



RESOLUTION NO. 2018-015

**A Resolution Authorizing a Recapture Agreement
Speedway, LLC – 2110 Orchard Road**

WHEREAS, the Village of Montgomery ("Village") is a non-home rule Illinois municipal corporation duly organized and existing pursuant to the Constitution of 1970 and the laws of the State of Illinois; and,

WHEREAS, Speedway, LLC, ("Developer") is the owner and developer of a certain development located within the corporate limits of the Village and commonly known as 2110 Orchard Road, Montgomery, Illinois ("Property"); and,

WHEREAS, Developer has constructed certain public improvements in excess of those which would ordinarily be required to service the Property; and,

WHEREAS, Developer desires to recapture an allocable share of the costs of constructing certain of the public improvements for the Property ("Recapture Items") which will provide benefit to other properties ("Benefitted Properties") from the owners of the Benefitted Properties ("Benefitted Owners").

WHEREAS, Developer and the Village are desirous of entering into this Recapture Agreement to provide for the fair and allocable recapture by Developer of the proportionate costs of the Recapture Items from the Benefitted Owners, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Village President and the Board of Trustees of the Village of Montgomery as follows:

(1) Recitals. The foregoing recitals are hereby incorporated into and made a part of this Resolution.

(2) Approval. The Recapture Agreement between the Village and Developer is hereby approved in substantially the form attached to this Resolution as Exhibit A. The Village President and Village Clerk of the Village of Montgomery are hereby directed to execute and attest the Recapture Agreement on behalf of the Village.

(3) Miscellaneous Provisions. That if any section, paragraph, clause or provision of this Resolution shall be held invalid, the invalidity thereof shall not affect the remaining provisions of this Resolution; and,

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

PASSED AND APPROVED by the President and Board of Trustees of the Village of Montgomery, Kane and Kendall Counties, Illinois, this 24th day of September, 2018.




Matthew Brolley,
President of the Board of Trustees of the
Village of Montgomery, Kane and Kendall
Counties, Illinois

AYES: 5

NAYS: 0

ABSENT: 1

ATTEST: 

Penny FitzPatrick,
Clerk, Village of Montgomery



EXHIBIT A

Recapture Agreement

RECAPTURE AGREEMENT

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

Laura M. Julien
Mickey, Wilson, Weiler, Renzi &
Andersson, P.C.
140 S. Municipal Drive
Sugar Grove, IL 60554
Phone: (630) 801-9699
Fax: (630) 801-9715

RECAPTURE AGREEMENT

THIS RECAPTURE AGREEMENT ("Agreement"), is made and entered as of the 24th day of September, 2018, by and between the VILLAGE OF MONTGOMERY, an Illinois municipal corporation ("Village") and Speedway LLC, a Delaware Limited Liability Company ("Developer").

RECITALS:

A. Developer is the owner and developer of that certain real estate development located within the corporate limits of the Village and commonly known as 2110 Orchard Road, Montgomery, Illinois gas station site ("Gas Station").

B. Developer desires to recapture an allocable share of the costs of constructing certain of the public improvements for the Gas Station ("Recapture Items") which will provide benefit to other properties ("Benefitted Properties") from the owners of the Benefitted Properties ("Benefitted Owners").

C. Developer and the Village are desirous of entering into this Agreement to provide for the fair and allocable recapture by Developer of the proportionate costs of the Recapture Items from the Benefitted Owners, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby agree as follows:

1. **RECAPTURE ITEMS.** The Recapture Items, being elements of the public improvements to be constructed as a part of the development of the Gas Station, are identified in Exhibit "A" attached hereto ("Recapture Schedule"). The Recapture Schedule identifies each Recapture Item and the cost to construct each Recapture Item ("Recapture Cost"). Developer shall cause each of the Recapture Items to be constructed in compliance with the provisions of the Annexation Agreement and to be accepted and conveyed to the Village in accordance with applicable ordinances of the Village.

2. **BENEFITTED PROPERTIES.** The Benefitted Properties are legally described in the Parcel Exhibit attached hereto as Exhibit "B". Each parcel of real estate contained within the Benefitted Properties are referred to herein individually as a "Benefitted Parcel". There are a total of two (2) Benefitted Parcels as identified in the Parcel Exhibit.

3. **RECAPTURE COSTS.** The Recapture Item(s) which the Corporate Authorities of the Village have determined will benefit a Benefitted Parcel, and the prorata share of the Estimated Cost of each such Recapture Item to be allocated to such Benefitted Parcel are set forth in the Recapture Schedule. The aggregate amount of the proportionate share of the Recapture Cost for each of the Recapture Items allocable to a Benefitted Parcel is referred to herein as the "Recapture Costs". The Recapture Costs for each of the Benefitted Parcels shall be as identified in the Recapture Schedule. No interest shall accrue on the Recapture Costs for the benefit of Developer.

4. **COLLECTION OF RECAPTURE COSTS.** The Village shall assess against and collect from the Benefitted Owner of a Benefitted Parcel, or any portion thereof, his successors and assigns, the Recapture Cost, calculated under Paragraph 3 of this Agreement for such Benefitted Parcel. At such time as a Benefitted Owner, or its agent or representative, annexes and/or subdivides a Benefitted Parcel, or any portion thereof, or subdivides the Benefitted Parcel from a larger parcel of land, or applies to the Village for issuance of a permit for connection to all or any of the Recapture Items, whichever shall first occur, the Village shall collect from such Benefitted Owner, or its agent or representative, the applicable Recapture Costs, owed hereunder by such Benefitted Parcel. No Benefitted Parcel which is a part of a subdivision (whether by plat or division by deed) shall be approved or recognized by the Village or be issued a connection permit to a Recapture Item by the Village until such Benefitted Parcel has fully paid the applicable Recapture Costs, owed by such Benefitted Parcel under this Agreement.

5. **PAYMENT OF RECAPTURE COSTS.** Any Recapture Costs, collected by the Village pursuant to this Agreement shall be paid to Developer, or such other person or entity as Developer may direct by written notice to the Village, within thirty (30) days following collection thereof by the Village. It is understood and agreed that the Village's obligation to reimburse Developer shall be limited to funds collected from the Benefitted Owners as provided herein, and payments made hereunder shall be made solely out of said funds. This Agreement shall not be construed as creating any obligation upon the Village to make payments from its general corporate funds or revenue.

6. **VILLAGE'S OBLIGATION.** The Village and its officers, employees and agents shall make all reasonable efforts to make the aforesaid collections of the Recapture Costs, for each Benefitted Parcel. Neither the Village nor any of its officials shall be liable in any manner for the failure to make such collections, and Developer agrees to hold the Village, its officers, employees and agents, harmless from the failure to collect said fees. In any event, however, Developer and/or the Village may sue any Benefitted Owner owing any Recapture Costs, hereunder for collection thereof, and in the event Developer initiates a collection lawsuit, the Village agrees to cooperate in Developer's collection attempts hereunder by allowing full and free access to the Village's books and records pertaining to the subdivision and/or development of the Benefitted Parcel and the collection of any Recapture Costs therefor. In the event the Village and any of its agents, officers or employees is made a party defendant in any litigation arising out of or resulting from this Agreement, Developer shall defend such litigation, including the interest of the Village, and shall further release and hold the Village harmless from any judgment entered against Developer and/or the Village and shall further indemnify the Village from any loss resulting therefrom, except to the extent such loss results from the grossly negligent or willfully wrongful act or conduct of the Village or any of its agents, officers or employees.

7. **VILLAGE'S COLLECTION OF OTHER FEES AND CHARGES.** Nothing contained in this Agreement shall limit or in any way affect the rights of the Village to collect other fees and charges pursuant to Village ordinances, resolutions, motions and policies. The Recapture Costs provided for herein for each Benefitted Parcel is in addition to such other Village fees and charges.

8. **TERM.** This Agreement shall remain in full force and effect for a period of twenty (20) years from the date hereof, unless sooner terminated by the mutual agreement of the parties hereto or by the completion of all duties to be performed hereunder. In the event no portion of a Benefitted Parcel is a part of a subdivision approved or recognized by the Village and no connection permit as aforesaid is issued by the Village for such Benefitted Parcel within ten (10) years following the date of this Agreement, this Agreement, and each and every duty and undertaking set forth herein pertaining to such Benefitted Parcel, shall become null and void and of no further force and effect as to such Benefitted Parcel.

9. **LIEN.** The recordation of this Agreement against the Benefitted Properties shall create and constitute a lien against each Benefitted Parcel, and each subdivided lot hereafter contained therein, in the amount of the Recapture Costs, plus interest, applicable hereunder to such Benefitted Parcel.

10. **MISCELLANEOUS PROVISIONS.**

A. **Amendment:** This Agreement may be amended upon the mutual consent of the parties hereto from time to time by written instrument and conformity with all applicable statutory and ordinance requirements and without the consent of

any other person or corporation owning all or any portion of the Benefitted Properties.

B. Binding Effect: Except as otherwise herein provided, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Developer and any successor municipal corporation of the Village.

C. Enforcement: Each party to this Agreement, and their respective successors and assigns, may either in law or in equity, by suit, action, mandamus, or other proceeding in force and compel performance of this Agreement.

D. Recordation: A true and correct copy of this Agreement shall be recorded, at Developer's expense, with the Kane and/or Kendall County Recorder's office. This Agreement shall constitute a covenant running with the land and shall be binding upon the Benefitted Properties in accordance with the terms and provisions set forth herein.

E. Notices: Any notice required or desired to be given under this Agreement, unless expressly provided to the contrary herein, shall be in writing and shall be deemed to have been given on the date of personal delivery, on the date of confirmed telefacsimile transmission provided a hard copy of such notice is deposited in the U.S. mail addressed to the recipient within twenty-four (24) hours following the telefacsimile transmission, or on the date when deposited in the U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Village: Village of Montgomery
200 N. River Street
Montgomery, IL 60538
Attn: Village Clerk
Phone: (630) 896-8080
Fax: (630) 896-0791

With a copy to: Mickey, Wilson, Weiler & Renzi
140 S. Municipal Drive
Sugar Grove, IL 60554
Attn: Laura M. Julien
Phone: (630) 801-9699
Fax: (630) 801-9715

If to Developer: Speedway LLC Law Department
500 Speedway Drive
Enon, Ohio 45323
Attn: Kevin Lewis

With a copy to: John F. Philipchuck, Esq.
Dommermuth, Cobine, West, Gensler
Philipchuck, Corrigan and Bernhard, Ltd.
111 East Jefferson Avenue, Suite 200
Naperville, Illinois 60540

F. Severability: The invalidity or unenforceability of any of the provisions hereof, or any charge imposed as to any portion of the Benefitted Properties, shall not affect the validity or enforceability of the remainder of this Agreement or the charges imposed hereunder.

G. Complete Agreement: This Agreement contains all the terms and conditions agreed upon by the parties hereto and no other prior agreement, excepting the Annexation Agreement, regarding the subject matter of this Agreement shall be deemed to exist to bind the parties. This Agreement shall be governed by the laws of the State of Illinois.

H. Captions and Paragraph Headings: Captions and paragraph headings incorporated herein are for convenience only and are not part of this Agreement, and further shall not be used to construe the terms hereof.

I. Recitals and Exhibits: The recitals set forth at the beginning of this Agreement and the exhibits attached hereto are hereby incorporated into this Agreement and made a part of the substance hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the date first above written.

DEVELOPER:

VILLAGE:

SPEEDWAY, LLC, a Delaware Limited Liability Company

VILLAGE OF MONTGOMERY, an Illinois municipal corporation

By: _____

By: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

Title: _____

Title: _____



EXHIBIT A – RECAPTURE SCHEDULE

Project: 4333 (100494) Montgomery, IL Speedway

Project #: 750391

Date: 7/19/2016

Client: Speedway

Phase: WATER MAIN

Eng: MJG

Location: 2110 Orchard Road; Montgomery, IL

Division	Description	Quant.	Unit	Unit Price	Amount
35	Increase to 12" Water Main, Ductile Iron	812	FT	\$30.00	\$24,360.00
35	12" Fittings	2	EA	\$1,334.00	\$2,668.00
SUBTOTAL=					\$27,028

This is the recapture amount that will be granted to Speedway at the time of tap-in by Schuerling Property.



Mandy Gauss

7/19/2016

Exp. 11/30/2017

Benefitted Properties:

Scheuring Farm Partnership – 73.74 acres – PIN 02-01-400-007 – Recapture Cost \$26,076.68

Johnston – 2.69 acres – PIN 02-01-200-005 – Recapture Cost \$951.26

73.74
 2.69

 76.43

\$27,028
 \$353.63/AC

EXHIBIT B
LEGAL DESCRIPTION

THAT PART OF THE EAST HALF OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE CENTER OF SAID SECTION; THENCE EASTERLY ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION, 599.52 FEET TO THE CENTERLINE OF GALENA ROAD; THENCE NORTHEASTERLY ALONG SAID CENTERLINE 191.40 FEET FOR THE POINT OF BEGINNING; THENCE SOUTHEASTERLY 1536.46 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SOUTHEAST QUARTER, THENCE EASTERLY ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SOUTHEAST QUARTER, TO THE NORTHEAST CORNER THEREOF; THENCE NORTHERLY ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER TO THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE NORTHERLY ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 1181.40 FEET; THENCE NORTH 46 DEGREES 20 MINUTES 09 SECONDS WEST TO THE CENTERLINE OF GALENA ROAD; THENCE SOUTHWESTERLY ALONG SAID CENTERLINE TO THE POINT OF BEGINNING. (EXCEPTING THEREFROM THOSE PART OF THE ABOVE DESCRIBED PROPERTY LYING WITHIN THE RIGHTS OF WAY OF GALENA ROAD, ORCHARD ROAD AND CATERPILLAR DRIVE AND ALSO EXCEPTING THEREFROM LOTS 1 AND 2 IN SCHEURING SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 2003 AS DOCUMENT 200300034474, IN KENDALL COUNTY) ALL IN BRISTOL TOWNSHIP, KENDALL COUNTY, ILLINOIS.

THE ABOVE DESCRIBED PROPERTY IS THAT INCLUDED IN PINs 02-01-200-005 and 02-01-400-007

EXHIBIT B

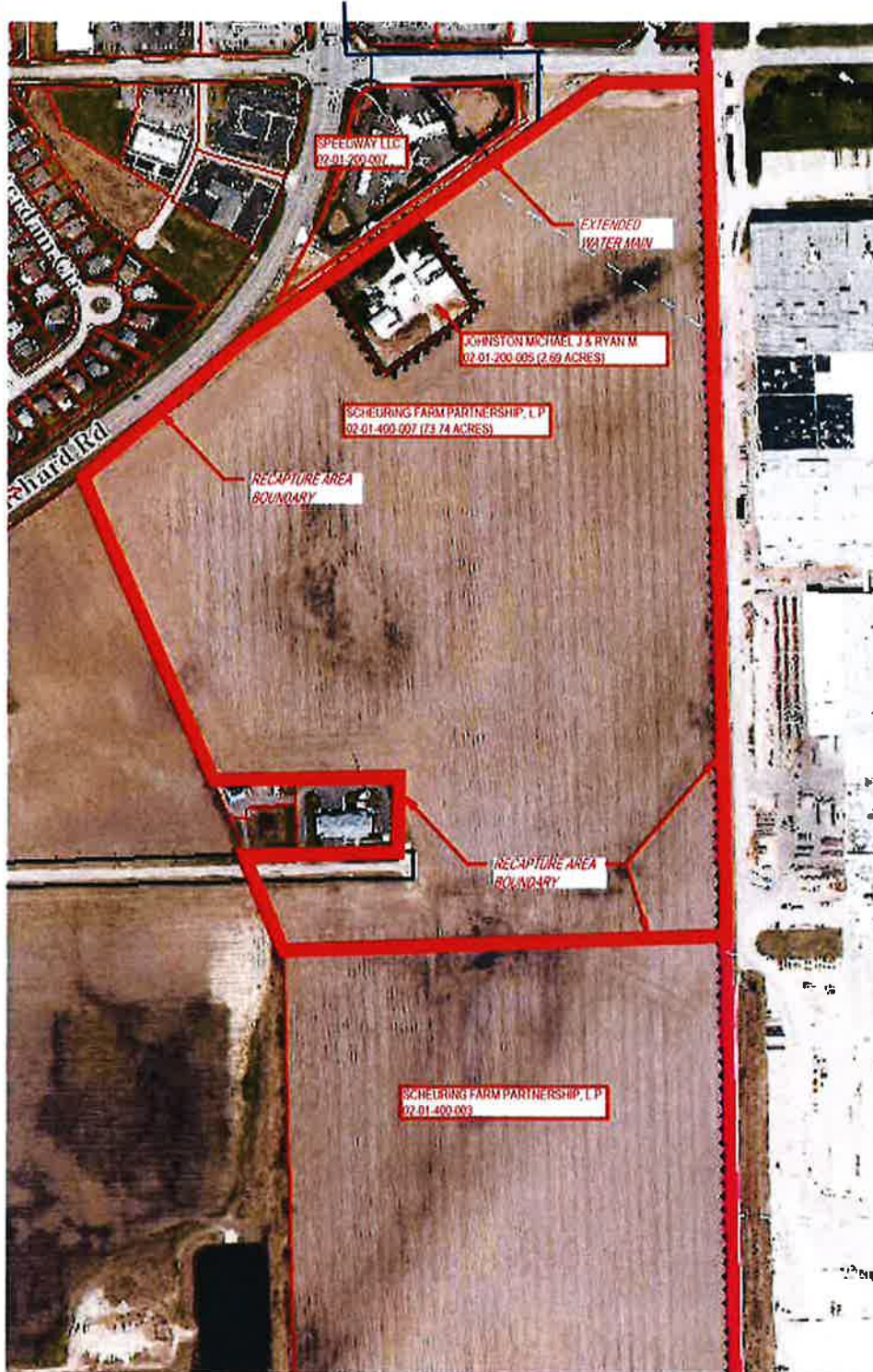


EXHIBIT B - WATER MAIN RECAPTURE

100494 MONTGOMERY, IL

2110 ORCHARD ROAD
VILLAGE OF MONTGOMERY

37N-07E-01
KENDALL COUNTY, IL

SCALE: N.T.S

DATE: 06/13/2018

REVISIONS		
NO.	DATE	DESCRIPTION

DESIGN:

DRAWN:
CAC

CHECKED:



CREATION TO COMPLETION

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1 OF 1