

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is between Sam’s Real Estate Business Trust (Sam’s), a corporation organized and existing under the laws of the State of Delaware, and the City of West Allis, Wisconsin (the City), a municipal corporation organized and existing under the laws of the State of Wisconsin (individually, the Party; collectively, the Parties).

1. Definitions. In this Agreement:

(a) The "Property" means the land and improvements located at 1540 South 108<sup>th</sup> Street in the City of West Allis, Wisconsin, Parcel No. 449-9981-019.

(b) “The Case” means the actions pending in the Milwaukee County Circuit Court, Wisconsin entitled *Sam’s Real Estate Business Trust v. City of West Allis*, No. 18-CV-3845.

(c) "Court" means Milwaukee County Circuit Court.

(d) "Tax Year" means a year in which an assessment is made as of January 1, with taxes based on the assessment payable in the year following the tax year.

2. Refund of Taxes. Pursuant to Wis. Stat. § 74.37, the City shall issue a refund payable to the Gimbel, Reilly, Guerin and Brown LLP Trust Account or to another account designated by Sam’s in writing in the amount of:

2017 Tax Year	\$ 34,215.92
2018 Tax Year	<u>\$ 33,255.90</u>
	\$ 67,471.82

The City is paying this amount as a partial refund for property taxes paid by Sam’s based on the property tax assessment of the Property for Tax Years 2017 and 2018. The Parties agree that no portion of the refund constitutes interest or penalties.

3. Waiver of Costs. Each Party waives all claims for costs.

4. Time of Payment. The City shall issue the refund amounts described under Section 2 of this Agreement within 45 days of the order of dismissal by the Court.

5. Stipulation of Dismissal. Within 10 days from the date this Agreement is fully executed, the Parties shall enter into a stipulation authorizing the court to dismiss the complaint in this Case on the merits, with prejudice and without costs and fees to any Party.

6. 2017 and 2018 Assessed Value of Property. The Parties agree that the agreed-upon assessed value for each year used for the purpose of calculating the refund set forth in Section 2 only is as follows:

	Assessment Value
2017	\$9,000,000
2018	\$9,000,000

7. Obligation to Assist. Sam's shall cooperate with the City and provide reasonable assistance, as needed, to enable the City to charge back a portion of the refund amounts as applicable under Wis. Stat. § 74.41.

8. Breach of this Agreement. Any breach of this Agreement, including but not limited to, failure to issue the refund amounts described under Section 2, shall give rise to a cause of action for breach of contract. In the event of any litigation, including appeals, in connection with the breach, enforcement, or interpretation of this Agreement, the prevailing Party shall recover all costs and reasonable attorneys' fees incurred in connection with or stemming from the breach.

9. Responsibility for Fees and Expenses of Attorneys and Experts. Each Party shall be solely responsible for the fees of its attorneys and experts accrued as part of the Case, in the negotiation or drafting of this Agreement, or as part of any settlement discussions or mediation.

10. No Representations. Each Party acknowledges and agrees that no representation or promise not expressly contained in this Agreement has been made by the Parties or any of its employees, attorneys, agents, or representatives. Each Party acknowledges that it is not entering into this Agreement on the basis of any such representation or promise, express or implied.

11. Binding on Successors. This Agreement and the agreements, promises, rights and obligations in this Agreement shall run with the Property and are binding upon and inure to the benefit of each of the Parties and their respective transferees, purchasers of property, grantees, heirs, successors, and assigns.

12. No Assignment or Transfer. Sam's represents and warrants that it has not assigned or transferred to anyone or any entity any of the claims or rights it has or may have with respect to the 2017 or 2018 assessments of the Property.

13. Governing Law. This Agreement shall be governed and interpreted by the laws of the State of Wisconsin.

14. Interpretation of Agreement. The Parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement: (a) neither Party shall be deemed the drafter of this Agreement for purposes of its interpretation; and (b) the Parties shall attempt in good faith to resolve the dispute prior to initiating any court action.

15. Representation by Counsel; Reliance. Each Party acknowledges that it has been represented throughout all negotiations leading up to this Agreement by attorneys of its choice and that its attorneys have approved this Agreement. Each Party represents that in entering into this Agreement, the Party has relied on its own judgment and on the advice of its attorneys, and that no statements or representations made by the other Party or any of its agents, except statements or representations expressly made in this Agreement, have influenced or induced the Party to sign this Agreement.

16. Entire Agreement. This Agreement states and constitutes the entire agreement of the Parties concerning its subject matter and supersedes all prior or contemporaneous agreements, representations and negotiations (written or oral), or discussions concerning its subject matter, including but not limited to, all agreements, representations, negotiations, and discussions (written or oral) made in the course of settlement discussions or mediation regarding the Case.

17. No Admissions of Liability Concerning Assessments or Fair Market Value. This Agreement is the settlement of disputed claims. By entering into this Agreement, the City does not admit any liability to Sam's for any of the claims asserted in the Case or Sam's objections to the 201 or 2018 assessments of the Property and the payments made under this Agreement shall not be construed as an admission of any such liability. Neither Party makes an admission about the actual assessed or fair market value of the Property as of January 1, 2017 and January 1, 2018, or any other admission concerning the assessment of the Property.

18. Waiver. No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

19. Amendments or Modifications. This Agreement may not be amended, modified or altered in any manner whatsoever, except by a further written agreement duly authorized and executed by the Parties.

20. Authorization to Sign Agreement. Each person signing this Agreement on behalf of either Party represents and warrants that the person holds the position indicated beneath the person's signature and that the person has the requisite corporate or other authority to sign this Agreement on behalf of the Party. Each Party represents that entry into this Agreement is not in contravention of any agreement or undertaking to which the Party is bound.

21. Reading of Agreement. Each person signing this Agreement on behalf of either Party acknowledges that the person has read this Agreement, that the person understands the terms and conditions of this Agreement, that the person (if other than an attorney for the Party) has been advised by legal counsel concerning this Agreement, and that the person freely and voluntarily signs this Agreement.

Dated: June 9, 2020.

SAM'S REAL ESTATE BUSINESS TRUST

Brandon Caplena

Title: Sr. Manager, Tax

Dated: June 10, 2020.

**APPROVED AS TO FORM:**

GIMBEL, REILLY, GUERIN &  
BROWN, LLP  
Two Plaza East, Suite 1170  
330 Kilbourn Avenue  
Milwaukee, WI 53202

Christopher L. Strohbehn

Christopher L. Strohbehn  
State Bar Number 1041495  
Attorney for Sam's Real Estate Business Trust

Dated: \_\_\_\_\_, 2020.

CITY OF WEST ALLIS

BY: \_\_\_\_\_  
\_\_\_\_\_

ATTEST: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

Dated: \_\_\_\_\_, 2020.

**APPROVED AS TO FORM:**

STAFFORD ROSENBAUM LLP  
222 W. Washington Avenue, Ste 900  
Madison, WI 53703

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Ted Waskowski  
WI State Bar No. 1003254  
Attorney for City of West Allis