

**VILLAGE OF ORLAND PARK
SMART ENERGY FUND AGREEMENT**

THIS AGREEMENT, entered into this 2nd day of May, 2011, between the Village of Orland Park, Illinois (hereinafter referred to as "Village") and the following designated Owner/Lessee, to witness:

Owner's Name:	Simon Property Group, Inc.
Lessee's Name:	N/A
Name of Business:	Orland Square Mall
Tax ID#/Social Security #:	36-3971387
Address of Property to be Improved:	<u>288 Orland Square Drive</u>
PIN Number:	27-10-301-005; -007; -008; 27-10-300-009; -012;

WITNESSETH:

WHEREAS, the Village of Orland Park has established a Smart Energy Fund for application within the Village of Orland Park (the "Village") and funded it through the American Recovery and Reinvestment Act of 2009 via the United States Department of Energy's Energy Efficiency and Conservation Block Grant (EECBG); and

WHEREAS, said Smart Energy Fund is administered by the Village for the purposes of helping property owners and tenants of commercial structures within the Village to conserve resources and install high performance, energy efficient and renewable energy systems; and

WHEREAS, pursuant to the Smart Energy Fund the Village, subject to its sole discretion, will reimburse Owners/Lessees for the cost of eligible energy efficiency/ renewable energy improvements to commercial structures within the Village up to a maximum of one-half (1/2) of the approved contract cost of such improvements or \$20,000.00, whichever is less; and

WHEREAS, the Owner/Lessee's property is located within the Village, and the Owner/Lessee desires to participate in the Smart Energy Fund pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements obtained herein, the Village and the Owner/Lessee do hereby agree as follows:

SECTION 1

With respect to energy efficiency/ renewable energy improvements, the Village shall reimburse an Owner/Lessee for the cost of improvements to the Owner/Lessee's property at the rate of fifty percent (50%) of such cost.

The actual total reimbursement amounts per this Agreement shall not exceed \$11,572.95. The improvement costs that are eligible for Village reimbursement include all labor, materials, equipment, and other contract items necessary for the proper execution and completion of the scope of work as shown on the plans, design drawings, specifications and estimates approved by the Village. Such plans, design drawings, specifications, estimates and scope of work are attached hereto as Exhibit A.

The energy efficiency/ renewable energy improvements to be performed pursuant to this Agreement are:

- Per Lime Energy bid:
- Replace 283 existing lighting fixtures of assorted types with new energy efficient lighting;
 - 16 lights in the loading docks;
 - 42 lights in the boiler room;
 - 12 lights in the electric room;
 - 16 lights in dock storage;
 - 7 lights in Storage Room 2;
 - 7 lights in Storage Room 3;
 - 8 lights in Storage Room 4;
 - 4 lights in the service elevator;
 - 11 lights in the janitor's room;
 - 9 lights in the elevator penthouse;
 - 17 lights in the security office;
 - 18 lights in the maintenance garage;
 - 88 lights in the general facility;
 - 28 lights in various rooms

Note: view attachments for further information.

SECTION 2

No improvement work shall be undertaken until its design has been submitted to and approved by the Village. Following approval, the Owner/Lessee shall contract for the work and shall commence and complete all such work within ninety (90) days from the date of such approval.

SECTION 3

The Development Services Director shall periodically review the progress of the contractor's work on the energy efficiency/ renewable energy improvements pursuant to this Agreement. Such inspections shall not replace any required permit inspections by the Building Inspectors. All work which is not in conformance with the approved plans, design drawings and specifications shall be immediately remedied by the Owner/Lessee and deficient or improper work shall be replaced and made to comply with the approved plans, design drawings and specifications and the terms of this Agreement.

SECTION 4

Upon completion of the improvements and upon their final inspection and approval by the Development Services Director or his/her designee, the Owner/Lessee shall submit to the Village a properly executed and notarized contractor sworn statement showing the full cost of the work, as well as each separate component amount due to the contractor and each and every subcontractor involved in furnishing labor, materials or equipment in the work. In addition, the Owner/Lessee shall submit to the Village proof of payment of the contract cost pursuant to the contractor's statement and final lien waivers from all contractors and subcontractors. The Owner/Lessee shall also submit to the Village a copy of all of the invoices for professional services fees for preparation of plans and specifications. The Village shall, within thirty (30) days of receipt of the contractor's statement, proof of payment and lien waivers, and the professional services statement, issue a check to the Owner/Lessee as reimbursement for one-half (1/2) of the approved construction cost estimate or one-half (1/2) of the actual construction cost, whichever is less, subject to the limitations set forth in Section 1 hereof.

SECTION 5

If the Owner/Lessee or his contractor fails to complete the improvement work provided for herein in conformity with the time limitation, approved plans, design drawings and specifications and the terms of this Agreement, then upon written notice being given by the Development Services Director to the Owner/Lessee, by certified mail to the address listed above, this Agreement shall terminate and the financial obligation on the part of the Village shall cease and become null and void.

SECTION 6

Upon completion of the improvement work pursuant to this Agreement, the Owner/Lessee shall be responsible for properly maintaining such improvements in finished form and without change or alteration thereto, as provided in this Agreement, unless changes are submitted for review and are approved by the Village Board. Such approval shall not be unreasonably withheld if the proposed changes do not substantially alter the original design concept of the improvements as specified in the plans, design drawings and specifications approved pursuant to this Agreement. In the event the approved energy efficiency/ renewable energy improvements are not properly maintained or alterations are made to the improvements without prior consent from the Village, the Village reserves the right to terminate this Agreement, hold the applicant liable for any architectural design and consultant fees incurred by the Village, and require reimbursement in full for all monies expended towards the project through this Smart Energy Fund.

SECTION 7

This Agreement shall be binding upon the Village and upon the Owner/Lessee and its successors, to said property for a period of ten (10) years from and after the date of completion and approval of the energy efficiency/ renewable energy improvements provided for herein. It shall be the responsibility of the Owner/Lessee to inform subsequent Owner/Lessee(s) of the provisions of this Agreement, and to be aware of the requirement for prior Village approval of any alteration whatsoever to the building energy systems funded by the Smart Energy Fund.

SECTION 8

The Owner/Lessee releases the Village from, and covenants and agrees that the Village shall not be liable for, and covenants and agrees to indemnify and hold harmless the Village and its officials, officers, employees and agents from and against, any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from or in any way connected directly or indirectly with the energy efficiency/ renewable energy improvement(s), including but not limited to actions arising from the Prevailing Wage Act (820 ILCS 30/0.01 et seq.) and the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) The Owner/Lessee further covenants and agrees to pay for or reimburse the Village and its officials, officers, employees and agents for any and all costs, reasonable attorneys' fees, liabilities or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, or causes of action. The Village shall have the right to select legal counsel and to approve any settlement in connection with such losses, claims, damages, liabilities, or causes of action. The provisions of this Section 8, as well as Sections 6 and 7, above, shall survive the completion of said façade improvement(s).

SECTION 9


Nothing herein is intended to limit, restrict or prohibit the Owner/Lessee from undertaking any other work in or about the subject premises, which is unrelated to the energy efficiency/ renewable energy improvements provided for in this Agreement.

SECTION 10

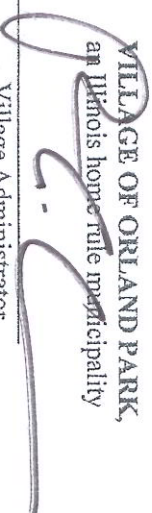
This Agreement shall be enforceable by any action at law or in equity, including actions for specific performance and injunctive relief. The laws of the State of Illinois shall control the construction and enforcement of this Agreement. The parties agree that all actions instituted on this Agreement shall be commenced and heard in the Circuit Court of Cook County, Illinois, and hereby waive venue in any other court of competent jurisdiction. Before any failure of any party to perform any obligation arising from this Agreement shall be deemed to constitute a breach, the party claiming the breach shall notify the defaulting party and demand performance. No breach of this Agreement shall be found to have occurred if performance is commenced to the satisfaction of the complaining party within thirty (30) days of the receipt of such notice.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date first appearing above.

OWNER


KENNETH BROWN,
GENERAL MANAGER

LESSEE (if applicable)

By: 
VILLAGE OF ORLAND PARK,
an Illinois home rule municipality
Village Administrator

ATTEST: 
Deputy Village Clerk