Item #3:
Resolution Adopting Amendments To Sunset Foods EIA

VILLAGE OF LONG GROVE

RESOLUTION NO. 2010-R-___

RESOLUTION APPROVING THE FIRST AMENDED AND RESTATED ECONOMIC INCENTIVE AGREEMENT BETWEEN THE VILLAGE AND SUNSET FOODS

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 Aptakisic 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 Aptakisic Road ("***Sunset Grove Property***"); and

WHEREAS, Sunset Foods, Inc. ("***Taxpayer***") is a prospective tenant of the Sunset Grove Property; and

WHEREAS, Taxpayer operates grocery stores in Lake Forest, Highland Park, Libertyville, and Northbrook, Illinois and is desirous of constructing and operating a comparable grocery store on the Sunset Grove Property ("***Grocery Store***"), but Taxpayer has determined that it cannot construct and operate a Grocery Store without financial incentives; and

WHEREAS, the Village desires to have Taxpayer construct and operate a Grocery Store on the Sunset Grove Property in order to create job opportunities in the Village, serve further development upon and on land adjoining the Sunset Grove Property, strengthen the commercial sector of the Village, enhance the Village's tax base, and otherwise promote the best interests of the Village and its residents; and

WHEREAS, the Village and Taxpayer have previously entered into an Economic Incentive Agreement dated 25 March 2008 ("***Economic Incentive Agreement***") providing for

the rebate of a portion of the sales tax generated by the Grocery Store as an incentive for Taxpayer's constructing and operating a Grocery Store on the Sunset Grove Property; and

WHEREAS, due to changes in the financial markets affecting the development of the Grocery Store, the Village and Taxpayer have discussed and negotiated specific changes to the Economic Incentive Agreement, which changes are set forth in the First Amended and Restated Economic Incentive Agreement ("***Amended Agreement***") in the form attached to this Resolution as **Exhibit A**; and

WHEREAS, the Village has determined that approving the Amended Agreement will advance the objectives of the TIF District and better ensure the construction and operation of a Grocery Store on the Sunset Grove Property;

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 Amended Agreement.** The Amended Agreement is hereby approved in substantially the same 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 Amended Agreement on behalf of the Village; provided, however, that the Village President and Village Clerk may not execute or attest the Amended Agreement unless and until the Taxpayer executes the Amended Agreement and delivers such executed Amended Agreement to the Village within 60 days after the effective date of this Resolution; provided further that the President and Board of Trustees shall not execute or attest the Amended Agreement until after the issuance of the TIF Bonds contemplated in such Amended Agreement. If the TIF Bonds have not been issued with 15 days after the "Commencement

Date" as defined in the Amended Agreement, then this Resolution shall have no force or effect.

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 _____, 2010.

AYES:

NAYS:

ABSENT:

APPROVED THIS ____ DAY OF _____, 2010.

_____
Village President

ATTEST:

_____
Village Clerk

9529399_v3

EXHIBIT A

AMENDED AND RESTATED ECONOMIC INCENTIVE AGREEMENT

Draft July 23, 2010

Prepared by and after
recording return to:

Victor P. Filippini, Jr.
Holland & Knight LLP
131 South Dearborn Street
30th Floor
Chicago, Illinois 60603
312-578-6560

Recorders Use Only

FIRST AMENDED AND RESTATED ECONOMIC INCENTIVE AGREEMENT

BY AND BETWEEN

THE VILLAGE OF LONG GROVE

AND

SUNSET FOODS

DATED AS OF _____, 2010

Draft July 23, 2010

FIRST AMENDED AND RESTATED ECONOMIC INCENTIVE AGREEMENT

THIS FIRST AMENDED AND RESTATED ECONOMIC INCENTIVE AGREEMENT is made and entered into as of the _____ day of _____, 2010, by and between the **VILLAGE OF LONG GROVE**, an Illinois municipal corporation ("***Village***") and **SUNSET FOODS, INC.,** an Illinois corporation ("***Taxpayer***").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the Village's statutory powers, the parties agree as follows:

SECTION 1. RECITALS.

A. Taxpayer is the prospective tenant of certain property generally located at the southeast corner of Aptakisic Road and Route 83 in Long Grove, Illinois, and legally described in Exhibit A attached hereto ("***Property***").

B. The Property is located in the Village's HR-1 zoning district and for more than one year has been vacant, but zoning approvals for a planned unit development on the Property have been granted. The Property is also located within a tax increment financing redevelopment project area (the "***TIF District***") that has been duly established by the Village.

C. Taxpayer operates grocery stores in Lake Forest, Highland Park, Libertyville, and Northbrook Illinois and is desirous of constructing and operating a comparable grocery store on the Property ("***Grocery Store***"), which Grocery Store would include at Taxpayer's option and subject to applicable laws, sales of alcoholic beverages and preparation of food for off-premises consumption, cooking demonstrations and classes, and temporary outdoor uses consistent with Section 5-9-3.D.3 of the Zoning Regulations. Taxpayer has determined, however, that it cannot construct and operate the Grocery Store without the Sales Tax Rebate to be provided pursuant to this Agreement. The Village has therefore agreed to rebate a portion of the sales tax generated by the Grocery Store as an incentive for Taxpayer's constructing and operating the Grocery Store on the Property.

D. The Village desires to have Taxpayer construct and operate the Grocery Store on the Rebate Property in order to create job opportunities in the Village, serve to further development on land adjoining the Rebate Property, strengthen the commercial sector of the Village, enhance the Village's tax base, and otherwise to promote the best interests of the Village and its residents.

E. The Village and Taxpayer entered into that certain "Economic Incentive Agreement By and Between the Village of Long Grove and Sunset Foods," dated March 25, 2008 (the "***Original Agreement***"), which Original Agreement set forth the terms of the rebate of the sales tax revenues.

F. Subsequent to execution of the Original Agreement, the Village and the Taxpayer agreed to modify the structure and terms of the Sales Tax Rebate, by pledging sales tax revenues generated from the development of the Grocery Store as additional security for certain Tax Increment Financing bonds ("***TIF Bonds***") that the Village intends to issue relating to improvement to serve the TIF District, in exchange for the Taxpayer having an accelerated Sales Tax Rebate payment from the net proceeds of the TIF Bonds.

G. The Village and the Taxpayer determined to enter into this First Amended and Restated Economic Incentive Agreement (the "***Agreement***"), which Agreement is intended to incorporate the terms of the Original Agreement, except to the extent that terms of the Original Agreement have been revised to reflect the new structure and terms of the Sales Tax Rebate, and this Agreement supersedes the terms of the Original Agreement.

H. Taxpayer meets high standards of creditworthiness, and the Village and Taxpayer have the power and authority to enter into this Agreement specifically pursuant to, but without limitation, Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20.

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.

"Commencement Date": The date established pursuant to Section 3.A of this Agreement.

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

"Effective Date": The date referenced in the first paragraph of page 1 of this Agreement.

"Force Majeure": An Act of God or other event or cause not reasonably within the control of Taxpayer or the Village including, without limitation, fire, strikes, lockouts, building material supply shortages, vendor problems not caused by Taxpayer, embargoes, civil riot, floods, or natural catastrophe, as further described in Section 7 of this Agreement.

"Gross Receipts": The term "Gross Receipts" shall have the same meaning as that which is ascribed to it in the Retailer's Occupation Tax Act.

"Local Sales Taxes": The local sales taxes imposed by the Village pursuant to the authority granted by Section 8-11-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/8-11-1 *et seq.* and Chapter 3-4 of the Long Grove Village Code, or local business district sales taxes that may be imposed by the Village pursuant to Section 11-74.3-6 of the Illinois Municipal Code, 65 ILCS 5/11-74.3-6.

"Municipal Sales Tax": That portion or component of the Sales Taxes generated by Taxpayer from sales on all or any portion of the Rebate Property that the Village actually receives from the State of Illinois.

"Rebate Property": That portion of the Property on which the Grocery Store will be located and depicted as "Sunset Foods" on the site plan attached hereto as Exhibit B.

"Retailer's Occupation Tax Act": The Illinois Retailer's Occupation Tax Act, 35 ILCS 120/1 *et seq.*, as the same has been and may, from time-to-time hereafter, be amended.

"Sales Taxes": Any and all taxes imposed and collected by the State of Illinois pursuant to the Retailer's Occupation Tax Act, but not including any Local Sales Taxes.

"**Sales Tax Rebate**": The rebate payment to Taxpayer of a portion of the Municipal Sales Taxes that the Village is required to make pursuant to this Agreement.

"**Sales Tax Year**": The period of time commencing on the Commencement Date and ending on the date that is one year after the Commencement Date, and each succeeding year thereafter during the term of this Agreement.

"**Total Rebate Amount**": The maximum amount of Municipal Sales Tax to be reimbursed to Developer under this Agreement, which amount shall be One Million Dollars ($1,000,000.00).

"**Zoning Regulations**": The Long Grove Zoning Code, as the same has been and may, from time-to-time hereafter, be amended, and any special use permit or other ordinance granting zoning relief or approvals for the Property generally, or the Rebate Property specifically.

SECTION 3. COMMENCEMENT OF SALES TAX REBATE OBLIGATIONS.

A. Commencement Date. The "Commencement Date" under this Agreement is hereby declared to be the date on which the Grocery Store is constructed and open for business on the Property in compliance with Section 5.A, which date is anticipated to be January 15, 2011. The Taxpayer shall be required to notify the Village within three business days after the construction of the Grocery Store is complete and the Grocery Store is open for business on the Property.

B. Failure to Commence. Subject to extensions due to Force Majeure, in the event that the Grocery Store is not constructed on and open for business on the Property on or before June 30, 2011, the Village shall have no obligation whatsoever to perform any of the Sales Tax Rebate obligations set forth in Section 4 of this Agreement.

SECTION 4. SALES TAX REBATE.

A. Calculation of Sales Tax Rebate. Commencing on the Commencement Date and subject to the terms and limitations in this Agreement, the Village shall rebate to Taxpayer that portion of the Municipal Sales Tax generated by Taxpayer from the Rebate Property in accordance with the formula set forth below:

1. Within 15 days after the Commencement Date, the Village shall pay, or cause to be paid, to the Taxpayer an advanced Sales Tax Rebate payment of $300,000.00 from the proceeds of the TIF Bonds.

2. In each subsequent Sales Tax Year, commencing on or after January 1, 2012, the Village shall pay a Sales Tax Rebate to Taxpayer equal to 100% of the Municipal Sales Tax generated by Taxpayer and received by the Village from the Rebate Property from all Gross Receipts; provided, however, that:

    a. No Sales Tax Rebate will be paid from amount of Local Sales Taxes that the Village may receive;

    b. No Sales Tax Rebate will be paid from Sales Taxes generated from locations other than the Taxpayer's operations on the Rebate Property;

c. No Sales Tax Rebate will be paid in excess of the Total Rebate Amount or for Municipal Sales Taxes received after the term of this Agreement; and

d. Notwithstanding any Municipal Sales Tax generated from Taxpayer's operations on the Rebate Property, no Sales Tax Rebate will be paid to Taxpayer to the extent that such Municipal Sales Tax revenues are required to satisfy obligations in connection with that certain "Ordinance Providing for the Issuance of Not to Exceed $5,000,000 of Limited Obligation Tax Increment Revenue Bonds (Sunset Grove Project), Series 2010, of the Village of Long Grove, Lake County, Illinois" adopted on _____, 2010 (the "***TIF Bond Ordinance***").

B. <u>Village Payment</u>. Except for the payment due to the Taxpayer pursuant to Section 4.A.1 of this Agreement and subject to the limitations in Section 4.A.2 of this Agreement, within 120 days after the end of each Sales Tax Year, the Village shall pay Taxpayer the applicable Sales Tax Rebate for that particular Sales Tax Year, based on the records of the Illinois Department of Revenue actually provided to and received by the Village. If, for any reason, the State of Illinois fails to distribute the Municipal Sales Tax revenue or the necessary Illinois Department of Revenue records to the Village in sufficient time for the Village to make such annual Sales Tax Rebate payments, the Village shall provide notice of such fact to Taxpayer. In that event, the Village shall make the required Sales Tax Rebate payment within 60 days after the date on which the Village actually receives the Municipal Sales Tax revenue and records due the Village for the applicable annual payment period. If at the end of any Sales Tax Year, there is a need to adjust and reconcile the amount of any annual Sales Tax Rebate payment to account for any provision of this Agreement or to account for the amount of Municipal Sales Tax actually paid by the State of Illinois, the Village and Taxpayer do hereby agree to cooperate with each other to accomplish such reconciliation.

C. <u>Change in the Law</u>.

1. The Village and Taxpayer acknowledge and agree that the Village's obligation to pay the Sales Tax Rebate to Taxpayer is predicated on existing State law, including, without limitation, the Retailer's Occupation Tax Act. The Village and Taxpayer further acknowledge that the General Assembly of the State has, from time to time, considered proposals to modify or eliminate the distribution of Sales Taxes to Illinois municipalities. The Village and Taxpayer desire in Paragraph 2 of this Section 4.C to make express provision for the effect of any such change upon the operation of this Agreement.

2. In the event that the State of Illinois amends or repeals the Retailer's Occupation Tax Act or makes any other promulgation, enactment or change in law ("***Change in Law***") that eliminates the distribution of Sales Taxes to the Village, otherwise alters the distribution formula in a manner that prevents the Village and Taxpayer from determining with a reasonable degree of certainty the precise amount of the Municipal Sales Tax or the amount of Municipal Sales Tax generated by Taxpayer on the Rebate Property, or it is determined that the Property does not qualify, under applicable state law, to receive Municipal Sales Tax Rebates, the provisions of this Agreement with regard to Sales Tax Rebates of Municipal Sales Tax generated from the Rebate Property on or after the effective date of the Change in Law or such determination shall automatically terminate and become null and void and be of no further force or effect, and the Village shall

have no obligation whatsoever to pay to Taxpayer any of the Municipal Sales Tax generated on or after the effective date of the Change in Law or such determination. However, if a Change in Law results in replacement taxes for the Sales Taxes directly resulting from Gross Receipts of Taxpayer as contemplated hereunder, then, for purposes of this Agreement, such replacement taxes shall be defined as Sales Taxes, subject in all respects to the Village's actual receipt of its portion of such replacement taxes as well as the Village's authority under state law to provide for rebate of such replacement taxes, as contemplated herein.

D. **No Guarantee**. The parties acknowledge and agree that none of the terms, conditions, or provisions of this Agreement shall be construed, deemed, or interpreted as either (1) a guarantee that the Village will receive any Municipal Sales Taxes as a result of the operation of the Grocery Store on the Rebate Property, (2) a guarantee that Taxpayer will receive the Total Rebate Amount under this Agreement, or (3) a requirement or obligation by Taxpayer to generate Gross Receipts from the Rebate Property.

E. **Limited Liability**. Notwithstanding any other provision of this Agreement to the contrary, the Village's obligation to pay the Sales Tax Rebate shall be subject to the applicable laws of the State of Illinois and shall not be a general debt of the Village or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Municipal Sales Tax received by the Village, as specifically defined in Section 2 of this Agreement. Taxpayer shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the Sales Tax Rebate, and no execution of any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or other property of the Village (unless the Village refuses to make such payment to Taxpayer in violation of this Agreement). No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future trustee, member, elected or appointed officer, official, agent, attorney, representative, or employee of the Village in his or her individual capacity.

SECTION 5. USE AND DEVELOPMENT OF THE PROPERTY.

A. **Zoning Approvals**. This Agreement shall be contingent upon, and not effective until, Taxpayer has (i) filed all necessary applications for, (ii) obtained approval of zoning relief to authorize the operation of, (iii) obtained a certificate of occupancy in conformity with such approval of zoning relief, and (iv) secured all business and other licenses or permits required to operate, the Grocery Store on the Property.

B. **Compliance with Laws**. If Taxpayer fails to comply with any material provision of the Zoning Regulations or of any other applicable code, ordinance, or regulation of the Village, or of any other applicable local, state, or federal ordinance, regulation, or law during the term of this Agreement, the provisions of this Agreement with regard to payment of Sales Tax Rebates of Municipal Sales Tax generated from the Rebate Property shall automatically terminate, and the Village shall have no obligation to pay to Taxpayer any Sales Tax Rebate based upon the Municipal Sales Tax generated on or after the date of Taxpayer's noncompliance or violation; provided, however, at least 30 days before such automatic termination, the Village shall notify Taxpayer of the violation and allow Taxpayer 30 days after such notice to cure the violation.

SECTION 6. REAL PROPERTY VALUATION.

Taxpayer recognizes that the Village has legitimate interests and concerns regarding the valuation and assessment of the Property for real estate tax purposes. Accordingly, Taxpayer does hereby agree to (a) notify the Village prior to the commencement or initiation of any protest or appeal by, on behalf of, or for the benefit of Taxpayer of the real property valuation of the Property established by the Lake County Assessor; and (b) not initiate or cause to be initiated any protest or appeal that seeks a property valuation that is disproportionate to, or inconsistent with, the actual use of the Property.

SECTION 7. FORCE MAJEURE.

Whenever a period of time is provided for in this Agreement for either Taxpayer or the Village to perform any act or obligation, and Taxpayer or the Village, as the case may be, is unable to perform or complete such act or obligation because of a Force Majeure, then upon the occurrence of any such Force Majeure, the time period for the performance and completion of such acts or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

SECTION 8. LITIGATION AND DEFENSE OF AGREEMENT.

A. Litigation. If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against either party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of either party to perform its obligations under, or otherwise to comply with, this Agreement ("***Litigation***"), the party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.

B. Defense. The Village and Taxpayer do hereby agree to use their respective best efforts to defend the validity of this Agreement, and all ordinances and resolutions adopted and agreements executed pursuant to this Agreement, including every portion thereof and every approval given, and every action taken, pursuant thereto. Any costs or expenses incurred by the Village in connection with the defense of this Agreement (including, without limitation, reasonable attorneys' fees and the reasonable value of Village staff time) shall be reimbursed by the Taxpayer. To this end, Taxpayer may elect to assume directly all responsibilities, costs, and expenses relating to the defense of any Litigation; provided, however, that Taxpayer shall have no authority to settle Litigation on behalf of the Village without the formal or written approval of the Corporate Authorities. The Village and Taxpayer do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

C. Cooperation for Curative Acts. To the extent any challenge is asserted against the validity of this Agreement, any of its provisions, or any procedures or enactments relating to this Agreement, the parties shall cooperate to take any curative action that may be necessary or desirable to avoid or defeat such challenge and allow the parties to enjoy the benefits intended to be conferred by the Agreement.

D. Litigation as Force Majeure. To the extent that Taxpayer is unable to receive a Sales Tax Rebate for any period due to Litigation, such Litigation will qualify as a Force Majeure event.

SECTION 9. REMEDIES.

A. Remedies. In the event of a breach or an alleged breach of this Agreement by either party, either party may, by suit, action, mandamus or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement.

B. Notice and Cure. Neither party may exercise the right to bring any suit, action, mandamus or any other proceeding pursuant to Paragraph A of this Section 9 without first providing written notice to the other party of the breach or alleged breach and allowing a period of 30 days for the curing of said breach or alleged breach; provided, however, that in the event such violation or failure cannot be cured within said 30-day period notwithstanding diligent and continuous effort by the party receiving notice and said party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

SECTION 10. TERM.

This Agreement shall be in full force and effect for a period of 10 years after the Commencement Date. This Agreement shall, during its term, run with and bind the Rebate Property and shall inure to the benefit of and be enforceable by Taxpayer and the Village, and any of their respective permitted legal representatives, heirs, grantees, successors, and assigns.

SECTION 11. RELEASE OF INFORMATION.

Taxpayer agrees to sign all documentation necessary to cause the Illinois Department of Revenue to release to the Village the amount of Municipal Sales Tax generated by Taxpayer from the Rebate Property during each of the Sales Tax Years pursuant to applicable State law.

SECTION 12. PAYMENT OF VILLAGE FEES AND COSTS.

A. General Requirements. In addition to any other costs, payments, fees, charges, contributions, or dedications specifically required by this Agreement, Taxpayer shall pay to the Village, as and when due, all application, inspection, and permit fees, and all other fees, charges, and contributions required by applicable Village codes, ordinances, resolutions, rules, or regulations.

B. Special Requirements. In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement, or by applicable Village codes, ordinances, resolutions, rules, or regulations, Taxpayer shall pay or cause to be paid to the Village, within 30 days after presentation of a written demand notice therefor, all legal, engineering, and other consulting and administrative fees, costs, and expenses incurred or accrued in connection with the review and processing of plans for the development of the Rebate Property, including specifically, but without limitation, the fees and expenses that the Village has paid and will pay to its legal counsel. The Village agrees to provide Taxpayer with a detailed fee statement for such services. 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 as a condition precedent to the execution of this Agreement by the Village President. Further, Taxpayer agrees that it shall be liable for and will pay upon demand all costs incurred by the Village for publications and recordings required in connection with the aforesaid matters. Notwithstanding any other provision of this Agreement, payment of all said fees, costs, and expenses shall be a condition precedent to each and every obligation of the Village under this Agreement. Additionally, the Village may, in its sole

discretion and upon notice to Taxpayer, set off any amounts due from Taxpayer under this Agreement against any Sales Tax Rebate due from the Village.

C. Village Lien Rights. If any money due from Taxpayer to the Village pursuant to this Agreement is not paid to the Village by Taxpayer within 30 days after a demand for such payment, then such money, together with interest and costs of collection, including legal fees and administrative expenses, shall become a lien upon all portions of the Rebate Property (or Taxpayer's interest in the Rebate Property), and the Village shall have the right to collect such amount, with interest and costs, including legal fees and administrative expenses, and the right to enforce such lien in the same manner as in statutory mortgage foreclosure proceedings. Such lien shall be subordinate to any first mortgage now or hereafter placed upon the Rebate Property; provided, however, that such subordination shall apply only to charges that have become due and payable prior to a sale or transfer of the Rebate Property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the Rebate Property from liability for any charges thereafter becoming due, nor from the lien of any subsequent charge.

SECTION 13. LIABILITY AND INDEMNITY OF VILLAGE.

A. No Liability for Village Review. Taxpayer acknowledges and agrees (1) that the Village is not, and shall not be, in any way liable for any violations of restrictive covenants applicable to the Rebate Property that may occur, or for any damages or injuries that may be sustained, as the result of the Village's review and approval of any plans for the Rebate Property, or as a result of the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Rebate Property; and (2) that the Village's review and approval of any such plans and the issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure Taxpayer, or any of its heirs, successors, assigns, tenants, or licensees, or any third party, against restrictive covenant violations or damage or injury of any kind at any time.

B. Village Procedures. Taxpayer acknowledges that notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement and agrees not to challenge any of such actions on the grounds of any procedural infirmity or of any denial of any procedural right.

C. Indemnity. Taxpayer agrees to, and does hereby, release, hold harmless, and indemnify the Village, the Corporate Authorities, all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with (i) the Village's review and approval of any plans, or the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Rebate Property; (ii) any actions taken by the Village pursuant to Subsection B of this Section 13; (iii) the development, construction, and maintenance of the Rebate Property; (iv) the violation of any restrictive covenant applicable to the Rebate Property; and (v) the performance by Taxpayer of its obligations under this Agreement and all related ordinances, resolutions, or other agreements.

D. Defense Expenses. Taxpayer shall, and does hereby agree to, pay, without protest, all costs or expenses incurred by the Village in connection with the defense of this Agreement (including, without limitation, reasonable attorneys' fees and the reasonable value of Village staff time). To this end, Taxpayer may elect to assume directly all responsibilities, costs, and expenses relating to the defense of any Litigation; provided, however, that Taxpayer shall

have no authority to settle Litigation on behalf of the Village without the formal or written approval of the Corporate Authorities.

SECTION 14. ENFORCEMENT.

The parties hereto 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 Taxpayer agrees that it shall not seek, and that it does not have the right to seek, to recover a judgment for monetary damages (other than payment of the Sales Tax Rebate) against the Village or any elected or appointed Village officer, officials, agents, representatives, attorneys, or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. Notwithstanding the foregoing, in the event of a judicial proceeding brought by any party to this Agreement against any other party to this Agreement for enforcement or for breach of any provision of 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.

SECTION 15. NATURE, SURVIVAL AND TRANSFER OF OBLIGATIONS.

A. Binding Effect. Taxpayer acknowledges and agrees that this Agreement shall be binding upon Taxpayer and any and all of his or its heirs, successors, and permitted assigns and the successor owners of record of all or any portion of the Rebate Property.

B. Prohibited Assignments. It is the express intent of the parties hereto that, unless otherwise expressly approved by resolution of the Corporate Authorities of the Village, this Agreement, and all of the rights and privileges granted herein, are for the sole and exclusive benefit of Taxpayer. Accordingly, notwithstanding any provision of this Agreement, in the event that Taxpayer does, or attempts to, voluntarily or involuntarily transfer its interests in the Rebate Property or this Agreement, in whole or in part, without the prior consent of the Corporate Authorities, which consent may be granted or denied in the sole discretion of the Corporate Authorities, this Agreement, and all of the rights and privileges granted herein, shall, at the option of the Village, become null and void and be of no force or effect.

SECTION 16. REPRESENTATIONS AND WARRANTIES.

A. Taxpayer Representations and Warranties. In order to induce the Village to enter into this Agreement and to adopt the ordinances and grant the rights herein provided for, Taxpayer hereby warrants and represents to the Village as follows:

1. Taxpayer is duly organized, validly existing, and in good standing under the laws of the State of Illinois.

2. Taxpayer has the authority and the legal right to make, deliver, and perform this Agreement and has taken all necessary corporate, partnership, and venture actions to authorize the execution, delivery, and performance of this Agreement.

3. No owner, mortgagee, landlord, or any other secured party that has an interest in the Rebate Property as of the date of this Agreement has an objection to either (i) the execution and performance of this Agreement by Taxpayer or (ii) the binding nature of this Agreement with respect to the

Rebate Property. In the event that Taxpayer is not the owner of record of the Rebate Property, Taxpayer shall deliver to the Village Clerk, at the time of Taxpayer's execution of this Agreement, a document in the form attached hereto as Exhibit C executed by all owners of record and any secured parties acknowledging this warranty and confirming the validity thereof.

4. All necessary consents of any Board of Directors, shareholders, creditors, investors, partners, judicial, or administrative bodies, governmental authorities, or other parties, including specifically but without limitation all secured parties, regarding the execution and delivery of this Agreement have been obtained.

5. Except as may be expressly identified in Exhibit D attached hereto, no consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village, and the State of Illinois with respect to distribution of Sales Taxes) is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement that has not heretofore been obtained by Taxpayer. The securing of any consent or authorization, or the completion of any filing or other act as identified in Exhibit D shall be a condition precedent to the Village's obligation to deliver any Sales Tax Rebate to Taxpayer.

6. The individuals executing this Agreement on behalf of Taxpayer have the power and authority to execute and deliver this Agreement on behalf of Taxpayer.

7. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of Taxpayer; (ii) will not result in a breach or default under any agreement to which Taxpayer is a party or to which Taxpayer, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which Taxpayer or the Property, in whole or in part, is or are subject.

8. Taxpayer meets high standards of creditworthiness and financial strength and will, upon request, deliver to the Village one or more of the following: (A) corporate debenture ratings of BBB or higher by Standard & Poor's Corporation or Baa or higher by Moody's Investors Service, Inc.; (B) a letter from a financial institution with assets of $10,000,000 or more attesting to the financial strength of the developer; or (C) specific evidence of equity financing for not less than 10% of the total project costs.

B. Village Representations and Warranties. In order to induce Taxpayer to enter into this Agreement and to adopt the ordinances and grant the rights herein provided for, the Village hereby warrants and represents to Taxpayer that the individuals executing this Agreement on behalf of the Village have been duly authorized and directed by the Corporate Authorities to execute and deliver this Agreement on behalf of the Village.

SECTION 17. GENERAL PROVISIONS.

A. **Notice.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be (i) personally delivered, or (ii) delivered by a reputable overnight courier, or (iii) delivered by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed as evidenced by a confirmation of transmission and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three (3) business days thereafter. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (x) actual receipt, or (y) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit, or (z) three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt.

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

Village of Long Grove
3110 RFD
Long Grove, Illinois 60047
Attention: Village Manager
FAX: 847-634-9408

with a copy to:

Victor P. Filippini, Jr.
Holland & Knight LLP
131 S. Dearborn Street
30th Floor
Chicago, Illinois 60603
FAX: 312-578-6666

For notices and communications to Taxpayer:

Sunset Foods
1812 Green Bay Road
Highland Park, IL 60035
FAX: _____

with a copy to:

Lawrence M. Freedman, Esquire
Ash, Anos, Freedman & Logan LLC
77 West Washington Street, Suite 1211
Chicago IL 60602
FAX: 312-346-7847

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.

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. The Village shall be under no obligation to exercise any of the rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village to exercise at any time any such right shall not be deemed or construed a waiver thereof, nor shall such failure void or affect the Village'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, and, in all matters contained herein, all parties shall have an implied obligation of reasonableness, except as may be expressly set forth otherwise.

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

G. Non-Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the entire remainder of this Agreement shall, thereupon, be null and void and of no further force and effect, it being the intent of the parties that all of the provisions of this Agreement be treated as an individual whole.

H. Entire Agreement. This Agreement shall constitute the entire agreement of the parties to this Agreement regarding the rebate of Municipal Sales Tax to Taxpayer; all prior drafts and agreements concerning such matters between the parties, whether written or oral, are merged in this Agreement and shall be of no force and effect.

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 all 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, B, C, and D attached hereto 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 modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective unless and until such change is

reduced to writing and executed by the Village and all owners of record of the Property at the time such modification is intended to be effective, pursuant to all applicable statutory procedures.

N. **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.

O. **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 Taxpayer.

[END OF TEXT. SIGNATURES CONTINUE ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST: **VILLAGE OF LONG GROVE**

_____ _____

Village Clerk Village President

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

This instrument was acknowledged before me on _____, 200__ by _____, the Village President of the **VILLAGE OF LONG GROVE**, an Illinois municipal corporation, and by _____, the Village Clerk of said municipal corporation.

Given under my hand and notarial seal this _____ day of _____, 2008.

Notary Public

My Commission Expires:

(SEAL)

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

SUNSET FOODS, INC.
an Illinois corporation

By: _____

Its: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me to be the _____ of **SUNSET FOODS, INC.**, an _____ corporation, and _____, personally known to me to be the _____ of said corporation, appeared before me this day in person and acknowledged that as such _____ and _____, they signed and delivered said instrument as their free and voluntary act and as the free and voluntary act of **SUNSET FOODS, INC.** for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 2008.

Notary Public

My Commission Expires:

(SEAL)

EXHIBIT A

Legal Description of the Property

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.

PIN: 15-30-200-030

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.

PIN: 15-30-200-031

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.

PIN: 15-30-200-032

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.

PIN: 15-30-200-002

EXHIBIT B

Depiction of the Rebate Property

EXHIBIT C

Acknowledgement Form from
Secured Parties

The undersigneds, being all of the owners of record and secured parties of record with respect to the "Property" as legally described in Exhibit 1 to this Acknowledgement, hereby state and acknowledge that they have:

(i) No objection to the execution and performance by Sunset Foods, Inc. ("***Sunset***"), of that certain "Economic Incentive Agreement" between Sunset and the Village of Long Grove, Illinois (the "***Agreement***");

(ii) No objection to the binding nature of the Agreement with respect to the "Rebate Property" as defined in the Agreement; and

(iii) No knowledge of the falsehood or inaccuracy of any of the representations or warranties in Section 16.A of the Agreement.

_____
NAME OF OWNER OF RECORD/
SECURED PARTY

By:_____
Its_____
Date:_____

ATTEST:

_____
Its_____

_____
NAME OF OWNER OF RECORD/
SECURED PARTY

By:_____
Its_____
Date:_____

ATTEST:

_____
Its_____

_____
NAME OF OWNER OF RECORD/
SECURED PARTY

By:_____
Its_____
Date:_____

ATTEST:

_____
Its_____

_____
NAME OF OWNER OF RECORD/
SECURED PARTY

By:_____
Its_____
Date:_____

ATTEST:

_____
Its_____

EXHIBIT D

Additional Required Government Approvals and Action
(if applicable)