

**Item #2:**  
**Resolution Adopting Amendments To Sunset Grove RDA**

VILLAGE OF LONG GROVE

RESOLUTION NO. 2010-R-\_\_\_\_

**RESOLUTION ADOPTING AMENDMENTS  
TO THE SUNSET GROVE REDEVELOPMENT AGREEMENT**

**WHEREAS**, the Village of Long Grove depends heavily on the success and vibrancy of its commercial areas to maintain the fiscal integrity of the Village; and

**WHEREAS**, in order to eliminate various conditions that have impaired the reasonable development of the Village's downtown business district, the Route 83 corridor south of Aptakistic Road, and other nearby areas within the Village, the Village Board has adopted a redevelopment project and plan and established a redevelopment project area (a "**TIF District**") as authorized under 65 ILCS 5/11-74.4-1 *et seq.* (the "**TIF Act**"); and

**WHEREAS**, the TIF District includes, *inter alia*, approximately 15.6 acres located at the southeast corner of Illinois Route 83 and Aptakistic Road ("**Sunset Grove Property**"); and

**WHEREAS**, to ensure that certain redevelopment activities occur to benefit the TIF District or portions thereof, the Village has previously entered into a Redevelopment Agreement dated 25 March 2008 (the "**Redevelopment Agreement**") with the owners and developer of the Sunset Grove Property (collectively, the "**Developer**") to install various public improvements and other amenities needed to support a high quality, first-class retail and commercial planned development including a high-end grocery store on the Sunset Grove Property ("**Redevelopment Project**"); and

**WHEREAS**, due to dramatic changes in the global economy that have affected many of the underlying assumptions for the Redevelopment Project that existed at the time of the Redevelopment Agreement, the Village and the Developer have discussed and negotiated specific changes to the Redevelopment Agreement to better ensure the viability of the Redevelopment Project, which changes are set forth in the Amendment to the Redevelopment Agreement ("**Amendment**") in the form attached to this Resolution as **Exhibit A**; and

**WHEREAS**, the Village has determined that approving the Amendment will advance the objectives of the TIF District and better ensure the viability of the Redevelopment Project; and

**WHEREAS**, the Village Board had previously approved an earlier version of the Amendment pursuant to Resolution No. 2009-R-45, which earlier version is hereby superseded by the Amendment attached hereto as Exhibit A;

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, COUNTY OF LAKE, STATE OF ILLINOIS**, as follows:

**SECTION ONE: Recitals.** The foregoing recitals are incorporated into and made a part of this Resolution as if fully set forth in this Section One.

**SECTION TWO: Approval of Amendment.** The Amendment is hereby approved in substantially the form attached to this Resolution as **Exhibit A** (subject to final review of the terms and exhibits by the Village Manager, Village Attorney, and Village Engineer), and the Village President and Village Clerk are hereby authorized to execute and attest the Amendment on behalf of the Village; provided, however, that the Village President and Village Clerk may not execute or attest the Amendment unless and until the Developer executes the Amendment and delivers such executed Amendment to the Village within 60 days after the effective date of this Resolution.

**SECTION THREE: Effective Date.** This Resolution will be in full force and effect upon its passage and approval in the manner provided by law.

PASSED THIS \_\_\_\_ DAY OF JUNE, 2010.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS \_\_\_\_ DAY OF JUNE, 2010.

\_\_\_\_\_  
Village President

ATTEST:

\_\_\_\_\_  
Village Clerk

# 9529297\_v2

**EXHIBIT A**

**AMENDMENT TO REDEVELOPMENT AGREEMENT**

**FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE VILLAGE OF LONG GROVE,  
SUNSET GROVE PINNACLE DEVELOPMENT CORPORATION  
(SUCCESSOR TO SUNSET GROVE DEVELOPMENT CORP.),  
AND SUNSET GROVE L.L.C.  
(SUNSET GROVE PROJECT)**

**THIS FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT BY AND BETWEEN THE VILLAGE OF LONG GROVE, SUNSET GROVE PINNACLE DEVELOPMENT CORPORATION (SUCCESSOR TO SUNSET GROVE DEVELOPMENT CORP.), AND SUNSET GROVE L.L.C. (SUNSET GROVE PROJECT)** dated as of this \_\_\_\_ day of \_\_\_\_\_, 2010 (the "**First Amendment**"), by and among the **VILLAGE OF LONG GROVE**, an Illinois municipal corporation ("**Village**"), **SUNSET GROVE PINNACLE DEVELOPMENT CORPORATION**, an Illinois corporation ("**SGPDC**"), and **SUNSET GROVE L.L.C.**, an Illinois limited liability company ("**Sunset Grove**"). (SGPDC 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.**

A. This First Amendment amends that certain Redevelopment Agreement dated 25 March 2008 ("**Agreement**") among the Village, Sunset Grove, and Sunset Grove Development Corporation ("**SGDC**"). The terms used in this First Amendment are the same terms as used in the Agreement, unless otherwise expressly provided in this First Amendment or unless the context otherwise requires.

B. Subsequent to execution of the Agreement, the interests of SGDC and its owners/principals, have, with the approval of the Village, been assigned to SGPDC. For purposes of interpreting the Agreement or this First Amendment: (i) any reference to SGDC shall be deemed to be a reference to SGPDC, and vice versa, irrespective of whether such reference relates to a time or an event after the date of SGDC's assignment of its interests to SGPDC; and (ii) any reference to the "**Developer**" shall be deemed to be a reference to SGPDC and Sunset Grove, irrespective of whether such reference relates to a time or an event after the date of SGDC's assignment of its interests to SGPDC.

C. Sunset Grove is the owner of the Property (as defined in the Agreement).

D. Although the Village did establish the Water SSA as contemplated in Section 10.O of the Agreement, in March 2009, Developer requested that the Village assume responsibility for designing, constructing, and otherwise developing the Deep Well Water System. By letter dated 10 March 2009 between the Parties' attorneys (the "**March 2009 Letter**"), the Village and Developer agreed to modify the terms of the Agreement with respect to the Deep Well Water System and related matters.

E. Due to other changes in the development and financial markets affecting the Property and the Project, the Village and Developer, through a letter between their attorneys dated 22 October 2009 (the "**October 2009 Letter**"), further agreed to modify various elements and provisions of the Agreement.

F. This First Amendment is intended to incorporate into the Agreement the material terms of both the March 2009 Letter and the October 2009 Letter, as refined by the Parties and reflected in this First Amendment, and this First Amendment supersedes the terms of the March 2009 Letter and the October 2009 Letter.

## **SECTION TWO. AMENDMENTS TO SPECIFIC PROVISIONS OF THE AGREEMENT.**

Subject to the terms and limitations in Section Three of the First Amendment, the Agreement shall be and is hereby amended in the following respects:

A. Amendment to Section 2 (Definition of "Effective Date"). The definition of "Effective Date" in Section 2, entitled "Definitions," of the Agreement is hereby amended in its entirety. So that the definition of "Effective Date" shall hereafter be and read as follows:

**"Effective Date"**: March 25, 2008, but the Developer's right to enforce any provision of this Agreement shall be May 6, 2010, being the date that the Developer 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.

B. Amendment to Section 5.C.1. Paragraph 1, entitled "Commencement of the Primary Phase," of Subsection C, entitled "Primary Phase Requirements," of Section 5, entitled "Schedule and Phasing for Development and Occupancy," of the Agreement shall be amended in its entirety, so that said Paragraph 5.C.1 shall hereafter be and read as follows:

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 the earlier of (a) 36 months after the Effective Date, or (b) the date set forth on the "**Approved Primary Phase Schedule**," which is attached as Exhibit AM-1 to the First Amendment to this Agreement (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, and thereafter pursued the Primary Phase Work diligently to completion in accordance with the Approved Primary Phase Schedule, 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 to be

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, such Site Restoration work being in the nature of remediation of an uncompleted building under 65 ILCS 5/11-31-1. The Corporate Authorities of the Village may grant extensions to the Approved Primary Phase Schedule by resolution and without further amending this Agreement.

C. Amendment to Section 5.C.3. Paragraph 3, entitled "Completion of the Primary Phase," of Subsection C, entitled "Primary Phase Requirements," of Section 5, entitled "Schedule and Phasing for Development and Occupancy," of the Agreement shall be amended in its entirety, so that said Paragraph 5.C.3 shall hereafter be and read as follows:

3. Completion of the Primary Phase. The Developer and any Assigned Builder shall achieve Substantial Completion of the Primary Phase Work within the earlier of (a) eighteen (18) months after the date of issuance of the first building permit for any building to be developed as part of such phase, or (b) the time set forth in the Approved Primary Phase Schedule.

D. Amendment to Section 7. Section 7, entitled "Final PUD, Subdivision, Landscaping, and Engineering Plans and Plats," of the Agreement shall be amended by adding the following sentence at the end of said Section 7: "Notwithstanding anything to the contrary in this Section 7, the Primary Phase Work shall be commenced, prosecuted, and completed in accordance with the Approved Primary Phase Schedule."

E. Amendment to Subsection 10.A. Subsection A, entitled "Design and Construction of the Improvements," of Section 10, entitled "Improvements," of the Agreement shall be amended in its entirety, so that said Subsection A shall hereafter be and read as follows:

#### **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; the Approved Primary Phase Schedule is attached to the First

Amendment to this Agreement as Exhibit AM-1. All materials used for construction of the Public and Private Improvements shall be new and of first quality.

F. Amendment to Subsection 10.B. Subsection A, entitled "Completion of the Improvements," of Section 10, entitled "Improvements," of the Agreement shall be amended in its entirety, so that said Subsection A shall hereafter be and read as follows:

**SECTION 10. IMPROVEMENTS.**

\* \* \*

B. **Completion of the Improvements.** The Developer shall cause all Public and Private Improvements to 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 schedule for Public and Private Improvements included in the Primary Phase Work shall be the Approved Primary Phase Schedule attached to the First Amendment to this Agreement as Exhibit AM-1, which shall control over any timeframe to the contrary. 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.

G. Amendment to Paragraph 10.M.ii. Paragraph ii, entitled "Authorization to Use the Access Drive Outlot," of Subsection M, entitled "Authorizations Regarding Access Drive Outlot," of Section 10, entitled "Improvements," of the Agreement shall be amended by adding a new paragraph iv, which new paragraph iv shall hereafter be and read as follows:

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

\* \* \*

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 Aptakistic 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(iii) 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;

- 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; and
- d. The owner of the Accessing Property has waived any objection to being included within a business district under 65 ILCS 5/11-74.3 under substantially the same terms as are set forth in Section 13.C of this Agreement.

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:

- e. 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
- f. 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.

With respect to subsection 10.M.ii.d, provided such Accessing Property qualifies for inclusion within a business district, the Village (i) agrees that it will take all reasonable actions to so include such Accessing Property in a business district and (ii) acknowledges that it would be unreasonable not to so include such Accessing Property in a business district.

H. Amendment to Subsection 10.M. Subsection M, entitled "Authorizations Regarding Access Drive Outlot," of Section 10, entitled "Improvements," of the Agreement shall be amended by adding two new paragraphs iv and v, which new paragraphs iv and v shall hereafter be and read as follows:

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

\* \* \*

- iv. Well Site Access. Notwithstanding anything to the contrary in the Agreement, to the extent that the Village constructs (or causes to be constructed) facilities for a Deep Well Water System (as defined in Section 10.O, below) on a portion of the real property legally described in Exhibit AM-2 attached to this First Amendment to the Agreement (the "Well Site"), the Developer shall grant access, utility, and drainage easements (as well as temporary construction, staging, and storage easements) to the Village upon the Access Drive Outlot or such other portions of the Property as the Village and Developer may agree, which easements shall be granted without cost or expense to the Village and in form and substance acceptable to the Village. The Developer will grant such easements to within 30 days after the date of the First Amendment to this Agreement. In the event that the Village accepts dedication of the Access Drive Outlot, the Village will have the right (but not the obligation) to convert such part of the of the Well Site access easements into a public right-of-way for the purpose of extending the Access Drive Outlot right-of-way to the easterly boundary of the Property.
- v. Well Site Construction Access. The Developer will be required at the Developer's cost to construct at least a temporary access road so that the Village has practical (as well as legal) access to the Well Site. Alternatively, the Developer may provide the Village with a temporary easement over the existing access road to the Developer's property on Route 83, provided that the Developer extends at Developer's expense such existing access road as necessary to provide access to the Well Site. Such construction of the temporary access road shall be completed within the time period set forth in the Approved Primary Phase Schedule attached to the First Amendment to this Agreement as Exhibit AM-1.

I. Amendment to Paragraph 10.N.ii. Paragraph ii, entitled "Perimeter Improvements," of Subsection N, entitled "Burial of Utilities," of Section 10, entitled "Improvements," of the Agreement shall be amended in its entirety, so that said Paragraph 10.N.ii shall hereafter be and read as follows:

- ii. Perimeter Improvements. All utility lines located along the perimeter of the Property along Route 83 or Aptakisis Road ("Perimeter Utilities") will be relocated in the manner customarily employed by the utility in question. To the extent that an affected utility requires as part of the

relocation of the Perimeter Utilities that such relocation extend beyond the limits of the Property, Developer must relocate such lines in accordance with such requirements. The Developer will be required to bear all costs for relocating such Perimeter Utilities; except that the Village agrees to advance to the Developer \$35,000.00 for the relocation of Perimeter Utilities for electrical services (the "**Advance**"), which Advance shall be tendered to the Developer within 45 days after the Developer's delivery of an invoice for the relocation of the Perimeter Utilities for electrical services. The Developer shall repay the Advance to the Village no later than three years after the effective date of the First Amendment to this Agreement, except as otherwise provided in Subsection 12.D of this Agreement.

J. Amendment to Subsection 10.O. Subsection O, entitled "Water Supply System," of Section 10, entitled "Improvements," of the Agreement shall be amended in its entirety, so that said Subsection 10.O shall hereafter be and read as follows:

- O. **Water Supply System.** The Parties acknowledge that a water supply system must be installed to serve the Project on the Property.
- (i) In connection with such water supply system, the Village has established a special service area (the "**Water SSA**"). The Village will ultimately 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 the Water SSA (the "**Deep Well Water System**").
  - (ii) In conjunction with such Deep Well Water System, the Village may issue bonds as authorized by the Water SSA (including bonds authorized by the TIF District and supported by the taxes from the Water SSA). Nothing in this Agreement shall expand or limit the Village's authority under the Water SSA.
  - (iii) The Village reserves the right to develop the Deep Well Water System in phases; provided that the Village will construct such elements of the Deep Well Water System (or such temporary facilities, including a shallow well) as are required to serve the potable water needs for the Grocery Store on the Grocery Store Lot by the time set forth in the Approved Primary Phase Schedule, subject to any extensions resulting from force majeure events. If necessary, the Developer must provide fire flows for the Grocery Store via a private temporary fire flow system (and Village will permit such a temporary fire flow system),

which the Developer must disconnect upon the full water system becoming operational, but disconnection shall not be a condition precedent to the issuance of any occupancy permit (temporary, conditional, or final) unless municipal water service is available in quantities and in the location to provide primary fire flow support. Adequate fire flows will be a requirement for any temporary, conditional, or final certificate of occupancy for the Grocery Store. Operation of the Deep Well Water System shall not be a prerequisite to issuance of any building permit on the Property.

- (iv) The Developer shall reasonably cooperate with the Village in connection with the Deep Well Water System, but, except as provided in Subsection 10.M and Paragraph 10.O.v of this Agreement, the Developer shall not be required to incur any out-of-pocket expenses related to such cooperation (other than such cooperation otherwise required by this Agreement or the Water SSA). The Village will endeavor to develop the Deep Well Water System at the lowest responsible cost consistent with the Approved Primary Phase Schedule and the availability of funds for such Deep Well Water System from the Water SSA.
- (v) As part of the Primary Phase Work, the Developer will be required to complete in a timely fashion and without cost to the Village the extension of sanitary sewerage facilities to the Well Site.

K. Amendment to Section 12. Section 12, entitled "Payment of Village Fees and Costs," of the Agreement shall be amended by adding a new Subsection D, which new Subsection 12.D shall hereafter be and read as follows:

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

\* \* \*

**D. Deferral of Payments to Village.** Notwithstanding any provision in this Agreement to the contrary, the Parties agree as follows:

- (i) Past Due Amounts. The Developer acknowledges that it has amounts due under this Agreement that have not yet been paid to the Village (the "**Past Due Amounts**"); as of \_\_\_\_\_, 2010, the Past Due Amounts were approximately \$\_\_\_\_\_, including costs that the Village incurred in undertaking certain stormwater management activities on the Property. The Past Due Amounts as of \_\_\_\_\_, 2010, are summarized on Exhibit AM-3, but do not necessarily represent all of the Past Due Amounts. Subject to Paragraph 12.D(iv) of this

Agreement, the Developer acknowledges, shall not contest, its obligation to pay the Past Due Amounts.

- (ii) Anticipated Payables. The Village and the Developer acknowledge that, between the effective date of the First Amendment to this Agreement and the earlier of the third anniversary of the First Amendment to this Agreement or October 1, 2013 (the "**Payment Deferral Date**"), the Developer is expected to incur payment obligations to the Village as provided in this Agreement (and particularly Section 12 of this Agreement), including without limitation building permit fees for which the Developer is the applicant, subdivision and zoning filing fees, staff time reimbursements, and third-party expenses that are paid by the Village in connection with this Agreement (and amendments hereto) or the Property (the "**Anticipated Payables**"). The Developer acknowledges, and shall not contest, its obligation to pay the Anticipated Expenses that are imposed in accordance with Applicable Village Codes and Ordinances or this Agreement, subject to Paragraph 12.D(iv) of this Agreement.
  
- (iii) Deferral of Payments. The Village agrees that the Developer may defer payment on the Past Due Amounts, the Anticipated Payables, and the Advance (collectively, the "**Deferred Amounts**") until the Payment Deferral Date. Except to the extent provided in Paragraph 12.D(iv) of this Agreement, the Developer shall pay the Deferred Amounts by the Payment Deferral Date.
  
- (iv) Archer Lots; Extension of Payment Deferral Date; Waiver of Deferred Amounts.
  - (a) Archer Lots. The Village owns developable property fronting on a connection road between Robert Parker Coffin Road and Old McHenry Road that is expected to be subdivided and zoned as four new commercial lots (the "**Archer Lots**"). A plan showing the Archer Lots is attached hereto as Exhibit AM-4. The Village will use best efforts to cause the Archer Lots to be subdivided and available for sale, no later than December 31, 2010. [In the event that the Archer Lots have not been subdivided and made available for sale by December 31, 2010, all dates, defined dates, and obligations of the Developer under this Section 12.D shall be delayed by one (1) day for each day that the Archer Lots remain unsubdivided or unavailable for sale after December 31, 2010.] It is further anticipated that a special use permit for the Archer Lots will be sought to permit the construction of a 7,000 square foot building on each lot for use as a standard restaurant or such other uses expressly authorized by the Village Board (the "**Archer Special Use**"). If the Village closes on the sale of one or more of the Archer Lots for at least \$375,000 per lot if the Archer Special Use is granted or for

at least \$250,000 per lot if the Archer Special Use has not been granted (the "**Minimum Price**"), then the Payment Deferral Date shall be extended to the "Provisional Extended Payment Date" as defined in Subparagraph 12.D(iv)(c).

- (b) Extension of Payment Deferral Date. As of the Payment Deferral Date, if the sale of none of the Archer Lots has closed, the Village agrees to extend the Payment Deferral Date until October 1, 2013 (the "**Extended Payment Deferral Date**") for not more than \$300,000 of the Deferred Amounts, and the Developer shall immediately pay the balance (if any) of the Deferred Amounts. Upon the closing of the sale of any of the Archer Lots for at least the Minimum Price prior to the Extended Payment Deferral Date, the time for paying any outstanding Deferred Amounts shall be governed by the Provisional Extended Payment Date.
- (c) Payment Extensions/Waivers. If at any time before the Extended Payment Deferral Date the sale of one or more of the Archer Lots for at least the Minimum Price has closed, the Developer's obligation to pay the Deferred Amounts shall be further deferred until the earlier of: (i) the date of issuance of a certificate of occupancy for a principal building on an Archer Lot (or the date of issuance of all certificates of occupancy for the principal buildings on each Archer Lot sold by the Extended Payment Deferral Date), or (ii) October 1, 2015 (the "**Provisional Extended Payment Date**"); except to the extent that the Developer is entitled to a waiver of all or a portion of the Deferred Amounts as set forth in the following table (the "**Deferral/Waiver Table**"):

**DEFERRAL/WAIVER TABLE:**

<p>→ Maximum amount of Deferred Amounts to be waived if conditions below are satisfied</p> <hr/> <p>↓ Date for Closing on Sale of Archer lot(s) at not less than Minimum Price/ Date for issuance of certificate of occupancy for principal building</p>	<p>Maximum amount of waiver of Deferred Amounts if the sale of one of the Archer Lots has closed by the date specified and has had a certificate of occupancy issued for principal building by the date specified</p>	<p>Maximum amount of waiver of Deferred Amounts if the sale of at least two of the Archer Lots by the date specified and have had certificates of occupancy issued for principal buildings by the date specified</p>
<p>January 1, 2012 for sale / April 1, 2013 for C.O.</p>	<p>\$450,000</p>	<p>\$500,000</p>

October 1, 2012 for sale / October 1, 2014 for C.O.	\$350,000	\$400,000
October 1, 2013 for sale/ October 1, 2015 for C.O.	\$250,000	\$300,000

Any outstanding Deferred Amounts shall be paid as of the Provisional Extended Payment Date; except that, to the extent that any Archer Lots are sold as of the date set forth in the Deferral/Waiver Table and certificates of occupancy for principal buildings on such lots are actually issued by the dates for issuance of certificates of occupancy set forth in the Deferral/Waiver Table, then such portion of the Deferred Amounts as set forth in the Deferral/Waiver Table shall be waived, and the Developer shall immediately pay to the Village any remaining balance of the Deferred Amounts.

- (d) Notwithstanding anything in this Paragraph 12.D(iv) to the contrary, if any Archer Lot is purchased for at least the Minimum Price by a person unrelated to the Developer by any of the dates for sale in the Deferral/Waiver Table, then the Deferred Amounts relating to such lot as set forth in the Deferral/Waiver Table shall be waived as of the closing date for such sale irrespective of the issuance of a certificate of occupancy.

L. Amendment to Subsection 13.A. Subsection A, entitled "Future Cooperation," of Section 13, entitled "Village Agreements," of the Agreement shall be amended by adding a new Paragraph v, so that Paragraph 13.A shall hereafter be and read as follows:

**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 that are 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 rights-of-way as necessary for the easement, construction, maintenance, repair, and replacement of the Public and Private Improvements to serve the Property;
- 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; and
- v. The Village will cooperate in helping Developer remove or otherwise resolve any existing liens or citations imposed by Federal, State, or County environmental departments, but the Village has no obligation to expend funds in connection with such cooperation or to make financial contributions with respect to any such liens, citations, or penalties.

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.

M. Amendment to Subsection 13.C. Subsection C, entitled "Business District," of Section 13, entitled "Village Agreements," of the Agreement shall be amended in its entirety, so that Subsection 13.C shall hereafter be and read as follows:

**C. Business District.** The Village may designate one or more business districts 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, which other properties may be included in a business district as a condition to accessing the Access Drive Outlot ("**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 any Business District, such additional sales tax shall be established uniformly throughout each Business District and shall not exceed one percent (1%) (the "**Business District Sales Tax**"). In connection with the Business District on the Property, 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 and Business District Sales Tax 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 and Business District Sales Tax paid to the Village by IDOR, each shall have the right to contest the amount of such Sales Tax Revenue and Business District Sales Tax. 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 Business District Sales Tax and the information used by IDOR to calculate the amount of Sales Tax Revenue and Business District Sales Tax 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(1)(g) of the Illinois Freedom of Information Act, 5 ILCS 140/7(1)(g) (or any successor provision), the Village agrees to hold in confidence all such information. The Developer acknowledges that, *inter alia*, the following uses of the Business District Sales Tax revenue are proper: (a) paying principal or interest on, or other amounts due or arising from, the TIF Note or Bonds as provided in Section 14 of this Agreement; (b) paying (either directly or by reimbursing other Village funds) reimbursements of Developer Expenses, as referenced in Section 14 of this Agreement; (c) reimbursing the Village for any Deferred Amounts that are waived by the Village pursuant to Section 12 of this Agreement; (d) reimbursing the Village for any unpaid amounts that are due to the Village pursuant to Section 12 of this Agreement; (e) costs for the Deep Well Water System (including financing costs) that are not fully paid by the Water SSA taxes; and (f) costs incurred by the Village in establishing or administering the Business District or the TIF District.

N. Amendment to Subsection 14.B. Subsection B, entitled "Terms of the TIF Note," of Section 14, entitled "TIF Financing," of the Agreement shall be amended in its entirety, so that Subsection 14.B shall hereafter be and read as follows:

**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 approved by the Village pursuant to Section 14I, subject to the following conditions and limitations:

1. The total amount of Developer Expenses that may be reimbursed to the Developer by the Village pursuant to the TIF Note and this Agreement shall be \$3,000,000.00, subject to the reductions 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. To the extent that there are outstanding Bonds, any recapture payments shall be deposited into the Account (as defined in Section 14.E of this Agreement), notwithstanding any contrary provision in any recapture agreement entered into pursuant to Section 10.K of this Agreement. To the extent that the Developer has already been or will be reimbursed for Developer Expenses through the TIF Note, Bonds, or recapture payments in an amount equal to or exceeding the TIF Funding Cap, then the Village shall retain such portion of the recapture amount that would cause the

Developer to receive more than the TIF Funding Cap, notwithstanding any contrary provision in any recapture agreement entered into pursuant to Section 10.K of this Agreement; 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 SGPDC 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 the Developer for Developer Expenses under this Agreement or the TIF Note;
- iv. be secured only by the Pledged Amount, as provided in this Agreement;
- v. except for any Bonds issued pursuant to Section 14.D (to which the TIF Note shall be subordinate), shall have a first lien on the Pledged Amount;
- vi. provide for payment of principal and accrued interest within 30 days after any Developer Expenses have become Certified Costs, but only to the extent that there are moneys available from the Pledged Amount in the Account that are not needed to meet annual obligations of the Bonds or as otherwise provided in the Bond Ordinance and documents arising from the Bond Ordinance. Such payments shall cease upon (a) the payment of the TIF Note in full, or (b) the termination of the Village's obligation

- to reimburse the Developer for Developer Expenses as described in clause (iii);
- vii. provide that each 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 TIF Note without the Developer's consent;
- 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 the Developer; (c) to an entity in which the majority equity interest is owned by the owners of the Developer; or (d) if otherwise approved by the Corporate Authorities in their sole discretion;
- x. be cancelled upon the sale of Bonds sufficient to generate Net Proceeds of \$3,000,000.00 or the remaining maximum amount of the TIF Note and payment of any outstanding amounts due under the TIF Note; and
- xi. provide that the first \$300,000.00 that the Developer receives from the TIF Note shall be paid to Sunset Foods as provided in Paragraph 14.D.1 of this Agreement.

O. Amendment to Subsection 14.D. The opening paragraph, Subparagraph 1, and Subparagraph 4 of Subsection D, entitled "Issuance of Bonds," of Section 14, entitled "TIF Financing," of the Agreement shall be amended in their entirety, so that said opening paragraph and Subparagraphs 1 and 4 of Subsection 14.D shall hereafter be and read as follows:

**D. Issuance of Bonds.** As soon as practicable after the satisfaction of all of the pre-conditions to the TIF Closing set forth in Section 14C, the Village shall reasonably endeavor to 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 ("**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. The Bond Proceeds will be held in an escrow for the benefit of the Developer ("**Escrowee**"), subject to payment procedures to be mutually approved by the Developer and by resolution of the Village's Corporate Authorities. The Net Proceeds will be used to reimburse the Developer for Developer Expenses incurred, but such reimbursement shall only be made within 30 days after any Developer Expenses have become Certified Costs. Notwithstanding the foregoing, the Village may deliver a portion of the Net Proceeds to another governmental agency to serve as

performance security for obligations to be undertaken by the Developer pursuant to this Agreement, subject to terms mutually acceptable to the Village and Developer. In addition, notwithstanding any other provision in this Section 14, the Developer agrees, if so requested by the Village, to assign the first \$300,000.00 paid from the Net Proceeds to Sunset Foods, Inc. in accordance with that certain "Economic Incentive Agreement" between the Village and Sunset Foods, Inc. dated 25 March 25 2008, as such Economic Incentive Agreement may be amended or restated from time-to-time, which assignment may be in the form of the advancement of payment of Certified Costs to become due to the Developer.

\* \* \*

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 Escrowee or trustee a direction as to the investment of funds on deposit in the funds and accounts established by or pursuant to the Bond Ordinance.

\* \* \*

P. Amendment to Subsection 14.E. Subsection E, entitled "Deposit of Pledged Amount in Account," of Section 14, entitled "TIF Financing," of the Agreement shall be amended in its entirety, so that said Subsection 14.E shall hereafter be and read as follows:

**E. Pledged Amount.** 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.

The following additional amounts are collectively referred to as the "**Secondary Collateral**," and shall be deposited in certain funds as set forth in Section 4.2 of that certain Trust Indenture dated \_\_\_\_\_, 2010, between the Village of Long Grove and Amalgamated Bank of Chicago, as Trustee (the "**Trust Indenture**");

- a. 60% of the Sales Tax Revenue that is generated by businesses on the Property, except the amount attributable to the Grocery Store to be developed and operated on the Grocery Store Lot on the Property;
- b. 100% of the first \$1,000,000.00 in Sales Tax Revenues attributable to the Grocery Store on the Grocery Store Lot on the Property, and thereafter 60% of the Sales Tax Revenues attributable to such Grocery Store;
- b. 60% of the amount of taxes imposed and collected on behalf of the Village under 65 ILCS 5/8-11-1.2 through 65 ILCS 5/8-11-1.5 from businesses on the Property (the "**Local Sales Tax**");

**Revenue**"); and

- c. 60% of the taxes imposed and collected on behalf of the Village under 65 ILCS 5/11-74.3-6 from businesses on the Property (the "**Business District Sales Tax Revenue**").

The Incremental Property Taxes and Secondary Collateral shall be collectively referred to as the "**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. The Pledged Amount shall not be reduced except for payments of principal and interest on the Bonds or the TIF Note, until the TIF Note and Bonds are fully satisfied (unless otherwise provided in the Bond Ordinance or Trust Indenture). The entire Pledged Amount in the Account on February 1 of each year (or such other payment date as may be set forth in the Bond Ordinance or Trust Indenture) shall be used to pay principal and interest first on the Bonds and second on the TIF Note, as provided herein. The Parties agree that nothing in this Agreement would preclude the Bond Ordinance from authorizing the release of moneys to the Village from time-to-time up to the amount of the Secondary Collateral in the event that (i) the Bonds include a coverage requirement, (ii) the Account contains moneys in excess of the debt service due on, and coverage required for, the Bonds in any year during the term of the Bonds, and (iii) amounts due and payable under the TIF Note, as such amounts may exist from time-to-time, have been fully satisfied. In addition, any funds contained in the Account after fully satisfying the obligations of the Bond and the TIF Note up to the amount of Secondary Collateral moneys deposited in the Account shall be transferred to the Village's General Fund and may be used by the Village for any lawful purpose, subject to any limitations otherwise imposed by law on the Secondary Collateral. After any transfers pursuant to the immediately preceding sentence, any funds contained in the Account after meeting the obligations of the Bond and the TIF Note may be transferred to any other account in the Fund and thereafter 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.

Q. Amendment to Subsection 14.G. Subsection G, entitled "Submissions of Certification Requests," of Section 14, entitled "TIF Financing," of the Agreement shall be amended in its entirety, so that said opening paragraph of Subsection 14.G shall hereafter be and read as follows:

**G. Submission of Certification Requests.** For reimbursement of Developer Expenses in accordance with the TIF Note or from the Net Proceeds, 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**"). Unless alternative procedures are approved by the Developer and by resolution of the Corporate Authorities, the Developer may submit monthly Certification Requests, except that the Developer may not submit 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 the Developer for, Developer Expenses that have not been separately identified as required herein. To the extent that Developer Expenses have been certified and Net Proceeds are available, at Developer's request, disbursements may be made directly to Developer's contractors.

R. Amendment to Subsection 15.A. Subsection A, entitled "Performance and Payment Letter of Credit," of Section 15, entitled "Performance Security," of the Agreement shall be amended in its entirety, so that said Subsection 15.A shall hereafter be and read as follows:

## **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 (less any amount of the Net Proceeds assigned to Sunset Foods, Inc. pursuant to Subsection 14.D.1 of this Agreement); and
2. the actual amount of security (either in the form of a letter of credit or bond, but not including any Net Proceeds) delivered to another governmental entity in connection with any Public Improvement to be dedicated to such governmental entity.

In lieu of the Developer's requirement to provide the Performance and Payment Letter of Credit, the Developer may provide dedicated funds for the construction of all required Public and Private Improvements for the Primary Phase Work in accordance with the requirements of 30 ILCS 550 (a "**Construction Escrow**"), provided that such Construction Escrow is regulated by documentation reasonably acceptable to the Village Attorney to demonstrate compliance with the requirement of 30 ILCS 550. In the event that the Village accepts a Performance and Payment Letter of Credit as replacement for the Construction Escrow, such Letter of Credit will be administered and reduced as set forth in this Agreement. The amount to be deposited in the Construction Escrow must include funds for ensuring completion of all Public and Private Improvements, including trees and landscaping within public right-of-way. Any such Construction Escrow will be subject to the other terms and provisions of this Section 15, except as otherwise provided in the documentation approved in writing by the Village Attorney.

S. Amendment to Subsection 15.I. Subsection I, entitled "Village Lien Rights," of Section 15, entitled "Performance Security," of the Agreement shall be amended in its entirety, so that said Subsection 15.I shall hereafter be and read as follows:

**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 (including any of the Deferred Amounts that may be due and owing under this Agreement), 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.

T. Amendment to Subsections 16.B and 16.C. Subsection B, entitled "Village Procedure; Cooperation in Undertaking Corrective Action," and Subsection C, entitled "Indemnity," of Section 16, entitled "Liability and Indemnity of Village," of the Agreement shall be amended in its entirety, so that said Subsections 16.B and 16.C shall hereafter be and read as follows:

**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; (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; (iii) the establishment of the Water SSA or any taxes levied pursuant to the Water SSA; (iv) the establishment of any Business District or any taxes imposed in connection with any such Business District; and (v) amounts of third-party expenses that the Village pays in connection with the development that are reimbursable from the Developer. 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 or 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;
- (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;
- (iii) any action by Michael Firsell, Adam Firsell, David Bossy, Mid-America Development Partners, Mid-America Development Partners LLC, Mid-America Development Partners II LLC, Mid-America Management Corporation, or persons who have or have had an interest in Sunset Grove LLC, Sunset Grove Development Corporation or Sunset Grove Pinnacle Development Corporation since the Effective Date of this Agreement (the "**Potential Claimants**") relating to or arising from matters associated with the Property, its development, or matters addressed in this Agreement. The Potential Claimants do not include Sunset Grove LLC or Sunset Grove Pinnacle Development Corporation.

As of the effective date of the First Amendment to this Agreement, the Village has no knowledge of any claims it may have against any Potential Claimants that are not otherwise addressed in this Agreement.

U. Amendment to Section 17. Section 17, entitled "Nature, Survival, and Transfer of Obligations," of the Agreement shall be amended by adding a new Subsection D, which new Subsection 17.D shall hereafter be and read as follows:

**C. Pre-Approved Assignments.** The Village agrees that, subject to the terms of this Section 17, it will consent to the assignment by the Developer to a new corporation and/or limited liability company owned or controlled by Jay Levin, of any

rights under this Agreement, as well as any other agreement with or ordinance of the Village to which Developer is a party or affected property owner.

V. Amendment to Subsection 23.A. The third paragraph of Subsection A, entitled "Notice," of Section 23, entitled "General Provisions," of the Agreement shall be amended in its entirety, so that the third paragraph of Subsection 23.A shall hereafter be and read as follows:

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

c/o Pinnacle Capital  
1175 Corporate Woods Pkwy, Suite 280  
Vernon Hills, IL 60061  
Attention: Jay Levin

With a copy to:

John Mays, Esquire  
Gould & Ratner  
222 N. LaSalle Street, Suite 800  
Chicago, Illinois 60601

### **SECTION THREE. ADDITIONAL REQUIREMENTS OF THE FIRST AMENDMENT.**

A. Recordation of Exhibit L. The Developer shall execute and record Exhibit L to the Agreement, and deliver a copy of the recorded Exhibit L to the Village, within 30 days after the effective date of this First Amendment.

B. Compliance with Approved Primary Phase Schedule. The Developer shall substantially comply with the Approved Primary Phase Schedule, and in any event the Primary Phase Work shall proceed in a timely and prompt manner to cause the construction of the Grocery Store on the Grocery Store Lot to be completed and ready for occupancy no later than January 15, 2011.

C. Consequences of Non-Compliance. In the event that the Developer fails to comply with the requirements of Subsections A and B of this Section Three, the amendments to the Agreement as set forth in Subsections B through R and U of Section Two of this First Amendment shall be null and void; provided, however, that the Corporate Authorities of the Village may extend the time for Developer compliance by resolution and without further amendment to this Agreement.

**SECTION FOUR. OPTION TO PURCHASE ARCHER LOTS.** The Village will make available for purchase the four Archer Lots, and the Developer will have the opportunity to purchase any or all of the Archer Lots pursuant to the terms of this Section Four:

A. Price. The Developer may purchase any or all of the Archer Lots for the Minimum Price per lot, unless a higher bid is received or a higher minimum price is set by the Village following the sale process referenced below.

B. Sale Process. The Village will follow statutory procedures for making the Archer Lots available for purchase. The Developer shall have the same opportunity to acquire any one or more of the Archer Lots as any other person in connection with such sales process. If the Village sets a minimum price for any Archer Lot higher than the Minimum Price set forth in Subsection 2.K of this First Amendment, irrespective of whether such sales process results in a sale of that Archer Lot, it shall be deemed a sale to a person unrelated to the Developer for the purposes of Subparagraph 12.D.iv.d of the Agreement (as amended by Subsection 2.K of this First Amendment) as of the date that bids are due pursuant to such sales process.

C. Right of First Refusal. In the event that a person unrelated to the Developer submits the highest responsive bid for any Archer Lot, the Village shall provide the Developer with a right of first refusal to purchase any such lot, provided that: (i) the right of first refusal is exercised in writing within 15 days after the Village notifies Developer; and (ii) in exercising the right of first refusal, the Developer must accept all material terms of the successful bid, except that in no event may Developer exercise such right for a purchase price less than the Minimum Price.

D. Marketing. Subject to the terms of this Section Four, the Developer shall have the right to market any or all of the Archer Lots for sale or lease.

E. Application of Unreimbursed Developer Expenses. To the extent that (i) there are Certified Costs for Developer Expenses under Section 14 of the Agreement, as amended by this First Amendment, that have not been reimbursed, or (ii) there is a TIF Note balance that has not been paid, the Developer may apply the amount of unreimbursed Developer Expenses, any unpaid TIF Note balance, or both as a credit against the purchase price due for any of the Archer Lots.

F. Failure to Subdivide or Make Available for Purchase. If the Village has not subdivided all of the Archer Lots and made such lots available for purchase on or before December 31, 2011, all four Archer Lots shall be deemed sold for the Minimum Price to a person unrelated to Developer for purposes of Subparagraph 12.D.iv.d of the Agreement (as amended by Subsection 2.K of this First Amendment).

**SECTION FIVE. AMENDMENT TO FINAL PUD PLAN.** Upon request of the Developer, the Village will undertake all steps required to properly consider the modification of the plat of subdivision of Lot 1 of the Property into two parcels to allow for a free standing two-story Bank building with basement of approximately 3800 square feet per floor with three drive-thru lanes on the northwest corner of Lot 1 and eliminating the site previously known as the Fifth Third Bank location that being the most southern portion of Building B. Any such modification shall be subject to all standard Village land use reviews, including review and approval of the exterior elevations relating to such modifications. The locations, separations, and setbacks of buildings on the two parcels shall be as approved in connection with any amendment to the PUD Plan, notwithstanding generally applicable regulations regarding such building location, separation, and setback requirements. Without prejudicing the Village's discretion in considering any such modification request, the Corporate Authorities of the Village acknowledge that the modification concept described in this Section Five is not inconsistent with the development of the Property and, subject to review of the details of any such modification request, may be worthy of approval.

**SECTION SIX. GENERAL PROVISIONS OF THE FIRST AMENDMENT.**

A. Effective Date of First Amendment. This First Amendment shall be deemed effective as of the date that it is executed by the duly authorized representatives of the Parties.

B. Entire Agreement; Supersedence. The Agreement, as modified by this First Amendment, constitutes the entire agreement between the Parties, and the provisions of this First Amendment supersede any and all prior agreements and all contrary provisions in the Agreement. In addition, this First Amendment supersedes and makes null and void the terms of the march 2009 Letter and the October 2009 Letter, as well as any negotiations between the Parties, whether written or oral, relating to the subject matter of the Agreement or this First Amendment.

C. Release from Water System Obligations. Subject to the terms and conditions of this First Amendment, the Village releases the Developer from the conditions in Sections 3.CC and 5.3 of Ordinance No. 2008-O-27 relating to the Deep Well water System.

D. Exhibits. Exhibits AM-1 through AM-4 attached to this First Amendment 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 First Amendment, the text of this First Amendment shall control.

E. Recordation. The Village shall cause this First Amendment to be recorded against the Property following its effective date.

[SIGNATURES ON FOLLOWING PAGES]

**IN WITNESS WHEREOF**, the Parties have caused their authorized representatives to affix their signatures on this First Amendment to signify the Parties' acceptance of the terms hereof.

**ATTEST:**

**VILLAGE OF LONG GROVE**

\_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
President

**SUNSET GROVE PINNACLE  
DEVELOPMENT CORPORATION  
(SUCCESSOR TO SUNSET GROVE  
DEVELOPMENT CORP.),**

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

By: \_\_\_\_\_

Its: \_\_\_\_\_

**LIST OF EXHIBITS TO FIRST AMENDMENT**

- Exhibit AM-1:** Approved Primary Phase Schedule
- Exhibit AM-2:** Legal Description of Real Property Including Well Site
- Exhibit AM-3:** Summary of Past Due Amounts
- Exhibit AM-4:** Plan of the Archer Lots

**EXHIBIT AM-1**  
**APPROVED PRIMARY PHASE SCHEDULE**

**EXHIBIT AM-2**  
**LEGAL DESCRIPTION OF REAL PROPERTY INCLUDING WELL SITE**

**EXHIBIT AM-3**  
**SUMMARY OF PAST DUE AMOUNTS**

**EXHIBIT AM-4  
PLAN OF THE ARCHER LOTS**