

**SALES TAX REVENUE SHARING AND DEVELOPMENT AGREEMENT**

This **SALES TAX REVENUE SHARING AND DEVELOPMENT AGREEMENT** (this “**Agreement**”) is entered into as of the 17th day of August, 2016, by and between Metal Monkey Brewing, LLC, an Illinois limited liability company (“**MMB**”), and the **VILLAGE OF ROMEOVILLE**, an Illinois home rule municipal corporation (the “**Village**”). MMB and the Village are hereinafter individually sometimes referred to as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

A. **WHEREAS**, the Village is a home rule municipality in accordance with Article VII Section 6(a) of the Constitution of the State of Illinois of 1970, and is entering into this Agreement pursuant to its authority as a home rule unit;

B. **WHEREAS**, MMB is the tenant occupying premises known as 515 Anderson Drive, Suite 900, in Romeoville, Illinois (the “**Property**”);

C. **WHEREAS**, MMB is using and occupying the Property as and for a brewery producing craft beer, along with a taproom used for retail on and off-premises sales purposes (the “**Project**”);

D. **WHEREAS**, the Village seeks to encourage the continuing and successful operation of the Project and, in order to make the Project economically feasible, the Village has agreed to rebate to MMB a portion of the Sales Taxes (as defined below) that are generated by the Project and received by the Village in accordance with the terms of this Agreement (the “**Rebate**”);

E. **WHEREAS**, the Corporate Authorities of the Village have approved the Rebate and this Agreement pursuant to Resolution No. \_\_\_\_.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals**. The recitals set forth above are expressly incorporated into this Agreement by this reference thereto as if fully set forth in this Section 1.

2. **Definitions**. For purposes of this Agreement, the following terms shall have the meanings set forth below.

a. **Commencement Date**. September 1, 2016.

b. **Municipal Code**. The Municipal Code of the Village of Romeoville.

c. **Payment Date**. Shall mean thirty (30) days after the Village receives (i) both the periodic sales tax information from the State of Illinois with respect to Sales Taxes administered by the State of Illinois. and, with respect to any Sales Taxes administered by the

Village, the periodic sales tax information and return to be submitted by MMB to the Village and (ii) with respect to Sales Taxes administered by the State of Illinois, actual payment of the then-due distributive share of the Sales Taxes from the State of Illinois as reflected in such periodic sales tax information, and, with respect to any Sales Taxes administered by the Village, actual payment from MMB of the then-due amount of such Village administered Sales Taxes as reflected in the return thereof required to be filed by MMB with the Village. Notwithstanding the foregoing, for ease of administration, the Village shall be permitted hereunder to make payment of any rebate of Sales Taxes due hereunder consistent with the Payment Date determined by the provision of sales tax information by the State of Illinois and the receipt of actual payment of the then-due distributive share of Sales Taxes from the State of Illinois, and at such time, the Village shall likewise make payment of then-due rebate amounts of Village administered Sales Taxes. MMB and Village acknowledge that the preceding sentence reflects the fact that the State of Illinois is currently anticipated to disclose information pertaining to Sales Taxes and make payment of local distributive shares of Sales Taxes three times per year, and that the parties intend for the Village to be permitted to make payment of rebates of State administered and Village administered Sales Taxes together to MMB hereunder on a three times per year basis, rather than making separate rebate payments of State administered Sales Taxes on a three times per year basis, and separate rebate payments of Village administered Sales Taxes on a monthly basis.

d. **Property**. Shall have the meaning set forth in Recital B.

e. **Project**. Shall have the meaning set forth in Recital C.

f. **Rebate**. Shall have the meaning set forth in Recital D.

g. **Sales Tax**. The net portion of taxes imposed by the State or Village as a retailers' occupation tax, service occupation tax, or any other so-called "sales tax" or similar tax that may be imposed by the State or Village, or any governmental agency or body created under the laws of the State or Village, and available for distribution to the Village.

h. **State**. The State of Illinois.

i. **Termination Date**. The date that is five (5) years after the Commencement Date plus any time necessary for the Village to undertake final audit, accounting and payment to MMB after such five (5) year period.

3. **Rebate**. Subject to the terms and conditions of this Agreement, the Village agrees to rebate fifty percent (50%) of all Sales Taxes generated by the Project to MMB during the period of time starting on the Commencement Date and ending on the Termination Date.

4. **Payments**. The Village shall make payments to MMB on each Payment Date from and after the Commencement Date for the term of this Agreement. Such amounts shall be payable solely from, and to the extent of, Sales Tax generated from the Project and collected by the State or by the Village and remitted to the Village by the State or directly by MMB during the term of this Agreement. The payments shall be sent to MMB at the address set forth in Section 8. Consistent with Section 2.c above, the parties anticipate having three Payment Dates per year, determined by reference to the release of Sales Tax information by the State of Illinois

and receipt by the Village from the State of Illinois of the Village's distributive share of State administered Sales Taxes.

5. **Term.** Upon the Rebate terminating, this Agreement, subject to the provisions below, shall be and become null and void and of no further effect whatsoever, without further action on the part of the Village, MMB or any other person, firm or corporation. Notwithstanding the foregoing, this Agreement shall remain in effect for purposes of audit, final accounting, and payment and for purposes of enforcement actions hereunder.

6. **Mutual Assistance.** The Village and MMB agree to do all things necessary or appropriate to carry out, and to aid and assist each other in carrying out, the terms of this Agreement and in implementing the Parties' intent, as reflected by the terms of this Agreement, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the Village of such resolutions and ordinances and the taking of such actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and provisions of this Agreement and the Parties' intentions as reflected by the terms of this Agreement. No waiver of Village regulations shall be inferred from this Agreement, except as specifically set forth.

7. **Reporting and Payment.** MMB acknowledges that the Village's obligations to make any payments of rebate amounts hereunder are conditioned upon MMB's provision to the State of Illinois and the Village of all Sales Tax information and returns as required by applicable laws and ordinances, and MMB's remittance to the State of Illinois and the Village of all Sales Taxes amounts respectively due them under applicable laws and ordinances.

8. **Notices.** All notices, demands, consents, approvals and other communications which are required or desired to be given by either party to the other hereunder shall be in writing and shall be hand delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three days after mailing; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communication.

All notices to the Village shall be sent to:

Village of Romeoville  
1050 W. Romeo Road  
Romeoville, Illinois 60446  
Attn: Village Manager

All notices to MMB shall be sent to:

Metal Monkey Brewing, LLC

515 Anderson Drive Suite 900  
Romeoville IL 60446

9. **Default/Remedies.** The failure of a Party to materially comply with its obligations under this Agreement shall constitute a default by such Party. The Party claiming the occurrence of such default shall notify the other Party of same and shall demand performance by giving the defaulting Party a thirty (30) day written notice specifying the default. Unless, within such thirty (30) day period (a) the defaulting Party, (i) cures such default, or (ii) commences action to cure such default and completes the curing of such default within a reasonable time or (b) the Party claiming default, by written notice to the defaulting Party, either waives the default or grants the defaulting Party a longer period to cure, then the Party claiming the default may pursue all remedies available at law and equity, including specific performance.

In the event legal action or other proceeding is brought for enforcement of this Agreement or with respect to an alleged breach, default or misrepresentation, the successful or prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable attorneys' fees and related costs (including any fees and costs incident to appeals) in addition to any other relief hereunder to which such Party may be entitled.

10. **Governing Law.** This Agreement shall be governed by the laws of the State of Illinois.

11. **Intentionally Omitted.**

12. **Integration.** This Agreement contains the entire agreement of the Parties with respect to the transactions contemplated by this Agreement. All prior agreements, negotiations, and understandings are expressly merged herein and superseded hereby.

13. **Severability.** Each section of this Agreement, and each sentence, clause or phrase contained in such section, shall be considered severable and if, for any reason, any section, or any sentence, clause or phrase contained in such section, is determined to be invalid or unenforceable, such invalidity or unenforceability shall not impair the operation or affect enforceability or validity of the remaining portions of this Agreement.

14. **Amendment.** This Agreement may be amended by, and only by, a written instrument authorized in accordance with law and signed by both Parties.

15. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon: (i) the Village and any successor corporate authorities of the Village; and (ii) MMB. This Agreement may not be assigned by MMB to any grantee, lessee, assign or other third party.

16. **Effectiveness of this Agreement.** Nothing contained in this Agreement shall be deemed or construed to impose any duty or obligation upon MMB to acquire the Property, to undertake the development and construction of the Project or any other on-site or off-site improvements or to operate the Project, it being expressly acknowledged and agreed, however,

that the Village's obligations to MMB hereunder are premised and conditioned on the generation of Sales Tax from the Project as the sole source of reimbursement hereunder.

17. **Counterparts; Facsimile Signatures.** This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile or other electronically transmitted signatures on this Agreement shall constitute originals signatures of the parties.

18. **Construction.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

19. **Time is of the Essence.** Time is of the essence of this Agreement and of each and every provision hereof.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective as of the Effective Date.

**MMB**

**Metal Monkey Brewing, LLC**, an Illinois limited liability company

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

**Village**

**VILLAGE OF ROMEOVILLE**, an Illinois municipal corporation

By: \_\_\_\_\_  
Name: John D. Noak  
Its: Village President

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_, who is personally known to me to be the \_\_\_\_\_ of said \_\_\_\_\_, appeared before me this day in person and acknowledged that he/she signed and delivered the foregoing Agreement as his/her own free and voluntary act and as the free and voluntary act of said corporation for the purposes therein set forth.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that John D. Noak, of the **VILLAGE OF ROMEOVILLE**, an Illinois municipal corporation, who is personally known to me to be the Village President of said Illinois Municipal corporation, appeared before me this day in person and acknowledged that he/she signed and delivered the foregoing Agreement as his/her own free and voluntary act and as the free and voluntary act of said corporation for the purposes therein set forth.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public