

**Item #4:**  
**First Public Hearing For Establishment Of Business District**  
**(Sunset Grove)**

## NOTICE OF PUBLIC HEARINGS

### VILLAGE OF LONG GROVE, LAKE COUNTY, ILLINOIS ESTABLISHMENT OF BUSINESS DISTRICT

Notice is hereby given that public hearings will be held on Tuesday, February 9, 2010, at 7:00 p.m., and Tuesday, February 23, 2010, at 7:00 p.m., at the Long Grove Village Hall, 3110 Old McHenry Road, Long Grove, Illinois, 60047, regarding the establishment of a Business District pursuant to 65 ILCS 5/11-74.3-1 *et seq.* (the "Proposed Business District"). The Proposed Business District consists of the territory legally described in Exhibit A attached to this notice and is generally described below:

The Proposed Business District includes four contiguous parcels consisting of approximately 16.4 acres, located at the southeast corner of Illinois Route 83 and Aptakisic Road in the Village of Long Grove.

There will be considered at the public hearings comments on whether to establish the Proposed Business District. A Proposed Business District Development Plan is on file and available for public inspection during normal business hours at the Long Grove Village Hall, 3110 Old McHenry Road, Long Grove, Illinois, 60047.

At the February 9 and February 23 public hearings, all interested persons may file written comments and objections with the Village Manager and may be heard orally with respect to any issues regarding the establishment of the Proposed Business District. The hearings may be adjourned by the President and the Board of Trustees of the Village without further notice other than a motion to be entered upon the minutes of the hearings fixing the time and place of the subsequent hearings.

/s/ David A. Lothspeich  
Deputy Village Clerk  
Village of Long Grove, Lake County, Illinois

**NOTICE OF PUBLIC HEARINGS - EXHIBIT A**  
**PROPOSED BUSINESS DISTRICT LEGAL DESCRIPTION**

PARCEL 1:

THE NORTH 5 ACRES OF THE WEST HALF OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART TAKEN FOR ROAD PURPOSES IN CASE NUMBER 91 ED 44) IN LAKE COUNTY, ILLINOIS.

PARCEL 2:

THE SOUTH 389.18 FEET OF THE NORTH 718.31 FEET (AS MEASURED ON THE EAST AND WEST LINES THEREOF) OF THE NORTH HALF OF THE WEST HALF OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EAST LINE OF ROUTE 83 (EXCEPT THAT PART TAKEN FOR ROAD PURPOSES IN CASE NUMBER 91 ED 43) IN LAKE COUNTY, ILLINOIS.

PARCEL 3:

THE SOUTH 389.17 FEET OF THE NORTH 1107.48 FEET (AS MEASURED ON THE EAST AND WEST LINES THEREOF) OF THAT PART OF THE NORTH HALF OF THE WEST HALF OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EAST LINE OF ROUTE 83 (EXCEPT THAT PART TAKEN FOR ROAD PURPOSES IN CASE NUMBER 91 ED 42) IN LAKE COUNTY, ILLINOIS.

PARCEL 4:

THE WEST 2 1/2 ACRES OF THE NORTH 5 ACRES OF THE EAST HALF OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS.

**P.I.N. Numbers:**

15-30-200-002  
15-30-200-030  
15-30-200-031  
15-30-200-032

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**EXHIBIT B**  
**REDEVELOPMENT AGREEMENT**

**REDEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE VILLAGE OF LONG GROVE,  
SUNSET GROVE DEVELOPMENT CORP.,  
AND SUNSET GROVE L.L.C.  
(SUNSET GROVE PROJECT)**

**THIS REDEVELOPMENT AGREEMENT ("Agreement")** is dated as of the 25<sup>th</sup> day of March, 2008, and is by and among the **VILLAGE OF LONG GROVE**, an Illinois municipal corporation ("**Village**"), **SUNSET GROVE DEVELOPMENT CORPORATION**, an Illinois corporation ("**SGDC**"), and **SUNSET GROVE L.L.C.**, an Illinois limited liability company ("**Sunset Grove**") (SGDC and Sunset Grove will hereinafter be collectively referred to as the "**Developer**"). The Village and Developer are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**" as the context may require.

**IN CONSIDERATION OF** the recitals and the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

**SECTION 1. RECITALS.<sup>1</sup>**

**A.** Developer includes the contract purchaser of certain real property consisting of approximately 15.6 acres, located in the Village of Long Grove, Illinois, at the southeast corner of Illinois Route 83 and Aptakisic Road, legally described in Exhibit A to this Agreement ("**Property**").

**B.** The Developer desires and proposes to develop the Property with a high quality, first-class retail and commercial planned development including a high-end grocery store, five additional retail and commercial buildings, a stormwater detention outlot, and an access drive outlot, and other uses and improvements as described in this Agreement and as depicted on the Preliminary PUD Plans, consisting of approximately 126,571 square feet of gross floor area (plus a potential grocery store addition of up to 19,529 square feet) ("**Project**").

**C.** In order for the Developer to proceed with the development of the Property pursuant to the Preliminary PUD Plans, it will be necessary to construct certain Public and Private Improvements, which improvements are necessary and desirable for the development of the Property and the public interest.

**D.** Pursuant to notice duly published in the *Daily Herald* as provided by statute and the Zoning Code, public hearings were commenced by the Plan Commission on December 4, 2007, and continued thereafter from time-to-time, and, on February 5, 2008, the Plan Commission recommended approval of an amendment to the Zoning Code and Long Grove Zoning Map, approval of a special use permit for a planned unit development, and approval of a Preliminary Plat of Subdivision and Preliminary PUD Plans.

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<sup>1</sup> All capitalized words and phrases throughout this Agreement shall have the meanings set forth in the preamble above, Sections 1 and 2 of this Agreement, or the Section of this Agreement in which the word or phrase is defined.

**E.** Based upon the recommendations for approval of the Project as set forth in the Preliminary PUD Ordinance (and particularly the restrictions on and requirements for the development of the Property), as well as the significant costs of developing the Property in the face of the limited public facilities immediately available to the Property and the topography and other site conditions on the Property, the Developer has determined that the Project is not financially viable as recommended.

**F.** The Village has determined that the restrictions and requirements on the development of the Project as set forth in the Preliminary PUD Ordinance are essential to maintaining the land use patterns and overall character of the Village. In light of the other substantial community benefits that would result from the development of the Project in terms of stabilizing the Village's tax base, establishing infrastructure improvements necessary for the development of parcels in the vicinity of the Property, and presenting convenient retail opportunities for the residents of the Village (including a grocery store), the Village has explored means to reduce the net financial impact of the Project on the Developer so that construction of the Project as provided in the Preliminary PUD Ordinance may proceed.

**G.** After considerable review and analysis and extensive public vetting, the Corporate Authorities have determined that the Property is part of an area of the Village that qualifies for Tax Increment Financing under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., ("**TIF Act**") as amended, to finance redevelopment in accordance with the conditions and requirements set forth in the TIF Act. The Corporate Authorities have further determined that the public interests will be served by using TIF incentives to offset in part the development costs relating to the Project so that it may proceed. The Developer has determined that, (i) with the TIF incentives set forth in this Agreement, it can pursue the development of the Project as set forth in the Preliminary PUD Ordinance, and (ii) but for such TIF incentives it would be unable to undertake the development of the Property in a manner consistent with the land use patterns and character of the Village as provided in the Preliminary PUD Ordinance.

**H.** In accordance with the TIF Act and pursuant to the TIF Approval Ordinances, the Village approved a tax increment redevelopment plan and redevelopment project ("**Redevelopment Plan**") for a redevelopment project area that includes a portion of the Property ("**TIF District**").

**I.** To stimulate and induce the development of the Property, the Village is willing to finance certain eligible redevelopment project costs through TIF revenues and through the issuance of TIF revenue bonds or other debt instruments supported only by incremental revenue from the TIF District, all in accordance with the terms and provisions of the TIF Act and this Agreement.

**J.** The Parties seek to enter into this Agreement to provide for (i) the development and use of the Property in compliance with this Agreement; (ii) the construction of certain infrastructure improvements to serve the Property and the buildings to be constructed thereon and to make such infrastructure available for future development of other nearby properties, subject to the terms set forth in this Agreement; and (iii) to eliminate certain factors and characteristics found in the Property which have caused the Property to be designated as "blighted" in accordance with the TIF Act.

**K.** In addition, the Parties further desire to eliminate blight in and around the Property, and to this end desire to establish a Business District pursuant to 65 ILCS 5/11-74.3-1

*et seq.* and to impose a Business District Retailers Occupation Tax and a Business District Service Occupation Tax, in order to accelerate redevelopment activities on and around the Property by attracting a high-end grocery store and similar high quality retail businesses.

L. The Corporate Authorities, after due and careful consideration, have concluded that the zoning, subdivision, development, and use of the Property pursuant to and in accordance with this Agreement would (i) eliminate blight within the Village, (ii) strengthen the tax base of the Village, (iii) further enable the Village to control the development of the Property in a manner consistent with the zoning patterns and character of the Village, and (iv) serve the best interests of the Village.

M. The Corporate Authorities have reviewed and considered the proposed development of the Property, and the various zoning and subdivision approvals being requested to allow for its implementation, and have found the proposed development and such zoning and subdivision approvals to be consistent with the character of, and existing development patterns in, the Village. To that end, the Corporate Authorities have approved the Preliminary PUD Ordinance subject to the approval of this Agreement.

N. All other notices, publications, procedures, public hearings, and other matters required for the consideration and approval of this Agreement have been made, given, held, and performed by the Village as required by 65 ILCS 5/11-13-1 *et seq.*, all other applicable statutes, and the Applicable Village Codes and Ordinances.

O. The Parties now seek to enter into this Agreement pursuant to the authority granted by, among others, the following: (i) Article 7, Section 10 of the Illinois Constitution; (ii) Division 12 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-12-4 *et seq.*); (iii) Division 13 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-13-1 *et seq.*); (iv) Division 5 of Article 9 of the Illinois Municipal Code (65 ILCS 5/9-5-1 and 5/9-5-2); (v) Division 74.3 of Article 11 of the Municipal Code (65 ILCS 5/11-74.3-1 *et seq.*); (vi) the TIF Act; and (vii) the Village's police powers.

P. The Parties, consistent with Illinois law, have agreed to the terms and conditions set forth in this Agreement as evidenced by the signatures affixed hereto.

## **SECTION 2. DEFINITIONS.**

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

**"Access Drive Outlot"**: Outlot B, as depicted on the Preliminary Plat.

**"Applicable Village Codes and Ordinances"**: The Village Code, Subdivision Ordinance, Zoning Code, and all other codes and ordinances adopted by the Village.

**"Bonds"**: Any bonds, notes, indentures, or other debt instruments issued by the Village and payable exclusively through the Incremental Property Taxes generated pursuant to the TIF District. The terms and rights appertaining to any Bonds will be set forth in the Bond Ordinance. Bonds may be issued in separate series, and different series of bonds may or may not be on par with other series of Bonds.

**"Bond Ordinance"**: Collectively, one or more ordinances that may be enacted by the Village authorizing the issuance of Bonds, from time to time, in one or more series and in accordance with this Agreement and on such other terms as are acceptable to the Village, in its sole direction.

**"Building Code"**: Title 4, entitled "Building Regulations," of the Village Code, as the same has been and may, from time to time hereafter, be amended.

**"Corporate Authorities"**: The Village Board and Village President of the Village.

**"Declaration of Covenants"**: The Declaration of Covenants, Restrictions and Easements to be recorded by the Developer against the Property pursuant to Section 8 of this Agreement.

**"Detention Outlot"**: Outlot A, as depicted on the Preliminary Plat.

**"Effective Date"**: The date on which all of the following events have occurred:

- i. execution of this Agreement by both Parties, which date shall be deemed to be the date set forth in the first paragraph of Page 1 of this Agreement;
- ii. the Developer has presented evidence reasonably satisfactory to the Village Manager that the Developer has acquired merchantable fee simple title to all of the parcels of land included within the Property, which evidence may be a deed and title policy as proof of title; and
- iii. the Developer has recorded a covenant against the Property, in substantially the form and substance of Exhibit L attached to this Agreement, declaring that the Property shall be and remain within the corporate limits of the Village.

**"Excluded Purchaser"**: A purchaser or tenant of a portion of the Property who, pursuant to a Transferee Assumption Agreement is not a person obligated under this Agreement.

**"Final Engineering Plan"**: The engineering plan that receives the approval of the Village Engineer pursuant to Section 7 of this Agreement and in accordance with the Requirements of Law. Upon such approval, the Final Engineering Plan shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Agreement and shall, for all purposes in this Agreement, supersede any engineering plans previously submitted for consideration or tentative approvals.

**"Final Landscaping Plan"**: The landscaping plans that receive the approval of the Village pursuant to Section 7 of this Agreement and in accordance with the Requirements of Law. Upon such approval, the Final Landscaping Plan shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Agreement and shall, for all purposes in this Agreement, supersede any landscaping plans previously submitted for consideration or tentative approvals.

**"Final Plans"**: The Final Engineering Plan, Final Landscaping Plan, Final PUD Plans, and Final Subdivision Plat.

**"Final PUD Ordinance"**: One or more ordinances that receive the approval of the Corporate Authorities pursuant to Section 7 of this Agreement and in accordance with the Requirements of Law. A Final PUD Ordinance will serve as the approval required to commence construction of the Property Improvements for that portion of the Property that is the subject of the ordinance's approval. Upon such approval, the Final PUD Ordinance will supersede the Preliminary PUD Ordinance for such portion of the Property that is the subject of the Final PUD Ordinance unless expressly stated to the contrary in the Final PUD Ordinance, and to the extent of such supersedence will be deemed to be incorporated in, and made a part of, this Agreement as superseding the Preliminary PUD Ordinance.

**"Final PUD Plans"**: The final planned unit development plans that receive the approval of the Corporate Authorities pursuant to Section 7 of this Agreement and in accordance with the Requirements of Law. Upon such approval, the Final PUD Plans shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Agreement and shall, for all purposes in this Agreement, supersede the Preliminary PUD Plans.

**"Final Subdivision Plat"**: The subdivision plat that receives the approval of the Corporate Authorities pursuant to Section 7 of this Agreement and in accordance with the Requirements of Law. Upon such approval, the Final Subdivision Plat shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Agreement and shall, for all purposes in this Agreement, supersede any subdivision plat previously submitted for consideration or tentative approvals.

**"Force Majeure"**: Strikes, lockouts, acts of God, delays in issuance of third-party permits, litigation, shortage or lack of necessary construction materials, or other factors beyond a Party's reasonable control and reasonable ability to remedy; provided, however, that Force Majeure shall not include delays caused by the Developer's acts or omissions or by weather conditions, unless such weather conditions are unusually severe or abnormal considering the time of year and the particular location involved.

**"Grocery Store Lot"**: Lot 4, as depicted on the Preliminary Plat.

**"Incremental Property Taxes"**: The ad valorem taxes, if any, arising from the taxes levied upon that portion of the Property included within the Redevelopment Project Area, which taxes are allocable to the TIF District in accordance with the TIF Act.

**"Lot"**: A lot of record including a portion of the Property, as depicted on the Final Subdivision Plat, comprised of the Grocery Store Lot, the Retail Lots, the Access Drive Outlot, and the Detention Outlot, all as more particularly depicted on the Preliminary Plat included as part of Exhibit B attached to this Agreement.

**"Net Proceeds"** means that portion of the proceeds allocated to the Project derived from the issuance of the Bonds [net of any costs of issuance (including the establishment of the TIF District), underwriter's fee or discount, debt service reserve, capitalized interest, or other similar types of funding requirements generally applicable in connection with the issuance of debt instruments], which amount shall be sufficient to pay the obligations to be incurred by the Village in fulfillment of its responsibilities under Section 14 this Agreement.

**"Plan Commission"**: The Plan Commission of the Village, established by the Village Code, as the same has been and may, from time to time hereafter, be amended.

**"Preliminary PUD Ordinance"**: Ordinance No. 2008-O-9 adopted by the Corporate Authorities on February 26, 2008 attached hereto as Exhibit E.

**"Preliminary PUD Plans"**: The plans for the proposed development of the Property approved pursuant to Section 6.D of this Agreement, attached to this Agreement as Exhibit B, and listed below:

1. Preliminary PUD Site Plan prepared by OKW Architects and Planners, Inc. consisting of one (1) sheet, dated November 27, 2007 and last revised February 26, 2008.
2. Preliminary PUD Grading Plan, and Preliminary PUD Utility Plan prepared by Manhard Consulting, Ltd., consisting of ten (10) sheets, dated November 1, 2007 and last revised on February 26, 2008.
3. Proposed Improvement Plans prepared by Manhard Consulting, Ltd., dated February 26, 2008, and consisting of the following:
  - a. Topographic Survey.
  - b. Preliminary Site Dimensional and Paving Plan.
  - c. Preliminary Grading Plan.
  - d. Preliminary Utility Plan.
  - e. Construction Details.
  - f. Specifications.
4. Preliminary Plat of Subdivision prepared by Manhard Consulting, Ltd., consisting of three (3) sheets, dated October 24, 2007 and last revised on February 26, 2008.
5. Tree Preservation Plan, prepared by OKW Architects and Planners, Inc., consisting of one (1) sheet and dated November 27, 2007, and last revised on February 26, 2008.
6. Proposed Architectural and Landscaping Plans, prepared by OKW Architects and Planners, Inc. and consisting of the following:
  - a. Preliminary Landscape Plan and Plant List, consisting of one (1) sheet, dated November 27, 2007 and last revised on February 26, 2008.
  - b. Plant photos, consisting of [one (1) sheet], dated November 27, 2007 and last revised on February 26, 2008.
  - c. Sunset Store Elevations, consisting of two (2) sheets, dated February 26, 2008.

- d. Retail Stores Elevations (Buildings A and B), consisting of six (6) sheets, dated February 26, 2008.
  - e. Seating Area Plans (Building B, Sunset Foods, and North Plaza), consisting of two (2) sheets, dated February 26, 2008.
  - f. Monument Sign Elevations, consisting of one (1) sheet, dated February 26, 2008.
  - g. Wall/Fence Elevation, consisting of one (1) sheet, dated February 26, 2008.
  - h. Signage Criteria Elevations and Requirements, consisting of nine (9) sheets, dated February 26, 2008.
7. Site Lighting Plan prepared by OKW Architects and Planners, Inc., consisting of one (1) sheet, dated February 26, 2008.
  8. Site Photometrics prepared by OKW Architects and Planners, Inc., consisting of [one (1) sheet] dated February 26, 2008.

**"Property Improvements"**: All of the improvements and facilities (including without limitation related engineering, architectural, and other consultant services and costs therefor) that are required or authorized to be made, constructed, or installed in connection with the subdivision and development of the Property, including without limitation landscaping; all perimeter buffering; streetscaping; storm water detention and drainage facilities; water mains and service lines; sanitary sewer main and service lines; parking lots; streets, pathways, and sidewalks; soil erosion and tree protection measures; fencing and retaining walls; parking lot and street lighting; and traffic-related improvements. Such improvements and facilities need not be physically located on the Property, and they may be set forth or identified in any of the following: the Preliminary PUD Plans, or, upon approval, the Final Subdivision Plat, the Final Engineering Plan, the Final Landscaping Plan, the Final PUD Ordinance, or as elsewhere provided in this Agreement. The Property Improvements shall be comprised of:

**"Public Improvements"**, being those Property Improvements that are to be dedicated to the Village or such other public agencies as the Village may approve. As part of the Final PUD Ordinance, the Parties may elect to identify with greater particularity which Property Improvements are to be Public Improvements.

**"Private Improvements"**, being those Property Improvements (other than Public Improvements) that are required to be constructed, installed, or placed in service pursuant to this Agreement, Requirements of Law, the Preliminary PUD Plans, or the Final PUD Ordinance, or upon approval are depicted on the Final Subdivision Plat, Final Engineering Plan, the Final Landscaping Plan. Private Improvements do not include Structural Improvements.

**"Structural Improvements"**, being those buildings and structures authorized to be constructed and occupied on the Property pursuant to this Agreement or the Final PUD Ordinance.

**"Recapture Improvements"**: Any Public Improvements that, in the opinion of the Village Engineer consistent with good and customary municipal engineering practices, may be used for the benefit of property within the Village other than the Property. Recapture Improvements may be specifically identified in a Final PUD Ordinance.

**"Redevelopment Project Costs"**: Any qualifying redevelopment project costs as authorized and defined by the TIF Act incurred by the Developer in connection with the development of the Property in accordance with the Final PUD Ordinance and this Agreement, which Redevelopment Project Costs are identified on Exhibit M to this Agreement.

**"Requirements of Law"**: Applicable Village Codes and Ordinances and all applicable federal, state, and county laws, statutes, codes, ordinances, resolutions, rules, and regulations.

**"Retail Lots"**: Lots 1, 2, 3, 5, and 6 as depicted on the Preliminary Plat.

**"Roadway Improvements"**: Those Public and Private Improvements required in order to provide adequate access to the Property.

**"Sales Tax Revenue"**: Any and all taxes imposed and collected by the State of Illinois and distributed to the Village pursuant to the Retailer's Occupation Tax Act, (35 ILCS 120/1 et seq.); (ii) the Service Occupation Tax Act, (35 ILCS 115/1 et seq.); and (iii) any taxes intended to replace the taxes imposed by such Acts.

**"Subdivision Ordinance"**: Title 6 of the Village Code, being the Village of Long Grove subdivision regulations, as the same has been and may, from time to time hereafter, be amended.

**"Substantial Completion"**: Completion evidenced by (i) issuance of a final or temporary occupancy certificate for a building; or (ii) for Public or Private Improvements, functional and legally authorized use of the improvement and all of its facilities, as reasonably determined by the Village Manager.

**"TIF Approval Ordinances"**: Collectively, Ordinance Nos. 2008-O-4, 2008-O-5, and 2008-O-6 adopted by the Corporate Authorities on February 26, 2008, as well as such other ordinances that may be enacted by the Village pursuant to the TIF Act, adopting the Redevelopment Plan, authorizing the establishment of the Redevelopment Project Area, and taking such other action as may be necessary or desirable to reimburse Redevelopment Project Costs in accordance with this Agreement and on such other terms as are acceptable to the Village, in its sole discretion.

**"Village Code"**: The Long Grove Village Code, as the same has been and may, from time to time hereafter, be amended.

**"Zoning Code"**: Title 5 of the Village Code, being the Village of Long Grove zoning regulations, as the same has been and may, from time to time hereafter, be amended.

### **SECTION 3. DESIGNATION OF DEVELOPER**

The Village hereby designates Developer as the exclusive developer for the Project on the Property, subject to the terms of this Agreement and only so long as Developer is not in default pursuant to Section 22 of this Agreement. The Developer may assign to a

financially responsible party reasonably acceptable to the Corporate Authorities the right to construct any Structural Improvements on the Property (an "**Assigned Builder**"), but no such assignment will authorize the occupancy of any Structural Improvements until the Substantial Completion of the Public and Private Improvements and the determination by the Village Engineer that either (i) the Guaranty Letter of Credit has been delivered in accordance with this Agreement for the Public and Private Improvements, or (ii) there remains sufficient sums as part of the Performance and Payment Letter of Credit to ensure completion of the Public and Private Improvements and the delivery of an adequate Guaranty Letter of Credit. The Village acknowledges and agrees that Sunset Foods is an acceptable Assigned Builder for the Grocery Store Lot.

#### **SECTION 4. DESCRIPTION AND USE OF LOTS.**

A. **Restrictions and Conditions.** The Property shall be divided into six lots and two outlots, which may be developed and used only as follows:

1. **The Grocery Store Lot:** The Grocery Store Lot shall be developed and operated for the use and purpose of a high-end grocery store of approximately 48,300 square feet, plus a possible expansion in accordance with the Preliminary PUD Plans ("**Grocery Store**") and related improvements in accordance with this Agreement, the Preliminary PUD Plans, and Applicable Village Codes and Ordinances. The Grocery Store shall be initially developed and initially known and operated as a "Sunset Foods." When open, the Grocery Store shall at all times be operated as a high-end grocery store that is recognized in the grocery industry as being commercially comparable to, and having offerings and services reasonably equivalent to a "Sunset Foods," such as a Dominick's, Jewel, or Whole Foods grocery store. In no case shall the Grocery Store be operated as a "discount grocery" or "wholesale grocery," as those terms are generally understood in the grocery industry. No change in the owner or operator of the Grocery Store shall be allowed without the prior approval of the Corporate Authorities by resolution duly adopted at a regular or special public meeting of the Corporate Authorities. The Corporate Authorities' approval shall not be withheld in the event that the proposed successor owner and operator, as the case may be, satisfy the operational standard set forth in this paragraph.

2. **The Retail Lots:** The Retail Lots may only be developed and operated subject to the restrictions, conditions, and uses authorized in this Agreement, the Preliminary PUD Ordinance, the Preliminary PUD Plans, and Applicable Village Codes and Ordinances.

3. **The Detention Outlot:** The Detention Outlot may only be developed and operated for purposes of a stormwater detention basin. Unless an alternative water source for fire suppression is provided to the reasonable satisfaction of the Village Engineer, the design of such basin must be capable of storing all water needed for the Property's fire protection needs, as determined by the Village Engineer, and other improvements in accordance with this Agreement, the Preliminary PUD Ordinance, the Preliminary PUD Plans, and Applicable Village Codes and Ordinances.

4. **The Access Drive Outlot:** The Access Drive Outlot may only be developed and operated for providing the primary vehicular access to and from the Property and Illinois Route 83, all in accordance with this Agreement, the Preliminary PUD Ordinance, the Preliminary PUD Plans, and Applicable Village Codes and Ordinances.

B. Authorized Modifications. The building square footages set forth in this Preliminary PUD Plans and restrictions in this Section may be modified by no more than 5% per building as part of the Final Plan approval, provided the overall square footage of all buildings within the Project shall not be less than 108,000 square feet (exclusive of the Grocery Store mezzanine of approximately 15,000 square feet).

**SECTION 5. SCHEDULE AND PHASING FOR DEVELOPMENT AND OCCUPANCY.**

A. Phasing Permitted. The Property may be developed in multiple phases as described in this Section:

1. the "Preliminary Work Phase", consisting of preliminary clearing and mass grading on the Property ("Preliminary Work").
2. the "Primary Phase", consisting of the development of:
  - a. all Public and Private Improvements (except landscaping interior to a Lot if expressly excepted in the terms of the Final PUD Ordinance for the Primary Phase), and the complete development of the Detention Outlot and the Access Drive Outlot;
  - b. the Grocery Store; and
  - c. the building or buildings on any other Lot, if the Developer has received approval of the Final Plans for such Lot in accordance with this Agreement and Applicable Village Codes and Ordinances(collectively, the "Primary Phase Work").
3. the "Secondary Phase", consisting of the development of any buildings on the Retail Lots not developed during the Primary Phase ("Secondary Phase Work"). The Secondary Phase and Secondary Phase Work may occur in phases as determined by the approval of a Final PUD Ordinance addressing the particular Retail Lot or Lots in question.

B. Preliminary Work Phase Requirements.

1. Preliminary Work Phase. The Developer may undertake the Preliminary Work upon, but not before, the Effective Date of this Agreement, subject to the satisfaction of the following requirements and conditions:
  - a. The Village Engineer has received and approved final plans for the Preliminary Work;
  - b. The Developer's final plans for the Preliminary Work comply with all Applicable Village Codes and Ordinances, including those regarding the removal of trees as part of the Preliminary Work;

- c. The Developer has obtained all necessary permits and approvals for the Preliminary Work from federal and state governmental entities having jurisdiction over the Property;
- d. The Developer has delivered to the Village performance security in the form and amounts required in Section 15 of this Agreement; provided, however that, the amount of the security required during the Preliminary Work Phase need not cover the cost of all of the Public and Private Improvements, but rather need only be in the amount reasonably determined by the Village Engineer to be sufficient to cover the costs of the Preliminary Work;
- e. The Developer has demonstrated to the satisfaction of the Village Engineer that the Preliminary Work is reasonably expected to be performed in accordance with the final plans for such work as they may be approved; and
- f. The Developer has executed a separate "at-risk" agreement in the Village's customary form, which "at-risk" agreement acknowledges that undertaking of the Preliminary Work is performed without assurance that the Preliminary Work will satisfy the requirements of the Final Plans and that the Developer will need to comply with the requirements of the Final Plans notwithstanding any Preliminary Work actually performed. The Corporate Authorities hereby authorize the Village Manager to execute on behalf of the Village any such "at risk" agreement upon the Village Attorney's approval of its form.

2. **Sole Risk.** The Developer acknowledges that as of the Effective Date, the Village has granted no final approvals (including final development plan approval and final subdivision plat approval), or entered into any development agreements of any kind with the Developer, allowing the development of any portion of the Property. Accordingly, the Developer shall proceed with the Preliminary Work at its sole risk.

3. **No Other Assurances.** Neither the Developer nor any other person shall be entitled to any other permits or approvals for any other work of any type on the Property, and no such permits or approvals shall be issued, regardless of expenditures incurred by the Developer in proceeding with the Preliminary Work, unless and until all required Village approvals have been granted with respect to the Final Plans for the Primary Phase Work, and all of the terms and conditions of this Agreement, and all other Requirements of Law with respect to the Property and the Primary Phase Work have been fully satisfied.

**C. Primary Phase Requirements.**

1. **Commencement of the Primary Phase.** The Developer may undertake the Primary Phase Work upon, but not before, the approval of Final Plans for the Primary Phase Work and the delivery of performance security in the form and amounts required by Section 15 of this Agreement. The Developer shall have received a building permit and commenced the Primary Phase Work by a date no later than 36 months after the Effective Date (the "**Primary Phase Commencement Deadline**"). If the Developer has not received a building permit and commenced the Primary Phase Work by the Primary Phase Commencement Deadline, then: (i) the Preliminary

PUD Plan approvals for the Property shall be null and void; and (ii) the Village may require the Developer to perform site restoration and modification activities to establish a natural open space setting on the Property, in accordance with plans approved by the Village ("**Site Restoration**"). In the event the Developer fails to perform all required Site Restoration, the Village is authorized to undertake Site Restoration and receive reimbursement from the Developer upon demand.

2. **Completion of Grocery Store as Part of Primary Phase.** The Village shall not issue any certificate of occupancy for any building on any portion of the Property prior to the Substantial Completion of the Grocery Store; provided, however, that (a) if, in the reasonable determination of the Village Engineer, the Grocery Store is progressing reasonably and is expected to be Substantially Complete within 60 days, and (b) any other building on the Property is otherwise ready to receive a certificate of occupancy, then (c) the Village will issue a certificate of occupancy for such other building, subject to such conditions as the Village may deem necessary or appropriate to ensure the diligent progress and timely completion or Substantial Completion of the Grocery Store.

3. **Completion of the Primary Phase.** The Developer and any Assigned Builder shall achieve Substantial Completion of the Primary Phase Work within eighteen (18) months after the date of issuance of the first building permit for any building to be developed as part of such phase.

**D. Secondary Phase Requirements.**

1. **Commencement of Secondary Phase Work.** The Developer may undertake the Secondary Phase Work in two or more phases, but only upon, and not before, the approval of Final Plans for the Secondary Phase Work and the continued maintenance or delivery of performance security in the form and amounts required by Section 15 of this Agreement. The Developer or an Assigned Builder shall have received a building permit and commenced the Secondary Phase Work for all buildings to be included within the Project by a date no later than 66 months after the Effective Date (the "**Secondary Phase Commencement Deadline**"). If the Developer or an Assigned Builder has not received a building permit and commenced the foregoing work by the Secondary Phase Commencement Deadline, then the Preliminary PUD Plan approvals for any Lot on which the work has not commenced shall be null and void; but in no event will approvals previously granted be affected for other Lots on the Property where work has commenced.

2. **Completion of Secondary Phase Work.** The Developer or an Assigned Builder shall achieve Substantial Completion of any phase of the Secondary Phase Work within twelve (12) months after the date of issuance of the first building permit for any building to be developed as part of such phase.

**E. Diligent Pursuit of Tenants and Building Permits.** The Developer shall use commercially reasonable efforts to obtain tenants for all leasable square footage planned for the Project and all required permits and shall cause the construction and development of all components of the Primary Phase and the Secondary Phase to be prosecuted and completed pursuant to the terms of this Agreement, the Preliminary and Final PUD Ordinances, and all other Applicable Village Codes and Ordinances with due diligence, in good faith and without delay, subject only to Force Majeure leading to unavoidable delay. Upon a finding that the Developer is in compliance with the terms and provisions of this paragraph, the Primary Phase Commencement Deadline and Secondary Phase Commencement Deadline may be extended by resolution of the Corporate Authorities and shall not require an amendment to the Agreement.

F. **No Further Zoning Approvals.** Subject to the Developer's securing approval of the Final PUD Plans for the various phases of development of the Property that substantially conform to the Preliminary PUD Plans and the related approval of the Final PUD Ordinance(s), and subject to the terms and conditions of this Agreement, no further zoning approvals shall be required of the Developer as a prerequisite to the receipt by the Developer or an Assigned Builder of the permits necessary to permit the development of the Property as depicted on the Preliminary PUD Plans in substantial conformity with this Agreement.

#### **SECTION 6. ZONING OF THE PROPERTY.**

The Village did adopt on February 26, 2008 the following ordinances:

A. **Text Amendment.** An ordinance amending the Zoning Code to create the HR-1 Highway Retail District, which is attached as Exhibit C to this Agreement ("**Zoning Text Amendment Ordinance**").

B. **Map Amendment.** Subject to the Effective Date of this Agreement, an ordinance amending the Village's zoning map to classify a portion of the Property into the HR-1 Highway Retail District, and a portion of the Property into the OS-P District, which ordinance is attached as Exhibit D to this Agreement ("**Zoning Map Amendment Ordinance**").

C. **Preliminary PUD Ordinance.** Subject to the Effective Date of this Agreement, the Preliminary PUD Ordinance.

#### **SECTION 7. FINAL PUD, SUBDIVISION, LANDSCAPING, AND ENGINEERING PLANS AND PLATS.**

Prior to the development of the Property, the Developer shall prepare and submit to the Village the Final PUD Plans all prepared in substantial conformity with the Preliminary PUD Plans. The Final PUD Plans may be submitted in phases for different portions of the Property consistent with the lot designations on the Preliminary PUD Plans and in accordance with Section 5 of this Agreement. In accordance with the Preliminary PUD Ordinance, the Developer shall submit to the Village for its review and approval the Final PUD Plans and the Final Subdivision Plat, for the Primary Phase within 30 months after the effective date of the Preliminary PUD Ordinance, and the Final PUD Plans and the Final Subdivision Plat, for the Secondary Phase shall be submitted to the Village for its review and approval upon the earlier of: (a) 120 days after the Developer's execution of leases for at least 50% of the leasable square footage within each such Lot; or (b) within 60 months after the effective date of the Preliminary PUD Ordinance. The foregoing time periods may be extended by resolution of the Corporate Authorities and shall not require a public hearing or an amendment to the Agreement. The failure to submit an application for approval of Final PUD Plans for any Lot within the time periods set forth in this Subsection shall render null and void the approvals granted in the Preliminary PUD Ordinance for that Lot, but any final approvals previously granted by the Village for other Lots will remain valid. After the Final PUD Plans have been submitted to the Village, the Village shall cause the same to be promptly reviewed and shall cause such meetings to be conducted as may be necessary for approval of the Final PUD Plans and Final Subdivision Plat. After the Final PUD Plans have been reviewed and such meetings have been held with respect to approval of the Final PUD Plans and Final Subdivision Plat, and provided the Final PUD Plans are in substantial conformance with the Preliminary PUD Plans, the Village shall promptly adopt a Final PUD Ordinance approving the Final PUD Plans and Final

Subdivision Plat and directing all required Village signatures and certifications to be affixed to the Final Subdivision Plat and any other relevant documents; provided, however, that no such signatures and certifications shall be affixed by the Village until the Developer shall have (A) obtained all other approvals, sworn statements, signatures, and certifications required for the Final PUD Plans and Final Subdivision Plat; (B) paid the Village its legal, engineering, consulting, and administrative fees, costs, and expenses; and (C) deposited with the Village Clerk a sufficient sum, in current funds, to reimburse the Village for the actual cost of recording the Final PUD Ordinance and Final Subdivision Plat. Such final approval of the Final PUD Plans and Final Subdivision Plat shall require a meeting before the Plan Commission and Corporate Authorities, but shall not require a public hearing before the Plan Commission so long as the Final PUD Plans and Final Subdivision Plat substantially conform to the Preliminary PUD Plans. After final approval, execution, and certification of the Final PUD Plans and Final Subdivision Plat by the Village, the Village shall promptly cause the Final Subdivision Plat to be properly recorded with the Lake County Recorder of Deeds. The Village acknowledges and agrees that the Final PUD Plans and the Subdivision Plat may be incorporated into one and the same document.

#### **SECTION 8. DECLARATION OF COVENANTS.**

Prior to recordation of the Final PUD Ordinance and Final Subdivision Plat, the Developer shall record against the Property, in a form and substance reasonably acceptable to the Village Attorney, a Declaration of Covenants providing for the following:

- i. the protection and maintenance, by the property owners, in perpetuity, of the common facilities on the Property, including without limitation water conveyance facilities, stormwater conveyance facilities, wastewater conveyance facilities, and stormwater detention areas on the Property;
- ii. the protection and maintenance, by the property owners, in perpetuity, of all Private Improvements on the Property, including without limitation private roadways, sidewalks and pedestrian trails, entryway signage, fencing, landscaping, and decorative lighting on the Property;
- iii. cross-easements for parking, ingress, and egress among all Lots within the Property, which cross-easements will be subject to the review and approval of the Village. In addition, pursuant to Section 10.M of this Agreement, the Village may require reciprocal cross-easements for the main access road between the Property and other parcels located east of and along Illinois Route 83 south of Aptakisic Road; and
- iv. the right of the Village to take action to cure any failure of the property owners to properly maintain and repair the Property or to otherwise fail to abide by the provisions of the declaration or declarations and the right of the Village to be reimbursed for all costs and expenses incurred by the Village related thereto, including without limitation the right of the Village to perfect a lien to recover such costs and expenses against any or all of the

parcels of property within the Property, all subject to notice and cure periods reasonably acceptable to the parties.

**SECTION 9. USE AND DEVELOPMENT OF THE PROPERTY.**

**A. Specific Use and Development Restrictions.**

1. **Approval and Restriction of Retail and Commercial Occupants.**
  - (a) **Initial Occupancy of Retail Lots.** The Developer agrees that the initial occupants of the Retail Lots may include, without limitation, those businesses identified on Exhibit F to this Agreement ("**Initial Retail Occupants**").
  - (b) **All Other Occupants of the Retail Lots.** All occupants of the Retail Lots shall be subject to the non-retail use restrictions set forth in the Preliminary PUD Ordinance.
  - (c) **Restaurant Limitation.** No more than 17,500 square feet of space within the Retail Lots shall be occupied by restaurant uses.
2. **Maintenance of Right-of-Way Property Prior to Development.** The Developer shall provide maintenance and upkeep to any portion of the Property to be dedicated to IDOT or Lake County DOT ("LCDOT") prior to construction of roadway improvements on such portion of the Property by or on behalf of IDOT or LCDOT.
3. **Wetlands Work and Mitigation.** The Developer shall undertake and complete all requirements imposed by the Requirements of Law in relation to the existing wetlands on the Property that may be impacted by the Project.
4. **Minimization of Cut-Through Traffic.** The Developer shall cooperate with the Village and undertake such traffic-management and parking lot and access drive modifications as may be necessary to avoid cut-through traffic through the Property from Illinois Route 83 to Aptakisic Road.
5. **Location of Trash Areas and Trash Removal; Property Maintenance.** All trash areas for the Retail Outlots shall be located behind self-latching doors, within the buildings, as designated on the Final PUD Plans. Trash shall be removed in accordance with a trash removal plan approved by the Village Manager that will require, at minimum, the removal of trash from the Grocery Store and Retail Lots three times per week; except that the Grocery Store may have fewer pick-ups for cardboard, but not less than once per week. In addition, prior to Final PUD Ordinance approval for the entire Property, the Developer is required to maintain any undeveloped portion of the Property free from debris and noxious or invasive vegetation.
6. **Deliveries.** All truck deliveries shall occur in accordance with a truck delivery plan approved either as part of the Final PUD Ordinance or

approved in writing by the Village Manager prior to the issuance of any certificate of occupancy for any retail or commercial use on the Property.

**B. General Restrictions.** Notwithstanding any use or development right that may be applicable or available to the Property pursuant to the Zoning Code, the Property shall be used and developed, except for minor alterations due to final engineering and site work approved by the Village Engineer, only pursuant to and in accordance with the following:

- i. this Agreement;
- ii. the Final PUD Plan and Final Subdivision Plat;
- iii. the Final Engineering Plans;
- iv. the Final Landscape Plans;
- v. the provisions of the Final PUD Ordinance;
- vi. the provisions of the Zoning Text Amendment Ordinance;
- vii. all other applicable provisions of the Zoning Code and Subdivision Ordinance;
- viii. the Village Code, including without limitation the Building Code;
- ix. the Declaration of Covenants, as they may be amended from time-to-time; and
- x. the Requirements of Law.

**C. Conflicts.** Unless otherwise provided in this Agreement, either specifically or in context, in the event of a conflict between or among any of the plans and documents set forth in Section 9B of this Agreement, items with a lower number in Section 9B will control over items with a higher number, but as among items 9B.i – 9B.v, the document that provides the greatest control and protection for the Village shall control. All of the plans and documents set forth in Section 9B shall be interpreted so that the duties and requirements imposed by any one of them are cumulative among them, unless otherwise provided in this Agreement either specifically or in context.

#### **SECTION 10. IMPROVEMENTS.**

**A. Design and Construction of the Improvements.** In connection with the development of the Property, the Developer shall, at its sole cost and expense, design, construct, and install all of the Public and Private Improvements. All Public and Private Improvements shall be designed and constructed pursuant to and in accordance with the Final Engineering Plan and the Final Landscape Plan, and, where applicable, subject to the review and approval of the authorized persons as provided by the Requirements of Law. Where field determinations are required, they must be made to the reasonable satisfaction of the Village Engineer. All work performed on the Property Improvements shall be conducted in a good and workmanlike manner and with due dispatch once commenced. Public and Private Improvements must proceed in accordance with the schedule approved by the Village Engineer

and referenced in Section 10B of this Agreement. All materials used for construction of the Public and Private Improvements shall be new and of first quality.

**B. Completion of the Improvements.** All Public and Private Improvements shall be completed and made ready for inspection and approval by the Village pursuant to the construction schedule that will be approved by the Village Engineer as part of the Final Engineering Plan and within the timeframe set forth in Subsection 5C3 or 5D2 of this Agreement. The Developer shall be allowed extensions of time beyond the completion dates set forth in such construction schedule only for unavoidable delay caused by Force Majeure.

**C. Engineering Services.** The Developer shall provide, at its sole cost and expense, all engineering services for the design and construction of the Public and Private Improvements that it is to construct.

**E. Construction Traffic.** The Village reserves the right to designate certain prescribed routes of access to the Property for construction traffic to provide for the protection of pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that such designated routes shall not be unreasonably or unduly circuitous nor unreasonably or unduly hinder or obstruct direct and efficient access to the Property for construction traffic. At all times during the construction of the Property Improvements, and until completion, approval, and, where appropriate, acceptance of the Property Improvements by the Village or other governmental agency, the Developer shall keep all routes used for construction traffic to be free and clear of mud, dirt, debris, obstructions, and hazards and shall repair any damage caused by such construction traffic. The Village shall not be obligated to keep any streets within the Property cleared, plowed, or otherwise maintained.

**F. Inspection and Approval of the Improvements.**

- i. **Final Inspection and Approval of the Public and Private Improvements.** The Developer shall notify the Village Engineer when it believes that any or all of the Public and Private Improvements have been fully and properly completed and shall request final inspection and approval of such Public and Private Improvements by the Village. The notice and request shall include any of the "as-built" or "record" drawings required by Section 10.F.ii and, with respect to the Public Improvements to be dedicated to the Village, to the extent not previously submitted, contractors' sworn statements, final lien waivers, and all other appropriate documentation necessary to demonstrate that all contractors, subcontractors, and material suppliers, as well as all engineering and inspection fees, have been paid in full. The notice and request shall be given far enough in advance to allow the Village Engineer time to inspect the Public and Private Improvements and to prepare a punch list of items requiring repair or correction and to allow the Developer time to make all required repairs and corrections prior to the scheduled completion date. The Developer shall promptly make all necessary repairs and corrections as specified on the punch list and in accordance with the Final Engineering Plans.
- ii. **"As-Built" or "Record" Drawings and Specifications of the Improvements.** The Developer shall, not later than the time it gives the notice of completion and request for approval, provide to the Village three sets of

"as-built" or "record" drawings for all of the Public Improvements to be dedicated to the Village, including one set on a reproducible mylar. The "as-built" or "record" drawings and specifications shall depict every Public Improvement as built and shall include all final dimensions, elevations, and calculations necessary to fully describe the Public Improvements and to establish their compliance with this Agreement and all Requirements of Law.

**G. Guaranty of the Improvements.** The Developer hereby guarantees the prompt and satisfactory correction of all defects and deficiencies in the Public and Private Improvements; with respect to the Public Improvements (including, without limitation, landscaping installed by the Developer on public lands or within public rights-of-way or easements) such guarantee will include financial security as provided in Section 15 to address defects or deficiencies that occur or become evident within two years after approval and acceptance of the Public Improvements by the Village pursuant to this Agreement. If any such defect or deficiency occurs or becomes evident, then the Developer shall, after 10 days' prior written notice from the Village, correct it or cause it to be corrected. In the event any Public Improvement is repaired or replaced pursuant to such a demand, the guaranty provided by this Section 10G shall be extended, as to such repair or replacement, for two full years from the date of such repair or replacement. If the Village Engineer determines, in his sole and absolute discretion, that the Developer is not adequately maintaining, or has not adequately maintained, any Public or Private Improvement as provided in this Section 10G, the Village after 10 days' prior written notice to the Developer may, but shall not be obligated to, enter upon any or all of the Property for the purpose of performing maintenance work on and to any such Improvement. In the event that the Village shall cause to be performed any work pursuant to this Subsection 10G, the Village shall have the right to draw from the performance security described in Section 15 of this Agreement. In the event that the performance security is unavailable to finance the work performed by the Village pursuant to this Subsection 10G, then the Village shall have the right to place a lien on the Property for all costs and expenses incurred by the Village, including legal and administrative costs. The rights and remedies provided in this Section shall be in addition to, and not in limitation of, any other rights and remedies otherwise available at law or in equity.

**H. Issuance of Permits and Certificates.**

- i. **Performance Security.** The Village shall not be required to issue any permits in connection with any Property Improvements or other development activities relating to the Property until the Developer shall have delivered to the Village the performance securities required under Section 15 of this Agreement.
- ii. **Right to Withhold Permits and Certificates.** The Village shall have the absolute right to withhold any building permit or certificate of occupancy at any time the Developer is in material breach of the terms of this Agreement, subject to the Village providing written notice of such violation and providing the Developer with an opportunity for the Developer to cure such violation within 30 days of such notice.
- iii. **Completion of Improvements.** Except as may otherwise be provided in Section 5.C.2 of this Agreement, the Village shall issue no certificates of occupancy for any portion of the Property until the Public and Private

Improvements for the Primary Phase Work are substantially completed. In addition, no certificates of occupancy for any Structural Improvement in any other phase of the Project may be issued unless and until the Private Improvements related to such phase or Structural Improvement as set forth in the applicable Final PUD Ordinance have been substantially completed in accordance with the schedule approved pursuant to Subsection 10B of this Agreement, or until other arrangements satisfactory to the Village Engineer, in his reasonable discretion, shall have been made. The issuance of any building permit or certificate of occupancy by the Village at any time prior to completion of all the Public and Private Improvements and approval and, where appropriate, acceptance thereof by the Village shall not confer on the Developer or an Assigned Builder any right or entitlement to any other building permit or any certificate of occupancy.

**I. Completion of Construction.** If the Developer or an Assigned Builder fails to diligently pursue construction of any Structural Improvement as required in, or permitted by, this Agreement to completion within the time period prescribed in the building permit or permits issued by the Village for such construction, and if the building permit or permits are not renewed within three months after the expiration thereof, the Developer or Assigned Builder (as the case may be) shall, within 60 days after notice from the Village, remove any partially constructed or partially completed Structural Improvements from the Property. In the event the Developer or Assigned Builder fails or refuses to remove any such Structural Improvements as required by this Section 10I, the Village shall have, and is hereby granted, in addition to all other rights afforded to the Village in this Agreement and by law, the right, at its option, to demolish and/or remove any of such Structural Improvements, and the Village shall have the right to apply any applicable security or otherwise charge the Developer or Assigned Builder for an amount sufficient to defray the entire cost of the work, including reasonable legal and administrative costs. If the amount charged is not paid by the Developer or Assigned Builder within 30 days following a demand in writing by the Village for payment, the charge, together with interest and costs of collection (including reasonable attorneys' fees), shall become a lien against the Lot (as depicted on the Final Subdivision Plat) on which the work was performed, and the Village shall have the right to collect the charge, with interest and costs, and to enforce the lien in the same manner as mortgage foreclosure proceedings.

**J. Damage to Property.** The Developer shall maintain the Property and all streets and sidewalks in and adjacent to the Property in a safe condition at all times during development of the Property and construction of the Property Improvements. Further, the Developer shall promptly clean all debris deposited on any street, sidewalk, or other public property in or adjacent to the Property by the Developer or an Assigned Builder or any agent of or contractor hired by, or on behalf of, the Developer or an Assigned Builder; and shall repair any damage to such property that may be caused by the activities of the Developer, an Assigned Builder, or any agent of or contractor hired by, or on behalf of, the Developer or an Assigned Builder. Prior to the development of any portion of the Property, the Developer shall maintain the undeveloped portion of the Property free from debris and noxious or invasive vegetation.

**K. Recapture for Improvements.** The Village agrees to enter into an agreement or agreements, in substantially the form attached to this Agreement as Exhibit G, to permit the Developer to recapture a portion of the Developer's costs in constructing and installing the Recapture Improvements from fees charged to owners of property not within the

Property, pursuant to Section 9-5-1 of the Illinois Municipal Code, which fees shall be calculated based upon an allocation of capacity of the completed Recapture Improvements to the properties that benefit from such improvements. If the Developer is entitled to recapture any of its costs pursuant to this paragraph, the Village Engineer and the Developer's engineer shall, where necessary, allocate the respective capacities serving the Property and the other benefited properties and the area subject to recapture. In the event the Village Engineer and the Developer's engineer cannot agree on the allocation formula for or the areas subject to the recapture, the Village Engineer shall determine the amount which may be recaptured and the areas from which the recapture shall be paid, provided such determination is consistent with good and customary municipal engineering principles. In the event that the Developer disputes the Village Engineer's determination, the Developer may appeal the Village Engineer's decision to the Corporate Authorities, whose determination on the issue will be final.

**L. Obligations With Respect To Other Off-Site Utility Improvements.** In connection with the development of the Property, the Developer shall not be required by the Village to construct oversized Public Improvements, or to contribute to or pay for the costs of oversizing any Public Improvement (including off-site wastewater mains, water mains, wastewater treatment facilities, water system facilities, or stormwater management facilities), unless such Public Improvements are either (i) designated as Recapture Improvements in the Final PUD Ordinance, or (ii) the subject of a cost-sharing or reimbursement agreement whereby the Developer is reimbursed for any costs in excess of the Developer's proportionate share of such Public Improvements. The Developer acknowledges that the Village is making no representation and giving no assurances as to construction requirements that may be imposed by other governmental authorities.

**M. Authorizations Regarding Access Drive Outlot.**

- i. In General. The Developer agrees to develop the Access Drive Outlot and install the Public and Private Improvements associated with such Outlot and its use as a signalized access point to the Property as provided in the Preliminary PUD Plans. The Developer has incurred substantial additional costs in acquiring the Access Drive Outlot and will incur additional substantial costs for said Access Drive Outlot improvements. In addition, in order to secure a Sunset Foods grocery store and pursue the Project in the manner desired by the Village, the Developer has represented that it cannot allow use of the Access Drive Outlot by any other property that will be developed with a grocery store or supermarket in excess of 5,000 square feet, or any store that devotes more than 5,000 square feet of sales area to the sale of food products for off-premises consumption (other than carry-out restaurants).
- ii. Authorization to Use the Access Drive Outlot. As a condition of the approvals for the development of the Property, the Developer agrees that it will authorize any property with frontage along the east line of Route 83 and south of Aptakisic Road (the "Accessing Property") to make use of the Access Drive Outlot, but only if the following conditions are satisfied:
  - a. The Accessing Property is located within the corporate limits of the Village and a covenant substantially the same as that attached as Exhibit L to this Agreement is executed and recorded against such Accessing Property;

- b. A cross-easement for the main internal access road only in substantially the same form as the cross-easement required pursuant to Section 8(II) and approved by the Village Attorney and Village Engineer is entered into by and between or among the owners of the Property and each Accessing Property to ensure uninterrupted access between and among the Property and all Accessing Property; and
- c. The Village has adopted a preliminary planned unit development ordinance for such Accessing Property, or the Corporate Authorities have adopted a resolution waiving this requirement.

The Developer agrees to impose no other conditions as consideration for authorizing an Accessing Property to make use of the Access Drive Outlot, except that the Developer may require:

- d. The recordation of a covenant against the Accessing Property prohibiting the development of a grocery store or supermarket in excess of 5,000 square feet, and prohibiting any store that devotes more than 5,000 square feet of sales area to the sale of food products for off-premises consumption (other than carry-out restaurants), on such Accessing Property; and
  - e. Payment by the owner of the Accessing Property of a proportionate share of the costs of acquiring and improving the Access Drive Outlot, the reasonableness of such proportionate share to be approved by the Village Engineer.
- iii. **Dedication of Access Drive Outlot.** The Village may (but need not) require the Developer to dedicate to the Village the Access Drive Outlot and the Public and Private Improvements thereon at any time on or after Substantial Completion of the same and satisfaction by all potential Accessing Properties of the conditions described in Sections 10M.ii of this Agreement. Until any such dedication and acceptance by the Village, the Developer will remain responsible for completion, maintenance, and repair of the Public and Private Improvements on the Access Drive Outlot in accordance with Section 10 and the other terms and provisions of this Agreement. In the event that the Village requires the dedication of the Access Drive Outlot pursuant to this Section, the Access Drive Outlot may thereafter only be used for public right-of-way purposes.

**N. Burial of Utilities.**

- i. **Internal Improvements.** Except as provided in Section 10.N.ii of this Agreement, all on-site utility facilities that are included among the Public or Private Improvements for the Project must be buried, (a) unless expressly provided to the contrary as part of a Final PUD Ordinance, or (b) except to the extent that the affected utility prohibits the burial of a portion of such utility facilities. The Village will impose similar requirements on the other properties within the Village located east of Illinois Route 83 and within the TIF District as part of any development or redevelopment approvals for such properties.

ii. **Perimeter Improvements.** Within 60 days after the Effective Date of this Agreement, the Village will notify the Developer either that: (a) all utility lines located along the perimeter of the Property along Route 83 or Aptakisic Road that are either currently located overhead or that customarily would be installed overhead (the "**Perimeter Utilities**") must be buried as part of the Primary Phase Work, except to the extent that the affected utility prohibits the burial of a portion of such utility facilities; or (b) the Perimeter Utilities will be relocated or installed in the manner customarily employed by the utility in question. To the extent that an affected utility requires as part of the relocation or burial of the Perimeter Utilities that such relocation or burial extend beyond the limits of the Property, Developer must relocate or bury such lines in accordance with such requirements. To the extent that the Village does not require the burial of the Perimeter Utilities, the Developer will be required to bear all costs for relocating such Perimeter Utilities. If the Village elects to have the Perimeter Utilities buried, the Developer must bear the initial cost of such burial, but upon completion of such burial work, the Village will reimburse the Developer for the difference between the estimated cost of (c) performing the burial work for the Perimeter Utilities and (d) performing required above-ground relocation of the Perimeter Utilities (the "**Burial Reimbursement**").

y. The estimated costs described in (c) and (d) of this Section 10.N.ii will be determined by a third-party engineer mutually agreed upon by the Village and the Developer, which estimated costs are to be obtained within 35 days after the Effective Date of this Agreement.

z. In the event that the Village elects to have the Perimeter Utilities buried, the Burial Reimbursement will be incorporated as part of the Developer Expenses (as defined in Section 14.A of this Agreement); provided, however, that in such case the "Pledged Amount" defined in Section 14.E of this Agreement will also include an amount equal to the Burial Reimbursement of the sales tax revenues generated and received from the Property through a Business District sales tax as contemplated in Section 13.C of this Agreement.

O. **Water Supply System.** The Parties acknowledge that Developer must install or cause to be installed a water supply system to serve the Project on the Property.

(i) In connection with such water supply system, the Village has adopted an ordinance (the "**SSA Proposing Ordinance**," a copy of which is attached as Exhibit N to this Agreement) that initiated proceedings for a special service area (the "**Water SSA**"). If the Village formally establishes the Water SSA within 60 days after the Effective Date of this Agreement, then

Developer must design, construct, install, and commence operation (or cause to be designed, constructed, installed, and to have operations commence) of a regional deep well water supply system that is capable of serving at least the properties included within SSA Proposing Ordinance (the "Deep Well Water System"); Developer may cooperate with the beneficial owners of any of the other properties identified in the SSA Proposing Ordinance (the "Cooperating Owners") in undertaking the development, construction, and commencement of operations of the Deep Well Water System. In addition, upon Substantial Completion and commencement of service from the Deep Well Water System, the Village agrees to acquire the Deep Well Water System from the Developer and any Cooperating Owners through the Water SSA for the reasonable costs of construction (including engineering and related consultant and other out-of-pocket costs and expenses, as well as any financing costs of the Deep Well Water System reasonably allocable to the proportionate share of any property identified within the SSA Proposing Ordinance that is not beneficially owned by a Cooperating Owner). As part of such acquisition, the Village may issue bonds pursuant to the Water SSA in the amount of the shares attributable to properties of any non-Cooperating Owners within the Water SSA, and thereafter pay the proceeds of such bonds to the Developer and any other Cooperating Owners ratably (or in such proportion as the Developer and such Cooperating Owners may otherwise agree); provided that, in such case, a further consideration for the acquisition of the Deep Well Water System would be a discharge of the Property and the properties of any Cooperating Owners from all Water SSA tax obligations.

- (ii) In the event that the Village does not establish the Water SSA within 60 days after the Effective Date of this Agreement, then the Developer will develop a private on-site water supply system that is either (a) a deep well system, provided that the Village and Developer agree within 90 days after the Effective Date of this Agreement on a means for the Village to reimburse the Developer for the cost difference between a deep well system and a shallow well system, or (b) a shallow well system.

#### **SECTION 11. DEDICATIONS, DONATIONS, AND CONTRIBUTIONS.**

**A. Dedications.** The Developer shall dedicate sites, easements, and rights-of-way as required by this Agreement, depicted on the Preliminary PUD Plans, or as otherwise provided in the Final PUD Ordinance or Final Plans.

**B. No Impact Fees or Donations.** Except as otherwise provided in this Section 11 and in Section 12, the Developer shall not be required by the Village to pay to the Village any impact fees or make any land or monetary donations to the Village in connection with the development of the Property.

#### **SECTION 12. PAYMENT OF VILLAGE FEES AND COSTS.**

**A. General Requirements.** In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement, the Developer or an Assigned Builder shall pay to the Village, as and when due, all application, inspection, and

permit fees, and all other fees, charges, and contributions required by the Applicable Village Codes and Ordinances.

**B. Special Requirements.** In addition to any other costs, payments, fees, charges, contributions or dedications required by this Agreement or by the Applicable Village Codes and Ordinances, the Developer shall pay to the Village, within 30 days of presentation of a written demand or demands therefor, all reasonable legal, engineering and other consulting or administrative fees, costs, and expenses incurred or accrued in connection with the review and processing of plans for the development of the Property and in connection with the negotiation, preparation, consideration, and review of this Agreement (other than the salaries of the Village's administrative staff, except the Village Planner). Payment of all such fees, costs, and expenses for which demand has been made, but payment has not been received, by the Village prior to execution of this Agreement shall be made by a certified or cashier's check within 30 days of presentation of an invoice therefor.

**C. Future Fees.** Any new or increased Village fee adopted during the term of this Agreement shall apply to the development of the Property, provided, however, that for a five-year period commencing from the Effective Date of this Agreement, such new fee or increase in any existing Village fee shall only apply to the development of the Property if such new fee or increase (1) is applied nondiscriminatorily throughout the Village (excepting those developments in the Village having Agreements providing otherwise); (2) does not conflict directly with any other provision of this Agreement; (3) does not substantially and adversely affect the Developer's ability to develop the Property in substantial conformity with this Agreement and the PUD Ordinance; and (4) does not increase by more than three percent per annum; provided further that, with respect to the Primary Phase Work commenced within 24 months after the Effective Date of this Agreement, the Village fees existing as of the Effective Date will apply.

### **SECTION 13. VILLAGE AGREEMENTS.**

**A. Future Cooperation.** The Village agrees to provide to the Developer the following cooperation, support, and assistance as may be reasonably necessary to implement the provisions of this Agreement:

- i. The Village will assist the Developer in obtaining any and all permits and approvals from other governmental entities with jurisdiction required to allow the Developer to develop the Property in accordance with this Agreement, including but not limited to permits and approvals for the Public and Private Improvements;
- ii. The Village will assist the Developer in obtaining approvals and easements from private parties as may be required for the construction of the Public and Private Improvements. The Village is not required, however, to exercise any powers of eminent domain in furtherance of this Subsection 13.A.ii;
- iii. The Village will grant easements in Village right-of-way as necessary for the easement, construction, maintenance, repair, and replacement of the Public and Private Improvements to serve the Property; and

- iv. The Village will assist the Developer to establish agreements with other private parties as may be required to establish a regional deep well system serving the Property.

Except as specifically set forth in this Agreement, any costs incurred by the Village in its cooperation, support, and assistance shall be fully reimbursed by the Developer in accordance with Section 12B of this Agreement.

**B. Liquor Licenses.** Within 45 days after the approval of this Agreement, the Village will consider the adoption of an ordinance or ordinances creating liquor license categories to accommodate (i) sales of liquor for off-site consumption by the Grocery Store, (ii) sales of liquor for off-site consumption by a drug store, and (iii) sales of liquor for on-site consumption for any sit-down restaurants on the Property, but only for parties who qualify to hold such licenses pursuant and subject to the terms of the Applicable Village Codes and Ordinances regarding the same. Any applications for liquor licenses under the categories described in this paragraph will be acted upon by the Village in a timely manner and in accordance with the Applicable Village Codes and Ordinances.

**C. Business District.** The Village may designate a business district in accordance with Division 74.3 of Article 11 of the Municipal Code (65 ILCS 5/11-74.3-1 *et seq.*) for the Property and the other properties within the Village located east of Illinois Route 83 and within the TIF District ("**Business District**"), but such Business District may not remain in effect for more than 45 days after the termination of the TIF District. To the extent the Village imposes an additional sales tax in conjunction with the establishment of the Business District, such additional sales tax shall be established uniformly throughout the Business District and shall not exceed one percent (1%). In connection with the Business District, the Developer shall cause each occupant of the Property that conducts retail sales that generate Sales Tax Revenue (a "**Sales Tax Generator**") to deliver to the Village copies of the "Authorization to Release Sales Tax Information to the Village of Long Grove Illinois, Illinois," in the standard form established by the Illinois Department of Revenue (IDOR), so that the Village may receive, on a calendar quarterly basis, from IDOR the information necessary to determine the amount of Sales Tax Revenue attributable to the retail sales of each Sales Tax Generator. If IDOR does not make such documentation available to the Village, the Developer shall exercise reasonable efforts to obtain such documentation from Sales Tax Generators on the Property. In the event either the Village or Developer questions the amount of Sales Tax Revenue paid to the Village by IDOR, each shall have the right to contest the amount of such Sales Tax Revenue. The Village and Developer will cooperate with one another in obtaining access to the necessary books and records evidencing the amount of Sales Tax Revenue and the information used by IDOR to calculate the amount of Sales Tax Revenue payable to the Village pursuant to Illinois law. The Village acknowledges and agrees that information to be provided by the Developer or a Sales Tax Generator may be construed as proprietary, confidential, and valuable business information and to the extent permitted by state or federal law including but not limited to Section 7(l)(g) of the Illinois Freedom of Information Act, 5 ILCS 140/7(1)(g), the Village agrees to hold in confidence all such information.

**D. Sidewalks.** The Village agrees that, to the extent that a pathway or sidewalk is required to be installed on the Property as part of the Final PUD Plans, the Village will impose similar requirements on the other properties within the Village located east of Illinois Route 83 and within the TIF District as part of any development or redevelopment approvals for such properties.

## **SECTION 14. TIF FINANCING.**

**A. Reimbursement for Redevelopment Project Costs.** The Parties acknowledge that the Developer, and particularly SGDC, will pay, or has paid, extraordinary costs relating to the development of the Public Improvements on the Property that qualify as Redevelopment Project Costs. Subject to the terms of this Section 14, the Village agrees to reimburse SGDC (or, in the discretion of the Village, directly pay for) a portion of the costs of the Public Improvements that qualify as Redevelopment Project Costs (the "**Developer Expenses**") in the amount of \$3,000,000.00, subject to the adjustments set forth in this Section 14. In furtherance of its obligation to reimburse SGDC or to directly pay, for such Developer Expenses, the Corporate Authorities shall:

- i. execute and deliver to SGDC a note which shall contain the terms and provisions set forth in Section 14B and such other terms as may be mutually agreed to by the Parties and shall be substantially in the form attached to this Agreement as **Exhibit H ("TIF Note")**; and
- ii. issue the Bonds in accordance with Section 14D;

provided, however, the Village's agreement to reimburse Developer Expenses pursuant to the TIF Note and the Bonds shall not take effect until the date of the closing of the execution and delivery of the TIF Note contemplated by this Section (the "**TIF Closing**"). The TIF Closing shall occur at a date and location mutually agreed to by the Parties, as soon as reasonably practicable after all of the conditions set forth in Section 14C have been satisfied.

**B. Terms of the TIF Note.** The principal amount of the TIF Note shall be the total Certified Costs actually incurred by the Developer (and particularly SGDC) and approved by the Village pursuant to Section 14I, subject to the following conditions and limitations:

1. The total amount of Developer Expenses to be reimbursed to SGDC by the Village pursuant to the TIF Note and this Agreement shall be \$3,000,000.00, subject to the adjustments set forth in this Section 14 (the "**TIF Funding Cap**");
2. The TIF Funding Cap shall be reduced dollar-for-dollar to the extent Village, county, state, or federal funding is committed to the payment of any of the Developer Expenses or to the extent that any recapture payments are received pursuant to Section 10.K of this Agreement with respect to any of the Public Improvements; and
3. The Developer Expenses for which reimbursement will be provided relate to public improvements and particularly right-of-way improvements along Aptakisic Road and Illinois Route 83, including without limitation pavement, curbing, required utility line relocations, signalization improvements, storm water management improvements, and required landscaping.

The TIF Note shall:

- i. evidence the Village's obligation to reimburse SGDC for the Developer Expenses, subject to and in accordance with this Agreement. The actual amount due and owing under the TIF Note at any time will be reflective of the Developer Expenses that have been identified as Certified Costs pursuant to Section 14I. Upon Developer Expenses becoming Certified Costs, the amount of such Certified Costs shall become the principal amount of the TIF Note, unless paid by the Village within 14 days after the adoption of a Certification Resolution as provided in Section 14I;
- ii. bear interest at the rate of nine percent (9%) per annum, which interest shall not be tax-exempt and which shall accrue semi-annually beginning on the Closing Date;
- iii. have a maximum term of twenty (20) years following the Closing Date, after which time the Village shall have no further obligation to reimburse SGDC for Developer Expenses under this Agreement or the TIF Note;
- iv. be secured only by the Pledged Amount, as provided in this Agreement;
- v. have a first lien on the Pledged Amount provided that no Bonds have been issued. Upon the issuance of Bonds pursuant to Section 14.D, the TIF Note will be subordinate to the Bonds with respect to the Pledged Amount;
- vi. provide for payment of principal and interest once per year on February 1, which annual payment shall not exceed the Pledged Amount in the Account, until the earlier of (a) the payment of the TIF Note in full, or (b) the termination of the Village's obligation to reimburse SGDC for Developer Expenses as described in clause (iii);
- vii. provide that each annual payment shall be applied first to accrued but unpaid interest, second to current interest, and third to principal;
- viii. provide that the Village may prepay the Note without the Developer's consent, and that the principal amount of the TIF Note shall be reduced by the Net Proceeds upon the issuance of the Bonds; and
- ix. be transferable or assignable only (a) as a collateral assignment to an accredited investor, as defined in Rule 501 of Regulation D of the Federal Securities Act of 1933, or a bank, as defined in Section 3(a)(2) of the Federal Securities Act of 1933; (b) to an entity wholly owned and controlled by the owners of SGDC; (c) to an entity in which the majority equity interest is owned by the owners of SGDC; or (d) if otherwise approved by the Corporate Authorities in their sole discretion.

C. **Pre-conditions to TIF Closing.** The TIF Closing shall occur only upon the satisfaction of each and every one of the following conditions:

1. Not less than 30 days before the TIF Closing, Developer shall provide to the Village certified copies of its formation documents and good standing certificate issued by the appropriate governmental authority of the state of its formation, showing among other things, that Developer is authorized to do business in the State of Illinois. To the extent that any member of Developer is required to consent to the transactions contemplated hereunder, any such member which is an entity must also provide its formation documents to Village. All such documents must be acceptable to the Village.

2. Simultaneous with the TIF Closing, Developer shall, at its cost, provide certificates of incumbency and resolutions and consents necessary to undertake the Project and all other actions reasonably necessary for the Project in accordance with this Agreement. All such certifications and consents shall be accompanied by an opinion of Developer's counsel, addressing the due authorization of Developer and its members to enter into this Agreement and all agreements related hereto and to undertake such other matters as may be required hereunder. The form and substance of all documents required under this paragraph 2 shall be acceptable to the Village, in its sole discretion and consistent with any Developer lender requirements.

3. Not less than 30 days before the TIF Closing, Developer shall, at its cost, provide to the Village a cost breakdown of the estimated Developer Expenses, certified by Developer and its general contractor as true and complete to the best of their knowledge ("**Cost Breakdown**"). The Cost Breakdown shall separate the "soft" and "hard" costs for each of the Public Improvements included within the Developer Expenses.

4. Not less than 30 days before the TIF Closing, the Developer shall, at no cost to the Village, obtain and provide to the Village written financing commitments from one or more lending institutions, which may include both a construction loan and mezzanine loan, agreeing to make loans to the Developer in amounts that, together with equity funds evidenced by the Developer and the TIF assistance and any other financial assistance provided by the Village, equals the amount necessary to pay all costs for the Primary Phase Work. The written financing commitments and the adequacy of funds necessary to pay the Developer Expenses shall be in such form and substance as acceptable to the Village.

5. Not less than 30 days before the TIF Closing, the Developer shall provide evidence of an executed lease for the entire Grocery Store Lot and at least 33% of the net leasable space (or, alternatively, 40% of the net pro forma rental revenue) for any Retail Lot included as part of the Primary Phase Work.

6. Not less than 30 days before the TIF Closing, the Developer shall present to the Village a certification or such other evidence reasonably satisfactory to Village that the Developer has fulfilled all other conditions imposed by the lenders for the Project.

7. The Developer shall furnish or cause to be furnished, the Village at TIF Closing with paid up policies of title insurance issued by a title insurance company reasonably satisfactory to the Village Manager, in a form reasonably acceptable to the Village.

8. The Developer shall be in compliance with all the terms and conditions of this Agreement, to be performed and/or observed by Developer, up until the time of the TIF Closing, including the delivery of the required Performance and Payment Letter of Credit.

**D. Issuance of Bonds.** No later than 45 days after the satisfaction of all of the pre-conditions to the TIF Closing set forth in Section 14C, the Village shall issue TIF revenue bonds in one or more bond issuances in its name sufficient to generate Net Proceeds of up to \$3,000,000.00 to retire the Note ("**Bonds**"). The Bonds shall be subject to the following provisions:

1. The Net Proceeds will be used by the Village to pay for the eligible Developer Expenses in accordance with this Agreement. If so provided in a Bond Ordinance, the Bond Proceeds may be held by a trustee for the bond holders ("Trustee").

2. The source of repayment of the Bonds will be the Pledged Amount, as described in Section 14E.

3. The Bonds will be payable solely from, and will have a first lien on, the Pledged Amount.

4. The Net Proceeds shall be deposited, held, invested, reinvested, and disbursed as provided in the Bond Ordinance. The Developer understands and agrees that the Village alone shall deliver to any Trustee a direction as to the investment of funds on deposit in the funds and accounts established by or pursuant to the Bond Ordinance.

5. Except in the event of fraud or gross negligence, the Village shall have no responsibility whatsoever to the Developer with respect to any investment of funds made under the Bond Ordinance, including any loss of all or portion of the principal invested or any penalty for liquidation of investment. Any such loss may diminish the amounts of Bond proceeds available to pay eligible Developer Expenses.

6. The Bonds shall be underwritten by a qualified investment banker, such as William Blair & Co., LLC.

7. The Village and Developer will make all reasonable efforts to ensure that the Bonds will be exempt from federal taxation under the Internal Revenue Service Code. For the Village, such efforts may include, without limitation, passing an inducement or intent resolution to preserve the eligibility of any costs expended and the tax-exempt status of the Bonds.

**E. Deposit of Pledged Amount in Account.** The Village shall establish a special tax allocation fund pursuant to the requirements of the TIF Act ("**Fund**"). The Village shall deposit into an account (the "**Account**") of the Fund the Incremental Property Taxes within 90 days after receipt thereof by the Village ("**Pledged Amount**"). The Pledged Amount shall be irrevocably pledged to the payment of any principal and interest due on the Bonds and the amounts due under the TIF Note, as provided herein. In the Village's sole discretion, the TIF Note may also be paid from proceeds of any bonds or other obligations issued by the Village or

any other sources available to the Village and permitted by law to be used to make payments under the TIF Note; provided, however, that the Pledged Amount shall not be reduced by the amount of such payments from other bond proceeds or obligations or other sources until the TIF Note and Bonds are fully satisfied. The entire Pledged Amount in the Account on February 1 of each year shall be used to pay principal and interest first on the Bonds and second on the TIF Note, as provided herein. Any funds contained in the Fund in excess of the Pledged Amount may be used by the Village for any lawful purpose permitted under the TIF Act (including, but not limited to, calculation and distribution of "surplus" in accordance with Sections 11-74.4-7 and 11-74.4-8a of the TIF Act). Because the Fund is a special fund, the amounts deposited in the Account shall be disbursed in accordance with this Agreement, the TIF Approval Ordinances, and the TIF Note without further action by the Corporate Authorities. Upon full satisfaction of the Bonds and TIF Note, any Pledged Amount remaining in the Account may be transferred to any other account in the Fund.

**F. Limited Obligation of the Village.** The Developer hereby acknowledges that the Pledged Amount may be insufficient to cover the payment of all principal and interest on the Bonds and the TIF Note. If the Pledged Amount is insufficient to pay all the principal and interest due on the Bonds and under the TIF Note, the Developer (and particularly SGDC) hereby acknowledges that it shall have no recourse against the Village provided that all Pledged Amounts required to be deposited in the Account from time to time pursuant to the TIF Act and this Agreement have been deposited into the Account and the amount equal to the Pledged Amount in each year has been used solely to pay amounts due on the Bonds and under the TIF Note.

**G. Submission of Certification Requests.** For reimbursement of Developer Expenses in accordance with the TIF Note, the Developer shall submit to the Village a written request for certification of such Developer Expenses in the form attached as *Exhibit I* to this Agreement ("**Certification Request**"). The Developer shall not submit (i) more than two Certification Requests in any calendar year; (ii) a Certification Request for less than \$250,000; or (iii) a Certification Request more than six (6) months after the last Developer Expenses have been paid by Developer. Each Certification Request shall be accompanied by (i) sworn statements and lien waivers for any material, fixtures, apparatus, machinery, services, or labor provided by any contractor, subcontractor, or other person or entity entitled to file a lien under the Mechanics Lien Act, 770 ILCS 60/1, included in the Developer Expenses for which reimbursement is sought; (ii) bills, contracts, and invoices relative to the Developer Expenses; and (iii) other documents or information that the Village shall reasonably require to evidence appropriate payment of Developer Expenses. To facilitate the certification of the Developer Expenses (including their certification as proper Redevelopment Project Costs) as provided herein, the Developer shall (iv) require its contractors, suppliers, and others with whom it enters into contracts for Developer Expenses to submit pay requests, invoices, and bills that include only amounts that are included with the Developer Expenses and qualify as Redevelopment Project Costs; and (v) take such other actions as are reasonably necessary or desirable to identify Developer Expenses separately from other costs. If the Developer does not fulfill its obligations as set forth in the preceding sentence, the Village shall have no obligation to certify, or reimburse SGDC for, Developer Expenses that have not been separately identified as required herein.

**H. Eligibility for Payment.** Notwithstanding any other provision of this Agreement, SGDC shall be entitled to be reimbursed for Developer Expenses only if:

- i. The Developer actually incurs such Developer Expenses;

- ii. Such Developer Expenses are also "redevelopment project costs" as defined in the TIF Act;
- iii. For any Developer Expenses relating to the Public Improvements, the Village Engineer has determined that, based upon an inspection, the Public Improvements have been completed in accordance with the Final Plans and this Agreement to the extent of the percentage of completion as represented in the request for reimbursement;
- iv. Such Developer Expenses are also Certified Costs (as defined in Section 14I);
- v. Reimbursement is permitted pursuant to this Agreement, the Redevelopment Plan, and the TIF Act;
- vi. The Developer is not in material default or breach of any obligation under this Agreement; and
- vii. Until the Public Improvements are Substantially Completed, SGDC will not be entitled to reimbursement of more than the lesser of \$2,700,000.00 or 90% of the Developer Expenses for the partially completed portion of the work on Public Improvements.

I. **Village Review of Certification Requests.** The Village Manager, in consultation with the Village Engineer, shall approve or disapprove a Certification Request within 30 days after its submission; In order to make any such determination, the Village reserves the right to review the books and records of Developer relating to the Developer Expenses. To the extent that a Certification Request is approved, the Village Manager shall issue an approval notice to Developer ("**Certification Notice**") identifying which Developer Expenses identified in the Certification Request have been approved for payment ("**Certified Costs**"), as well as payment for such Certified Costs. If the Village finds an error or deficiency in any Certification Request, the Village shall specify such error or deficiency in reasonable detail within 60 days after the date the Village receives the Certification Request.

J. **Commitment to Fair Employment Practices and Affirmative Action.** The Village and Developer shall comply with the requirements pertaining to fair employment practices and affirmative action described in the Redevelopment Plan.

#### **SECTION 15. PERFORMANCE SECURITY.**

A. **Performance and Payment Letter of Credit.** As security to the Village for the performance by Developer of Developer's obligations to construct and complete the Public Improvements and Private Improvements included as part of the Primary Phase Work pursuant to and in accordance with this Agreement, the Developer hereby irrevocably elects, on behalf of itself and its successors, to provide performance and payment security for the Public and Private Improvements in the form of one or more letters of credit ("**Performance and Payment Letter of Credit**"). The amount of the Performance and Payment Letter of Credit shall be equal to 110% of the estimate of the costs of construction and completion of the Public and Private Improvements as determined by the Village Engineer ("**Approved Cost Estimate**"). The amount of the Performance and Payment Letter of Credit will be reduced by:

1. 110% of the amount of the Net Proceeds upon the issuance of any Bonds pursuant to Section 14 of this Agreement; and
2. the actual amount of security (either in the form of a letter of credit or bond) delivered to another governmental entity in connection with any Public Improvement to be dedicated to such governmental entity.

**B. Maintenance of Security.** The deposit of the Performance and Payment Letter of Credit shall be a condition precedent to the issuance of a building permit for any Structural Improvements. The Performance and Payment Letter of Credit shall be maintained and renewed by the Developer, and shall be held in escrow by the Village, until approval and, where appropriate, acceptance by the Village of all the Public Improvements and Private Improvements included as part of the Primary Phase Work pursuant to this Agreement and until the posting of the Guaranty Letter of Credit required by Section 15C below. After the acceptance and posting of the Guaranty Letter of Credit, the Village shall release the Performance and Payment Letter of Credit.

**C. Guaranty Letter of Credit.** As a condition of the Village's approval of any or all of the Public Improvements pursuant to Section 10 of this Agreement, the Developer on behalf of itself and its successors, shall post, and hereby irrevocably elects to post, a letter of credit in the amount of 10% of the actual total cost of the Public Improvements (as certified by the Developer's engineer and approved by the Village Engineer) as security for the performance of the Developer's obligations with respect to the Public Improvements ("**Guaranty Letter of Credit**"). The Guaranty Letter of Credit shall be held by the Village in escrow until the end of the two-year guaranty period set forth in Section 10G of this Agreement or until two years after the proper correction of any defect of deficiency in the Public Improvements pursuant to Section 10 and payment thereof, whichever occurs later. If the Village is required to draw on the Guaranty Letter of Credit by reason of the Developer's failure to fulfill its obligations under this Agreement, then the Developer, within 10 days thereafter, shall cause the Guaranty Letter of Credit to be increased to its full original amount.

**D. Costs.** The Developer shall bear the full cost of securing and manufacturing the Performance and Payment Letter of Credit and the Guaranty Letter of Credit.

**E. Form of Letters of Credit.** The Performance and Payment Security and the Guaranty Letter of Credit each shall be in a form reasonably satisfactory to the Village Attorney in accordance with this Section 15E. Each letter of credit, whether the Performance and Payment Letter of Credit or the Guaranty Letter of Credit, shall be in substantially the form attached to this Agreement as **Exhibit J** and shall be from a bank reasonably acceptable to the Village and having capital resources of at least \$50,000,000, with an office in the Chicago Metropolitan Area and insured by the Federal Deposit Insurance Corporation. Each letter of credit shall, at a minimum, provide that (a) it shall expire no earlier than the later of one year following the date of its issuance or 35 days after delivery to the Village, in the manner provided in Section 23A of this Agreement, of written notice that the letter of credit will expire, (b) it may be drawn on based upon the Village Manager's certification that the Developer has failed to fulfill any of the obligations for which the letter of credit is security, as stated in this Section 15, (c) it shall not require the consent of the Developer prior to any draw on it by the Village, (d) it shall not be canceled without the prior written consent of the Village, and (e) if at any time it will expire within 35 or any lesser number of days, and if it has not been renewed, and if any obligation of the Developer for which it is security remains uncompleted or unsatisfactory, then the Village may, without notice and without being required to take any further action of any

nature whatsoever, call and draw down the letter of credit and thereafter either hold all proceeds as security for the satisfactory completion of all obligations or employ the proceeds to complete all obligations and to reimburse the Village for any and all costs and expenses, including legal fees and administrative costs, incurred by the Village, as the Village shall determine. Upon completion of the Developer's obligations to construct and complete the Public or Private Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the Village for all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village shall release to the Developer any proceeds remaining on deposit with the Village drawn from the letter of credit. The Performance and Payment Letter of Credit may provide that the aggregate amount of the letter of credit may be reduced in the discretion of the Village Board by resolution in recognition of the Developer's partial payments of Project Public or Private Improvement work, but only to the extent that such work has been satisfactorily performed. No reduction for work satisfactorily completed shall be allowed except upon presentation by the Developer of proper contractors' sworn statements, partial or final waivers of lien, as may be appropriate, and all additional documentation as the Village may reasonably request to demonstrate satisfactory completion of the Public or Private Improvement in question and full payment of all contractors, subcontractors, and material suppliers. The letters of credit shall not be reduced by reason of any cost incurred by the Developer to satisfy its obligations under Sections 10 or 11 of this Agreement.

**F. Replenishment of Security.** If at any time the Village reasonably determines that the funds remaining in the Performance and Payment Letter of Credit are not sufficient to pay in full (i) the remaining unpaid cost of all Public Improvements and Private Improvements included as part of the Primary Phase Work pursuant to this Agreement, (ii) the costs of demolition or making safe of any Property Improvements that are in violation of the Requirements of Law or that are incomplete or abandoned so as to create any hazard to the public health, safety, or welfare, and (iii) all unpaid or reasonably anticipated Village fees, costs, and expenses, or that the funds remaining in the Guaranty Letter of Credit are not, or may not be, sufficient to pay all unpaid costs of correcting any and all defects and deficiencies in the Public Improvements and Private Improvements included as part of the Primary Phase Work pursuant to this Agreement and all unpaid or reasonably anticipated Village fees, costs, and expenses relating to the Improvements, then, within 30 days after a demand by the Village, the Developer shall increase the amount of the letter of credit to an amount determined by the Village to be sufficient to pay unpaid fees, costs, and expenses. Failure to so increase the amount of the security shall be grounds for the Village to receive the proceeds of, or to draw down, as the case may be, the entire remaining balance of the letter of credit. Upon completion of the Developer's obligations to construct and complete the Public Improvements and Private Improvements included as part of the Primary Phase Work pursuant to and in accordance with this Agreement, and after reimbursement of the Village for all fees and all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village shall release to the Developer any proceeds remaining on deposit with the Village from any letter of credit.

**G. Replacement Letters of Credit.** If at any time the Village determines that the bank issuing either the Performance and Payment Letter of Credit or the Guaranty Letter of Credit is without capital resources of at least \$50,000,000, or if at any time the Village determines that the bank is unable to meet any federal or state requirement for reserves, is insolvent, is in danger of becoming any of the foregoing, or is otherwise in danger of being unable or unwilling to honor the letter of credit at any time during its term, or if the Village otherwise reasonably deems itself to be insecure, then the Village shall have the right to demand that the Developer provide a replacement letter of credit from a bank meeting the

requirements set forth in this Agreement. The replacement letter of credit shall be deposited with the Village not later than 30 days after a demand. Upon deposit, the Village shall surrender the original letter of credit to the Developer. Failure to provide a replacement letter of credit shall be grounds for the Village to receive the proceeds of, or to draw down, as the case may be, the entire remaining balance of the letter of credit.

**H. Use of Funds in the Event of Breach of Agreement.** If the Developer fails or refuses to complete the Public Improvements and Private Improvements included as part of the Primary Phase Work in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the Public Improvements as required by Section 10G of this Agreement, or fails or refuses to restore property in accordance with a demand made pursuant to Section 10I of this Agreement, or fails or refuses to pay any amount demanded by the Village as and when required pursuant to Section 12 of this Agreement, or in any other manner fails or refuses to meet fully any of its obligations under this Agreement, then the Village in its reasonable discretion may draw on and retain all or any of the funds remaining in the appropriate letter of credit. The Village thereafter shall have the right, subject to reasonable notice and opportunity for cure, to exercise its rights under this Agreement, to take any other action it deems reasonable and appropriate to mitigate the effects of any failure or refusal, and to reimburse itself from the proceeds of the letter of credit for all of its costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of the Developer's failure or refusal to fully meet its obligations under this Agreement. If the funds remaining in the letter of credit are insufficient to repay fully the Village for all costs and expenses, then the Developer shall upon demand of the Village therefor deposit with the Village any additional funds as the Village determines are necessary, within 30 days of a request therefor, to fully repay such costs and expenses.

**I. Village Lien Rights.** If any money, property, or other consideration due from the Developer to the Village pursuant to this Agreement is not either recovered from the letter of credit required in this Section 15 or paid or conveyed to the Village by the Developer within 30 days after a demand for payment or conveyance, then the money, or the Village's reasonable estimate of the value of the property or other consideration, together with interest and costs of collection, including legal fees and administrative expenses, shall become a lien upon all portions of the Property in which the Developer retains any legal, equitable, or contractual interest, and the Village shall have the right to collect the amount or value, with interest and costs, including legal fees and administrative expenses, and the right to enforce the lien in the same manner as in statutory mortgage foreclosure proceedings. In the event, but only in the event, of a sale or transfer of the Property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure, such lien shall be subordinate to any first mortgage whether now or hereafter placed upon the Property. Any other sale or transfer shall not relieve the Property from liability for any charges hereafter becoming due, nor from the lien of any charge, except as otherwise provided by law.

## **SECTION 16. LIABILITY AND INDEMNITY OF VILLAGE.**

**A. Village Review.** The Developer acknowledges and agrees that the Village is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans for the Property, the Project, or the Property Improvements, or the issuance of any approvals, permits, certificates, or acceptances, for the development or use of the Property, the Project, or the Property Improvements, and that the Village's review and approval of any such plans and the Property Improvements and issuance of any such approvals, permits, certificates, or acceptances does

not, and shall not, in any way, be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, and licensees, or any third party, against damage or injury of any kind at any time, except as may be caused by the Village's gross negligence or willful misconduct and not otherwise protected by the Village's statutory immunity.

**B. Village Procedure; Cooperation in Undertaking Corrective Action.**

The Parties acknowledge and agree that, to the best of their knowledge and understandings, all notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement, and Parties agree not to challenge such approval on the grounds of any procedural infirmity or of any denial of any procedural right. In addition, the Developer, on behalf of itself and its successors, waives and releases any and all claims it may have regarding (i) the Village's review and approval of this Agreement or any plans for the Property, the Project, the Property Improvements, the TIF District, or the Business District, or (ii) the issuance to the Developer or any Assigned Builder of any approval, permit, certificate, or acceptance for the Property, the Project, or the Property Improvements. In the event any challenge is asserted with respect to any procedural or substantive infirmity or of any denial of any procedural right with respect to any review, approval, permit, certificate, or acceptance for the Property, the Project, or the Property Improvements, the Parties agree to cooperate with each other in any manner reasonable necessary or appropriate to take corrective action to address any asserted infirmity or denial of procedural right.

**C. Indemnity.** The Developer agrees to, and does hereby, hold harmless and indemnify the Village, the Corporate Authorities, and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of such parties in connection with (i) the Developer's development, construction, maintenance, or use of any portion of the Property, the Project, or the Property Improvements; and (ii) the performance by the Developer of its obligations under this Agreement, except as may be caused by the Village's gross negligence or willful misconduct.

**D. Developer Defense Expense.** The Developer shall, and does hereby agree to, pay all expenses, including reasonable legal fees and administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims referenced in Subsection 16C of this Agreement.

**E. Other Defense Expense.** Subject to any corrective action as described in Section 16.B of this Agreement, the Village will defend challenges regarding the establishment of the TIF District. In addition, the Village will not oppose any intervention petition by Developer in any suit or action in which the establishment of the TIF District is at issue. The Village will cooperate with Developer in defending any challenges arising from the Preliminary PUD Ordinance, the Final PUD Ordinance, the Zoning Text Amendment Ordinance, or the Zoning Map Amendment Ordinance, but the Village will have no obligation to incur out-of-pocket expenses in connection with such cooperation; provided that the Village may elect to participate directly in the defense of such zoning challenges.

**SECTION 17. NATURE, SURVIVAL, AND TRANSFER OF OBLIGATIONS.**

**A.** All obligations assumed by the Developer under this Agreement shall be binding upon the Developer, upon any and all of the Developer's heirs, successors, and assigns, and upon any and all of the respective successor legal or beneficial owners of all or any portion of the Property other than any Excluded Purchaser. To assure that all such heirs,

successors, assigns and successor owners have notice of this Agreement and the obligations created by it, the Developer shall:

- i. Deposit with the Village Clerk, contemporaneously with the Village's approval of this Agreement, any consents or other documents necessary to authorize the Village to record this Agreement with the Lake County Recorder of Deeds; and
- ii. Notify the Village in writing when the Developer transfers a legal or beneficial interest in any portion of the Property to any other party; and
- iii. Incorporate, by reference, this Agreement into any and all real estate sales contracts entered into for the sale of all or any portion of the Property to any other party; and
- iv. Require, prior to the transfer of all or any portion of the Property, or any legal or equitable interest therein to any other party, the transferee of said portion of the Property to execute an enforceable written agreement, in substantially the form attached as Exhibit K to this Agreement, agreeing to be bound by the provisions of this Agreement ("**Transferee Assumption Agreement**"), and to provide the Village, upon request, with such reasonable assurance of the financial ability of such transferee to meet those obligations as the Village may require. Notwithstanding the foregoing, the Developer may, in lieu of a Transferee Assumption Agreement, identify the transferee of a portion of the Property as an Excluded Purchaser and instead reaffirm the Developer's assumption of any obligations and liabilities under this Agreement that otherwise would have devolved upon such Excluded Purchaser in accordance with this Section 17.A.iv.

The Village agrees that upon a successor becoming bound to the personal obligation created in the manner provided in this Agreement and providing the financial assurances required herein, the liability of the Developer shall be released to the extent of the transferee's assumption of such liability. The failure of the Developer to provide the Village with a fully executed copy of a Transferee Assumption Agreement and, if requested by the Village, with the transferee's proposed assurances of financial capability before completing any such transfer shall result in the Developer remaining fully liable for all of the Developer's obligations under this Agreement but shall not relieve the transferee of its liability for all such obligations as a successor to the Developer.

**B. Limitation of Owner Obligations and Rights.** Except for specific rights and affirmative obligations assigned to the Developer pursuant to the terms of this Agreement, the rights and obligations of all owners of portions of the Property under this Agreement shall be limited to those rights and obligations directly related to or arising out of the portion of the Property owned by such owners.

**C. Excluded Assignments.** This Section 17 does not require the Village's consent to the collateral assignment of this Agreement to Developer's construction lender or a permanent lender, if required thereby.

**SECTION 18. TERM.**

This Agreement shall remain in full force and effect from the Effective Date until the TIF District expires; provided, however, that the Developer's construction obligations hereunder shall terminate pursuant to certificates of completion issued by the Village.

**SECTION 19. DEVELOPER REPRESENTATIONS, COVENANTS, AND WARRANTIES.**

The Developer, and the person executing this Agreement on behalf of the Developer, represent, warrant, and covenant, as of the date of this Agreement, that:

- i. the Developer is an Illinois corporation, duly organized, validly existing, qualified to do business in Illinois;
- ii. the Developer has the right, power, and authority to enter into, execute, deliver and perform this Agreement, and the Developer is in compliance with all Requirements of Law, the failure to comply with which could affect the ability of Developer to perform its obligations under this Agreement;
- iii. the execution, delivery and performance by the Developer of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate its organizational documents or articles of incorporation, as amended and supplemented, any of the applicable Requirements of Law, or constitute a breach of or default under, or require any consent under, any agreement, instrument, or document to which the Developer is now a party or by which the Developer is now or may become bound;
- iv. there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened, or affecting the Developer which would impair its ability to perform under this Agreement;
- v. the Developer shall apply for and shall maintain all government permits, certificates, and consents necessary to conduct its business and to construct and complete the Project as required by this Agreement; and
- vi. the Developer has sufficient financial and economic resources to implement and complete its obligations under this Agreement, and the financial information and other written data are true and correct in all material respects as of the dates of such statements and data. There have been no material adverse changes in the business, operations, ownership, or condition (financial or legal) of Developer as disclosed in such statements and data, and Developer has no knowledge of any liabilities, contingent or otherwise, of Developer which might have a material adverse effect upon its ability to perform its obligations under this Agreement. The financial projections provided to the Village are the same in all material respects as the financial projections provided by Developer to the provider(s) of the Project financing.

**SECTION 20. VILLAGE REPRESENTATIONS, COVENANTS, AND WARRANTIES.**

The Village represents, warrants and agrees as the basis for the undertakings on its part contained in this Agreement that:

- i. The Village is a municipal corporation duly organized and validly existing under the law of the State of Illinois and has all requisite corporate power and authority to enter into this Agreement.
- ii. The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement: (i) have been duly authorized by all necessary corporate action on the part of the Village, (ii) require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement, and (iii) shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition, or provision of any indenture, agreement, or other instrument to which the Village is subject.
- iii. To the best of the Village's knowledge, the notices, hearings, other proceedings, actions, and approvals undertaken by or on behalf of the Village in connection with this Agreement and the matters described in this Agreement have been completed in the manner required by law, and that there are no proceedings pending or threatened against or affecting the Village or the Property in any court or before any governmental authority that involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement or the matters described in this Agreement.

**SECTION 21. ENFORCEMENT.**

The Parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce, or compel the performance of this Agreement; provided, however, that the Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the Village or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement; provided further that this limitation does not extend to claims for reimbursement of Developer Expenses pursuant to Section 14 of this Agreement. Notwithstanding the preceding sentence, in the event of a judicial proceeding brought by one Party to this Agreement against the other Party to this Agreement, the prevailing Party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any Property Improvements at any time the Developer has failed or refused in a material way to meet any of its obligations under this Agreement.

## **SECTION 22. DEFAULT.**

**A. Events of Default by the Developer.** Each of the following shall be an "**Event of Default**" with respect to this Agreement:

- i. If any material representation made by the Developer in this Agreement, or in any certificate, notice, demand, or request made by a representative of Developer in connection with this Agreement shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the Developer does not remedy the default within 30 days after written notice from the Village.
- ii. Default by the Developer for a period of 30 days after written notice thereof in the performance or breach of any covenant contained in this Agreement concerning the existence, structure, or financial condition of the Developer; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said 30 days and the Developer, within said 30 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 60 days after such notice.
- iii. Default by the Developer for a period of 30 days after written notice thereof in the performance or breach of any covenant, warranty, or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if such default cannot be cured within said 30 days and the Developer, within said 30 days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 60 days after such notice.
- iv. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days.
- v. The commencement by the Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Developer or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of the Developer generally to pay such entity's debts as such debts become due or the taking of action by the Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within 60 days after such filing.

- vi. Failure to have funds to meet the Developer's obligations; provided, however, that such default shall constitute an Event of Default only if the Developer does not remedy the default within 30 days after written notice from the Village.
- vii. Sale, assignment, or transfer of the Property except in accordance with the Transferee Assumption provisions in Section 17 of this Agreement.
- viii. Change in the organizational status of the Developer except in accordance with the Transferee Assumption provisions in Section 17 of this Agreement.
- ix. The Developer abandons the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than 30 consecutive days for any reason other than Force Majeure.
- x. The Developer fails to comply with the Requirements of Law in relation to the construction and maintenance of the buildings contemplated by this Agreement; provided, however, that such default shall constitute an Event of Default only if the Developer does not remedy the default within 30 days after written notice from the Village.
- xi. A representation or warranty of the Developer is not true for a period of 30 days after written notice from the Village.

To the extent that a transfer has been made to an Assigned Builder or another person pursuant to Section 17 of this Agreement, an event of default of the Developer will not affect the interests of the transferee, nor will the default of a transferee affect the interests of the Developer, unless the terms of the approved Transferee Assumption Agreement otherwise provide.

**B. Events of Default by the Village.** The following shall be Events of Default with respect to this Agreement:

- i. If any material representation made by the Village in this Agreement, or in any certificate, notice, demand, or request made by a representative of Village in connection with this Agreement shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the Village does not remedy the default, within 30 days after written notice from the Developer.
- ii. Default by the Village in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the Village; provided, however, that such default or breach shall constitute an Event of Default if the Village does not, within 30 days after written notice from the Developer, initiate and diligently pursue appropriate measures to remedy the default.
- iii. Default by the Village in the performance or breach of any material covenant, warranty, or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the

Village, commences cure within 30 days after written notice from the Developer and in any event cures such default within 60 days after such notice, subject to Force Majeure.

Agreement: **C. Remedies for Default.** In the case of an Event of Default under this

- i. The defaulting party shall, upon written notice from the non-defaulting party as provided in Section 22.A or 22.B, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, within the time period provided, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting party's obligations under this Agreement.
- ii. In case the Village shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, the Developer and the Village shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer and the Village shall continue as though no such proceedings had been taken.

### **SECTION 23. GENERAL PROVISIONS.**

**A. Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i), personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic Internet mail ("**e-mail**"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to Village shall be addressed to, and delivered at, the following address:

Village of Long Grove  
3110 RFD

Long Grove, Illinois 60047  
Attention: Village Manager

With a copy to:

Victor P. Filippini, Jr.  
Holland & Knight LLP  
131 S. Dearborn Street, 30<sup>th</sup> Floor  
Chicago, Illinois 60603

Notices and communications to the Developer shall be addressed to, and delivered at, the following address:

Sunset Grove Development Corporation  
c/o Mid-America Development Partners  
1110 Jorie Boulevard, Suite 350  
Oak Brook, Illinois 60523  
Attention: Michael Firsel and Adam Firsel

With a copy to:

Michael Ross, Esquire  
Schain Burney Ross & Citron, Ltd.  
222 N. LaSalle Street, Suite 1910  
Chicago, Illinois 60601-1102

**B. Time of the Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.

**C. Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

**D. Non-Waiver.** Neither Party shall be under any obligation to exercise any of the rights granted to it in this Agreement. The failure of any Party to exercise at any time any such right shall not be deemed or construed to be a waiver thereof, nor shall such failure void or affect that Party's right to enforce such right or any other right.

**E. Consents.** Whenever the consent or approval of any Party hereto is required in this Agreement such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

**F. Governing Law.** This Agreement shall be governed by, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

**G. Severability.** It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but such remaining provisions shall be

interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

H. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.

I. **Grammatical Usage and Construction.** In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

J. **Interpretation.** This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though both Parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

K. **Headings.** The table of contents, heading, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

L. **Exhibits.** Exhibits A through N attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

M. **Amendments and Modifications.** No amendment or modification to this Agreement shall be effective unless and until it is reduced to writing and approved and executed by both Parties in accordance with all applicable statutory procedures.

N. **Changes in Laws.** Unless otherwise explicitly provided in this Agreement, any reference to any Requirements of Law shall be deemed to include any modifications of, or amendments to such Requirements of Law as may, from time to time, hereinafter occur.

O. **Calendar Days and Time.** Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or Federal holiday.

P. **No Third Party Beneficiaries.** No claim as a third party beneficiary under this Agreement by any person, firm or corporation shall be made, or be valid, against the Village or the Developer; provided, however, that Sunset Foods, Inc. is an intended third-party beneficiary only with respect to matters relating to the Grocery Store and the Grocery Store Lot, and only for so long Sunset Foods, Inc. is either in the process of constructing or actually operating the Grocery Store on the Grocery Store Lot.

Q. **Estoppel Certificates.** Each of the parties hereto agrees to provide (and the Village authorizes its attorney to provide) the other, upon not less than ten (10) business

days prior request, a certificate ("**Estoppel Certificate**") certifying that this Agreement is in full force and effect (unless such is not the case in which such Party shall specify the basis for such claim), that the requesting party is not in default of any term, provision, or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party.

R. **Acquisition of Property.** In the event Developer is unable to obtain fee simple title to the Property or has otherwise been unable to satisfy the pre-conditions for the Effective Date of this Agreement on or before December 1, 2008, either Party may terminate this Agreement upon delivering written notice thereof to the other Party, whereupon all duties and obligations hereunder by the Parties shall terminate.

[SIGNATURES ON FOLLOWING PAGES]

**ATTEST:**

*Karen Schmitt*  
Village Clerk

**VILLAGE OF LONG GROVE**

By: *Maria Rodas*;  
President

**SUNSET GROVE DEVELOPMENT CORP.**

By: *Michael D. Truel*  
Its: President

**SUNSET GROVE L.L.C.**

By: *Michael D. Truel*  
Its: Manager

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**TABLE OF EXHIBITS**

<b>EXHIBIT A</b>	<b>Description of Property</b>
<b>EXHIBIT B</b>	<b>Preliminary PUD Plans</b>
<b>EXHIBIT C</b>	<b>Zoning Text Amendment Ordinance</b>
<b>EXHIBIT D</b>	<b>Zoning Map Amendment Ordinance</b>
<b>EXHIBIT E</b>	<b>Preliminary PUD Ordinance</b>
<b>EXHIBIT F</b>	<b>Initial Retail Occupants</b>
<b>EXHIBIT G</b>	<b>Form of Recapture Agreement</b>
<b>EXHIBIT H</b>	<b>Form of TIF Note</b>
<b>EXHIBIT I</b>	<b>Form of Certification Request</b>
<b>EXHIBIT J</b>	<b>Form of Letter of Credit</b>
<b>EXHIBIT K</b>	<b>Form of Transferee Assumption Agreement</b>
<b>EXHIBIT L</b>	<b>Covenant Not to Disconnect</b>
<b>EXHIBIT M</b>	<b>Summary of Redevelopment Project Costs for the Property</b>
<b>EXHIBIT N</b>	<b>SSA Proposing Ordinance</b>