

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF
AN ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND FRY'S ELECTRONICS, INC.**

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 Economic Development Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Fry's Electronics, Inc. (the "Developer"), to provide certain sales tax rebate assistance from the Village's portion of the State Retailers' Occupation Tax, as set forth in the form of 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 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.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

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

Mayor

Passed:

Attest: _____
Village Clerk

**FRYS ELECTRONICS, INC.
ECONOMIC DEVELOPMENT AGREEMENT**

This Economic Development Agreement (“Agreement”) is made and entered into as of this _____ day of June, 2001, by and between the Village of Downers Grove, DuPage County, Illinois (“Village”), an Illinois home-rule municipal corporation, and Frys Electronics, Inc., a California corporation (“Developer”).

WHEREAS, Developer operates a successful retail business outside the corporate limits of the Village; and

WHEREAS, in order for the business of the Developer to continue to prosper and grow, the Developer has determined that it is in its best interest to lease land and to build a facility within the municipal boundaries of the Village in order to expand its existing business; and

WHEREAS, it is in the best interests of the Village to enter into this Agreement in order for the Developer to increase its business potential within the corporate limits of the Village and for the Village to realize a substantial economic benefit as a result of the expansion;

NOW, THEREFORE, the parties hereby covenant and agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated herein as if set forth verbatim.
2. **Developer to Establish and Expand Business in Downers Grove.** Developer is in the process of leasing approximately 23 acres of property on Finley Road in the Village (“Property”) whereupon it intends to build a facility of approximately 144,000 square feet containing a showroom of approximately 100,000 square feet, a warehousing distribution facility of approximately 40,000 square feet, and office area of approximately 4,000 square feet (“Facility”) which will house Developers business activity in Downers Grove (Developer’s Business). Developer will execute a lease of the Property, and Developer agrees to exercise its diligent efforts to complete construction of the Facility within eighteen (18) months of the date that the Village Board approves this Agreement. Developer shall provide the Village with an affidavit of Developer’s President or other corporate officer as appropriate setting forth a general description of the lease term. Provided, such affidavit shall also include detailed information setting forth the length of the lease term, options to renew or terminate, termination rights of the parties, notice requirements for breach and/or termination, and any other provision extending or limiting the lease term. It is expressly understood that the purpose of this information is to provide assurance to the Village that the Developer, as lessee, will have the right to operate Developer’s Business from the Property for the term of this Agreement. Developer’s failure to meet the dates contained in the previous sentence will not result in a breach of this Agreement provided that Developer did or is exercising diligent efforts to comply with such dates. However, the terms of this Agreement shall not become effective until and unless the Developer leases the Property and begins conducting Developer’s Business from the Facility.
3. **Building Plans.** Developer shall submit its development and building plans to the Village for its prior approval, consistent with the applicable ordinances and regulations of the Village. Developer shall provide Village with evidence of its lease of the Property.

4. **Sales Tax Sharing.** In order to make it economically feasible for Developer to substantially expand Developer's Business, including the leasing and development of the Property, a portion of the sales tax revenue generated from the Developer's Business shall be rebated by the Village to Developer.

5. **Rebate of Sale Tax Revenue.**

(a) Rebate of sales tax revenue shall commence with the sales tax revenue proceeds first received by the Village from the State of Illinois following the date set up by Developer for its "Grand Opening" of the Facility, as such date is published by Developer in a newspaper of general circulation within the Village. Such Grand Opening date shall be referred to as the "Effective Date." The parties acknowledge that the initial year that this Agreement is in effect will consist of twelve (12) full calendar months, plus one (1) partial month, being the month of the Grand Opening. Thereafter, "Annual Sales" periods will consist of twelve (12) full calendar months. Subject to the Project Cap defined in Paragraph 5 (b) below, such rebates will continue for each three-month period thereafter, utilizing the formula shown in the following schedule:

Sales Tax Revenue Distribution Formula

<u>Annual Sales</u>	<u>Share of Sales Taxes to be distributed</u>
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With respect to sales made during the initial year that this Agreement is in effect, and with respect to sales made during the nine (9) Annual Sales Periods following such initial year:

The first \$10,000,000 of sales	Village 100% Developer 0%
The next \$10,000,000 of sales (the above is the "Base Amount")	Village 0% Developer 100%

Above Base Amount	Village 50% Developer 50%
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(b) (i) Developer is limited to the receipt from the Village of a total amount of \$8,000,000 of rebates from sales tax revenues pursuant to the terms of this Agreement (the "Project Cap").

(ii) Developer and Village are each limited to the receipt of a total amount of \$1,000,000 of rebates from sales tax revenues from Base Amount sales.

(c) Subject to the Project Cap defined in Paragraph 5(b)(i) above, the rebates herein provided shall be earned by the Developer with respect to sales made during the initial year that this Agreement is in effect, and with respect to sales made during the fourteen (14) Annual Sales Periods following such initial year.

6. **Retention of Developer's Business Within the Village.** Developer agrees to maintain a sales operation that generates "sales tax" (as defined below) at the Property for a period of not less than nine (9) years after the Effective Date. Should Developer cease to maintain such a sales operation at the Facility within the first three (3) years after the Effective Date, the Developer must pay to the Village one hundred percent (100%) of any sales tax revenues rebated to Developer under this Agreement pursuant to

the sales tax sharing formula set forth in Paragraph 5, above. Should Developer cease to maintain such a sales operation at the Facility between years four (4) through six (6) following the Effective Date, Developer must pay the Village two-thirds (2/3) of all sales tax revenues rebated to the Developer by the Village under this Agreement; and should Developer cease to maintain such a sales operation at the Facility between years seven (7) and nine (9) following the Effective Date, Developer must pay the Village one-third (1/3) of all sales tax revenues rebated to the Developer by the Village under this Agreement. After year nine (9) the Developer may cease retail operations in the Village without payment to the Village of any previously rebated sales tax. Provided, however, that if it becomes unlawful to maintain such a sales operation, the provisions for repayment of previously rebated sales tax by Developer shall not apply

7. **Method/Time of Payment.** The Village shall make sales tax rebates to Developer within forty-five (45) days of the end of each calendar quarter (March 31st, June 30th, September 30th and December 31st) after the Effective Date. The parties acknowledge that gaps or delays in payment could arise due to delays in payments to the Village by the State of Illinois. The payments to Developer pursuant to the formula contained in Paragraph 5, above, shall be based only on actual cash receipts by the Village of its share of sales tax revenues collected from Developer by the State of Illinois. In the event there is a discrepancy between the sales amounts reported on Developer's sales tax reports and the cash receipts amount received by the Village from the State of Illinois, the Village agrees to promptly notify the Developer of such discrepancy in writing to allow the Developer an opportunity to investigate and, if appropriate, correct the error. The term "sales tax" used herein shall refer to the Village's share of (1) Retailers' Occupation Tax, Service Occupation Tax and Use Tax collected by the Illinois Department of Revenue, paid by and shown on a filed tax return of Developer ("**State Sales Tax**"), and (2) any national, state, or local sales, use, consumption, excise, or any similar tax which does not exist as of the date hereof but which is hereafter imposed upon sales of the Developer's goods and products placed over the Internet or similar electronic means ("**Internet Tax**"). State sales tax shall not include any additional taxes, which the Village may impose as a home-rule municipality under Illinois law.

8. **Changes in Law.** The Parties acknowledge that the agreement to distribute State Sales Tax revenues as herein provided is predicated on existing law in the State of Illinois providing for the payment to Illinois municipalities of one percent (1%) of the State Sales Tax generated within each such municipality. The General Assembly of the State of Illinois, from time to time, has considered modifying or eliminating the distribution of State Sales Tax revenues to Illinois municipalities. The Parties desire to make express provision for the effect that such a change in state law would have upon the operation of this Agreement. Accordingly, the Parties agree as follows:

(a) Should the Illinois General Assembly hereafter and during the State Sales Tax participation period eliminate the distribution of State Sales Tax revenues to Illinois municipalities, the Village shall not, under any circumstances, be required to impose a municipal sales tax or other tax for the purpose of providing a source of funds for the eliminated State Sales Tax distributions, provided, however, that in the event that the Village does impose a municipal sales tax or other tax to provide a source of funds to replace the eliminated State Sales Tax, then in such case the Parties agree to exercise their respective best efforts to make the appropriate equitable changes to this Agreement to carry out the intent of this

Agreement, which is to share, in the manner set forth in Paragraph 5, the sales tax revenue made available to the Village and produced by Developer at the Village location.

(b) Should the Illinois General Assembly hereafter and during the State Sales Tax participation period eliminate the distribution of State Sales Tax revenues to Illinois Municipalities, or otherwise alter the distribution formula in a manner which prevents the Village and Developer from being able to equitably ascertain the amount of State Sales Tax revenues being received by the Village as a direct result of the retail sales activities generated by the Developer, the Village shall have no obligation to make State Sales Tax distributions to Developer based upon the retail sales activities generated by the Developer, provided, however, in such a case, the Parties agree to exercise their respective best efforts to make the appropriate equitable changes to this Agreement to carry out the intent of this Agreement, which is to share, in the manner set forth in Paragraph 5, the sales tax revenue made available to the Village and produced by Developer at the Village location.

(c) Should the Illinois General Assembly hereafter and during the State Sales Tax participation period increase the percentage of State Sales Tax revenues distributed to Illinois municipalities, the State Sales Tax distributions provided for herein shall continue but shall apply solely to the amount of municipal State Sales Tax revenues generated from retail sales activities generated by the Developer, with such distribution continuing to be made in accordance with the distribution formula contained in this Agreement.

(d) Should the Illinois General Assembly hereafter and during the State Sales Tax participation period reduce the percentage of State Sales Tax revenues distributed to Illinois municipalities, States Sales Tax distributions provided for herein shall continue but shall apply solely to the extent of municipal State Sales Tax revenues generated from retail sales activities of Developer, with such distribution continuing to be made in accordance with the distribution formula in this Agreement.

9. **Proof of Payment.** Developer shall provide the Village with monthly sales and sales tax reports and proofs of payment and reasonable access to its tax and financial records limited, however, to tax and financial records which relate to the computation and/or allocation of gross receipts, at reasonable times and places, which the Village hereby agrees to hold in strictest confidence except as is reasonably necessary to enforce the terms of this Agreement and as otherwise may be provided pursuant to the Illinois Freedom of Information Act. Developer shall execute an Illinois Department of Revenue Power of Attorney (currently Form IL-2848) designating the Village's attorney as one of Developer's agents(s) for purposes of receiving tax information, and receiving copies of returns and tax notices in the event that the Illinois Department of Revenue notifies Developer of an audit of any sales or use taxes collected by such Department. If the Village has good cause to believe that the Developer has under-reported gross receipts, then in such case, the Village may retain an independent auditor, at the Village's sole cost and expense, to verify the sales of Developer. In the event that such independent auditor determines that there is a discrepancy in gross sales of more than four percent (4%), then all direct and reasonable costs and expenses incurred by the Village to retain the independent auditor to conduct the sales tax audit shall be promptly reimbursed to the Village by the Developer. In the event that such independent auditor fails to substantiate

a discrepancy in gross sales of more than four percent (4%), then all direct and reasonable costs and expenses incurred by the Developer in the investigation shall be promptly reimbursed to the Developer by the Village. Monthly, Village shall provide Developer with sufficient information to verify the amount of sales tax collected by Village and attributable to sales by Developer.

If Developer has good cause to believe that the Village has under-reported sales tax revenues collected by Village and attributable to sales by Developer, then, in such case, Developer may retain an independent auditor, at Developer's sole cost and expense, to verify such sales tax revenues so collected. In the event that such independent auditor determines that there is a discrepancy in sales tax revenues reported with respect to gross sales, of more than four percent (4%), then all direct and reasonable costs and expenses incurred by Developer to retain the independent auditor to conduct the sales tax audit shall be promptly reimbursed to Developer by the Village. In the event that such independent auditor fails to substantiate a discrepancy in sales tax revenues reported with respect to gross sales, of more than four percent (4%), then all direct and reasonable costs and expenses incurred by the Village in the investigation shall be promptly reimbursed to the Village by the Developer

10. **Conditions Precedent to Payment.** The liability of the Village to make any rebates under this Agreement is expressly conditioned on Developer's material compliance with each and every material covenant of this Agreement, including, without limitation, construction of the Facility substantially in accordance with the plans approved by the Village.

11. **Final Utilization of Economic Development Incentive.** Both Developer and Village agree that this Agreement will result in substantially increased utilization of the Property to the benefit of both the Village and the Developer. Both parties agree that upon payment of the sums stipulated in this Agreement, unless otherwise provided in writing between the parties, there will be no further extension or amendment of this Agreement. The Village acknowledges that the economic incentive provided to the Developer hereunder is a material inducement to the Developer in leasing and improving the Property.

12. **Term of Agreement.** It is understood that this Agreement shall be effective as of the date the Village Board adopts a resolution authorizing the execution of this Agreement, and shall remain in full force and effect thereafter until all the terms hereof expire, are satisfied or settled by both parties or otherwise adjudicated. The delivery to the Developer of a resolution approving this Agreement is the Village's warranty that the subject Agreement has been duly approved and is enforceable against the Village in accordance with the terms herein contained.

13. **Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed by the parties, each party agrees to perform such acts as may be reasonably necessary to consummate the terms of this Agreement.

14. **Parties Bound.** This Agreement shall be binding upon and inure to the respective legal representatives, successors, and assigns of the parties.

15. **Prevailing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Illinois.

16. **Invalidity of Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative,

and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

IN WITNESS WHEREOF this Agreement has been duly authorized by the Village Board and the Board of Directors of Developer as of the date and year first above stated.

Village of Downers Grove, an Illinois home-rule municipal corporation

By: _____
Brian Krajewski, Village Mayor

ATTEST:

April Holden, Village Clerk

Fry Electronics, Inc.
A California corporation, Developer

By: _____

ATTEST:

Secretary