

**VILLAGE OF DOWNERS GROVE**  
**Report for the Village Council Meeting**  
**10/4/2016**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
Lemon Tree Sales Tax Agreement Amendment	Dave Fieldman Village Manager

**SYNOPSIS**

The Lemon Tree Grocer has requested relief from the October 1, 2016 re-open date as required in the January 19, 2016 motion to cancel the Lemon Tree Sales Tax Rebate Agreement and waive the reimbursement provision.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2015-2017 include *Strong, Diverse Local Economy* and *Steward of Financial, Environmental and Neighborhood Sustainability*.

**FISCAL IMPACT**

The termination of the agreement and waiving of the reimbursement payment would result in foregone revenue of \$25,169.

**UPDATE & RECOMMENDATION**

This item was discussed at the September 20, 2016 Village Council meeting. Based on Village Council discussion, staff has prepared a resolution repealing the motion adopted by the Village Council on January 19, 2016 and authorizing a first amendment to the sales tax rebate agreement.

**BACKGROUND**

On January 19, 2016, the Village Council approved [a motion to waive the reimbursement payment](#) due to the Village pursuant to Article 6.2 of the Sales Tax Rebate Agreement (Agreement) between the Village and Lemon Tree Grocer, LLC, dated May 8, 2012. The motion declared the Agreement null and void provided that the Lemon Tree Grocer, LLC reopened a minimum 1,000 square foot grocery store at 5101 Mochel Drive no later than October 1, 2016. The Lemon Tree Grocer submitted a letter requesting relief from this provision.

The Lemon Tree owners indicated that they plan to convert the existing store into a new restaurant and grocery store. The Village has not yet received a building permit application for this work. The 1,000 square foot grocery store will not be open by October 1, 2016. Based on the Lemon Tree Grocer's request, permit drawings would be submitted in October but no dates for a reopening were provided.

**ATTACHMENTS**

Resolution

First Amendment to Agreement

Letter from Lemon Tree Grocer

Letter from Barker Nestor, Inc, Architecture + Design

January 19, 2016 Manager Memo

Letter from Lemon Tree Grocer dated September 19, 2016

VILLAGE OF DOWNERS GROVE  
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: October 4, 2016  
(Name)

RECOMMENDATION FROM: \_\_\_\_\_ FILE REF: \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

**STEPS NEEDED TO IMPLEMENT ACTION:**

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "A RESOLUTION REPEALING MOTION 2015-6625 AND AUTHORIZING A FIRST AMENDMENT TO THE SALES TAX REBATE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE LEMON TREE, LLC DATED MAY 8, 2012", as presented.



**SUMMARY OF ITEM:**

Adoption of this resolution shall repeal Motion 2015-6625 and authorize a first amendment to the Sales Tax Rebate Agreement between the Village of Downers Grove and The Lemon Tree, LLC dated May 8, 2012.

**RECORD OF ACTION TAKEN:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION REPEALING MOTION 2015-6625 AND AUTHORIZING A FIRST  
AMENDMENT TO THE SALES TAX REBATE AGREEMENT  
BETWEEN THE VILLAGE OF DOWNERS GROVE  
AND THE LEMON TREE, LLC DATED MAY 8, 2012**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois as follows:

1. That the form and substance of a certain First Amendment to Sales Tax Rebate Agreement ("Agreement"), between the Village of Downers Grove ("Village") and The Lemon Tree, LLC ("Lemon Tree") for retail sales tax rebates at the property located at 5101 Mochel Drive, as set forth in the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That Motion 2015-6625 approved by the Village Council on January 19, 2016 is hereby repealed.

4. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

5. That all resolutions and motions or parts of resolutions and motions in conflict with the provision of this Resolution are hereby repealed.

6. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_

Village Clerk

**FIRST AMENDMENT TO THE SALES TAX REBATE AGREEMENT  
BETWEEN THE VILLAGE OF DOWNERS GROVE AND  
THE LEMON TREE, LLC**

The Village of Downers Grove, Illinois (the "Village") and The Lemon Tree, LLC "Lemon Tree", entered into a Sales Tax Rebate Agreement for the property commonly known as 5101 Mochel Drive on or about May 8, 2012. Pursuant to the terms stated therein, the parties desire to amend that Agreement under the following terms:

1. That the May 8, 2012 Agreement shall be deleted in its entirety and amended as follows:

**Reimbursement:** Lemon Tree shall pay to the Village a reimbursement payment in the amount of \$25,169.00, no later than October 1, 2016.

If the Lemon Tree submits a complete building permit application for the remodeling of the existing restaurant, including a grocery store with a minimum one thousand square feet (1,000 sq. ft.) of floor area, in the existing Lemon Tree tenant space at 5101 Mochel Drive (the "Revised Project"), by no later than November 1, 2016, then the Village shall waive all Village fees for building permits and inspections for the Revised Project in an amount not to exceed \$25,169.00. If the fees for building permits and inspections exceed \$25,169, Lemon Tree shall be responsible for paying the difference. It is expressly understood that the Village does not have the authority to waive permit and inspection fees for other agencies and governments, and those fees shall be solely the responsibility of Lemon Tree.

Lemon Tree shall submit a complete application for a building permit to the Village no later than November 1, 2016. By January 1, 2017, Lemon Tree shall obtain all building and related permits required to construct the Revised Project. Required permits include those required by other agencies including the DuPage County Health Department and the Downers Grove Sanitary District.

If the fees for building permits and inspections total less than \$25,169.00, then any remaining portion of the balance shall be rebated back to Lemon Tree upon the opening of the grocery store portion of the Revised Project. If the grocery store portion of the Revised Project does not open by May 1, 2017, Lemon Tree shall pay to the Village an amount equal to the waived building permit and inspection fees and it shall forfeit any remaining portion of the balance of the reimbursement payment.

2. All other terms of the 2012 Agreement shall be declared null and void.

**VILLAGE OF DOWNERS GROVE**

**THE LEMON TREE, LLC**

\_\_\_\_\_

\_\_\_\_\_

Attest:

Attest:

\_\_\_\_\_  
April Holden, Village Clerk

\_\_\_\_\_  
Corporate Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Shaun Black  
406 N Aberdeen St  
Chicago, Il 60642  
September 7, 2016

Martin Tully  
Mayor  
Village of Downers Grove  
801 Burlington Ave  
Downers Grove, Il 60515

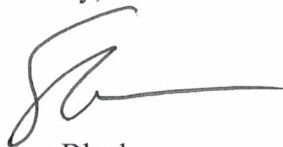
Dear Martin Tully and the Village Council:

Please consider Lemon Tree Grocer's formal request for relief from our re-open deadline of October 1st, 2016. It has been a struggle securing financing as well as dealing with other on-going, unforeseen issues that come about when opening a new business. We stay optimistic and excited about starting the re-model and plan to have the necessary permitting paperwork turned into the Village by October 1st, 2016.

While it's disappointing that the project has taken this long to get started our group has continued to give back to the community through generous time and financial donations to Downers Grove based non-for-profits throughout 2016.

The Lemon Tree Grocer/Fork and Vine team looks forward to becoming a pillar in the Downers Grove community once again, and appreciates your time and consideration in this extremely important matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Shaun Black', with a long horizontal line extending to the right.

Shaun Black



600 WEST CERMAK ROAD  
CHICAGO IL 60616 USA  
▶ T e l : 8 4 7 + 7 6 3 + 1 6 9 2  
F a x : 8 4 7 + 7 6 3 + 1 6 9 7

09 September 2016

Martin Tully  
Mayor  
**Village of Downers Grove**  
801 Burlington Avenue  
Downers Grove, IL 60515

VIA EMAIL

RE: Lemon Tree Grocer Renovation

Mr. Tully and the Village Council,

▶ We are the Architecture Firm that has been retained by the Lemon Tree Grocer Ownership. We received our executed proposal and retainer for this project on May 12th, 2016. Subsequently, we have completed the preliminary and design development phases of the project. Ownership has given us full approval on the design and has authorized us to proceed. We are currently working on the construction drawings along with our mechanical, electrical & plumbing engineers. We anticipate applying for Village permits by October 17th, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ryan P. Nestor', written over a faint, larger version of the same signature.

Ryan P. Nestor  
Principal  
Barker Nestor, Inc.





**VILLAGE OF DOWNERS GROVE**  
**Report for the Village Council Meeting**  
**1/19/2016**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
Lemon Tree Agreement Cancellation	David Fieldman Village Manager

**SYNOPSIS**

A motion has been prepared terminating a Sales Tax Rebate Agreement between the Village and Lemon Tree Grocer and waiving the “clawback” payment.

**STRATEGIC PLAN ALIGNMENT**

The Goals for 2015 to 2017 include *Strong, Diverse Local Economy* and *Steward of Financial, Environmental and Neighborhood Sustainability*.

**FISCAL IMPACT**

The termination of the agreement and waiving of the “clawback” payment would result in foregone revenue of \$25,169.

**UPDATE & RECOMMENDATION**

This item was discussed at the January 5, 2016 meeting. The Village Council discussed two potential actions:

1. A proposal by Commissioner White for an ‘earnback’ agreement (see attached email)
2. A proposal by Mayor Tully to cancel the agreement and waive the payment under the clawback provision upon reopening of the remodeled restaurant and grocery

The motion appearing on the January 19, 2016 Active Agenda is to cancel the agreement and waive the payment provided the Lemon Tree reopens as a minimum 1,000 square foot grocery store no later than October 1, 2016.

## BACKGROUND

Lemon Tree Grocer has closed both the grocery store and cafe and plans to reopen with a larger restaurant and smaller grocery store. The revised operations would not be consistent with the terms of the existing sales tax rebate agreement and have triggered the repayment of 75% of the amount Lemon Tree Grocer has received in sales tax rebates. Lemon Tree Grocer submitted the attached letter requesting that the agreement be terminated and that the required repayment of the sales tax rebates be waived.

In May 2012 the Village entered into a sales tax agreement with Lemon Tree Grocer ([http://www.downers.us/public/docs/agendas/2012/05-08-12/RES00-04737\\_LEMON\\_TREE.pdf](http://www.downers.us/public/docs/agendas/2012/05-08-12/RES00-04737_LEMON_TREE.pdf)). The agreement requires Lemon Tree Grocer to operate a grocery store as the primary business for at least 13 years from the effective date of the agreement and the Village to rebate 100% of the sales tax revenue generated from the grocery store. Ceasing to operate the grocery store in accordance with the agreement requires Lemon Tree Grocer to repay to the Village all or a portion of the amount of sales tax rebates paid according to the following schedule:

If Lemon Tree fails to continue to operate, it shall forfeit the withheld quarterly payment and shall pay back the tax rebate on the following schedule:

- Year 1 through 3: 100% of the Incentive Payment
- Year 4 through 6: 75% of the Incentive Payment
- Year 7 through 10: 50% of the Incentive Payment
- Year 11 through 13: 25% of the Incentive Payment

Since the effective date of the agreement (October 2011) Lemon Tree Grocer has generated \$38,004 in Village sales tax revenue. According to the agreement, 75% of the rebate payments (\$28,503) must be paid back to the Village. The Village is currently holding back \$3,333. The balance owed to the Village is \$25,169.

## ATTACHMENTS

Email from Commissioner White  
Letter from Lemon Tree Grocer

# VILLAGE OF DOWNERS GROVE COUNCIL ACTION SUMMARY

**INITIATED:** Village Attorney **DATE:** January 19, 2016  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

- Ordinance
- Resolution
- Motion
- Other

**STEPS NEEDED TO IMPLEMENT ACTION:**

Motion to waive the reimbursement payment due to the Village pursuant to Article 6.2 of the Sales Tax Rebate Agreement between the Village of Downers Grove and Lemon Tree Grocer, LLC, dated May 8, 2012 and to declare the Agreement null and void, provided that Lemon Tree Grocer, LLC reopens a minimum 1,000 square foot grocery store at 5101 Mochel Drive no later than October 1, 2016.

*DJD*

**SUMMARY OF ITEM:**

Adoption of this motion shall waive the reimbursement payment due to the Village pursuant to Article 6.2 of the Sales Tax Rebate Agreement between the Village of Downers Grove and Lemon Tree Grocer, LLC, dated May 8, 2012 and to declare the Agreement null and void, provided that Lemon Tree Grocer, LLC reopens a minimum 1,000 square foot grocery store at 5101 Mochel Drive no later than October 1, 2016.

**RECORD OF ACTION TAKEN:**

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## MEMORANDUM

To: Mayor & Council and Village Manager  
From: Bill White, Commissioner  
Re: Lemon Tree Rebate Agreement  
Date: January 5, 2016

After thinking about the Lemon Tree agenda topic and speaking one-on-one with other council members, I wish to offer an alternative solution that I believe better fits the underlying interests of all stakeholders.

1. Terminate the existing sales tax rebate agreement;
2. The Village retains \$3,333 and Lemon Tree waives any claim to that sum;
3. With respect to the \$25,169 which would otherwise be due the Village:
  - a. The Village will refrain from taking any steps to collect the \$25,169 provided Lemon Tree re-opens with a larger restaurant and smaller grocery section as proposed, within an agreed time period;
  - b. As long as Lemon Tree remains open with a larger restaurant and smaller grocery section as proposed, the Village will refrain from taking any steps to collect the \$25,169; and
  - c. For every dollar of sales tax generated from grocery sales following re-opening, a dollar of the recapture amount of \$25,169 will be forgiven. Based on projected annual grocery sales of \$700,000 for the "new store" the entire amount would be forgiven in less than four years.
4. If Lemon Tree thereafter closes the grocery portion of the business, the remaining amounts to be recaptured (if any) would be calculated and would remain due.

The following underlying interests are better satisfied by the foregoing:

- A. Lemon Tree can be entirely relieved of the obligation to repay \$25,169 provided they follow through with their stated intention to re-open with a larger restaurant and smaller grocery, and thereafter remain open;
- B. The Village retains at least some measure of leverage to assure that a downtown grocer remains open; even if on a smaller scale than originally contemplated;
- C. The Village avoids setting a precedent of simply walking away from its negotiated rights.

EOM

December 23, 2015

Mr. David Fieldman

Village Manager

Village of Downers Grove

801 Burlington Avenue

Downers Grove, Illinois 60515

Dear David,

Lemon Tree Grocer is formally requesting to void the current tax rebate agreement and waive the claw back portion of the contract. While we understand the current agreement does not allow such a provision, we also believe that the spirit in which the agreement was written has, and will continue to be satisfied. We have outlined facts and projections below that create a strong case where the interests of the Village Council of Downers Grove, the Downers Grove community and the residents of Acadia building #3, would be best served by eliminating the current agreement.

Since the inception of this agreement in 2012, Lemon Tree Grocer has generated close to \$65,000 in sales tax revenues that have been paid to the Village of Downers Grove. Per the current agreement, more than half of these proceeds have been refunded to the business to assist with the economic challenges a downtown Downers Grove grocery store faces. We have attached a projected PNL for your official review.

If the agreement was dissolved, the Village would net \$31,000 per year (under the new proposed business model). In the first year, the Village would recoup close to the entire amount deemed owed for the entire agreement. After five years of conducting business in this current retail space and understanding further what the community wants and can financially sustain, our business is confident the numbers we have provided are conservative.

As you can see, the Village's potential revenue would be substantially higher than the current agreement could allow.

The situation at Acadia building #3 requires a delicate balance between being a responsible retailer and good neighbor. For instance, plumbing issues have been a consistent problem for Lemon Tree Grocer since the opening of our business. Residents have been upset with the developer and our current landlord. In many cases this frustration has created tension and has tarnished our business acumen and our 'good neighbor' relationship with current Acadia residents. We are also faced with the challenge of poorly planned outdoor storage and proper coverage that covers our coolant system. This has caused Acadia residents to air major concerns in the solutions that have been made to date. We have been working with Chris Rintz and upon the approval of our proposal and during the remodel process we plan to come to resolutions with him to satisfy the concerns of the residents of our building.

To those who may pose the question that terminating this agreement would show potential preferential treatment towards one business, we believe it will show the compassion of a municipality who is willing to adapt and work with the ever-changing business economic climate.

Upon arriving in Downers Grove in 2010, our partner business, Michael's Fresh Market, with whom our tax rebate was contingent upon, closed its doors in a short period of time. In the five years we have been in business, larger grocery retailers such as Standard Market in Westmont, Caputo's Fresh Market (in the former Dominick's space on Ogden) and Fresh Thyme Market, have all impacted our resources and have become strong competitors in our marketplace.

Both myself and Tim Canning have made a strong commitment to the Downers Grove community to constantly evolve with these business challenges in this competitive market space and have not lost our drive or commitment to continue to serve this community for many years to come.

Since Lemon Tree Grocer entered the Downers Grove business community, our retail business (through the Canning Foundation) has contributed over \$150,000 to local charities and various community organizations. We've given over \$250,000 discounts specifically aimed at seniors and neighbors and consistently sold milk and other staples at cost. We have contributed not only through monetary efforts but have also volunteered over 200 hours of our resources to consistently support organizations such as the local Indian Boundary YMCA, the Downers Grove Junior Women's Club, and most recently, serving to support our District 58 school community by serving as Vice President of the Education Foundation of Downers Grove District 58. My hope is to move my family to Downers Grove next year after my first child is born. We are heavily invested in the success of the Downers Grove business community as well the future and sustainability of the community as a whole.

I am personally looking forward to ways we can also create further sustainability and camaraderie in our downtown Downers Grove business community. Since serving on the Education Foundation these past 2 years, the hard work and dedication of our volunteer board members inspired me to develop a special fundraising retailer program called "Shop to Earn" to raise the necessary funds and awareness for District 58 to support more educational programs. We are close to the launch of this fundraising

program and the response from other local retailers participate in this program has been overwhelming. This program model will not only help our local school district with much needed funding, it will also help local businesses give a percentage of sales back to a customer's school of choice and improve the chances our downtown can become sustainable.

Lemon Tree Grocer is asking for the Village of Downers Grove's support of our new business concept planned for the footprint at 5105 Mochel Drive. We humbly ask the village staff and elected officials that govern this community to allow us to complete the work that we have proposed to do and to evolve our business for healthier sustainability and growth for many years to come.

Thank you for your consideration and Happy Holidays.

Sincerely,

Shaun Black

Co-Owner

Lemon Tree Grocer

**NEW STORE  
PROFORMA  
2016**

<b>PROJECTED PROFORMA BEGINNING</b>		
<b>SALES:</b>		
<b><u>SALES</u></b>		
GROCERY & PRODUCE SALES	105,000	15.0%
PREPARED FOODS & MEAT SALES	301,000	43.0%
BEER/ WINE	189,000	27.0%
PASTRY	14,000	2.0%
NON-ALCOHOLIC BEVERAGES	700	0.1%
CATERING	90,300	12.9%
<b>TOTAL GROCERY SALES</b>	<b>700,000</b>	<b>100.0%</b>
<b>TOTAL TAX REBATE</b>	<b>7,000</b>	<b>1.0%</b>
<b>TOTAL GROCERY SALES</b>	<b>707,000</b>	<b>30.3%</b>
<b><u>BAR SALES</u></b>		
ZEST FOOD	1,120,000	70.0%
ZEST WINE	192,000	12.0%
ZEST ALCOHOL	112,000	7.0%
ZEST BEER	128,000	8.0%
ZEST N/A BEV	48,000	3.0%
<b>TOTAL ZEST SALES</b>	<b>1,600,000</b>	<b>69.4%</b>
<b>VILLAGE TAX DOLLARS</b>	<b>24,000</b>	<b>1.5%</b>
<b>TOTAL ZEST SALES</b>	<b>1,600,000</b>	<b>69.4%</b>
<b>TOTAL SALES</b>	<b>2,307,000</b>	<b>100.0%</b>



Shaun Black  
406 N Aberdeen St  
Chicago, IL 60642  
September 19, 2016

David Fieldman  
Manager  
Village of Downers Grove  
801 Burlington Ave  
Downers Grove, IL 60515

Dear David Fieldman:

After further thought and discussion internally we like to amend the request for relief from our re-open deadline. Instead we are proposing an agreement that would have Lemon Tree LLC paying the full tax rebate claw back money immediately with the understanding that the entire amount would be credited to our permit and other construction fees associated with the new buildout of the space at 5101 Mochel Drive.

While it's disappointing that the project has taken this long to get started our group has continued to give back to the community through generous time and financial donations to Downers Grove based non-for-profits throughout 2016.

The Lemon Tree Grocer/Fork and Vine team looks forward to becoming a pillar in the Downers Grove community once again, and appreciates your time and consideration in this extremely important matter.

Sincerely,

Shaun Black