

**INDUCEMENT AGREEMENT – ANGELO CAPUTO’S FRESH MARKETS**

THIS AGREEMENT is entered into this 2<sup>nd</sup> day of November, 2020, by and between the **VILLAGE OF ORLAND PARK**, Cook and Will Counties, Illinois, a home rule municipal corporation (hereinafter referred to as the “VILLAGE”), and **ANGELO CAPUTO’S FRESH MARKETS**, an Illinois corporation (hereinafter referred to as “CAPUTO’S”).

**WITNESSETH:**

In consideration of the Preliminary Statements, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

**1. Preliminary Statements**

Among the matters of mutual inducement which have resulted in this Agreement are the following:

(a) The VILLAGE is a home rule municipality pursuant to Article VII, Section 6 (a) of the Constitution of the State of Illinois and is authorized thereby to exercise any power and perform any function pertaining to its government and affairs.

(b) CAPUTO’S is the exclusive tenant of certain real property legally described in **EXHIBIT “A”** attached hereto and made a part hereof and commonly known as 11333 W 159<sup>th</sup> St., Orland Park, Illinois 60467 (hereinafter referred to as the “Subject Property”). Contingent upon the receipt of the promises and inducements contained herein, CAPUTO’S plans to cause or permit construction of an approximately 42,000 square foot Angelo Caputo’s Fresh Markets grocery store on the Subject Property, within which CAPUTO’S plans to operate a deli, bakery, and offer on-site food preparation (hereinafter referred to as the “Project”). It is anticipated by the parties hereto that the Project will generate substantial annual gross sales and will create

employment for at least one hundred twenty-five (125) full and part time employees. As of the date of this Agreement, the cost of said Project is approximately SEVEN MILLION DOLLARS (\$7,000,000.00) including the property remodeling, fixtures, signage, façade improvements, build-out, and parking lot improvement costs. As and to the extent required by the laws, codes and regulations of the Village (“Applicable Laws”), the architecture, building elevations, exterior building materials, building, zoning and sign requirements, and landscaping plans for the construction of the Project must be submitted to and approved by the VILLAGE. The Project to be constructed on the Subject Property shall be constructed substantially in accordance with the plans and specifications approved by the VILLAGE.

(c) The VILLAGE is desirous of having the Subject Property improved with the new grocery store in order to service the needs of the VILLAGE and its residents, and the Project will increase employment opportunities in the VILLAGE, prevent decline in economic conditions existing in the VILLAGE, stimulate commercial growth and stabilize the tax base of the VILLAGE, and, in furtherance thereof, the VILLAGE contemplates certain incentives and continuing economic incentives under the terms and conditions hereinafter set forth to assist in such.

(d) The parties hereto acknowledge, and CAPUTO’S represents and warrants, that it requires economic assistance from the VILLAGE in order to commence and complete the Project, and that, but for said economic assistance, the Project as contemplated would not be economically viable nor would the funds necessary for its commencement and completion be available.

(e) For purposes of this Agreement, the use of the term “sales tax” shall mean and refer to those taxes imposed by the State of Illinois pursuant to the Retailers’ Occupation Tax Act and the Service Occupation Tax Act (as said Acts may be amended from time to time, and shall include

Acts or laws implemented as substitutes therefor or supplements thereto (in whole or in part)) and which are collected by the State and distributed to the VILLAGE, as well as the VILLAGE'S Home Rule Retailers and Service Occupation Taxes (as the same may be amended from time to time, and shall include any taxes implemented as substitutes therefor or supplements thereto (in whole or in part)). If a governmental or legislative body enacts any law or statute which results in any material changes or amendments to the foregoing sales tax provisions, which changes or amendments prohibit the VILLAGE from complying with this Agreement, then the VILLAGE will amend this Agreement to comply with such changes or amendments in a manner which provides as much of the originally contemplated incentives and benefits to CAPUTO'S as possible. The use of the term "sales tax revenue" shall mean and refer to any and all revenues derived from any sales tax by the Village.

(f) This Agreement, and the incentives and inducements set forth herein, shall apply to the Project, including, but not limited to, the grocery store, pharmacy, deli and liquor sales arising from the Subject Property, as well as any different (or similar) grocery, pharmacy, deli and liquor sales facilities which may be located on the Subject Property from time to time during the term of this Agreement.

## **2. Conditions Precedent to the Undertakings on the Part of the VILLAGE**

All undertakings on the part of the VILLAGE pursuant to this Agreement are subject to satisfaction of the following conditions by CAPUTO'S on or before the date of the Initial Payment provided for in Paragraph 3 below, unless a different timeframe is otherwise specifically hereinafter stated:

(a) CAPUTO'S shall have obtained final approval (as and to the extent required by Applicable Laws) from the appropriate departments within the Village relating to the construction of the improvements constituting the Project, including, but not limited to, construction of any

signs, it being understood and agreed that the VILLAGE has the discretion established by law to approve all such work and the VILLAGE shall not be deemed to have caused a default hereunder or have any liability for its reasonable disapproval of such work, provided however that: (i) once any work has been approved, any subsequent disapproval thereof shall be deemed to be unreasonable; and (ii) as and to the extent that any work complies with all applicable laws, codes, regulations and ordinances, any disapproval thereof shall be deemed to be unreasonable.

(b) CAPUTO'S shall have obtained any other final approvals necessary from any other governmental unit or agency which has jurisdiction or authority over any portion of the Project.

(c) INTENTIONALLY DELETED.

(d) CAPUTO'S shall have certified to the VILLAGE that: (i) there exists no material default under this Agreement by CAPUTO'S, beyond any notice and applicable cure period set forth herein, that materially and adversely affects or that may materially and adversely affect, operation of the aforementioned grocery store on the Subject Property, and (ii) CAPUTO'S has not received any notice of any violation which has not prior to the date of the certification been cured: (i) relating to construction of the Project, (ii) of any applicable VILLAGE ordinances, rules and regulations, or (iii) of any applicable laws of the State of Illinois or the United States of America, and/or any agency or subdivision thereof; which has not prior to the date of the certification been cured

(e) Subject to the provisions of this Agreement and in particular, the provisions in Paragraph 24 hereof, CAPUTO'S shall have commenced construction of the Project on or before June 1, 2021 ("Project Commencement Date"). CAPUTO'S obligation to commence construction of the Project on the Project Commencement Date is expressly contingent upon the Village issuing a building permit for the Project no later than sixty (60) days after receipt of an application for

building permit for the Project and plans pertaining thereto ("Review Period"). The Project Commencement Date shall be extended by one day for each day or portion thereof that the Village delays the issuance of the building permit for the Project beyond the Review Period.

**3. Undertakings on the Part of the VILLAGE**

Subject to substantial compliance by CAPUTO'S, as reasonably determined by the VILLAGE Director of the Development Services Department, with all material terms and conditions set forth in this Agreement, the VILLAGE hereby undertakes to make the payments set forth in subparagraph (b) of this Paragraph 3:

(a) In addition to the conditions set forth in Paragraph 2 above, the Project shall have been substantially completed to the point where CAPUTO'S shall have caused the opening of a grocery store for business on the Subject Property as provided in Paragraph 4(a) below.

(b) Provided there is substantial compliance with all of the material terms and conditions set forth in this Agreement by CAPUTO'S, the VILLAGE hereby agrees to pay the sums hereinafter described, in quarterly installment payments (on or before the 1st day of the first calendar month in such quarter) over a maximum of a ten (10) year period commencing on CAPUTO'S receipt of the Initial Payment (as hereinafter defined) as follows, subject however to the following conditions and restrictions:

- (i) Each amount will be due and payable solely from the sales tax revenue received by the VILLAGE from applicable sales at or arising from operations at the Subject Property and computed as follows:
  - (1) It is acknowledged and understood by and between the parties hereto that the VILLAGE receives sales tax revenue monthly, and that sales tax revenues 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 received in mid to late October).
  - (2) Commencing with the first proceeds of sales tax revenue received by the VILLAGE from applicable sales at or arising from operations at the Subject Property and thereafter, the VILLAGE shall be entitled to fifty percent

(50%) of all such sales tax revenue and CAPUTO'S shall be entitled to the remaining fifty percent (50%) of such sales tax revenue ("CAPUTO'S Share"), until such time as CAPUTO'S shall have received twenty-five percent (25%) of the cost of the Project, including the property remodeling, fixtures, signage, façade improvements, build-out, and parking lot improvement costs, up to a maximum of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$1,750,000).

- (3) The initial payment of CAPUTO'S Share shall be made not later than the first day of the fourth calendar month after the opening of the CAPUTO'S Fresh Market grocery store (or on such later date once the VILLAGE has received the appropriate reports from the State to determine the amount of sales tax revenue generated on the Subject Property) (the "Initial Payment"). Payments of CAPUTO'S Share, if any, shall then be made every three (3) months thereafter until the tenth (10th) anniversary of the Initial Payment, at which time a final payment of CAPUTO'S Share, if any then remaining, shall be made based on sales tax revenue received through and including such date.
- (ii) CAPUTO'S shall have delivered to the VILLAGE no less than thirty (30) days prior to the Initial Payment or within, and no less than thirty (30) days prior to each subsequent payment, a certificate dated within fifteen (15) days of receipt by the VILLAGE that all material representations and warranties contained in Paragraph 5 herein are true and correct. Provided, however, that once the Project has been completed and any aspects of the construction and initial occupancy of the Project requiring VILLAGE approval have received such approval from the VILLAGE as finally completed, the certificate required hereunder shall not be required.
- (iii) That CAPUTO'S has documented prior to each payment under (2) above, to the VILLAGE's reasonable satisfaction, that the aggregate amount that has been expended for the Project costs outlined in EXHIBIT "B" attached hereto and made a part hereof equals or exceeds the aggregate payments theretofore made (including the then current payment to be made) pursuant to (2) above. Such documentation shall not continue to be required once it has been established that such costs expended equal or exceed the maximum amount of CAPUTO'S Share as provided herein.
- (c) The VILLAGE shall provide for payments required under this Paragraph by appropriating therefor in its annual budget ordinance for the fiscal year in which such payment may be due.
- (d) CAPUTO'S expects the CAPUTO'S Fresh Market grocery store to open for business in the twelve (12) months from the Project Commencement Date. Subject to the

provisions of Paragraph 24, in the event that the CAPUTO'S Fresh Market grocery store is not open to the public within eighteen (18) months after the Project Commencement Date, or on such other later date as may be agreed upon by and between the VILLAGE and CAPUTO'S, then CAPUTO'S shall be in default hereunder and all obligations on the part of the VILLAGE to make any payments to CAPUTO'S pursuant to this Paragraph shall terminate after the expiration of the applicable cure period set forth in Paragraph 21 hereof without cure, and neither the VILLAGE nor CAPUTO'S shall have any further obligations with regard to the Project.

(e) In the event that CAPUTO'S fails to deliver to the VILLAGE any or all of the foregoing certifications within the time periods set forth above, or otherwise violates any term or provision of this Agreement, then in such event, the VILLAGE shall have no obligation to make any payment to CAPUTO'S until such time as any such failure or violation is corrected to the reasonable satisfaction of the VILLAGE (except where this Agreement provides for forfeiture of any such payments), and all rights of CAPUTO'S to demand any current or future payment from the VILLAGE shall be deemed waived until such failure or violation is so corrected, and all other obligations on the part of the VILLAGE arising pursuant to this Agreement shall be deemed suspended and without any further force and effect unless and until such failure or violation is so corrected within the applicable cure period. Upon the cure or correction as aforesaid, any suspended, waived or accrued but unpaid payments under Paragraph 3(b)(i) above shall be paid by the VILLAGE to CAPUTO'S. Where this Agreement provides for forfeiture of any such payments, the VILLAGE may in that event cancel this Agreement immediately and permanently.

Notwithstanding any of the foregoing, or any other provision contained herein, if CAPUTO'S fails in any year to timely pay any or all of the real estate taxes on the Subject Property when they become due, or within the applicable ten (10) day cure period provided in Paragraph

21, the VILLAGE may, at its sole discretion, suspend future incentive payments due hereunder. Upon presentation to the Village satisfactory evidence that such real estate tax obligations have been paid or otherwise satisfied, any suspended or accrued but unpaid payments under Paragraph 3(b)(i) above shall be paid by the VILLAGE to CAPUTO'S. Notwithstanding the foregoing, CAPUTO'S shall have the right to contest in good faith the assessed valuation of the Subject Property and the improvements thereon from time to time without affecting this Agreement.

Additionally, it is understood and agreed by the parties that CAPUTO'S is eligible to participate in the VILLAGE's "Orland Park Commercial Impact Program" as an additional potential economic benefit to CAPUTO'S. The goal of the Orland Park Commercial Impact Program is to encourage new commercial growth and development through the temporary reduction and deferral of permit and impact fees. The entire Project will receive a 25% reduction on permit/impact fees and a 25% reduction on water tap fees. Additionally, payment of permit/impact fees and water tap fees shall be deferred until issuance of the final occupancy certificate.

4. **Undertakings on the Part of CAPUTO'S**

(a) Subject to Paragraph 24, CAPUTO'S shall not cause or permit the existence of any violation of VILLAGE ordinances applicable to the initial construction and occupancy of the Project, including but not limited to the VILLAGE's Building Code, Land Development Code, Fire Code, sign regulations, and any and all rules and regulations thereunder. CAPUTO'S agrees that approximately SEVEN MILLION DOLLARS (\$7,000,000.00) will be spent on the Project at the Subject Property. CAPUTO'S agrees to cause the Project to be constructed in full compliance in all material respects with plans (including but not limited to site plans, landscaping, building elevations and exterior building materials) approved by the VILLAGE.

(b) CAPUTO'S shall comply with all of the material requirements placed on it set forth in Paragraphs 2 and 3 of this Agreement.

(c) CAPUTO'S shall execute and provide the VILLAGE with a power of attorney letter, in form and content reasonably acceptable to the VILLAGE and CAPUTO'S, which letter shall be addressed to the Illinois Department of Revenue and shall authorize the Illinois Department of Revenue to release any and all gross revenue and sales tax information on a monthly basis with respect to the operation of the new CAPUTO'S Fresh Market grocery store on the Subject Property to the VILLAGE while this Agreement is in effect. In addition to said letter, CAPUTO'S shall prepare and submit such other or additional form(s) as may be required from time to time by the Illinois Department of Revenue 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 CAPUTO'S to execute the necessary authorization and/or release, the VILLAGE shall not be required to make any of the incentive payments provided for in Paragraph 3(b) hereof until such information is provided.

**5. Representations and Warranties of CAPUTO'S**

(a) CAPUTO'S hereby represents and warrants that the Project requires economic assistance from the VILLAGE in order to commence and complete the Project and, but for the economic assistance to be given by the VILLAGE as heretofore stated, the Project as contemplated would not be economically viable nor would the funds necessary for its completion be made available.

(b) CAPUTO'S hereby represents and warrants that it shall comply with all applicable local zoning and sign ordinances and regulations, all applicable building and fire code regulations and all other applicable VILLAGE codes, ordinances, resolutions and/or regulations, in any event with respect to the initial construction of the new retail store on the Subject Property. CAPUTO'S

agrees that the Project, including the site plan, landscaping plan, building elevations and exterior building materials, shall be constructed in compliance in all material respects with plans approved by the VILLAGE.

(c) CAPUTO'S hereby represents and warrants that it is an Illinois corporation in good standing under the laws of the State of Illinois.

(d) CAPUTO'S hereby represents and warrants that it has provided the legal description of the Subject Property set forth in this Agreement and that said legal description is accurate and correct to the best of its knowledge except as may hereafter be lawfully changed by plat of subdivision.

(e) CAPUTO'S hereby represents and warrants that, as of the date of this Agreement, the cost of the Project is approximately SEVEN MILLION DOLLARS (\$7,000,000.00).

## **6. Defaults**

The occurrence of any one or more of the following shall constitute a default by CAPUTO'S under this Agreement, subject to the cure provisions set forth in Paragraph 21 hereof, unless otherwise provided herein:

(a) Failure to comply with any material term, provision or condition of this Agreement imposed on CAPUTO'S; and the failure to cure such failure within the time and manner provided herein.

(b) A representation or warranty made by CAPUTO'S and contained herein that is false, inaccurate or otherwise incorrect, and that is not corrected within thirty (30) days following written notice thereof to CAPUTO'S from the VILLAGE.

(c) CAPUTO'S: (i) becomes insolvent; or (ii) is unable, or admits in writing its inability to pay, its debts as they mature; or (iii) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its or their property; or

(iv) is adjudicated a bankrupt; or (v) files a petition in bankruptcy or to effect a plan or other arrangement with creditors; or (vi) files an answer to a creditor's petition (admitting the material allegations thereof) for an adjudication of bankruptcy or to effect a plan or other arrangement with creditors; or (vii) applies to a court for the appointment of a receiver for any asset; or (viii) has a receiver or similar official appointed for any of its assets, or, if such receiver or similar official is appointed without the consent of CAPUTO'S and such appointment shall not be discharged within sixty (60) days after his appointment or CAPUTO'S has not bonded against such receivership or appointment; or (ix) a petition described in (v) is filed against CAPUTO'S and remains pending for a period of sixty (60) consecutive days, unless the same has been bonded, and as a result thereof, CAPUTO'S ceases to operate; or (x) files any lawsuit, claim and/or legal, equitable or administrative action affecting the VILLAGE's ability to collect any such sales tax revenue hereunder.

(d) CAPUTO'S relocation of the CAPUTO'S Fresh Market grocery store on the Subject Property to any place outside the corporate limits of the VILLAGE.

(e) Subject to Paragraph 24, the discontinuation of a grocery store on the Subject Property for a period in excess of one (1) year without its replacement by another retail sales business prior to the commencement of the eleventh (11<sup>th</sup>) year following the opening for business of the aforementioned CAPUTO'S Fresh Market grocery store. If CAPUTO'S violates the provisions of this Subparagraph, this Agreement shall be automatically terminated and the VILLAGE will have no further obligations hereunder, including but not limited to the obligation to make any payments pursuant to Paragraph 3 above.

Upon the occurrence of a default as hereinabove set forth and the expiration without cure following the giving of any applicable notice and the expiration of any applicable cure period, the

VILLAGE shall be relieved of any and all of its obligations arising hereunder and such obligations on the part of the VILLAGE shall be immediately canceled, become null and void and be without any force or effect, subject to the notice and cure provisions set forth in Paragraph 21 hereof, unless otherwise provided herein. The sole remedy of the VILLAGE for CAPUTO'S default hereunder shall be to terminate this Agreement, effective as of the expiration without cure of the notice and cure period following the date of such default.

Notwithstanding the foregoing, if the event which gives rise to a default hereunder, independently of this Agreement constitutes a violation of any code, ordinance, regulation or rule of the VILLAGE, the VILLAGE shall have such remedies as may be provided for in such ordinance, regulation or rule, or as permitted at law or in equity.

#### **7. Notices**

All notices and requests required pursuant to this Agreement shall be sent via certified mail, return receipt requested, and addressed as follows:

##### **To the VILLAGE:**

1. Village President  
Village of Orland Park  
14700 S. Ravinia Avenue  
Orland Park, Illinois 60462

##### **To CAPUTO'S:**

1. Caputo's New Farm Produce – Orland Park Inc.  
Attn: Robertino Presta, CEO  
520 E. North Ave.  
Carol Stream, Illinois 60188

##### **With a Copy to:**

2. Village Clerk  
Village of Orland Park  
14700 S. Ravinia Avenue  
Orland Park, Illinois 60477

2. Ansani & Ansani, P.C.  
1411 W. Peterson, Suite 202  
Park Ridge, IL 60068

With a Copy to:

3. E. Kenneth Friker  
Klein, Thorpe and Jenkins, Ltd.  
15010 S. Ravinia Avenue - Suite 10  
Orland Park, Illinois 60462

or to such other persons or such other addresses as the parties may indicate in writing, by providing at least thirty (30) days written notice to the other, either by personal delivery, by overnight delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof. The parties may hereafter mutually agree to accept service via facsimile, and any such facsimile service shall be deemed had upon receipt and proof of a written facsimile transmission confirmation page. Notice shall be deemed received upon acceptance or rejection, as evidenced by a written delivery receipt in relation thereto.

#### **8. Law Governing**

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

#### **9. Assignments**

CAPUTO'S shall not assign this Agreement to any person or entity other than an Affiliate or Affiliates without the express written approval and consent by the VILLAGE. For purposes of this Agreement, an "Affiliate" shall mean any person or entity that is, directly or indirectly, a shareholder, director or officer of CAPUTO'S or is owned or controlled by, or under common control or ownership with, one or more shareholder, director or officer of CAPUTO'S and shall include any (i) member of such person's family, (ii) estate planning trust or entity the trustee, beneficiary or manager of which is any such person or a member of such person's family and (iii) trust or entity that results from the death or incapacity of any such person or a member of such person's family.

It is understood that the VILLAGE will have the absolute right and discretion to refuse to consent to an assignment where the prospective assignee has ever been denied any business license, or has ever had a business license terminated, suspended or revoked, or has ever been convicted of a felony.

Notwithstanding any such assignment and/or assumption of responsibility, whether permitted or approved and consented to by the VILLAGE, CAPUTO'S shall remain liable for all of its agreements, covenants and obligations and the performance thereof pursuant to this Agreement.

**10. Time**

Time is of the essence under this Agreement and all time limits set forth herein are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

**11. Binding Effect**

This Agreement shall inure to the benefit of, and shall be binding upon the VILLAGE and CAPUTO'S and its approved successors and assigns, subject, however, to the provisions of Paragraphs 9 and 12 hereof, and shall not run with the land.

**12. Limitation of Liability**

(a) No recourse under or upon any obligation, covenant or condition of this Agreement, or for any claim based thereon or otherwise related thereto, shall be had against the VILLAGE, or its officers, officials, agents and/or employees, in any amount or in excess of any specific sum agreed by the VILLAGE to be paid to CAPUTO'S hereunder, subject to the terms and conditions set forth herein, and no liability, right or claim at law or in equity shall attach to, or shall be incurred by, the VILLAGE, or its officers, officials, agents and/or employees, in excess of such amounts and any and all such rights or claims of CAPUTO'S against the VILLAGE, or its officers, officials,

agents and/or employees in excess of such amounts are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the VILLAGE.

(b) No recourse under or upon any obligation, covenant or condition of this Agreement, or for any claim based thereon or otherwise related thereto, shall be had against the shareholders, directors, officers, officials, agents and/or employees of CAPUTO'S, and no liability, right or claim at law or in equity shall attach to, or shall be incurred by, the members, managers, officers, officials, agents and/or employees of CAPUTO'S and any and all such rights or claims of VILLAGE against the shareholders, directors, officers, officials, agents and/or employees of CAPUTO'S are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by CAPUTO'S.

**13. Reimbursement for Legal and Other Fees and Expenses**

Except as provided in the grammatical paragraph immediately following this grammatical paragraph, upon demand by the VILLAGE made by and through its President, CAPUTO'S from time to time shall promptly reimburse the VILLAGE for all reasonable out-of-pocket costs and expenses incurred by the VILLAGE in the administration of this Agreement if caused by, or attributable, to the unauthorized actions of CAPUTO'S or any of its shareholders, directors, officers, employees, officials and/or agents.

Such costs and expenses incurred by the VILLAGE in the administration of this Agreement shall be evidenced to CAPUTO'S, upon request, by a sworn statement of the VILLAGE, and such costs and expenses may be further confirmed by CAPUTO'S at its option from additional documents designated by the VILLAGE from time to time as relevant to determining such costs and expenses.

In the event that any third party or parties institutes any legal proceedings against CAPUTO'S and/or the VILLAGE, which relate to the terms of this Agreement and such legal

proceedings arise out of CAPUTO'S breach or alleged breach of its obligations under this Agreement after the giving of any applicable notice and the expiration of any applicable cure period, then, in that event, CAPUTO'S shall indemnify and hold harmless the VILLAGE from any and all such proceedings. Further, CAPUTO'S, 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 CAPUTO'S 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 CAPUTO'S 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 CAPUTO'S shall reimburse the VILLAGE from time to time on written demand from the VILLAGE President 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 attorneys' fees, witnesses' fees and/or other litigation expenses incurred by the VILLAGE in connection therewith.

In the event that the VILLAGE or CAPUTO'S institutes legal proceedings against the other 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 all costs and expenses of such legal proceedings incurred by the prevailing party, including but not limited

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

**14. Continuity of Obligations**

Except as otherwise specifically provided for in this Agreement, the parties shall at all times during the term of this Agreement remain liable to the other for the faithful performance of all obligations imposed under this Agreement until: (a) the natural expiration of this Agreement's maximum ten (10) year period; (b) until the parties, at their sole option, have otherwise released the other party from any or all of its respective obligations hereunder; or (c) upon a material default by one party which default remains uncured beyond the applicable cure period and/or which is not subject to any cure period.

**15. No Waiver or Relinquishment of Right to Enforce Agreement**

Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and/or conditions set forth herein, or any of them, upon any other party imposed, shall not constitute or otherwise be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement and/or condition, but the same shall continue in full force and effect.

**16. VILLAGE Approval or Direction**

Where VILLAGE approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the VILLAGE or authorized official of the VILLAGE, unless otherwise expressly provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met, unless such requirements are inconsistent with this Agreement.

**17. Section Headings and Subheadings**

All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered under or relevant to such heading or not.

**18. Authorization to Execute**

The officer of CAPUTO'S who has executed this Agreement hereby warrants that he has been lawfully authorized by CAPUTO'S to execute this Agreement on behalf of CAPUTO'S. The VILLAGE President and VILLAGE Clerk hereby warrant that they have been lawfully authorized by the VILLAGE Board to execute this Agreement on behalf of the VILLAGE. CAPUTO'S and the VILLAGE shall, upon request, deliver to each other, at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of any and all documents reasonably required to legally evidence the authority to so execute this Agreement on behalf of the respective parties.

**19. Amendment**

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings by and between the parties relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those expressly set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

**20. Counterparts**

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

**21. Curing Default**

In the event of any default under or violation of this Agreement, the party not in default or violation shall serve written notice upon the party or parties in default or violation, which notice shall be in writing and shall specify the particular violation or default. Except where the provisions of this Agreement expressly prohibit the giving of the notice and providing the cure period hereinafter described, the parties reserve the right to cure any violation of this Agreement or default hereunder within thirty (30) days following such written notice of such default. If any such default is so cured within said thirty (30) day period, all terms and conditions of this Agreement shall remain in full force and effect. If the parties cannot cure a default or violation hereof within said thirty (30) day period, then the other party shall grant a reasonable extension of the cure period, said extension not to exceed ninety (90) days, provided that the party in default or violation is diligently pursuing completion and/or cure and tenders proof of such diligence to the non-defaulting party upon request. The non-defaulting party may, at its sole discretion, grant such additional extensions beyond the aforementioned ninety (90) day extension period as may, in the sole discretion of the non-defaulting party, be reasonably necessary to cure said default. Notwithstanding anything herein to the contrary, the aforesaid time periods shall be extended pursuant to Paragraph 24, if applicable, and the cure period for a violation of Paragraph 3(d) shall be one (1) year.

**22. Conflict Between the Text and Exhibits**

In the event of a conflict between the text of this Agreement and any Exhibits attached hereto, the text of the Agreement shall control and govern.

**23. Severability**

If any provision of this Agreement is held invalid by a court of competent jurisdiction, or in the event such a court shall determine that the VILLAGE does not have the power to perform

any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve the VILLAGE from performance under such invalid provision of this Agreement.

**24. Force Majeure**

In the event that either party hereto is delayed, hindered or prevented in performing any act required hereunder by reason of any act or occurrence beyond its reasonable control and not the fault of such party, including but not limited to labor disputes, material shortages, governmental restrictions or regulations, civil insurrection, war or other such reason, the party so delayed, hindered or prevented shall, if reasonably practicable hereunder, be excused from performance only for the period of such delay, hindrance and/or prevention and shall immediately tender said performance upon the removal and/or reconciliation of said interference.

**25. Definition of "VILLAGE"**

When the term "VILLAGE" is used herein, it shall be construed as referring to the Corporate Authorities of the VILLAGE unless the context clearly indicates otherwise.

**26. Recording of Agreement**

Neither this Agreement nor a memorandum thereof shall be recorded with the Recorder of Deeds of Cook County, Illinois.

**27. Village Attorney's Opinion**

Within ten (10) days after the date hereof and as a material inducement to CAPUTO'S, the VILLAGE shall cause its legal counsel to issue to CAPUTO'S, for its and its successors' and permitted assigns', its legal opinion that this Agreement has been duly authorized by the VILLAGE, that the signature on behalf of the VILLAGE have been duly authorized and made and that the Agreement (excluding Paragraph 23) is valid and binding on the VILLAGE in accordance with its terms, excluding insolvency, bankruptcy and similar laws.

**28. Execution of Agreement**

This Agreement shall be signed last by the VILLAGE, and the President (Mayor) of the VILLAGE shall affix the date on which he signs this Agreement on page 1 hereof, which date shall be the effective date of this Agreement.

**IN WITNESS WHEREOF**, this Agreement as of the date and year first written above.

VILLAGE OF ORLAND PARK,  
an Illinois municipal corporation

ATTEST:

By:   
Village President

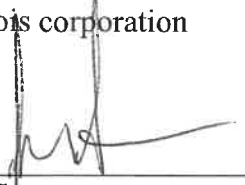
By:   
Village Clerk

Date: 11/02, 2020

Date: 11/02, 2020

ANGELO CAPUTO'S FRESH MARKETS,  
an Illinois corporation

ATTEST:

By:   
Its \_\_\_\_\_

By:   
\_\_\_\_\_

Date: 11-02, 2020

Date: 12-02-, 2020