

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
DECEMBER 6, 2011 AGENDA

| SUBJECT: | TYPE: | SUBMITTED BY: |
|---------------------------------------------------|--------------------------------------------------------|-----------------------------------|
| Sales Tax Rebate Agreement with Lemon Tree Grocer | ✓ Resolution Ordinance Motion Discussion Only | David Fieldman Village Manager |

SYNOPSIS

A resolution has been prepared authorizing a Sales Tax Rebate Agreement between the Village and Lemon Tree Grocer.

STRATEGIC PLAN ALIGNMENT

The Goals for 2011 to 2018 include *Strong, Diverse Local Economy* and *Steward of Financial and Environmental Sustainability* and *Exceptional Municipal Services*.

FISCAL IMPACT

The agreement will require the Village to rebate approximately \$14,000 in 2012 (100% of the sales taxes paid on the sale of groceries; estimated annual sales of \$1.4 million).

RECOMMENDATION

Approval on the December 13, 2011 active agenda.

BACKGROUND

The Village entered into a sales tax agreement with Michael's Fresh Market and Lemon Tree Grocer in 2009. The agreement required both Michael's Fresh Market and Lemon Tree Grocer to continue to operate. Michael's Fresh Market is no longer in business. Therefore the 2009 agreement is now void and will be superseded by this proposed agreement. The proposed agreement will provide for continued assistance to Lemon Tree Grocer for 100% of the sales tax provided only by grocery sales, including packaged liquor for eight years.

The proposed agreement with Lemon Tree Grocer, located at 5101 Mochel Drive, includes the following key terms:

Key Terms

- For a period of eight years, the Village shall rebate 100% of the sales tax for only the sale of groceries, including package liquor.
- The Village shall withhold the initial quarterly payment.
- No payments shall be made unless Lemon Tree is in compliance with all Village ordinances and the terms of the agreement. If any violation exists for 90 days or more, the Village may permanently withhold one quarterly payment for each period of 90 days of the violation.
- Lemon Tree Grocer shall agree to operate the grocery store for not less than 13 years from the date of the agreement and 51% of the sales in each quarter shall be from the sale of groceries.
- If Lemon Tree fails to continue to operate, it shall forfeit the withheld quarterly payment and shall pay back the tax rebate on the following schedule:
 - If Lemon Tree or an approved successor fails to continue to operate during:

- Year 1 through 3: 100% of the Incentive Payment
 - Year 4 through 6: 75% of the Incentive Payment
 - Year 7 through 10: 50% of the Incentive Payment
 - Year 11 through 13: 25% of the Incentive Payment
- At the end of each quarter Lemon Tree Grocer shall submit true and accurate sales figures by category along with an affidavit. The Village has the right to audit sales figures provided by Lemon Tree.

ATTACHMENTS

Resolution

Sales Tax Rebate Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
SALES TAX REBATE AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND
THE LEMON TREE, LLC**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Sales Tax Rebate Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and The Lemon Tree, LLC d/b/a Lemon Tree Grocer (“Lemon Tree”), as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

**SALES TAX REBATE AGREEMENT BETWEEN THE VILLAGE OF
DOWNERS GROVE AND THE LEMON TREE, LLC**

THIS AGREEMENT (this “Agreement”), is made and entered into as of the ____ day of _____ by and between the **VILLAGE OF DOWNERS GROVE, ILLINOIS**, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the “Village”), and The Lemon Tree, LLC, an Illinois limited liability company (“Lemon Tree”). (The Village and Lemon Tree are sometimes referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, the Village is a home rule unit of government in accordance with Article VII, Section 6, of the Constitution of the State of Illinois, 1970; and

WHEREAS, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise be in the best interests of the Village; and

WHEREAS, Lemon Tree currently leases the property commonly known as 5101 Mochel Drive, Downers Grove (“Lemon Tree Grocer”); and

WHEREAS, Lemon Tree represents and warrants to the Village that Lemon Tree, and its principals, are skilled in the development and operation of a grocery store and are able to provide to the Village skill, knowledge and expertise in operating the Lemon Tree Grocer; and

WHEREAS, Lemon Tree currently operates a specialty grocery store at 5101 Mochel Drive and has done so since August 13, 2010 and desires to continue its operation at the Lemon Tree Grocer; and

WHEREAS, Lemon Tree and the Village entered into a Sales Tax Rebate Agreement along with MMI, Inc. (Michael's) on June 16, 2009 providing for sales tax rebate to Lemon Tree, which 2009 Agreement is null and void as this current Agreement will supersede it; and

WHEREAS, the Village has determined that it is desirable and in the Village's best interest to continue to assist Lemon Tree in the manner set forth herein and as this Agreement may be supplemented and amended; and

WHEREAS, this Agreement has been submitted to the Corporate Authorities of the Village for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof, and any and all actions of the Corporate Authorities of the Village precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

WHEREAS, this Agreement has been submitted to the principals of Lemon Tree for consideration and review, which principals have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon Lemon Tree according to the terms hereof, and any and all action of Lemon Tree precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE
INCORPORATION OF RECITALS

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations and agreements of the Village and of Lemon Tree according to the tenor and import of the statements in such Recitals.

ARTICLE TWO
DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, including above in the recitals hereto and as follows:

“Agreement” means this Redevelopment and Sales Tax Rebate Agreement and all of the exhibits and attachments referenced herein and made a part hereof.

“Change in Law” means the occurrence, after the Effective Date, of an event described below, provided (a) such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and (b) such event is not caused by the Party relying thereon: Change in Law includes any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the Village); (ii) the order or judgment of any federal or state court, administrative agency or other governmental body; (iii) the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the

suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the services to be performed under this Agreement; or (iv) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village or with respect to those made by the Village, only if they violate the terms of this Agreement).

“Corporate Authorities” means the Mayor and Village Council of the Village of Downers Grove, Illinois.

“Day” means a calendar day.

“Party” means the Village or Lemon Tree and their successors and/or assigns as permitted herein, as the context requires.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

“Project” means the development, construction, financing, completion, and continuation of the Lemon Tree Grocer.

“Sales Tax” or “Sales Tax Revenue” means that net portion of taxes imposed by the State of Illinois for distribution to the Village pursuant to the Retailers=Occupation Tax Act (as said Act may be amended from time to time) and which are collected by the State and distributed to the Village, and all revenue derived from such taxes. It is expressly understood that if a governmental or legislative body other than the Village enacts any law or statute which results or which may result in any material changes or amendments to the foregoing sales tax provisions, which changes or amendments prohibit the Village from complying with this Agreement or which adversely affect the Village=s ability to comply herewith, then the Village and Lemon Tree

shall reevaluate this Agreement and the incentives provided hereunder and may mutually agree to restructure the Agreement. If a restructured agreement cannot be agreed to by both parties within a reasonable period of time not more than sixty (60) days from the effective date of the law or statute which has materially affected the Village's compliance herewith, then this Agreement shall automatically terminate releasing both parties from their obligations hereunder. The use of the terms "sales tax" and "sales tax revenue" shall not be construed to mean any additional taxes imposed by the Village as a home rule municipality.

“State” means the State of Illinois.

“Uncontrollable Circumstance” means any event which:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon; and
- (b) is one or more of the following events:
 - (i) a Change in Law;
 - (ii) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, nuclear incident, war or naval blockade;
 - (iii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary weather conditions or other similar Act of God;
 - (iv) governmental condemnation or taking other than by the Village;
 - (v) strikes or labor disputes, other than those caused by the acts of Lemon Tree ;

Uncontrollable Circumstance shall not include: (1) economic hardship or impracticability of performance, (2) commercial or economic frustration of purpose, (3) unavailability of

materials, strikes or labor disputes caused by the acts of Lemon Tree, or (4) a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

“Village” means the Village of Downers Grove, Illinois, an Illinois municipal corporation.

ARTICLE THREE **CONSTRUCTION**

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) Definitions include both singular and plural.
- (b) Pronouns include both singular and plural and cover all genders.
- (c) The word “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.
- (d) Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (e) All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the terms of this Agreement shall control.
- (f) Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.

(g) The Village Manager, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. Lemon Tree is entitled to rely on the full power and authority of the persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village.

(h) In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Lemon Tree in a different manner, Lemon Tree hereby designates Timothy Canning as its authorized representative who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Lemon Tree and with the effect of binding Lemon Tree in that connection. Lemon Tree shall have the right to change its Authorized Representative by providing the Village with written notice of such change in accordance with the terms of this Agreement.

ARTICLE FOUR **IMPLEMENTATION OF PROJECT**

The Village and Lemon Tree agree to cooperate in implementing the Project in accordance with the Parties' respective obligations set forth in this Agreement.

ARTICLE FIVE **VILLAGE'S OBLIGATIONS**

1. **General Rebate:** For a period of eight (8) years commencing October 1, 2011 ("General Rebate Period") unless terminated sooner pursuant to this Agreement, the Village

agrees to rebate 100% of the Sales Tax only for sales of groceries, including package liquor, from the Lemon Tree Grocer (“General Rebate”). The Village has the right to audit the sales figures submitted by Lemon Tree.

2. ***Payment of General Rebate:*** The amount of the General Rebate shall be paid quarterly. For the duration of this Agreement, Lemon Tree shall authorize the Illinois Department of Revenue to release monthly sales tax payments to the Village from which rebate calculations will be made. Lemon Tree agrees to cooperate and provide such additional documents as may be reasonably needed to verify the General Rebate. The Village will make payment to Lemon Tree within thirty (30) days after it receives sales tax payments from the State and the Village shall use reasonable diligence to collect such payments.

However, the Village shall withhold the initial quarterly payment. If Lemon Tree fails to continue to operate the Lemon Tree Grocer in accordance with Article 6.1 hereof, the withheld quarterly payment shall be automatically forfeited to the Village in accordance with Article 6.3. Upon expiration of the term of this Agreement, if Lemon Tree is in compliance with Article 6.1, the withheld quarterly payment shall be paid to Lemon Tree.

3. ***Compliance with Village Ordinances:*** No General Rebate payments shall be made unless and until Lemon Tree is in compliance with all terms and conditions of any Village Ordinances and all other terms and conditions of this Agreement. The Village shall only be obligated to make General Rebate Payments if Lemon Tree has no outstanding Village ordinance violations or debt to the Village. In the event that a violation of a Village ordinance exists for ninety (90) days or more, the Village reserves the right to permanently withhold payment of one quarterly rebate payment for each ninety (90) day violation period. The Village shall not unreasonably withhold the issuance of any permits or rebate payments. Any General Rebate

payments made prior to the existence of any violation are not required to be returned to the Village pursuant to this section.

ARTICLE SIX
LEMON TREE'S OBLIGATIONS

1. *Project - Commitment to Continue the Lemon Tree Grocer:* The parties agree that the General Rebate is contingent upon (i) the continued operation of the Lemon Tree Grocer for a period of not less than thirteen (13) years from the effective date of this Agreement (October 1, 2011); and (ii) that the primary business (at least 51% of its sales in each quarter) of the Lemon Tree Grocer are from the sale of groceries, as opposed to the café component of the Lemon Tree Grocer. To that end, Lemon Tree agrees to continue the operation of a specialty grocery store at the Lemon Tree Grocer which offers at a minimum prepared foods, packaged foods, fresh meat, fresh produce, fresh bread, delicatessen, and an outdoor dining area and agrees that the hours and days of operation of the Lemon Tree Grocer shall be at a minimum seven days a week, six hours a day and such hours and services shall remain unchanged during the term of this Agreement, subject to reasonable holiday closings. If, at any time during this time period, Lemon Tree, or a successor, ceases to operate the Lemon Tree Grocer as a specialty grocery store, then the Village shall be released and discharged from any further obligation to make payments under this Agreement, and Lemon Tree or its successors shall reimburse the Village in accordance with Article 6.2 of this Agreement. The failure to meet this commitment is not a breach, but rather a foreseeable event for which the offsetting terms have been agreed to in Article 6.2 of this Agreement. At the end of each quarter and prior to receiving the General Rebate for said quarter, Lemon Tree shall provide to the Village an affidavit and any other

documentation, in a form acceptable to the Village's Finance Director, showing true and accurate sales figures by category.

2. Reimbursement: In the event Lemon Tree, or any approved successor, fails to continue the operation of the Lemon Tree Grocer as provided in Article 6.1 of this Agreement, Lemon Tree, or such approved successor, shall forfeit the withheld quarterly payment and shall reimburse to the Village within sixty (60) days of receipt of a written demand from the Village specifying the amount of the reimbursement all or a portion of the Rebate Payments paid hereunder according to the following schedule:

If said event occurs during:

- * *Year one through year three - One hundred percent (100%) of the Rebate Payments*
- * *Year four through year six - seventy-five percent (75%) of the Rebate Payments*
- * *Year seven through year ten - fifty percent (50%) of the Rebate Payments*
- * *Year eleven through year thirteen – twenty-five percent (25%) of the Rebate Payments*

After the expiration of a sixty (60) day written demand by the Village to Lemon Tree or its successor specifying the amount due, the Village may, in its sole discretion, pursue any and all available legal remedies to recover said monies, including, without limitation,, proceed with an action in law or in equity to recover the amounts owed.

3. Compliance with Village Ordinances: Lemon Tree shall be in compliance with all Village ordinances and regulations at all times during the term of this Agreement.

4. Compliance with Applicable Laws: Lemon Tree shall at all times acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village.

5. **Copies of Agreements:** Upon request of the Village, Lemon Tree shall submit copies of any and all leases, contracts to purchase and property title documents for land subject to the terms of this Agreement.

6. **Prevailing Wage:** Lemon Tree is hereby notified by the Village that work contemplated by this Agreement may be subject to the Prevailing Wage Act 820 ILCS 130/1 *et seq.* Lemon Tree agrees to comply with all applicable provisions of the Illinois Prevailing Wage Act as administered by the Illinois Department of Labor (IDOL). Lemon Tree further agrees to contact IDOL for a determination of applicability of the Prevailing Wage Act to the projects contemplated by this Agreement. If required by IDOL, Lemon Tree agrees to pay the prevailing wage rates and to require that all of its subcontractors pay prevailing wage to any laborers, workers or mechanics who perform work on the projects contemplated by this Agreement. For applicable rates, go to the State of Illinois – Department of Labor website and use the most current DuPage County rate. Lemon Tree recognizes and agrees that it is solely responsible for compliance with the Prevailing Wage Act and agrees to fully indemnify, defend and hold harmless the Village pursuant to Section 7 below with regard to any actions or proceedings instituted regarding such compliance.

7. **Indemnification:** In the event that any third party or parties institutes any legal proceedings against the Village and/or Lemon Tree, which relate to the terms of this Agreement, then Lemon Tree shall indemnify and hold harmless the Village from any and all such proceedings. Further, Lemon Tree, upon receiving notice from the Village of such legal proceedings, shall assume, fully and vigorously, the entire defense of such lawsuit or proceedings and any and all costs and expenses of whatever nature relating thereto; provided, however, that Lemon Tree may not at any time settle or compromise such proceedings without

the Village's consent and even then only so long as such settlement or compromise does not involve an admission of wrongdoing on the part of the Village, nor any liability on the part of the Village, monetary or otherwise.

If the Village, in its sole discretion, determines that there is, or may probably be, a conflict of interest between the Village and Lemon Tree on an issue of material importance to the Village, or which may reasonably have a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event that the Village exercises such option, then Lemon Tree shall reimburse the Village from time to time on written demand from the Village and notice of the amount due for any and all reasonable out-of-pocket costs and expenses, including but not limited to court costs, reasonable attorney's fees, witnesses' fees and/or other litigation expenses incurred by the Village in connection therewith.

ARTICLE SEVEN
BREACH

In the event of breach of any of the terms and conditions of this Agreement, the non-breaching party shall have the right to terminate this Agreement, which will not relieve the breaching party from performance. In addition, the non-breaching party shall have the right, by any action or proceeding at law or in equity, to secure the specific performance of the covenants and agreements herein contained, and may be awarded damages or specific performance, or both. The foregoing rights and remedies shall be cumulative and exclusive.

In the event that the Village institutes legal proceedings against Lemon Tree for a breach of this Agreement, or any term or condition hereof, and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in any judgment against Lemon Tree all costs and expenses of such legal proceedings incurred by the Village, including but not limited to

court costs, reasonable attorney's fees and witnesses' fees, incurred in connection therewith. Either party may, in its sole discretion, appeal any judgment rendered in relation thereto.

ARTICLE EIGHT
TRANSFER OF INTEREST

The parties acknowledge that any change in ownership, in whole or in part, of Lemon Tree will render this Agreement void unless otherwise agreed to in writing by all parties hereto.

ARTICLE NINE
LIMITATION OF ACTIONS

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 any amount or in excess of any specific sum agreed by the Village to be paid to Lemon Tree 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 Lemon Tree against the Village, its officers, directors, 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 Lemon Tree, its officers, directors, agents and employees, in excess of its obligations to the Village 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 Lemon Tree, its officers, directors, agents and employees, in excess of its obligations hereunder.

ARTICLE TEN
MISCELLANEOUS PROVISIONS

1. ***Additional Documentation:*** Each party agrees to execute any additional documents which may be required to carry out the provisions of this Agreement; and Lemon Tree particularly agrees to execute such other documents which may be necessary to enable the Village to verify the amount of sales tax it has received from time to time.

2. ***Jurisdiction:*** This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be DuPage County Circuit Court or the Northern District of Illinois.

3. ***Waiver:*** A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement.

4. ***Notice:*** Any notices required in this Agreement shall be effective when in writing and three (3) days after mailing by certified mail return receipt requested, or by delivering the same in person to an officer of such party or by prepaid telegram or private overnight courier, when appropriate, addressed to the party to be notified.

All notices to Downers Grove shall be sent to:

Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515

All notices to Lemon Tree shall be sent to:

The Lemon Tree, LLC
5101 Mochel Drive
Downers Grove, IL 60515

5. ***Further Assistance and Corrective Instruments:*** The Village and Lemon Tree agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the Village's sound legal discretion.

6. ***Time of the Essence:*** Time is of the essence of this Agreement.

7. ***Integration:*** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

8. ***Counterparts:*** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

9. ***Severability:*** If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

10. ***Choice of Law:*** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

11. ***Entire Contract and Amendments:*** This Agreement (together with the exhibits attached hereto) is the entire contract between the Village and Lemon Tree relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and Lemon Tree, and may not be modified or amended except by a written instrument executed by the Parties hereto.

12. ***Third Parties:*** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the Village and Lemon Tree , nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or Lemon Tree , nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or Lemon Tree . This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

13. ***Successors in Interest:*** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective authorized successors and assigns. Notwithstanding anything herein to the contrary, the Village may not delegate its obligation hereunder or transfer any interest in the Property without the express written approval of Lemon Tree.

14. ***No Personal Liability of Officials of Village:*** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Mayor, Village Council member, Village Manager, any official, officer, partner, member, director, agent, employee or attorney of the Village, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village 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 that connection.

15. ***Repealer:*** To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

16. **Term:** This Agreement shall remain in full force and effect through October 1, 2019. This Agreement may be extended for two (2) additional five (5) year terms, subject to the approval of the Village Council for each extension.

17. **Municipal Limitations:** All municipal commitments are limited to the extent required by law.

18. **Effectiveness:** The Effective Date for this Agreement shall be the day on which this Agreement is fully executed pursuant to a duly enacted Village ordinance authorizing the execution and adoption of this Agreement. Lemon Tree shall execute this Agreement prior to Village Council authorization of execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

VILLAGE OF DOWNERS GROVE, an Illinois
municipal corporation

The Lemon Tree, LLC

By: Mayor

By:

ATTEST:

ATTEST:

By: Village Clerk

By: