred by the Developer to undertake and complete the Project, the Village is prepared to provide certain incentives including a rebate of sales taxes, but only to the extent and pursuant to the terms and conditions as set forth in the Sales Tax Rebate Sharing Agreement by and between

the Village of West Dundee, Kane County, Illinois and Spring Hill Mall, LLC dated as of August 31, 2015, as attached hereto and made a part hereof; and,

WHEREAS, the President and Board of Trustees of the Village have determined that providing certain incentives to induce the Developer to undertake and complete the Project are in the best interests of the Village and the health, safety, morals and welfare of its citizens as it shall provide for economic development, enhance the tax base of the Village and the other taxing districts, and assist with the retention and creation of job opportunity.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of West Dundee, Kane County, Illinois, as follows:

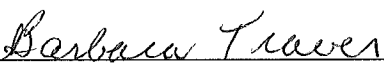
Section 1. That the Sales Tax Rebate Sharing Agreement by and between the Village of West Dundee, Kane County, Illinois and Spring Hill Mall, LLC, attached hereto and made a part hereof, providing for the rebate of sales taxes received by the Village from the commercial operations at the Subject Property in excess of \$771,000.00 but only in accordance with the terms, conditions and limitations set forth therein, is hereby approved; and, the Village President and Village Clerk are hereby authorized to execute said document and to undertake such actions as deemed necessary to implement its term.'

Section 2. This Ordinance shall be in full force and effect immediately upon its passage by the Corporate Authorities and approval as provided by law.


PASSED this 31st day of August 2015, pursuant to a roll call vote as follows:

AYES: Trustees Wilbrandt, Kembitzky, Price, Hanley and Yuscka
NAYS: None
ABSENT: Trustee Pflanz

ATTEST:



Barbara Traver, Village Clerk



Christopher Nelson, Village President

SALES TAX REBATE SHARING AGREEMENT

**This Document Prepared by and after
Recording Return To:**

Darryl R. Davidson, Esq.
Miller, Canfield, Paddock and Stone,
P.L.C.
225 West Washington Street, Suite 2600
Chicago, IL 60606
312.460.4210

This Space for Recorder's Use Only

**SALES TAX REBATE SHARING AGREEMENT BY AND BETWEEN
THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS, and
SPRING HILL MALL, L.L.C.**

DATED AS OF AUGUST 31, 2015

**SALES TAX REBATE SHARING AGREEMENT BY AND BETWEEN
THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS, and
SPRING HILL MALL, L.L.C.**

THIS SALES TAX REBATE SHARING AGREEMENT (“*Agreement*”) is made and entered into as of this 31st day of August, 2015 (“*Effective Date*”), by and between the Village of West Dundee, Kane County, Illinois, an Illinois home rule municipal corporation (“*Village*”), and Spring Hill Mall, L.L.C., a Delaware limited liability company (“*Developer*”), and its successors and assigns as owners of the Property and only as authorized pursuant to the conditions set forth in Section 16 of this Agreement. The Village and Developer are each a “*Party*” and collectively are the “*Parties*.”

IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Developer and the Village hereby agree as follows:

SECTION 1. RECITALS.

A. The Developer owns certain property in the Village commonly known as the Spring Hill Mall. An approximate [____]-acre portion of the Spring Hill Mall, to which this Agreement pertains and applies, is described in Exhibit A to this Agreement (“*Property*”).

B. The Developer desires and proposes to develop and redevelop the Property in the Village and to develop and redevelop related parcels in the Village of Carpentersville, Kane County, Illinois to continue as a shopping center (“*SHM Shopping Center*”) and to construct all related on-site and off-site improvements, in accordance with Exhibit B to this Agreement (the “*Proposed Development*” or “*Project*”).

C. As of the Effective Date of this Agreement, the Village receives a 1% Local Sales Tax on general merchandise, and imposes a 1.5% Home Rule Sales Tax on general merchandise.

D. The Village has further determined that the development and redevelopment of the Property with additional retail and commercial uses will help to create a sustainable revenue base for the Village without impairing the Village’s ability to deliver high-quality, cost-effective services.

E. The Village has determined that the operation and redevelopment of the Project on the Property will generate significant sales and property tax revenue for the Village, as well as the school and other affected taxing districts that serve Village residents, and that the development and redevelopment of the Property with additional retail and commercial uses fits with the Village’s Comprehensive Land Use Plan.

F. The Developer’s investment in the Proposed Development will enhance economic development opportunities for the Village and its residents. Because the upfront costs of the Proposed Development require extraordinary investment by the Developer, the parties acknowledge that various economic incentives, including, without limitation, those provided pursuant to this Agreement, are necessary and desirable to realize the significant economic development benefits of the Proposed Development.

G. The Corporate Authorities of the Village have determined that entering into this Agreement is necessary to ensure the implementation of the Proposed Development of the Property and provide for the related economic development benefits to the Village.

H. The Village and the Developer desire to enter into this Agreement, to enable the development, use, and occupancy of the Property in a manner consistent with the Village's Comprehensive Plan, and in a manner that will enhance the economic vitality of the Village and ensure the unified and proper use and development of the Property in accordance with this Agreement.

I. The Parties have each authorized the Term Sheet, the form of which is attached hereto as Exhibit C (the "**Term Sheet**"), the terms and provisions of which are hereby incorporated into this Agreement in their entirety, as if set forth at this place.

J. The Village has the power and authority to enter into this Agreement pursuant to, and without limitation, the home rule powers of the Village under Section 6, Article VII of the 1970 Constitution of the State of Illinois. The Developer has the corporate power and authority to enter into this Agreement.

SECTION 2. DEFINITIONS. Certain terms used herein are defined in the Term Sheet. Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

A. "**Carpentersville**" means the Village of Carpentersville, Kane County, Illinois.

B. "**Commencement Date**" means the date established pursuant to Section 3 of this Agreement.

C. "**Corporate Authorities**" means the President and Board of Trustees of the Village of West Dundee, Kane County, Illinois.

D. "**Force Majeure**" is defined in Section 8 hereof.

E. "**Gross Receipts**" shall have the meaning ascribed to it in the Retailers' Occupation Tax Act.

F. "**Home Rule Sales Tax**" means the sales tax imposed in the Village pursuant to Village's Home Rule Sales Tax Ordinance under the Home Rule Municipal Retailers' Occupation Tax Act, 65 ILCS 5/8-11-1, and the Home Rule Municipal Service Occupation Tax Act, 65 ILCS 5/8-11-5. The Home Rule Sales Tax as of the Commencement Date is two percent (2.0%).

G. "**Property**" means the property legally described in **Exhibit A** attached hereto and, by this reference, incorporated herein.

H. "**Requirements of Law**" shall have the meaning set forth in Subsection 4H of this Agreement.

I. “**Retailers’ Occupation Tax Act**” means the Illinois Retailers’ Occupation Tax Act, 35 ILCS 120/1 *et seq.*, as the same has been, and may, from time to time hereafter be, amended.

J. “**Sales Taxes**” means, collectively, any and all taxes imposed and collected by the State of Illinois pursuant to the Home Rule Sales Tax, the Retailer’s Occupation Tax Act, and the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*; and, subject to Section 4D of this Agreement, any other “sales tax” or successor tax that may be enacted by the State of Illinois that the Village is able to verify as being generated from the Property; but excluding a rate greater than 1.5% of the Home Rule Sales Tax.

K. “**Sales Tax Rebate**” means the rebate payment to the Developer of a portion of the Sales Taxes that the Village receives that it is required to make pursuant to this Agreement.

L. “**Sales Tax Year**” means the period of time commencing on the Commencement Date and ending on the last day of that calendar year (December 31), and each of the 22 succeeding years thereafter ending on December 31 under this Agreement.

M. “**Term Sheet**” means the “Term Sheet”, and approved by the Developer, the Village, and West Dundee, setting forth their respective and mutual understanding of, and obligations with respect to, the Proposed Development, as set forth in Exhibit C hereof.

N. “**West Dundee**” means the Village of West Dundee, Kane County, Illinois.

SECTION 3. COMMENCEMENT OF SALES TAX REBATE.

The “**Commencement Date**” under this Agreement is hereby declared to be the substantial completion of the Components A, B, C, D and E of the Project located in the Village.

SECTION 4. SALES TAX REBATE.

A. **Maximum Total Rebate.** In no event shall the Village rebate to the Developer more than a total of \$7,600,000.00 (excluding interest) as a result of this Agreement. The Sales Tax Rebate includes only those Sales Taxes generated by the Developer’s Property described on Exhibit A, as set forth in the Term Sheet. Any amount paid to the Developer by the Village from tax increment financing revenues shall reduce, dollar-for-dollar, the maximum total rebate to be paid to the Developer pursuant to this Agreement.

B. Calculation of Sales Tax Rebate.

1. **Sales Tax Rebate Percentages.** Beginning on the Commencement Date, the Village shall rebate to the Developer a portion of the Sales Tax generated by the operations on the Property during each Sales Tax Year or as otherwise set forth in a Note in accordance with the percentage formula set forth below:

- a. First \$771,000 of Sales Taxes generated at the Property - no Sales Tax Rebate

- b. The Sales Taxes generated by the Property in excess of \$771,000.00 (the “**Incremental Sales Taxes**”) – 70% of Incremental Sales Taxes rebated to Developer, subject to Section 4B3 of this Agreement.

2. **No Rebate Below \$771,000.00 of Base Sales Taxes.** In no event shall the Village rebate to the Developer any Sales Tax generated by the Property during any Sales Tax Year in which the Sales Tax generated is less than or equal to \$771,000.00.

3. **Reimbursement of Village's Costs.** Prior to payment of any Incremental Sales Taxes to the Developer pursuant to Section 4B1, the Village will use such Incremental Sales Taxes to reimburse itself for costs incurred in connection with the preparation and negotiation of this Agreement, up to a maximum of \$100,000.00. Any amount paid to the Village from tax increment financing revenues as reimbursement of such costs shall reduce, dollar-for-dollar, the maximum reimbursement to be paid to the Village pursuant to this Section 4B3.

4. **Issuance of Note.** Any Note issued by the Village to pay Incremental Sales Taxes to the Developer will bear an interest rate of 5.00%. Interest will be simple interest, and will not compound to principal.

C. **Village Payment.** Within 120 days after the end of each Sales Tax Year, following the Commencement Date, the Village shall pay the applicable Sales Tax Rebate for that portion of the particular Sales Tax Year to the Developer, based on the records of the Illinois Department of Revenue. If, for any reason, the State of Illinois fails to distribute the Sales Tax revenue to the Village in sufficient time for the Village to make the annual payments, the Village shall provide notice of that fact to the Developer. In that event, the Village shall make the required Sales Tax Rebate payment within 60 days after the date on which the Village actually receives the Sales Tax revenue due the Village for the applicable, annual payment period. To the extent necessary in that circumstance, as determined by the Village, the parties agree that the Village may require the Developer to submit such specified financial statements and copies of the applicable State of Illinois Sales Tax Reports from those businesses operating on the Property as are necessary to verify the amount of Sales Tax collected from operations at the Property. The Developer shall require its tenants to sign releases authorizing the State of Illinois to issue the reports to the Village. Any information received by the Village from Developer or its tenants under this Agreement shall be kept confidential to the extent allowed by the Requirements of Law.

D. **Change in the Law.**

1. The Village and the Developer acknowledge and agree that the Village’s obligation to pay the Sales Tax Rebate to the Developer is predicated on existing State law governing the distribution of Sales Taxes to the Village, including, without limitation, the Retailers’ Occupation Tax Act and the Service Occupation Tax Act. The Village and the Developer further acknowledge that the General Assembly of the State has, from time to time, considered proposals to modify or eliminate the distribution of Sales Taxes to Illinois

municipalities. The Village and the Developer make express provision for the effect of any change upon the operation of this Agreement in Paragraph 2 of this Subsection.

2. In the event that the State of Illinois amends or repeals either the Retailers' Occupation Tax Act or the Service Occupation Tax Act, or both, or makes any other promulgation, enactment, or change that eliminates the distribution of any Sales Tax, to the Village, or otherwise alters the distribution formula in a manner that prevents the Village and the Developer from determining with a reasonable degree of certainty the amount of the Sales Tax ("**Change in Law**"), the provisions of this Agreement with regard to any one or more Sales Taxes, generated from the Facility on or after the effective date of the Change in Law shall automatically be terminated, and the Village shall have no obligation whatsoever to pay to the Developer any Sales Tax Rebate with regard to such Sales Tax generated on or after the effective date of the Change in Law, subject to the following: if, within the period five years after the effective date of the Change in Law, the State of Illinois effects another Change in Law that either results in the distribution of such Sales Tax, to the Village or allows the Village and Developer to determine with a reasonable degree of certainty the amount of such Sales Tax, the provisions of this Agreement with regard to such Sales Tax, generated from the Facility shall automatically be reinstated and will continue for the remaining Term of this Agreement.

However, if a Change in Law results in replacement taxes for such Sales Tax, directly resulting from Gross Receipts at the Property as contemplated hereunder, then, for purposes of this Agreement, the replacement taxes shall be defined as Sales Taxes, subject in all respects to the Village's actual receipt of its portion of the replacement taxes as well as the Village's authority under state law to provide for rebate of the replacement taxes, as contemplated herein.

If there is a Change in Law, the parties will cooperate with each other to accomplish the intent of this Agreement as set forth in Section 1 of this Agreement.

E. No Guarantee. The parties acknowledge and agree that none of the terms, conditions, or provisions of this Agreement shall be construed, deemed, or interpreted as (1) a guarantee that the Village will receive any Sales Taxes as a result of the operation of the SHM Shopping Center on the Property, or (2) a requirement or obligation by the Developer or any of its tenants to generate Gross Receipts from the Property.

F. Limited Liability. Notwithstanding any other provision of this Agreement to the contrary, the Village's obligation to pay the Sales Tax Rebate payments shall not be a general debt of the Village or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Sales Tax received by the Village, as specifically defined in Section 2 of this Agreement. The Developer shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the Sales Tax Rebate payments, and no execution of any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or other property of the Village (unless the Village refuses to make the payment to the Developer in violation of this Agreement). No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future director, member, elected or appointed officer, official, agent, representative, employee, or attorney of the Village in his or her individual capacity.

G. Closure.

1. Unless mutually agreed otherwise by the Parties pursuant to an amendment to this Agreement, in the event that, at any time during the term of this Agreement, the Developer permanently abandons, closes, or terminates the use of more than 50% of the square footage of the SHM Shopping Center (subject to Paragraph 4G of this Agreement), or ceases the use of more than 50% of the square footage of the Property for a continuous period of six months (“**Closure**”), then: (a) the provisions of this Agreement with regard to Sales Tax generated from the Property shall, as of the date of the Closure, automatically terminate and become null and void and be of no further force or effect, and the Village shall have no obligation whatsoever to perform any of the Sales Tax Rebate obligations in Section 4 of this Agreement with regard to any Sales Tax collected by the Developer in the Sales Tax Year of the Closure; and (b) within 90 days after the Closure, the Developer shall be required to refund to the Village 50 percent of the Sales Tax Rebates received by the Developer.

2. In the event that, at any time during the Term of this Agreement, under the conditions imposed by Paragraph 1 of this Subsection G, the Developer is required to refund to the Village any part of the Sales Tax Rebate received by the Developer prior to the date of Closure, then to secure the refund, this Agreement shall be recorded against the Property, with the consent of the lender (if applicable), or provisions shall be made for such alternate forms of security as mutually agreed upon.

3. The Developer shall provide the Village with no less than 60 days written notice prior to any Closure, except to the extent any Requirement of Law prohibits Developer from providing 60 days’ notice, in which event Developer will provide notice in the minimum time allowed by the Requirements of Law.

4. Notwithstanding the foregoing, in the event that a Closure is exclusively the result of a Force Majeure, the Developer shall have no obligation to refund Sales Tax Rebates received prior to the Closure. This Subsection 4G shall not apply to Temporary Closures as defined in Section 10 of this Agreement.

H. Limitations on Payment of Sales Tax Rebate. The Developer acknowledges and agrees that the Property must be used and maintained in strict compliance with the Term Sheet and all applicable Village codes, ordinances, and regulations (collectively, the “**Requirements of Law**”), and that if the Developer fails to comply in all material respects with this Agreement or the Requirements of Law, or cure any defects within the time allowed herein or in the Term Sheet, the Village will suspend payment of the Sales Tax Rebate for the entire period that the Developer is not in material compliance with the Requirements of Law, and the Village will have no further obligation to provide any Sales Tax Rebate to the Developer until the Village determines in its reasonable discretion that the Developer is, during the Term, in material compliance with the Requirements of Law, at which time all suspended payments will be remitted to Developer. A legal nonconformity created as a result of the Village’s amendment to the Requirements of Law subsequent to the Commencement Date will not constitute a failure of the Developer to comply with the Requirements of Law.

SECTION 5. CONSTRUCTION AND OPERATIONAL REQUIREMENTS.

A. Prevailing Wage Act. The Developer acknowledges and agrees that it will comply with the applicable provisions of the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 *et seq.*, with respect to any demolition or construction on the Property that is paid for wholly or in part out of the Sales Tax Rebate provided pursuant to this Agreement.

B. Diligent Pursuit of the Project. The Developer must pursue, or cause to be pursued, all required redevelopment, demolition, construction, and installation of structures, buildings, and improvements on the Property in a diligent and expeditious manner, and in strict compliance with the Village Code and the Requirements of Law. Specifically, and without limitation of the foregoing, the Developer must obtain the consent of the anchor tenants and then commence demolition of the improvements to be removed for the Project within 60 days after the Effective Date of this Agreement.

C. Relocation of Retail Operations. Neither the Developer nor the Village, nor their successors or assigns, may provide any incentive for the relocation of Sears or Macy's from West Dundee to the Village in contravention of Section 3(q)(13) of the TIF Act or Section 8-11-21 of the Illinois Municipal Code. Any relocation of Kohl's, Carson Pirie Scott, Sears or Macy's from their current location across the municipal border using any municipal incentives shall require mutual agreement of the Developer and Villages.

SECTION 6. RESERVED.

SECTION 7. REAL PROPERTY VALUATION.

The Developer recognizes that the Village has legitimate interests and concerns regarding the valuation and assessment of the Property for real estate tax purposes. Accordingly, the Developer agrees that, throughout the Term of this Agreement, it shall not commence, initiate, or pursue any protest or appeal of the real property valuation of the Property established by the Kane County Assessor.

SECTION 8. FORCE MAJEURE.

Time is of the essence of this Agreement; however, a Party shall not be deemed in material breach of this Agreement with respect to construction of the Project, if such Party fails to timely perform the same and such failure is due in whole or in part to war, acts of God, strikes, labor disputes, inability to procure materials, or similar causes beyond the reasonable control of such Party but only to the extent such event or occurrence was not reasonably foreseeable or caused by such Party claiming the delay; and provided that Force Majeure shall not include delays caused by weather conditions, unless those conditions are unusually severe or abnormal considering the time of year and the particular location of the Property ("***Force Majeure***"). If one of the foregoing events shall occur or either Party shall claim that such an event shall have occurred, the Party to whom such claim is made shall investigate same and consult with the Party making such claim regarding the same and the Party to whom such claim is made shall grant an extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence from the time the Force Majeure concludes, provided that the failure of performance was reasonably caused by such Force Majeure.

SECTION 9. **LITIGATION AND DEFENSE OF AGREEMENT.**

A. Litigation. If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against either party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of either party to perform its obligations under, or otherwise to comply with, this Agreement (“***Litigation***”), the party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.

B. Defense. The Village and the Developer do hereby agree to use their respective commercially reasonable efforts to defend the validity of this Agreement, and all ordinances and resolutions adopted and agreements executed by such party pursuant to this Agreement, including every portion thereof and every approval given, and every action taken, pursuant thereto. Each party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Village and the Developer do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

C. Indemnity. The Developer agrees to, and does hereby, hold harmless and indemnify the Village, the Corporate Authorities, and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of such parties in connection with any claim brought by a third party against any of the parties identified in this paragraph arising out of or relating to this Agreement; provided, however, that the Developer’s indemnification obligation shall be reduced to the extent the indemnified claims are caused, if at all, by the willful misconduct or gross negligence on the part of the Village or to the extent the indemnified claims are caused, if at all, by the Village’s failure to comply with any material requirement of the Requirements of Law (except if such failure to comply with such Requirements of Law is caused, if at all, by the acts or omissions of Developer, its agents, representatives, or engineers).

D. Defense Expense. The Developer shall, and does hereby agree to, pay all reasonable expenses, including legal fees and administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims referenced in Subsection 8.C of this Agreement.

SECTION 10. **TERM.**

A. General. This Agreement shall be in full force and effect commencing on the Effective Date and through December 31, 2038, or until the Developer receives the lessor of 23% of the actual Project Costs or \$7,600,000.00 (excluding interest) in Sales Tax Rebate payments from the Village (or such reduced amount as provided in Section 4.A of this Agreement) pursuant to the terms of this Agreement, whichever occurs first (“***Term***”). This Agreement shall, during its Term, run with and bind the Property and shall inure to the benefit of and be enforceable by the Developer and the Village, and any of their respective permitted legal representatives, heirs, grantees, successors, and assigns.

B. Temporary Closure. If the Property temporarily closes (“*Temporary Closure*”) due to renovation of the Property or damage or Force Majeure, then, in each case, the Term of this Agreement shall be automatically extended for a period equal to the period commencing on the date of the Temporary Closure through the date on which the Property reopens (“*Temporary Closure Period*”), the Village will continue to make any and all payments during a Temporary Closure Period as required by Subsection 4C of this Agreement, but in no event beyond December 31, 2038.

SECTION 11. RELEASE OF INFORMATION.

The Developer agrees to execute and provide all documentation necessary to cause the Illinois Department of Revenue to release to the Village the Sales Tax generated by the Developer from the Property, including copies of State of Illinois Sales Tax Reports, during each of the Sales Tax Years pursuant to applicable State law. Any information received by the Village from Developer under this Agreement shall be kept confidential to the extent allowed by the Requirements of Law.

SECTION 12. PAYMENT OF VILLAGE FEES AND COSTS.

During the Term, the Developer shall pay to the Village, as and when due, all application, inspection, and permit fees, and all other fees, charges, and contributions required by applicable Village codes, ordinances, resolutions, rules, or regulations. The preceding sentence does not relieve the Developer from complying with any Requirements of Law.

SECTION 13. LIABILITY AND INDEMNITY OF VILLAGE.

A. No Liability for Village Review. The Developer acknowledges and agrees (1) that the Village is not, and shall not be, in any way liable for any violations of restrictive covenants applicable to the Property that may occur, or for any damages or injuries that may be sustained, as the result of the Village’s review and approval of any plans for the Property, or as a result of the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Property; and (2) that the Village’s review and approval of any of the plans and the issuance of any of the approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, or licensees, or any third party, against restrictive covenant violations or damage or injury of any kind at any time.

B. Village Procedures. To the best of Developer’s knowledge, all notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement. Developer agrees not to challenge any of those actions on the grounds of any procedural infirmity or of any denial of any procedural right.

C. Indemnity. The Developer agrees to, and does hereby, hold harmless and indemnify the Village, the Corporate Authorities, all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of those parties in connection with (i) the Village’s review and approval of any plans, or the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Property; (ii) any actions taken by the Village

pursuant to Subsection B of this Section; (iii) the development, construction, and maintenance of the Property; and (iv) the performance by the Developer of its obligations under this Agreement and all related ordinances, resolutions, or other agreements; provided, however, that Developer's indemnity under this Agreement shall be reduced to the extent the indemnified claims are caused, if at all, by the willful misconduct or gross negligence on the part of the Village or to the extent the indemnified claims are caused, if at all, by the Village's failure to comply with any material requirement of the Requirements of Law (except if such failure to comply with such Requirements of Law is caused, if at all, by the acts or omissions of Developer, its agents, representatives, or engineers).

D. Defense Expenses. The Developer shall, and does hereby agree to, pay all expenses incurred by the Village in defending itself with regard to any and all of the indemnified claims identified in Subsection C of this Section. These expenses shall include all out-of-pocket expenses, including attorneys' and experts' fees.

SECTION 14. ENFORCEMENT.

A. Enforcement. The parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement, including without limitation an action by Developer for payment of Sales Tax Rebates pursuant to the limitations provided in Section 4 of this Agreement; provided, however, that the Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the Village or any past, present, or future director, member, elected or appointed officer, official, agent, representative, employee, or attorney, of the Village on account of the negotiation, execution, or breach of this Agreement. In the event of a judicial proceeding brought by one party to this Agreement against the other party to this Agreement pursuant to this Section, the prevailing party shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the judicial proceeding.

B. Notice and Cure. Neither party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section without first providing written notice to the other party of the breach or alleged breach and allowing 30 business days to cure the breach or alleged breach. If the breach cannot be cured within the 30-business-day period ("***Time for Cure***"), then the Time for Cure shall be extended accordingly, provided that the notified party has promptly commenced to cure the breach and continued to prosecute the cure of the breach with diligence.

SECTION 15. NATURE, SURVIVAL, AND TRANSFER OF OBLIGATIONS.

A. Obligations. The parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute both the personal obligation of the party liable for its payment, and the successors of that party.

B. Binding Effect. The Developer acknowledges and agrees that this Agreement shall be binding upon the Developer and any and all of the Developer's heirs, successors, permitted assigns, and the successor owners of record of all or any portion of the Property.

C. Transferee Assumption. To assure that any potential heir, successor, or permitted assign or successor owner has notice of this Agreement and the benefits and obligations created by it, the Developer agrees:

1. that this Agreement shall be recorded with the Kane County Recorder of Deeds as provided in Subsection 17.S of this Agreement;

D. Transfer Defined. For purposes of this Agreement, the term "transfer" shall be deemed to include any assignment, transfer, sale, transfer to a receiver or to a trustee in bankruptcy, transfer in trust, or other disposition of the Property, or any beneficial interest in the Property, in whole or in part, by voluntary or involuntary sale, foreclosure, restructuring, merger, sale and leaseback, consolidation, or otherwise.

E. Mortgagees of Property. This Agreement shall be binding on all mortgagees of the Property or other secured parties automatically upon such mortgagee assuming title to the Property, in whole or in part, by a foreclosure or a deed in lieu of foreclosure without the necessity of executing such assumption agreement. Until such time, however, a mortgagee or other secured party shall have no personal liability hereunder.

F. Assignments of Right to Sales Tax Rebates. It is the express intent of the parties that, except as expressly provided or allowed in this Subsection, this Agreement, and all of the rights and privileges granted pursuant to this Agreement with regard to rebates of Sales Taxes ("**Rebate Rights**"), are for the sole and exclusive benefit of the Developer. In the event that the Developer does, or attempts to, voluntarily or involuntarily transfer its interest in the SHM Shopping Center or any portion of the Property on which the SHM Shopping Center is located, in whole or in part, the Rebate Rights will remain with the Developer, unless requested otherwise by the Developer and approved by the Village, which approval may be withheld in the reasonable discretion of the Corporate Authorities. The Village agrees that its consent is not required under this Agreement with regard to a transfer to an affiliate of the Developer, provided that: (i) the Developer provides the Village with 60 days advance notice of the transfer; and (ii) the transfer complies with the other provisions of this Section, including, without limitation, Subsection C.

SECTION 16. REPRESENTATIONS AND WARRANTIES.

A. By the Village. The Village represents, warrants and agrees as the basis for the undertakings on its part contained in this Agreement that:

1. The Village is a home rule municipal corporation duly organized and validly existing under the law of the State of Illinois and has all requisite corporate power and authority to enter into this Agreement;

2. The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the

provisions of this Agreement: (i) have been duly authorized by all necessary municipal action on the part of the Village; (ii) require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement; and (iii) shall not, by lapse of time, giving of notice or otherwise, result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the Village is subject; and

3. To the best of the Village's knowledge, there are no proceedings pending or threatened against or affecting the Village or the Property in any court or before any governmental authority that involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement.

B. By the Developer. In order to induce the Village to enter into this agreement and to adopt its proceedings and grant the rights herein provided for, the Developer hereby warrants and represents to the Village as follows:

1. The Developer is a duly organized, validly existing corporation or limited liability company in good standing under the laws of the State of its incorporation and is qualified to do business in Illinois.

2. The Developer has the corporate authority and the legal right to make, deliver, execute, and perform this Agreement and has taken all necessary corporate actions necessary to authorize the execution, delivery, and performance of this Agreement.

3. All necessary consents of any Board of Directors, managing member(s), shareholders, creditors, investors, partners, judicial, or administrative bodies, governmental authorities, or other parties including specifically, but without limitation regarding the execution and delivery of this Agreement have been obtained.

4. The consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village, and the State of Illinois with respect to distribution of Sales Taxes) is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement.

5. The individuals executing this Agreement on behalf of the Developer have the power and authority to execute and deliver this Agreement on behalf of the Developer.

6. The execution, delivery, and performance of this Agreement (i) is not prohibited by any Requirement of Law or under any contractual obligation of the Developer; (ii) will not result in a breach or default under any agreement to which the Developer is a party or to which the Developer, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which the Developer or/and the Property, in whole or in part, is or are subject.

SECTION 17. GENERAL PROVISIONS.

A. Entire Agreement and Release of Claims. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and

negotiations and understandings between the parties, whether written or oral, relating to the subject matter of this Agreement. The Developer does hereby release and waive any and all claims and causes of action that it had or may have had against the Village related to or resulting from any past written or oral agreements, negotiations, understandings, or prior policies of the Village, or any actions that the Village may have taken or failed to take, relating to the subject matter of this Agreement.

B. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

C. Notices. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village Manager
Village of West Dundee
102 South Second Street
West Dundee, IL 60118

With a copy to:

Kathleen Field Orr & Associates
53 West Jackson Boulevard, Suite 964
Chicago, IL 60604
Attention: Kathleen Field Orr, Esq.

Notices and communications to the Developer shall be addressed to, and delivered at, the following address:

Spring Hill Mall, L.L.C.
1114 Avenue of the Americas, Suite 2800
New York, NY 10036-7703
Attn: Eric Dinenberg, Senior Vice President,
Development

With a copy to:

Darryl R. Davidson, Esq.
Miller, Canfield, Paddock and Stone, P.L.C.
225 West Washington Street, Suite 2600
Chicago, IL 60606

D. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflict of laws rules, of the State of Illinois.

E. 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.

F. Change in Laws. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include the laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

H. Time of Essence. Time is of the essence in the performance of this Agreement.

I. No Third Party Beneficiaries. Except as expressly provided in this Agreement, no claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or valid against the Village.

J. Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

K. Calendar Days and Time. Unless otherwise provided in this Agreement, any reference in this Agreement to “day” or “days” shall mean calendar days and not business days, except where expressly provided. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

L. Exhibits. Exhibits A, B and C are attached to this Agreement, and by this reference incorporated in and made a part of, this Agreement. In the event of a conflict between an Exhibit and the text of this Agreement, the text of this Agreement shall control.

M. Counterparts. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

N. Waiver. Neither the Village nor the Developer shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village or the Developer to exercise at any time any of those rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the Village's or the Developer's right to enforce those rights or any other rights.

O. 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.

P. Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

Q. Grammatical Usage and Construction. In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

R. Authority to Execute. The Village hereby warrants and represents to the Developer that the persons executing this Agreement on its behalf have been properly authorized to do so by the Corporate Authorities. The Developer hereby warrants and represents to the Village that (1) 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; and (2) it has taken all legal actions needed to authorize the execution, delivery, and performance of this Agreement.

S. Recording and Filing. After the execution of this Agreement, the Village shall: (1) promptly cause this Agreement to be recorded in the office of the Recorder of Kane County, Illinois; and (2) file a copy thereof within 30 days of the execution hereof with the Illinois Department of Revenue, in accordance with Section 8-11-21 of the Illinois Municipal Code, 65 ILCS 5/8-11-21.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST:

VILLAGE OF WEST DUNDEE
Kane County, Illinois

Village Clerk

Village Manager

ATTEST:

SPRING HILL MALL, L.L.C.

By: _____

By: _____

Its: _____

Its: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
)
)**SS**
COUNTY OF KANE)

This instrument was acknowledged before me on _____, 2015 by **JOSEPH A. CAVALLARO**, the **VILLAGE MANAGER** of the **VILLAGE OF WEST DUNDEE**, an Illinois home rule municipal corporation, and by **BARBARA TRAVER**, the Village Clerk of said municipal corporation.

Given under my hand and notarial seal this _____ day of _____, 2015.

Notary Public

My Commission Expires:

(SEAL)

STATE OF _____)
)
)**SS**
COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me to be the _____ of Spring Hill Mall, L.L.C., a limited liability company, and _____, personally known to me to be the _____ of said corporation, appeared before me this day in person and acknowledged that as such _____ and _____, they signed and delivered said instrument as their free and voluntary act and as the free and voluntary act of _____ for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 2015.

Notary Public

My Commission Expires:

(SEAL)

EXHIBIT A

Description of the Property

(Portions of the Spring Hill Mall in West Dundee, Illinois Subject to Sales Tax Rebate Sharing)

PIN Numbers:

EXHIBIT B
Proposed Development

Approximately 173,745 square feet of new and renovated commercial space, including (i) major renovation of the southwest portion of Spring Hill Mall to accommodate a 35,000 square foot theatre capable of accepting 1,250 guests, (ii) demolishing a vacant retail anchor to be replaced by a free-standing outlot for restaurant and commercial space, (iii) major renovation of the southwest entranceway to the Spring Hill Mall to add complementary retail space and re-tenant interior mall space for new and expanded retail uses, and (iv) parking areas associated with such improvements.

EXHIBIT C

Term Sheet

Spring Hill Mall, L.L.C., the Village of Carpentersville and the Village of West Dundee,
Dated August 31, 2015

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