

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
JUNE 16, 2009 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Sales Tax Rebate Agreement with Michael's Fresh Market and the Lemon Tree Grocery	✓ Resolution Ordinance Motion Discussion Only	Michael Baker Deputy Village Manager

SYNOPSIS

A resolution has been prepared authorizing approval of an agreement with Michael's Fresh Market and the Lemon Tree Grocery that would provide for a sales tax rebate as a financial incentive to locate a grocery store in downtown Downers Grove.

STRATEGIC PLAN ALIGNMENT

The Strategic Plan for 2008-2013 provides for a goal of *Authentic Downtown – The Heart of Our community*. A supporting objective includes *Increase Service Businesses, Retail Stores, Grocery Stores, Hardware Stores*.

FISCAL IMPACT

The agreement will require the Village to rebate a portion of the sales generated from Michael's Fresh Market based on total sales volume. The rebate payments will be expended from the Village's Sales Tax Rebate Fund.

UPDATE & RECOMMENDATION

This item was discussed at the June 9, 2009 workshop. During the discussion, the Village Council asked staff to confirm the expiration date of the Village's 50% sales tax rebate agreement with Lemon Tree. Per the agreement, the 50% sales tax rebate agreement will expire on December 31, 2010. Staff recommends approval on the June 16, 2009 active agenda.

BACKGROUND

For many years, the Village of Downers Grove has been working closely with the Economic Development and Downtown Management Corporations to locate a full-service specialty grocery store in the downtown area. An opportunity to meet this goal recently surfaced with the announcement that the owners of Michael's Fresh Market, with grocery stores in three other suburban locations, plan to open a store in the vacant space at 7241 Lemont Road, formerly the site of Dominick's.

Based on the sales generated by Michael's Fresh Market, projected at \$15 million annually, the opportunity was identified whereby a portion of the sales tax generated from Michael's could be used to provide the needed financial incentive to support a grocery store in the downtown. The owners of Michael's assembled a team to pursue the downtown store opportunity and identified a suitable location in Acadia on the Green Building #3, which provides approximately 6,000 square feet of retail space for the downtown grocery store, to be known as The Lemon Tree. The owner/operator of the Lemon Tree has negotiated the terms of a lease with New England Builders and has worked with the Village to seek creation of a new liquor license

category to that allows for off-premise sales and on-premise consumption of alcohol at the same location. The proposed ordinance change also appears on the June 9 Workshop agenda.

The terms of the sales tax rebate agreement include the following:

- Sales taxes from Michael's Fresh market shall be rebated to the Lemon Tree in the following manner:
 - 1) 37.5% of total sales taxes collected up to \$15 million in annual sales
 - 2) 50% of total sales taxes collected in excess of \$15 million in annual sales
- Lemon Tree agrees to operate a specialty grocery store at the Acadia location which offers, at a minimum: prepared foods, packaged foods, fresh meat, fresh produce, fresh bread, a delicatessen, and an outdoor dining area.
- Both Michael's and the Lemon Tree must remain open at their current location to qualify the Lemon Tree to receive rebate payments
- The duration of the agreement shall be ten years with the option to extend with Village Council approval for two additional consecutive five-year terms.

ATTACHMENTS

Resolution

Draft Agreement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Manager **DATE:** June 16, 2009
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF A SALES TAX REBATE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND MMI, INC. AND THE LEMON TREE, LLC ", as presented.

SUMMARY OF ITEM:

Adoption of this resolution shall authorize execution of a sales tax rebate agreement between the Village of Downers Grove, MMI, Inc. and the Lemon Tree, LLC.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
SALES TAX REBATE AGREEMENT BETWEEN THE
VILLAGE OF DOWNERS GROVE AND MMI, INC. 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 MMI, Inc. (“Michael’s”) and The Lemon Tree, LLC (“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, MMI, INC., AND THE LEMON TREE, LLC

THIS REDEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into as of the ____ day of _____ (“Agreement Date”) by and between the **VILLAGE OF DOWNERS GROVE, ILLINOIS**, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the “Village”), MMI, Inc., (“Michael’s), and The Lemon Tree, LLC (“Lemon Tree”). (The Village, Michael’s, 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;

WHEREAS, Michael’s maintains an ownership stake in Lemon Tree; and

WHEREAS, Michael’s currently leases the property commonly known as 7241 Lemont Road, Downers Grove, (“Lemont Road Store”) ; and

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

WHEREAS, Michael’s operates a grocery store at the Lemont Road Store; and

WHEREAS, Lemon Tree desires to operate a specialty grocery store at the Acadia Store:
and

WHEREAS, both Michael’s and Lemon Tree represent and warrant to the Village that both Michael’s and Lemon Tree, and their principals, are skilled in the development and operation of grocery stores and are able to provide to the Village skill, knowledge and expertise in operating both the Acadia Store and the Lemont Road Store; and

WHEREAS, the Village has determined that it is desirable and in the Village’s best interest to assist Michael’s and 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 Michael’s and 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 Michael’s and Lemon Tree according to the terms hereof, and any and all action of Michael’s and 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 Michael's and Lemon Tree (hereinafter collectively referred to as "The Grocers") 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.

“Grocers” shall mean Michael’s and Lemon Tree collectively.

“Party” means the Village and/or Michael’s and/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, and completion of the Lemont Road Store and the Acadia Store.

“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 Grocers;

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 Grocers, 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. is The Grocers are 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 Michael's and/ or Lemon Tree in a different manner, Michael's hereby designates Michael Lattaas 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 Michael's and with

the effect of binding Michael's in that connection (each such individual being an "Authorized Representative") and 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 (each such individual being an "Authorized Representative"). The Grocers shall have the right to change their Authorized Representatives 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 The Grocers 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. **Initial Rebate:** For a period commencing on the first day that the Lemont Road Store is open for business and continuing through December 31, 2010 ("the Initial Rebate Period"), the Village agrees to rebate to Lemon Tree 50% of the State Retailers' Occupation Tax which the Village receives from the State ("Downers Grove Sales Tax") for all sales from the Lemont Road Store ("Initial Rebate") . Michael's shall provide the Village with written notice of its intent to open which notice shall provide the date that the Lemont Road Store will open for business.

2. **General Rebate:** For a period of nine (9) years after the Initial Rebate Period ("General Rebate Period") unless terminated sooner pursuant to this Agreement, The Village agrees to rebate a portion of the Downers Grove Sales Tax which the Village receives for all

sales from the Lemont Road Store (“General Rebate”). The General Rebate amount shall be calculated according to the following schedule:

37.5% of the Downers Grove Sales Tax up to the Base

50% of the Downers Grove Sales Tax in excess of the Base

For purposes of the General Rebate, the Base shall be defined as \$150,000.00 in Downers Grove Sales Tax receipts from sales from the Lemont Road Store. The Base shall reset to zero each January 1 of the General Rebate Period.

3. **Payment of Initial Rebate and General Rebate:** The amount of the Initial Rebate and General Rebate shall be paid quarterly. For the duration of this Agreement, Michael’s shall authorize the Illinois Department of Revenue to release monthly sales tax payments to the Village from which rebate calculations will be made. Michael’s 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.

4. **Parking Space Conversion.** The Village Council agrees to consider amending its parking ordinances to meet the needs of Lemon Tree at a future date.

5. **Compliance with Village Ordinances:** No Initial Rebate payments or General Rebate payments shall be made unless and until Michael’s and/ or Lemon Tree are/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 Initial Rebate payments and/or General Rebate Payments if Michael’s and/or Lemon Tree have no outstanding Village ordinance violations. In the event that a violation of a Village ordinance exists for ninety (90) days or more, the Village reserves the right to 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 Initial Rebate or 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
GROCERS'S OBLIGATIONS

1. ***Commitment to Continue the Acadia Store:*** The parties agree that the Initial Rebate and the General Rebate are contingent upon the continued operation of the Acadia Store as set forth in this Agreement. To that end, the Grocers agree to continue the operation of a specialty grocery store at the Acadia Store 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 Acadia Store 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.

2. ***Construction of Project:*** Michael's and/or Lemon Tree shall diligently pursue obtaining all required permits and shall cause construction of the Project to be prosecuted and completed with due diligence, in good faith and without delay, subject to Uncontrollable Circumstances and the other provisions of this Agreement.

3. ***Compliance with Village Ordinances:*** Michael's and/or 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:*** Michael's and/or Lemon Tree shall at all times acquire, install, construct, operate and maintain the Projects in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Projects 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, Michael's and/or 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.

ARTICLE SEVEN
BREACH

In the event of breach of any of the terms and conditions of the 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 failure of performance, or both. The foregoing rights and remedies shall be cumulative and exclusive.

ARTICLE EIGHT
TRANSFER OF INTEREST

The parties acknowledge that any change in ownership, in whole or in part, of either Michael's or 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 Michael's and/ or 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 Michael's and/or 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 Michael's and/or 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 Michael's 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 the appropriate State or federal court located within the State 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 or 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 Michael's shall be sent to:

Michael's, Inc.

All notices to Lemon Tree shall be sent to:

5. **Further Assistance and Corrective Instruments:** The Village and the Grocers 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 the Grocers relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and Michael's, 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 the Grocers, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or the Grocers, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or the Grocers. 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; provided, however, that, except as provided in Article 8 hereof, Michael's may not assign its rights under

this Agreement without the express written approval of the Village. 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 Michael's.

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 or Grocer, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village or Grocer 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 December 31, 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. Developer 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

MMI, INC., an Illinois corporation

By: Mayor

By: President

ATTEST:

ATTEST:

By: Village Clerk

By:

The Lemon Tree, LLC, an Illinois corporation

By: President

ATTEST:

By: