



ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title:	Motion to Approve a Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to Execute a Certain Termination Agreement Between the City of St. Charles and 3800 E Main LLC. (The Quad), and Von Maur Department Stores (the Department Store)
Presenter:	Chris Minick, Finance Director

Please check appropriate box:

<input type="checkbox"/>	Government Operations	<input type="checkbox"/>	Government Services
<input type="checkbox"/>	Planning & Development	<input checked="" type="checkbox"/>	City Council (05/05/2014)
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	

Estimated Cost:	N/A	Budgeted:	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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If NO, please explain how item will be funded:

Executive Summary:

For the last several months, staff has been working with 3800 E Main LLC to secure an economic incentive for the redevelopment of the Quad, formerly known as Charlestowne Mall. As part of the due diligence for creating a sales tax incentive, staff searched for any existing incentive agreements governing the Mall property. An incentive agreement dated September 30, 2000 is still in effect for the Mall property and must be terminated so that we can enter into the new sales tax reimbursement incentive agreement.

This incentive agreement was completed to rebate costs related to the construction and addition of the Von Maur department store currently operating at the site. The existing agreement had a 15-year term and calls for the City to rebate a portion of the sales taxes generated for the Mall property to the Mall owners once the threshold/base amount of sales tax revenue was reached. The base revenue amount in the agreement is \$1,537,293. The City made two payments under this agreement for 2002 sales tax revenues as well as 2003 sales tax revenues. During the other years, the base amount of sales tax was not exceeded and the City has made no payments under the existing agreement since 2003.

The current owners of the Mall (3800 E. Main LLC) are agreeable to terminating the existing agreement so that the new sales tax reimbursement incentive agreement can proceed. The attached resolution will terminate the existing agreement and staff recommends approval.

Attachments: *(please list)*

- Resolution
- Copy of the existing agreement

Recommendation / Suggested Action *(briefly explain):*

Motion to approve a Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to Execute a Certain Termination Agreement Between the City of St. Charles and 3800 E Main LLC. (The Quad), and Von Maur Department Stores (the Department Store).

<i>For office use only:</i>	Agenda Item Number: IB
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City of St. Charles, Illinois
Resolution No. _____

**A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to
Execute a Certain Termination Agreement Between the City of St. Charles and
3800 E Main LLC. (The Quad), and Von Maur Department Stores (the
Department Store)**

**Presented & Passed by the
City Council on _____**

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute that certain Termination Agreement, in substantially the form attached hereto and incorporated herein as Exhibit "A", by and on behalf of the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this 5th day of May, 2014.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this 5th day of May, 2014.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois, this 5th day of May, 2014.

Raymond P. Rogina

Attest:

City Clerk/Recording Secretary

Voice Vote:

Ayes:

Nays:

Absent:

Abstain:

Exhibit A

TERMINATION AGREEMENT

This Termination Agreement is entered into this ____ day of April, 2014, by and between SC 3800 MAIN, LLC, a Delaware Limited Liability Company (“Owner”) and THE CITY OF ST. CHARLES, an Illinois Municipal Corporation (“City”) and VON MAUR DEPARTMENT STORE (“Department Store”).

RECITALS

WHEREAS, CHARLESTOWNE MALL, LLC, an New York Limited Liability Company and the City executed an Agreement entitled *Incremental Sales Tax Grant Agreement* on September 30, 2000 which provided for annual funding amounts by the City to the Owner of the CHARLESTOWNE MALL, a copy of which is attached hereto as **Exhibit “B”**; and,

WHEREAS, Owner is the successor in interest to CHARLESTOWNE MALL, LLC by virtue of a purchase of the Charlestowne Mall occurring in 2013; and

WHEREAS, said Agreement set forth certain conditions precedent to the obligations of the Owner and the City including the construction of the VON MAUR DEPARTMENT STORE; and

WHEREAS, the Department Store and a prior Owner entered into an agreement relating to the construction of the VON MAUR DEPARTMENT STORE and further contingent upon the terms and conditions set forth in the Agreement; and

WHEREAS, the Owner, the City and the Department Store have agreed to terminate the *Incremental Sales Tax Grant Agreement* dated September 30, 2000.

NOW THEREFORE, in exchange for good and valuable consideration, the receipt of which is acknowledged by the parties, the Owner, City and Department Store agree as follows:

1. Termination. The *Incremental Sales Tax Grant Agreement* dated September 30, 2000 shall be and is hereby terminated as of the date of the execution of this Agreement.
2. Fulfillment of Terms and Conditions. The parties hereto agree that all terms and conditions of the *Incremental Sales Tax Grant Agreement* dated September 30, 2000 have

been performed or waived and the parties intend to have no further obligations pursuant to the Agreement.

- a. Release. Each of the parties does by execution of this Agreement, release and discharge each other from any and all liabilities arising out of said Agreement.
 - b. Released Claims. “Released Claims” means all claims between the parties including but not limited to claims, demands, obligations, liabilities, cause or causes of action, (whether at law or in equity), whenever arising and occurring at any time up to and through the date hereof, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, matured or unmatured, fixed or contingent, that arise out of or relate to the *Incremental Sales Tax Grant Agreement* dated September 30, 2000.
3. Entire Agreement: Amendment. This Amendment constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes any prior oral or written agreements, commitments or understanding with respect to the matters provided for herein.
 4. Execution of Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and, it shall not be necessary that the signatures of or on behalf of each party, or the signatures of all parties requires to bind any party, appear on each counterpart; but it shall be sufficient that all signatures appear on one or more counterparts. All counterparts shall collectively constitute shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all parties hereto.
 5. Governing Law. This Agreement, and the rights and obligations of the parties hereunder, shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

THE CITY OF ST. CHARLES, an Illinois SC 3800 MAIN, LLC, a Delaware Limited

Municipal Corporation

Liability Company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

VON MAUR DEPARTMENT STORE

By: _____
Name: _____
Title: _____

EXHIBIT "B"

(SEE FOLLOWING PAGE – INCREMENTAL SALES TAX GRANT AGREEMENT)

INCREMENTAL SALES TAX GRANT AGREEMENT

This Incremental Sales Tax Grant Agreement ("*Agreement*") is dated as of September 30, 2000 and made by and between CHARLESTOWNE MALL, L.L.C., a New York limited liability company with an address of 1265 Scottsville Road, Rochester, New York 14624 (the "*Owner*"), and CITY OF ST. CHARLES, an Illinois municipal corporation with an address of 2 East Main Street, St. Charles, Illinois 60174 (the "*City*").

RECITALS:

The Owner is the owner of certain land and improvements located at Charlestowne Mall in the City of St. Charles, Kane County, Illinois (the "*Property*"). The Owner is contemplating adding a Von Maur department store (the "*Department Store*") as an additional anchor store to the Property. Contingent upon the execution of an agreement between Von Maur and the Owner upon the terms set forth herein and the construction of the Department Store, the City is willing to assist the Owner with a grant for a portion of the costs of adding the Department Store in contemplation of the additional sales tax revenue to be generated by the Property after the addition of the Department Store.

TERMS AND CONDITIONS:

Now, therefore, in consideration of the mutual covenants contained in this Agreement, and intending to be legally bound hereby, the parties hereto agree with each other as set forth below.

ARTICLE I - ANNUAL FUNDING

1.1 Annual Funding Amounts. The City will grant to the Owner annual fundings (each, an "*Annual Funding*") the computation of which shall be based on a formula which commences with the following amounts for the following years (each, an "*Annual Funding Amount*"):

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2002	\$525,000	2007	\$700,000	2012	\$575,000
2003	\$700,000	2008	\$700,000	2013	\$575,000
2004	\$700,000	2009	\$575,000	2014	\$575,000
2005	\$700,000	2010	\$575,000	2015	\$575,000
2006	\$700,000	2011	\$575,000	2016	\$330,000

1.2 Annual Funding Amounts Subject to Adjustment.

1.2.1 It is anticipated hereunder that, prior to payment, the Annual Funding Amounts will be adjusted downward based on what are anticipated to be increases to the Owner's lease rentals from the Property due to the addition of the Department Store, as more particularly provided in Article 2.

1.2.2 In the event that the Department Store opens prior to March 2002, the Annual Funding Amount specified in Section 1.1 for 2002 shall be increased by \$58,333 for each month prior to March 2002 in which the Department Store opens, not to exceed, however, the sum of \$116,666. In the event that the Department Store opens after March 2002, the Annual Funding Amount specified in Section 1.1 for 2002 shall be decreased by \$58,333 for each month after March 2002 in which the Department Store opens, with no limitation on the amount of the reduction.

ARTICLE 2 - ANNUAL FUNDING AMOUNT ADJUSTMENTS AND PAYMENT

2.1 Incremental Net Rent Adjustments.

2.1.1 The parties agree that the base amount (the "*Base Amount*") for adjustments to be made hereunder shall be (i) the sum of rental income and percentage rent for the year ending December 31, 2000 provided in the audited financial statement for Charwil Associates Limited Partnership dated December 31, 2000. For each year commencing in 2002, the term "*Net Rent*" shall mean the sum of rental income and percentage rent as provided in the annual audited financial statements for Charwil Associates, Limited Partnership less any amounts paid by the Owner for tenant allowances as provided in the annual audited financial statements for Charwil Associates, Limited Partnership and other cash inducements as provided in the annual audited financial statements for Charwil Associates, Limited Partnership after \$2,000,000 of such allowances and inducements are paid. The \$2,000,000 amount set forth in the preceding sentence shall not apply to any one year but shall be cumulative commencing in 2002 and thereafter so that after such amount is expended for tenant allowances and inducements the Owner shall be entitled to deduct tenant allowance and inducement costs when calculating Net Rent, provided, however, for purposes of calculating the annual credit for such tenant improvements all amounts paid by Owner for each such tenant allowance shall be amortized on a straight line basis over the term of each such lease.

2.1.2 Commencing on April 1, 2003 and on each anniversary date thereof through and including April 1, 2017 (each, a "*Notification Date*"), the Owner will send to the City a notice certifying to the City as to the amount of Net Rent for the calendar year preceding the Notification Date. If the Net Rent for such year is higher than the Base Amount, the Annual Funding Amount for the applicable year will be reduced by an amount equal to eleven percent (11%) of the difference between the Base Amount and the Net Rent for such year (the "*Annual Adjustment Amount*") and the result of such adjustment shall be known as and herein referred to as the "*Net Annual Funding Amount*." In the event that a portion of the Property is sold to a third party and thereafter not offered for lease, the Annual Adjustment Amount for the year in which such portion is sold shall have

included as part of its amount eleven percent (11%) of the net sale proceeds for such portion of the Property (this shall not apply to the sale of the entire center in which case this Agreement would be assigned or inure to the benefit of the Owner's transferee).

2.2 Potential Adjustment Based on Sales Tax Revenue.

2.2.1 On or before April 1, 2003 and on or before each Notification Date thereafter, the City will provide the Owner with a notice setting forth the amount of the taxes reported pursuant to the preceding year's Illinois Retail Occupation Sales Tax that were paid or are payable by the Property's tenants, department stores or other entities reporting taxes on sales from the Property (the "Revenue Amount"; the Revenue Amount for the year 2001 shall constitute and is referred to herein as the "Base Revenue Amount"), including a listing of the tenants or other entities that have reported their taxes, certified by a duly-authorized representative of the City as true and complete (the "Sales Tax Information").

2.2.2 Each year, after receiving the Sales Tax Information, the parties will deduct the Base Revenue Amount from the preceding year's Revenue Amount to determine the incremental sales tax revenue, if any, for the Property (the "Incremental Revenue Amount"), and the Incremental Revenue Amount will be multiplied by a cap percentage (each, a "Cap %") for each year as set forth in the following chart:

<u>Year</u>	<u>Cap %</u>	<u>Year</u>	<u>Cap %</u>	<u>Year</u>	<u>Cap %</u>
2002	100%	2007	60%	2012	39%
2003	97%	2008	57%	2013	36%
2004	82%	2009	46%	2014	35%
2005	73%	2010	43%	2015	34%
2006	66%	2011	41%	2016	32%

Subject to the proviso set forth in the following sentence, the product of multiplying the Incremental Revenue Amount by the Cap % shall constitute and be referred to herein as the "Capped Incremental Revenue Amount." Notwithstanding the product of multiplying the Incremental Revenue Amount by the Cap %, in no event shall the Capped Incremental Revenue Amount for any particular year exceed the Annual Funding Amount for such year. On or before fifteen days following a Notification Date, the City shall notify the Owner of the Capped Incremental Revenue Amount for the preceding year. The "Net Incremental Revenue Amount" shall be the Capped Incremental Revenue Amount less the Annual Adjustment Amount.

2.3 **Actual Annual Funding Amount.** The amount of an Annual Funding for each year (the "Actual Annual Funding Amount") shall be the lesser of the Net Annual Funding Amount or the Net Incremental Revenue Amount.

2.4 Payment of Annual Fundings. Each Actual Annual Funding Amount shall be paid annually on April 30th of the year following the year for which the Actual Annual Funding Amount is applicable, or such later date as the City's share of tax revenue from the Illinois Retail Occupation Sales Tax is actually paid by the State of Illinois to the City (the "Settlement Date"), by the City wiring the Actual Annual Funding Amount to a bank account via wiring instructions to be provided by the Owner. In the event that the Annual Adjustment Amount exceeds the lesser of the Annual Funding Amount and the Capped Incremental Revenue Amount, such difference shall be paid to the City on the Settlement Date.

2.5 Audit. Owner shall keep full and accurate records of Net Rent. Such records maintained by Owner shall be kept for not less than three years after the close of each calendar year to which they relate and shall be available for inspection and audit by the City and its representatives at all times during regular business hours upon reasonable advance notice to the Owner. The City's receipt of any statement of Net Rent for any period shall not bind the City as to the correctness of the statement or amount of the payment. Within three years after the receipt of any notice certifying to the Net Rent for such preceding year, the City or its designated Certified Public Accountant shall be entitled to audit Owner's records pertaining to the same following 48 hours' advance written notice to Owner. Such audit shall be conducted during normal business hours at either the Property or Owner's principal place of business. If such audit determines that there has been an error in any of Net Rent, the party in whose favor such error was made shall immediately pay to the other party a sum equal to the difference between the Actual Annual Funding Amount that was paid for such year and the amount that the Actual Annual Funding Amount would have been absent such error, along with interest at the rate of seven percent (7%) per annum from the date said payment in error was made. If an error is discovered that leads to a payment of more than \$10,000 to the City, the Owner shall pay all of the City's reasonable costs and expenses incurred in connection with performing such audit and collecting the amounts due the City.

2.6 Expiration. This Agreement will expire on December 31, 2016; provided, however, that the City and Owner shall continue to be obligated for sums due for periods prior to expiration.

ARTICLE 3 - CONDITIONS PRECEDENT

The obligations of the Owner and the City under this Agreement are contingent upon the prior fulfillment of each of the following conditions: (i) the hard costs of construction for the Department Store shall not be less than \$10,000,000; (ii) the construction of the Department Store is completed in accordance with plans and specifications approved by the City; (iii) Von Maur shall have taken possession of the Department Store and opened for business; and (iv) all related common area renovations are completed and the costs thereof fully paid for.

ARTICLE 4 - MISCELLANEOUS

4.1 Notices. Every notice, approval, consent or other communication authorized or required by this Agreement shall not be effective unless same shall be in writing and delivered personally, sent postage prepaid by United States registered or certified mail, return receipt requested, or via a nationally-recognized overnight courier service which provides proof of delivery, directed as follows:

If to Owner:

Charlestowne Mall, L.L.C.
1265 Scottsville Road
Rochester, New York 14624
Attn: John W. Anderson

with a copy of any notice sent to Owner to:

Harris Beach & Wilcox, LLP
The Granite Building
130 East Main Street
Rochester, New York 14604
Attn: Gregory W. Lane, Esq.

If to the City:

City of St. Charles
Two East Main Street
St. Charles, Illinois 60174-1984
Attn: City Administrator

with a copy of any notice sent to the City to:

Schwartz, Cooper, Greenberger & Krauss, Chtd.
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
Attn: Ronald B. Grais, Esq.

Either party may designate by notice given from time to time in accordance with this Section 4.1 another address for the giving of notice. A notice shall be deemed "given," "delivered" or "received" upon receipt, if delivered personally, on the second business day following the postmark date if sent via certified or registered mail, or on the date of the receipt indicating proof of delivery if sent via courier service; provided, however, that any notice actually received by a party in the time provided shall constitute compliance with the notice requirement for the applicable provision of this Agreement, providing the party claiming to have provided such notice shall bear the burden of proof of establishing the actual receipt of the notice by the other party.

4.2 Certificate. Either party shall, without charge, at any time and from time to time hereafter, within ten days after written request of the other, certify by written instrument duly executed and acknowledged to any person, firm or corporation specified in such request, as to: (i) whether this Agreement has been supplemented or amended and, if so, the substance and manner of such supplement or amendment; (ii) the validity and force and effect of this Agreement, in accordance with its tenor as then constituted; (iii) the existence of any default hereunder; (iv) the existence of any offsets, counterclaims or defenses; (v) the commencement and expiration dates of the term of the Agreement; and (vi) any other matters as may reasonably be requested. Any such certificate may be relied upon by the party requesting it and any other person or entity to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

4.3 Governing Law. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Illinois without giving effect to conflicts of laws principles.

4.4 Partial Invalidity. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

4.5 Interpretation.

4.5.1 Wherover herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require.

4.5.2 The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. Unless otherwise indicated herein, all references with this Agreement to sections, subsections, subparts, appendixes, schedules or exhibits are references to such designated portions of this Agreement.

4.5.3 At least two copies of this Agreement have been executed by the Owner and the City. One copy has been delivered to the Owner and one copy has been delivered to the City, each of which shall be an original, but all of which shall constitute one and the same instrument.

4.5.4 The terms "Owner" and "City" whenever used herein shall mean only the owner at the time of the Owner's or City's interest herein, and upon any sale or assignment of the interest of either the Owner or the City herein, their respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be the Owner or the City, as the case may be.

4.5.5 This Agreement has been negotiated and reviewed by each party and its legal counsel. In any proceeding to enforce or interpret any provision of this Agreement, there shall be no presumption against either party as a result of either party having drafted this Agreement.

4.6 Entire Agreement. No oral statement or prior written matter shall have any force or effect. The City agrees that it is not relying on any representations or agreements other than those contained or referred to in this Agreement. This Agreement shall not be modified or canceled except by writing subscribed by all parties.

4.7 Authority. By its execution of this Agreement the City warrants and represents that the City's execution of this Agreement and the performance of its obligations hereunder have been authorized and that all the necessary approvals have been delivered and obtained for such execution and performance.

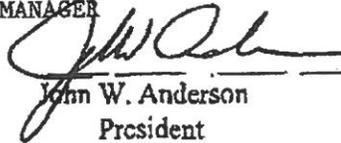
4.8 Parties. Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of the Owner and the City and their respective heirs, successors, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

CHARLESTOWN MALL, L.L.C., a New York limited liability company

By: FOX I, L.L.C.
ITS MANAGING MEMBER

By: FOX I SPC, INC.
ITS MANAGER

By: 
John W. Anderson
President

CITY OF ST. CHARLES, an Illinois municipal corporation

By: 
Name:
Title: