

VILLAGE OF DOWNERS GROVE
Report for the Village
4/13/2021

SUBJECT:	SUBMITTED BY:
Execution of a Sales Tax Rebate Agreement with Steinhafels, Inc.	David Fieldman Village Manager

SYNOPSIS

An ordinance authorizing the execution of a Sales Tax Rebate Agreement between the Village of Downers Grove and Steinhafels, Inc. for the property located at 1021 Butterfield Road has been prepared.

STRATEGIC PLAN ALIGNMENT

The 2019-2021 Long Range Plan includes the *Strategic Goal Steward of Financial, Environmental and Neighborhood Sustainability* and *Strong, Diverse Local Economy*.

FISCAL IMPACT

The Steinhafels furniture store is expected to generate about \$352,000 of revenue for the General Fund in the first year of operations. Revenue is projected to increase at 3% per year.

Projected Annual Taxable Sales	\$22,000,000
1% Municipal Sales Tax	\$220,000
1% Home Rule Sales Tax	\$220,000
Rebate of 40% of Municipal Sales Tax	(88,000)
Net Annual Village Revenue	\$352,000

UPDATE & RECOMMENDATION

This item was discussed at the March 16, 2021 Village Council meeting. Staff recommends approval on the April 13, 2021 Active Agenda.

BACKGROUND

[Steinhafels Inc.](#), a furniture retail business headquartered in Wisconsin, plans on leasing, remodeling and operating a furniture store at 1021 Butterfield Road. The property is currently improved with a two-story, 112,000 square foot building and a parking lot. It was formerly occupied by Art Van Furniture, which operated at this location from August 2015 to March 2020. In 2013, the Village entered into an [economic incentive agreement with Art Van](#).

Steinhafels requested a sales tax rebate agreement, indicating that an economic incentive is required for them to operate a store at this location. The key terms of the Sales Tax Rebate Agreement are as follows:

- Steinhafels shall commence the remodeling of the building no later than 6 months after the approval of this agreement and shall complete the remodeling within 1 year after the start of construction.
- Steinhafels shall operate a furniture store for a minimum of 15 years.
- Steinhafels shall comply with all Village ordinances and regulations.
- The Village shall rebate to Steinhafels an amount equal to 40% of the municipal sales tax generated by the store. Rebate payments shall be made for 10 years from the date the store commences operating or until the Village has paid a total of \$800,000 in rebates, whichever comes first.
- The Village shall hold back an annual amount equal to 25% of the annual rebate payment owed to Steinhafels. In the event that Steinhafels fails to continue to operate the store according to the agreement, the Village shall keep the amount held back.
- In the event that Steinhafels does not operate a furniture store for the required 15 years, Steinhafels shall reimburse the Village for all or a portion of the rebate payments according to the schedule in the agreement.

ATTACHMENTS

Ordinance
Agreement

VILLAGE OF DOWNERS GROVE

COUNCIL ACTION SUMMARY

INITIATED: Village Attorney **DATE:** April 13, 2021
(Name)

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

NATURE OF ACTION:

- ☒ Ordinance
- ☐ Resolution
- ☐ Motion
- ☐ Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "AN ORDINANCE APPROVING
A SALES TAX REBATE AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS
GROVE AND STEINHAFELS, INC.", as presented.



SUMMARY OF ITEM:

Adoption of this ordinance shall approve a sales tax rebate agreement between the Village and Steinhafels, Inc.

RECORD OF ACTION TAKEN:

ORDINANCE NO. _____**AN ORDINANCE APPROVING A SALES TAX REBATE AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE
AND STEINHAFELS, INC.**

WHEREAS, the Village of Downers Grove (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 spread of blight, to encourage private development in order to enhance the local tax base, to increase employment, and to enter into contractual agreements with third parties for the purpose of achieving these purposes; and

WHEREAS, 65 ILCS 5/8-11-20 authorizes municipalities to enter into economic incentive agreements in order to encourage the development or redevelopment of land within their corporate limits; and

WHEREAS, Steinhafels, Inc. ("Steinhafels") is the lessor of certain real property located at 1021 Butterfield Road, Downers Grove, Illinois ("Property"); and

WHEREAS, Steinhafels intends to make improvements to the Property, including replacing the HVAC system, remodeling the showrooms and installing signage; and

WHEREAS, the Village is desirous of having the Property developed for the use described in the Agreement to serve the needs of the Village, and to produce increased tax revenues for the various taxing districts authorized to levy taxes within the Property; and

WHEREAS, the Mayor and Village Council of the Village of Downers Grove, after due and careful consideration, have concluded that the development of the Property on the terms and conditions set forth in the Agreement will promote sound planning, increase the taxable value of property within the Village and otherwise promote, enhance, and serve the best interests and general welfare of the Village and its citizens;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, DuPage County and State of Illinois, as follows:

Section 1. Recitals. The foregoing recitals are incorporated into this Ordinance as findings of the Council.

Section 2. Approval of the Sales Tax Rebate Agreement. The Sales Tax Rebate Agreement shall be, and it is hereby, approved in final form satisfactory to the Village Manager. The Mayor and Village Manager are hereby authorized and directed to execute and deliver the Sales Tax Rebate Agreement and any other necessary and appropriate related documents after such documents have been properly executed and delivered by Steinhafels

Section 3. Conflict. That all ordinances and resolutions or parts thereof in conflict with the provisions of this Ordinance are hereby repealed

Section 3. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____
Village Clerk

I:\mw\ord.21\STRA- Steinhafels

EXHIBIT A

SALES TAX REBATE AGREEMENT

**SALES TAX REBATE AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND STEINHAFELS, INC.**

THIS SALES TAX REBATE AGREEMENT (the "Agreement"), is made and entered into as of the ____ day of _____, 20__ ("Agreement Date") by and between the **Village of Downers Grove, Illinois**, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the "Village"), and **Steinhafels, Inc.** ("Steinhafels"), a Wisconsin corporation. (The Village and Steinhafels are sometimes referred to individually as a "Party" and collectively as the "Parties").

WHEREAS, the Village is an Illinois municipal corporation possessing home rule powers under Section 6 of Article VII of the Illinois Constitution; 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, Steinhafels intends on leasing the property commonly known as 1021 Butterfield Road, Downers Grove ("the Property"), which is improved with an approximately 100,000 square-foot, two-story vacant building ("the Building"), at grade parking and loading. The Property is legally described in Exhibit A, which is attached hereto and incorporated herein by reference; and

WHEREAS, Steinhafels intends to operate a furniture store (“the Store”) out of the Building on the Property; and

WHEREAS, Steinhafels intends to make improvements to the Building, including replacing the HVAC system, remodeling the showrooms and installing signage, as indicated on the Design Plan attached hereto and herein incorporated as Exhibit B (the “Project”); and

WHEREAS, Steinhafels represents and warrants to the Village that Steinhafels, and its principals, are skilled in the development and operation of furniture sales and are able to provide to the Village skill, knowledge and expertise; and

WHEREAS, the Village, recognizing the economic and other benefits derived therefrom by the Village and its residents, has determined that it is desirable and in the Village’s best interests to assist Steinhafels in its endeavors to complete the Project; 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 Steinhafels 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 Steinhafels according to the terms hereof, and any and all action of Steinhafels 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:

A. INCORPORATION OF RECITALS

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and constitute findings, representations and agreements of the Village and of Steinhafels and are incorporated and adopted as fully set forth herein.

B. 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 Sales Tax Rebate Agreement and all of the exhibits and attachments referenced herein and made a part hereof.

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

"Party" means the Village and/or Steinhafels and its successors and/or assigns as permitted herein, as the context requires.

"Project" means the improvements to the existing Building, including replacement of the HVAC system, remodeling of the showrooms, and installation of signage as indicated on the Design Plan.

"Property" means 1021 Butterfield Road, Downers Grove utilized for the operation of the furniture store, which is described in Exhibit A.

“Required Commitment Period” means the required time period that Steinhafels commits to operate the furniture store on the Property.

“Sales Tax” and “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 and the Service Occupation Tax Act (as said Acts 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. This does not include the Home Rule Sales Tax, which has been adopted by the Village.

“State” means the State of Illinois.

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

C. 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. Steinhafels 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 Steinhafels in a different manner, Steinhafels hereby designates Andrew Steinhafel (and, in his absence, Fred Schweinert) as its authorized representatives 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 Steinhafels and with the effect of binding Steinhafels in that connection (each such individual being an "Authorized Representative"). Steinhafels shall have the right to change its Authorized Representative by providing the Village with written notice of such change which notice shall be sent in accordance with Section J, paragraph 4.

D. VILLAGE'S OBLIGATIONS

1. **Sales Tax Rebates:** In the event that all terms and conditions set forth in this Agreement are satisfactorily met by Steinhafels, the Village hereby agrees to rebate to Steinhafels a portion of the Sales Tax which the Village receives from the Store's payments to the State ("Rebate Payments") by yearly installments over a period commencing on the opening and operation of the Store ("Rebate Payment Start Date") and expiring on December 31st of the calendar year in which the tenth (10th) anniversary of the Rebate Payment Start Date occurs, or upon a total Rebate Payment of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) (the "Rebate Period"), whichever occurs first, in accordance with this Section. The Parties expressly acknowledge that the Village has adopted a Home Rule Sales Tax, and that the Village's Home Rule Sales Tax is not included and will not be used to make the Rebate Payments as required by this Agreement.

2. **Calculation and Payments of Rebates:** Subject to the reimbursement obligations set forth in Section E, the Village agrees to make the Rebate Payments to Steinhafels subject to the following conditions and restrictions:

(a) It is understood that any of the above amounts will be due and payable solely from the proceeds of sales tax revenue received by the Village from the Store on the Property.

(b) It is acknowledged and understood by and between the Parties that the Village receives sales tax revenue monthly, and that the taxes generated by sales in any one month are distributed to the Village approximately three (3) months later (e.g., taxes generated by sales in July are generally not received by the Village until October).

(c) The calendar year in which the Rebate Payment Start Date occurs shall be referred to as the "Initial Payment Year", and each calendar year thereafter in the Rebate Period shall be a "Payment Year".

(d) For each Payment Year, the Sales Tax Revenue received from retail sales generated by the Store shall be divided as follows: Village shall be entitled to sixty percent (60%) and Steinhafels shall be entitled to forty percent (40%), up to a total cumulative amount of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000).

(e) The Rebate Payments shall be computed at the close of each Payment Year by the Village as provided herein. The Village will make yearly payments to Steinhafels within thirty (30) days after it receives notification from the State of the sales tax revenue generated by the Store for the preceding Payment Year.

3. **Withholding:** The Village shall withhold twenty-five percent (25%) of each Rebate Payment for one year, after which time it shall be paid to Steinhafels with the subsequent year's Rebate Payment. If Steinhafels fails to continue to operate the Store in accordance with Section E.2., the withheld portion of the Rebate Payment shall be automatically forfeited to the Village in accordance with Section E.3. Upon expiration of the term of this Agreement, if Steinhafels is in compliance with all terms and conditions of the Agreement, the withheld portion of the Rebate Payment shall be paid to Steinhafels.

4. **Compliance with Village Ordinances:** The Village shall only be obligated to make Rebate Payments to Steinhafels if Steinhafels has no outstanding Village ordinance violations. The Village may temporarily withhold Rebate Payments in the event that Steinhafels is in violation of any Village ordinance, code or regulation. If a violation of a Village ordinance, code or regulation exists for ninety (90) days or more following notice to Steinhafels of such violation, the Village reserves the right to permanently withhold payment of a Rebate Payment.

5. **Village Cooperation:** The Village shall cooperate with Steinhafels in implementing the terms and conditions of this Agreement.

6. **Superseding Legislation.** For purposes of this Agreement, the use of the terms “sales tax” and “sales tax revenue” shall be construed to refer to that net portion of taxes imposed by the State of Illinois for distribution to the Village pursuant to the Retailers’ Occupation Tax Act and the Service Occupation Tax Act (as said Acts 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 Steinhafels shall reevaluate the provisions of this Agreement and the rebates provided hereunder and shall use commercially reasonable efforts to restructure the provisions of this Agreement in a manner that is consistent with the intent of this Agreement as set forth above. If a restructured agreement cannot be reached by the 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 the provisions of this Agreement shall automatically terminate releasing both Parties from all their obligations under this Agreement.

E. STEINHAFELS OBLIGATIONS

1. **Construction of the Project:** Steinhafels shall commence construction of the Project within six (6) months of the approval of this Agreement by the Village. Steinhafels shall have completed construction of the Project and shall have begun operations and sales from the Store within one (1) year from commencement of construction.

2. **Commitment to Store:** The Parties agree that the Rebate Payments are based in part upon: 1) a commitment by Steinhafels to continue operation of the Store, on the Property for a period of not less than fifteen (15) years from the Rebate Payment Start Date ("Required Commitment Period"); and 2) a reimbursement of such rebates, if the terms of this commitment are not fulfilled. To that end, Steinhafels agrees to continue the operation of the Store on the Property and shall continue to offer furniture sales in Downers Grove comparable to those provided by the Store for a period of not less than fifteen (15) years from the Rebate Payment Start Date of this Agreement. If at any time during the Required Commitment Period, the Store fails to offer furniture sales, then Steinhafels or its successors shall reimburse the Village in accordance with Section E.3. of this Agreement. The failure to meet this commitment is not a breach, but rather a foreseeable event for which offsetting terms have been agreed to here in Section E.3. of this Agreement. Notwithstanding the foregoing, in the event Steinhafels discontinues its operation of the Store by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, the unforeseen application of restrictive governmental laws or regulations, riots, pandemic (including COVID-19), government mandated store closure, insurrection, war, acts of terrorism, casualty (e.g., fire or windstorm), condemnation, or other reason of a like nature beyond its reasonable control (hereinafter, "Permitted Delay" or "Permitted Delays"), then the continuous operation obligation set forth herein shall be excused for the period of the Permitted Delay. Such Permitted Delay shall not extend the term of the Agreement.

3. **Reimbursement in Lieu of Required Commitment Period:** In the event Steinhafels, or any approved successor, has no Store in operation during the Required Commitment Period as provided in Section E.2. of this Agreement for a period in excess of

ninety (90) days excluding the period of any Permitted Delays set forth above, Steinhafels, or such approved successor, shall reimburse to the Village within sixty (60) days of receipt of a written demand from the Village specifying the amount of the reimbursement of the Rebate Payments paid hereunder according to the following schedule, all of which shall be adjusted for any withholding described above:

If said event occurs during:

- Year one (1) through three (3): One hundred percent (100%) of the Rebate Payments;
- Year four (4) through year five (5): Seventy-Five percent (75%) of the Rebate Payments;
- Year six (6) through year ten (10): Fifty percent (50%) of the Rebate Payments;
- Year eleven (11) through year fifteen (15): Twenty-five percent (25%) of the Rebate Payments.

After the expiration of a sixty (60) day written demand by the Village to Steinhafels, or its successors, 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, proceeding with an action in law or in equity to recover the amounts owed and Steinhafels agrees to compensate the Village for costs and fees, such as legal action, including but not limited to attorney's fees.

4. **Payment of Sales Taxes:** Steinhafels shall at all times during the Required Commitment Period pay all sales taxes required to be remitted to the State.

5. **Compliance with Applicable Laws:** Steinhafels shall at all times operate and maintain the Property and the Store in conformance with all applicable laws, rules, codes, ordinances and regulations. All work with respect to the Store 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.

6. **Copies of Agreements:** Upon request of the Village, Steinhafels shall permit the Village Attorney to inspect copies of any and all leases, contracts to purchase and property title documents for land subject to the terms of the Agreement, which copies may have redactions for confidential, proprietary and privileged terms. The Village agrees that except as required by law, it shall treat the Steinhafels lease as confidential commercial and financial information obtained from a business under the claim that the lease is furnished under a claim that it is proprietary, privileged and confidential and that disclosure of the lease would cause competitive harm to the Retailer all pursuant to the Illinois Freedom of Information Act 5 ILCS 140/7 (g).

7. **Disclosure:** For the duration of this Agreement, Steinhafels shall authorize the Illinois Department of Revenue to release monthly sales tax payments to the Village from which rebate calculations will be made. Steinhafels agrees to cooperate and provide such additional documents as may be reasonably needed to verify the amount of the Rebate Payments.

F. **BREACH**

In the event of a material breach of any of the terms and conditions of the Agreement, the non-breaching party shall have the right to terminate this Agreement following a reasonable notice and cure period, 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 for failure of performance, or both, except that the exclusive remedy for the failure to meet the Required Commitment Period is the payment of the scheduled reimbursements as set forth in Section E. The foregoing rights and remedies shall be cumulative and exclusive. Nothing herein shall modify, limit or abrogate any right of the Village to reimbursement as provided under Section E.

G. TRANSFER OF INTEREST

If Steinhafels transfers or subleases, in whole or in part, any of its interest in the Store or portion of the Property, the rights and obligations under this Agreement will transfer to successive owners upon written consent of the Village, which consent shall not unreasonably be withheld. In the event of such transfer, Steinhafels, its principals, officers, agents, shareholders and associated entities shall be released from all obligations of this Agreement.

H. 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 Steinhafels 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 Steinhafels or the Store 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 Steinhafels, 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 Steinhafels, its officers, directors, agents and employees, in excess of its obligations hereunder. Nothing herein shall modify, limit or abrogate any right of the Village to reimbursement as provided under Section E.3. of this Agreement.

I. INDEMNIFICATION

In the event that any third party or parties institutes any legal proceedings against the Village, which relate to the terms of this Agreement, then, in that event, Steinhafels shall indemnify and hold harmless the Village from any and all such proceedings. Further, Steinhafels, 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 Steinhafels 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 Steinhafels 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 Steinhafels 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.

J. PREVAILING WAGE

Steinhafels is hereby notified by the Village that any and all work contemplated by this Agreement may be subject to the Prevailing Wage Act 820 ILCS 130/1 *et seq.* Steinhafels agrees to comply with all applicable provisions of the Illinois Prevailing Wage Act as administered by

the Illinois Department of Labor (IDOL). Steinhafels 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, Steinhafels 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. Steinhafels 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 J above with regard to any actions or proceedings instituted regarding such compliance.

K. EQUAL EMPLOYMENT OPPORTUNITY

1. **No Discrimination.** Steinhafels shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, or sexual orientation. To the fullest extent permitted by law, Steinhafels will take affirmative action to ensure that applicants are employed and treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. Steinhafels agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Village setting forth the provisions of this nondiscrimination clause.

2. **Advertisements.** Steinhafels will, in all solicitations or advertisements for employees placed by or on behalf of Steinhafels related to the Project, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability or sexual orientation.

3. **Contractors.** Any contracts made by Steinhafels with any general contractor, agent, employee, independent contractor or any other person in connection with the Project shall contain language similar to that recited in Sections L.1 and L.2. above.

L. 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 Steinhafels 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 from the sales taxes paid by the Store. Upon request of the Village, Steinhafels shall execute and provide the Village with a power of attorney letter (or other necessary document), in form and content reasonably acceptable to the Village Attorney, which letter shall be addressed to the Illinois Department of Revenue ("IDOR") and shall authorize the IDOR to release any and all gross revenue and sales tax information with respect to the operation of the Store on the Property to the Village during the Rebate Period. In addition to said letter, upon the request of the Village, Steinhafels shall prepare and submit such other or additional forms as may be required from time to time by the IDOR in order to release such information to the Village. Finally, in the event that the sales tax revenue information is not released by the State due to the failure of Steinhafels to execute the necessary authorization and/or release upon the request of the Village, same shall not be a breach or default by Steinhafels under this Agreement, but as a consequence of such failure and as the

Village's sole remedy, the Village shall not be required to make any of the Rebate Payments provided for herein; provided the Village allows for a reasonable notice and cure period by Steinhafels.

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 in DuPage County 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 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 Steinhafels shall be sent to:

Steinhafels, Inc.
Attn: Andrew Steinhafel
W231N1013 County Highway F
Waukesha, WI 53186

5. **Successors & Assigns:** This Agreement and the covenants, rights, benefits and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, to the extent and as applied hereunder.

6. **Further Assistance and Corrective Instruments:** The Village and Steinhafels 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.

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

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

11. **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 Steinhafels, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or Steinhafels, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or Steinhafels. 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 Section H hereof, Steinhafels may not assign or transfer 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 Steinhafels.

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 Steinhafels, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village or Steinhafels 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 for fifteen (15) years from the Commencement Date, as defined in Section G.

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

18. **Effectiveness:** Steinhafels 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

STEINHAFELS, INC.
a Wisconsin corporation,

By: Mayor


By: Vice President - Andrew Steinhafel

ATTEST:

ATTEST:

By: Village Clerk


By: Staff Accountant - Brent Harycki

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