

**A RESOLUTION APPROVING AND AUTHORIZING  
THE EXECUTION OF THE REDEVELOPMENT AGREEMENT  
BY AND BETWEEN CLARK STREET DEVELOPMENT, LLC AND  
THE CITY OF ROLLING MEADOWS, COOK COUNTY, ILLINOIS**

WHEREAS, Clark Street Development, LLC (the “Developer”) desires to enter into a redevelopment agreement (“Redevelopment Agreement”) with the City of Rolling Meadows, Cook County, Illinois (the “City”) for purposes of redeveloping certain property located in a tax increment redevelopment project area located at the southeast corner of Kirchoff Road and Meadow Drive; and

WHEREAS, the Corporate Authorities of the City find it is in the best interests of the City to enter into the Redevelopment Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rolling Meadows, Cook County, Illinois, as follows:

Section One. That the foregoing recital clauses to this Resolution are adopted as the findings of the Corporate Authorities of the City of Rolling Meadows and are incorporated herein by specific reference.

Section Two. That upon receipt from the Developer of four (4) executed copies of the Redevelopment Agreement, the Mayor is hereby authorized to execute, and the City Clerk is hereby authorized to attest to, the Redevelopment Agreement in substantially the form of such agreement appended to this Resolution as Exhibit “A,” with such changes therein as shall be approved by the officials of the City executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from and after the execution and delivery of such Redevelopment Agreement.

Section Three. That the officials, officers and employees of the City are hereby authorized to take such further actions and execute such documents as are necessary to carry out the intent and purpose of this Resolution and of the Redevelopment Agreement.

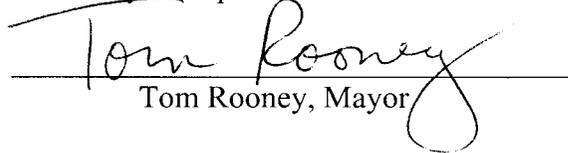
Section Four. That this Resolution shall be in full force and effect upon and after its passage in the manner provided by law.

AYES: Cannon, Allen, Buske, Judd, Banger, D'Astice, Larsen

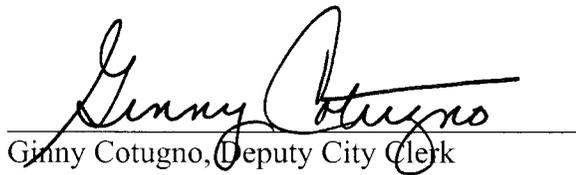
NAYS: 0

ABSENT: 0

PASSED and APPROVED this 11<sup>th</sup> day of September 2012.

  
\_\_\_\_\_  
Tom Rooney, Mayor

ATTEST:

  
\_\_\_\_\_  
Ginny Cotugno, Deputy City Clerk

**EXHIBIT "A"**  
**REDEVELOPMENT AGREEMENT**

**CITY OF ROLLING MEADOWS  
TAX INCREMENT FINANCING  
REDEVELOPMENT AGREEMENT  
(CLARK STREET PROJECT)**

THIS REDEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into this 11<sup>th</sup> day of September 2012, by and between the CITY OF ROLLING MEADOWS an Illinois municipal corporation (the “City”), and CLARK STREET DEVELOPMENT, LLC (the “Developer”) (the City and Developer are hereinafter sometimes collectively referred to as the “Parties,” and individually as a “Party”),

**W I T N E S S E T H:**

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act, as amended [65 ILCS 5/11-74.4-1 et seq. (Illinois State Bar Ed. 2010)] (the “Act”), the City has undertaken a program to redevelop certain property within the City and generally located at the southeast corner of Kirchoff Road and Meadow Drive and legally described in Exhibit A and depicted in Exhibit A-1 attached hereto and made apart hereof (the “Redevelopment Project Area”); and

WHEREAS, on May 10, 1988, the City Council (the ACorporate Authorities@) of the City, after giving all necessary notices and conducting all necessary meetings and public hearings required by the Act, adopted the following Ordinances (collectively the “TIF Ordinances”):

Ordinance No. 88-29: An Ordinance Adopting a Tax Increment Redevelopment Plan and a Redevelopment Project;

Ordinance No. 88-30: An Ordinance Designating a Tax Increment Redevelopment Project; and

Ordinance No. 88-31: An Ordinance Adopting Tax Increment Financing; and

WHEREAS, the Developer owns or shall acquire certain real property located within the Redevelopment Project Area, which is legally described in Exhibit B and depicted in Exhibit B-1, attached hereto and made a part hereof (the "Property"); and

WHEREAS, the Developer submitted a proposal to the City to redevelop the existing commercial improvements located on Property (the "Project"); and

WHEREAS, the Project shall be developed in conformance with the site plan prepared by \_\_\_\_\_ as said site plan may be amended from time to time with agreement by the City, which is attached hereto and made a part hereof as Exhibit C (the "Site Plan"); and

WHEREAS, the approximate cost of developing the Project is Four Million Five Hundred Thousand Dollars (\$4,500,000.00) of which not less than Six Hundred Thousand Dollars (\$600,000) will be spent before December 31, 2012; and

WHEREAS, to facilitate the development of the Project and subject to and in accordance with the terms of this Agreement and the Act, the City has agreed to reimburse the Developer for certain Redevelopment Project Costs (as hereinafter defined) that the Developer incurs, or has incurred, in connection with the development of the Project; and

WHEREAS, except for variances granted by the City, if any, the Project shall be developed and constructed in accordance with all City codes, ordinances and regulations, as applicable to the plans and specifications to be approved by the City from time to time and all other governmental authorities having jurisdiction over the Project; and

WHEREAS, the Developer represents and warrants to the City, and the City finds that, but for the assistance to be provided by the City to the Developer pursuant to the Act and this Agreement, the Project would not be economically viable or eligible for the private financing necessary for its development and, concomitantly, the Developer would not develop the Project; and

WHEREAS, this Agreement has been submitted to the Corporate Authorities of the City for consideration and review, and the Corporate Authorities and the Developer have taken all actions required to be taken prior to approval and execution of this Agreement in order to make the same binding upon the City and Developer according to the terms hereof; and

WHEREAS, the Corporate Authorities of the City, after due and careful consideration, have concluded that the development of the Project as provided herein will further the growth of the City, facilitate the redevelopment of the Redevelopment Project Area, improve the environment of the City, increase the assessed valuation of the real estate situated within the City, foster increased economic activity within the City, increase employment opportunities within the City, upgrade public infrastructure within a portion of the Redevelopment Project Area, and is otherwise in the best interests of the City by furthering the health, safety, morals and welfare of its residents and taxpayers.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer do hereby agree as follows:

**ARTICLE I.  
RECITALS PART OF THE AGREEMENT**

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article I.

**ARTICLE II.  
OBLIGATION OF THE PARTIES**

2.1. **Developer Obligations and Agreements.** In consideration of the substantial commitment of the City to the redevelopment of the Redevelopment Project Area pursuant to the Redevelopment Plan and its commitments contained in this Agreement, the Developer shall fulfill, or has fulfilled as a condition to the City's obligations hereunder, the following obligations:

- A. The Developer has acquired or shall acquire good and merchantable title to the Property.
- B. The Developer shall develop the Project substantially in accordance with the Site Plan as may be amended from time to time and the Project shall be completed and a temporary or permanent certificate of occupancy ("Certificate of Occupancy") shall be issued by or before December 31, 2015, subject to any Force Majeure Delays (as hereinafter defined).
- C. The Developer has advanced, shall hereafter advance, or shall cause other parties to advance the funds necessary to develop the Project and the Developer shall contribute equity to the Project in an amount not less than ten percent (10%) of the project budget for the Project and no less than Six Hundred Thousand Dollars (\$600,000) of development costs shall be spent before December 31, 2012.

- D. The Developer has secured, or shall hereafter secure or cause to be secured, all required permits entitlements, authorizations and approvals necessary or required to develop the Project.
- E. Until a Certificate of Occupancy has been issued for the Project, the Developer shall require its general contractor, or if there is none, then at its own expense, to obtain and maintain comprehensive general liability and shall cause the City to be named as an additional insured, with all the rights of a primary insured on such policy, and workmen=s compensation and automobile/vehicle liability insurance for the Project, and shall cause the City to be named as an additional insured where it has an insurable interest, with all the rights of a primary insured, on such policies, except that on the worker’s compensation insurance, the policy and certificate of insurance shall include a waiver of subrogation in favor of the City. Said insurance policies shall be issued in an amount not less than Five Million Dollars (\$5,000,000.00) combined single limit for bodily injury, personal injury or death and property damage with respect to any single occurrence, or in the case of worker’s compensation insurance, as required by statute. Each of said policies shall provide for not less than thirty (30) days prior written notice to the City and Developer before such policies may be materially changed, modified or cancelled. Prior to the commencement of any work on the Project, the Developer shall provide the City with appropriate certificates of insurance and copies of said policies issued. The Developer shall keep in force at all times until the Project is completed, builder’s risk insurance against the risk of physical loss, including collapse, covering the total

value of the building(s) and contents including the work performed and equipment, supplies and materials furnished for the Project. Should the City receive notice that premiums needed to maintain in force any of the required insurance policies have not been paid, the City shall notify the Developer of the receipt of said notice. If the Developer fails to promptly pay any such required premium, the City may, but is not obligated or required to, pay the premiums due during any cure period afforded in such notice. If the City pays any premium due on any of the required insurance policies, the amount of the premiums paid by the City shall constitute a debt owed by the Developer to the City and the City shall be entitled to file and enforce a lien against the Property. Failure of the Developer to pay any premiums on any required insurance policy shall constitute an event of default and shall remain so irrespective of whether the City shall elect to pay such premiums on behalf of the Developer. The Developer may cure said default if it repays the City for the amount of the premiums paid by the City within sixty (60) days of notice of the payment by the City. If not repaid, the City shall have the right to terminate this Agreement in accordance with the terms hereof.

- F. In the event a claim is made against the City, its officers, officials, agents and employees or any of them, or if the City, its officers, officials, agents and employees or any of them (the “Indemnified Party” or “Indemnified Parties”), is made a party-defendant in any proceeding arising out of or in connection with the Developer's duties, obligations and/or responsibilities under the terms of this Agreement or the development, construction and/or operation of the Project including, but not limited to, any claim or cause of action concerning matters

pertaining to hazardous materials and other environmental matters in existence as of the date of this Agreement, to the extent permitted by law, the Developer shall indemnify, defend and hold harmless the Indemnified Parties, or any Indemnified Party, from all claims, liabilities, losses, taxes, judgments, costs, fines, fees, including expenses and reasonable attorneys fees, in connection therewith. Any such Indemnified Party may obtain separate counsel to participate in the defense thereof at his or her own expense. The Indemnified Parties shall cooperate in the defense of such proceedings and be available for any litigation related appearances which may be required. Further, the Developer shall be entitled to settle any and all claims for money, in such amounts and upon such terms as to payment as it may deem appropriate, without the prior approval or consent of the Indemnified Parties, or any of them, as the case may be, provided that neither the City nor any of the other Indemnified Parties shall be required to contribute to such settlement, and further provided the special tax allocation fund for the Meadow Place Tax Increment Financing District (the "Special Tax Allocation Fund") shall not be used in connection with any such settlement without the consent of the City.

- G. The Developer agrees to acquire and pay for each building permit, occupancy permit, utility connection permit or other City required permit which is required for each structure to be constructed or located in the Project. Said permits shall be acquired in accordance with the terms of the Rolling Meadow Municipal Code, as amended from time to time.
- H. The Developer represents and warrants that it shall not cause or permit any mechanic's liens or other lien claims to remain against the Special Tax Allocation

Fund for labor or materials furnished in connection with demolition, site preparation, development, construction, additions, modifications, improvements or any other matter which might give rise to lien rights against the Special Tax Allocation Fund. Notwithstanding the foregoing, the Developer shall be entitled to defend, prosecute or settle, as the case may be in a timely and commercially reasonable manner, any claims for mechanic's liens, other liens, claims or causes of action relating to allegedly defective or incomplete work, provided that the City shall not be required to contribute to such settlement. The City shall have the right of offset to utilize any monies otherwise owed to or entitled by Developer (not otherwise earned but unpaid) under this Agreement to settle or satisfy any such claims and the Developer hereby agrees and covenants to indemnify, defend and hold harmless the Indemnified Parties, (including the payment of reasonable attorneys' fees and costs and expenses) from and against any such liens, claims or causes of action as may be asserted against the Special Tax Allocation Fund.

- I. Upon reasonable notice, the City Manager, or his designee, shall have access to all portions of the Project during development thereof. Additionally, during the term of this Agreement and upon reasonable notice, the City Manager, or his designee, shall have access to all of the Developer's books and records relating to the development of the Project, the private financing of the Project, the acquisition of the Property and the Redevelopment Project Costs with respect thereto, including but not limited to the Developer's closing documents, financing commitments, loan documents and statements, general contractor's and contractor's sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices. These

records shall be available for inspection, audit and examination upon ten (10) business days notice. The Developer shall incorporate this right to inspect, audit, examine and copy all books and records into all contracts entered into by the Developer with respect to the Redevelopment Project Costs and/or the Project. The City's access to all commercial and financial information is being made available to the City pursuant to the Illinois Freedom of Information Act 5 ILCS 140/7(g) as all financial information to be furnished pursuant to this Agreement is being furnished under a claim that such information is proprietary, privileged and confidential and that disclosure of such information would cause competitive harm to the Developer.

- J. To the extent required by law, the Developer agrees to pay, and to contractually obligate and cause any and all general contractors and subcontractors to pay, the prevailing rate of wages as established by the City pursuant to the Illinois Prevailing Wage Act [820 ILCS 130/0.01 *et seq.* (Illinois State Bar Ed. 2010)] when developing the Project.
- K. The Developer shall cooperate with the City and provide the City with the information in Developer=s possession or control required and necessary under the Act to enable the City to comply with the Act and its obligations under this Agreement.
- L. The Developer agrees to comply with the fair employment/affirmative action principles contemplated by the Act and the Redevelopment Plan, as such term is defined in the TIF Ordinances, and with all applicable federal, state and municipal regulations in connection with the development of the Project.

- M. The Developer represents, warrants and covenants that no member, official, officer, employee of the City, or any commission or committee exercising authority over the Project or the Property, or any consultant hired by the City or the Developer with respect thereto, owns or controls or has owned or controlled any interest, direct or indirect, in the Project or any portion of the Property, or will own or control any interest in the Project, and that this Agreement will not violate Section 5/11-74.4-4(n) of the Act.
- N. The Developer has furnished to the City a project budget dated \_\_\_\_\_ (the "Project Budget") showing total development costs for the Project in an amount of approximately Four Million Five Hundred Thousand Dollars (\$4,500,000.00). The Project Budget includes a first phase of costs in an amount of not less than Six Hundred Thousand Dollars (\$600,000) that shall be spent by the Developer before December 31, 2012 ("Phase One Costs") and the remaining development costs completed thereafter ("Phase II Costs"). The Developer hereby certifies to the City that the Project Budget is true, correct and complete, to the best of the Developer's knowledge, in all material respects. The Developer shall promptly deliver to the City certified copies of any Material Change Orders (as hereinafter defined) with respect to the Project Budget for approval. Material Change Orders shall be defined as any changes to the Project Budget that, in the aggregate, result in a reduction of the total cost of the Project by 5% or more. Any Material Change Orders must be submitted by the Developer to the City concurrently with the Certificates of Expenditures as described in Section 2.2A hereof; the Developer must obtain the City's prior written approval before approving any Material Change Orders.

- O. In the event the Certificate of Occupancy is not issued by December 31, 2015, the Developer shall reimburse the City for all sums remitted to the Developer pursuant to the terms of this Agreement.

2.2 **City Obligations and Agreements.** In consideration of the substantial commitment of the Developer to the development of the Project, the City agrees and covenants with the Developer as follows:

- A. The City shall pay the Developer up to SIX HUNDRED SEVEN THOUSAND SEVEN HUNDRED TWELVE DOLLARS (\$607,712.00) (“City Contribution”) to partially subsidize those Developer costs of the Project which constitute redevelopment project costs, as such term is defined in the Act (“Redevelopment Project Costs”) as itemized on Exhibit D, attached hereto and made a part hereof and as evidenced by a certificate in the form attached hereto and made a part hereof as Exhibit E prepared by the Developer and reasonably approved by the City certifying the amount of Redevelopment Project Costs actually incurred by the Developer as of the date of such certificate (“Certificate of Expenditures”). The City Contribution shall be paid to the Developer upon submission of the Certificate of Expenditures by the Developer to the City and City approval of said Certificate of Expenditures. The City shall have ten (10) business days to review and approve or disapprove the Certificate of Expenditures for the Project. In the event the City disapproves the Certificate of Expenditures, the City shall provide the Developer with written notice of such disapproval which will include the reason(s) for disapproval. Upon approval of the Certificate of Expenditures, or lack of disapproval with ten (10) business days as set out in this Section, the City shall pay to the Developer the City Contribution

amounts within thirty (30) days.

- B. In the event a claim is made against the Developer, its directors, members, shareholders, officers, officials, agents and employees or any of them, or if the Developer, its directors, members, shareholders, officers, officials, agents and employees or any of them (the “Developer Indemnified Party” or “Developer Indemnified Parties”), is made a party-defendant in any proceeding arising out of or in connection with the City’s duties, obligations and/or responsibilities under the terms of this Agreement [but specifically excluding any claim or cause of action concerning the closing on the Property and subsequent construction and operation of the Project], to the extent permitted by law, the City shall indemnify, defend and hold harmless the Developer Indemnified Parties, or any Developer Indemnified Party, from all claims, liabilities, losses, taxes, judgments, costs, fines, fees, including expenses and reasonable attorneys fees, in connection therewith. Any such Developer Indemnified Party may obtain separate counsel to participate in the defense thereof at his or her own expense. The Developer Indemnified Parties shall cooperate in the defense of such proceedings and be available for any litigation related appearances which may be required. Further, the City shall be entitled to settle any and all claims for money, in such amounts and upon such terms as to payment as it may deem appropriate, without the prior approval or consent of the Developer Indemnified Parties, or any of them, as the case may be, provided that neither the Developer nor any of the other Developer Indemnified Parties shall be required to contribute to such settlement.
- C. Developer hereby covenants and agrees that no recourse under or upon any

obligation or agreement contained herein or for any claim based thereon shall be had against the City, its officers, agents, attorneys, representatives or employees in any amount in excess of any specific sum agreed by the City to be paid at law or in equity shall attach to or shall be incurred by the City, its officers, agents, attorneys, representatives or employees in any amount in excess of any specific sum agreed by the City to be paid hereunder, subject to the terms and conditions contained herein, and any such excess rights or claims against the City, its officers, agents, attorneys, representatives, or employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the City.

### **ARTICLE III. AUTHORITY**

#### **3.1 Powers.**

- A. The City hereby represents and warrants to the Developer that the City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and the foregoing has been, or will be, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, and is enforceable in accordance with its terms and provisions and the execution of this Agreement does not require the consent of any other governmental authority.
- B. The Developer hereby represents and warrants to the City that the Developer has full lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and the foregoing has been or will be duly and validly authorized and approved by all necessary

Developer actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Developer, is enforceable in accordance with its terms and provisions and does not require the consent of any other party.

3.2 **Authorized Parties.** Except in cases where the approval or authorization of the City's Corporate Authorities is required by law, whenever, under the provisions of this Agreement, or other related documents and instruments or any duly authorized supplemental agreements, any request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree to, or to take some action at, the request of the other, such request, demand, approval, notice or consent, or agreement shall be given for the City, unless otherwise provided herein, by the City Manager or his designee and for the Developer by any manager of the Developer so authorized (and, in any event, the officers executing this Agreement are so authorized). Any Party shall be authorized to act on any such request, demand, approval, notice or consent, or agreement or other action and neither Party hereto shall have any complaint against the other as a result of any such action taken.

#### **ARTICLE IV. GENERAL PROVISIONS**

4.1 **Time of Essence.** Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

4.2 **Mutual Assistance.** The Parties agree to take such actions, including the execution and delivery of such documents, instruments and certifications (and, in the case of the City, the adoption of such ordinances and resolutions), as may be necessary or appropriate from time to time to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out such terms, provisions and intent.

Provided the Developer is in compliance with this Agreement, the City agrees that it shall not revoke or amend the Redevelopment Plan and Project, the TIF Ordinances or this Agreement if such revocation or amendment would prevent the development of the Project in accordance with this Agreement. The Parties shall cooperate fully with each other in securing from any and all appropriate governmental authorities (whether federal, state, county or local) any and all necessary or required permits, entitlements, authorizations and approvals to develop the Project.

4.3 **Force Majeure.** For the purposes of this Agreement, neither the Developer nor the City shall be considered to be in breach of any of its obligations hereunder if said Party is unable to acquire any property which, by the terms of this Agreement, said Party was required to acquire. "Force Majeure Delays" means delays in the construction caused by any one or combination of the following, which are beyond the reasonable control of and/or without the fault of the Party relying thereon, destruction by fire or other casualty, or performance is prevented by strike or other labor troubles, other than those caused by Developer, governmental restrictions, takings, and limitations arising subsequent to the date hereof, war or other national emergency; fire, flood or other casualties, shortage of material not attributable to any action or conduct of Developer, extreme adverse weather conditions, such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, tornadoes or cyclones, any delay in the performance by Developer resulting from the non-performance of the City's responsibilities, and any other extraordinary events or conditions beyond the reasonable control of the Developer or the City which, in fact, unreasonably interferes with the ability of the Developer or the City to discharge its respective obligations hereunder. Force Majeure Delay shall not include: (1) economic hardship or impracticability of performance (except as may be provided herein), (2) commercial or economic frustration of purpose (except as may be

provided herein), or (3) a failure of performance by a contractor (except as caused by events which are Force Majeure Delay as to the contractor).

In each case where a Party hereto believes its performance of any specific obligation, duty or covenant is delayed or impaired by reason of an event of Force Majeure Delay, the Party claiming the benefit of this Section 4.3 shall notify the other Party of the nature of the event claimed to constitute Force Majeure Delay and, specifically, the obligation, duty or covenant which it believes is delayed or impaired by reason of the designated event. Notification shall be provided in accordance with Section 4.11 hereof. Performance of the obligation, duty or covenant impaired by reason of the designated event shall be tolled for that period of time reasonably necessary to remove or otherwise cure the impediment to performance and the Party relying on the event of Force Majeure Delay shall be obligated to pursue such remedy or cure with reasonable diligence given the nature of the impairment, to the extent the same may be reasonably cured. In no case shall an event of Force Majeure Delay toll the performance of any obligation, duty or covenant not directly implicated in the claimed event of Force Majeure Delay. Further, nothing herein shall be deemed to preclude the right of the Party entitled, by the terms of this Agreement, to receive the performance of any obligation, duty or covenant to challenge the validity of a claimed event of Force Majeure Delay.

4.4 **Breach.** A Party shall be deemed to be in breach this Agreement if it fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement after the expiration of the any cure period applicable thereto.

4.5 **Cure of Breach.** Except as otherwise provided herein and in case of defaults in the failure to make monetary payments due hereunder, prior to the time that a failure of any Party to this

Agreement to perform its obligations hereunder or the failure to perform any other action or omission to perform any such obligation or action described in Section 4.4 shall be deemed to be a breach hereof, the Party claiming such failure shall provide written notification to the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within sixty (60) days of the receipt of such notice. The prosecution of the conduct necessary to remedy the alleged breach must be diligently pursued until the cure is perfected. The obligation to cure defaults, as herein required, shall be tolled during any applicable time period during which a delay in performance is permitted as an event of Force Majeure Delay under the provisions of Section 4.3 hereof but the tolling of the performance of any obligation shall be limited to the obligation or action as to which the Force Majeure Delay provisions apply.

In the event that either Party shall breach any provision of this Agreement and fail to cure said breach as provided in the preceding paragraph or as elsewhere provided in this Agreement, the non-defaulting Party may enforce the terms hereof by filing any action or proceeding available at law or in equity, in any court of competent jurisdiction, including an action for specific performance of the covenants and agreements herein contained. In addition, a non-defaulting Party may recover actual, but not consequential damages, directly and proximately relating to the defaulting Party's failure to perform the terms hereof. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section 4.5 or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and nonexclusive of any other remedy either set forth herein or available to any Party at law or in equity.

4.6 **Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties evidenced by a written amendment, by the adoption of an ordinance or resolution of the City approving said written amendment, as provided by law, and by the execution of said written amendment by the Parties or their successors in interest. In the event of the failure of either Party to make monetary payments hereunder, the cure period shall be ten (10) days after notice as provided herein and any late payment(s) shall bear interest at the rate of five percent (5%) per annum from the day that said payment(s) is/are due.

4.7 **Entire Agreement.** This Agreement sets forth all agreements, understandings and covenants between and among the Parties relative to the matters herein contained. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and shall be deemed a full integration of the entire agreement of the Parties.

4.8 **Severability.** If any provisions, covenants, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

4.9 **Consent or Approval.** Except as otherwise provided in this Agreement, whenever consent or approval written or otherwise of any Party to this Agreement is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

4.10 **Illinois Law.** This Agreement shall be construed in accordance with the laws of the State of Illinois.

4.11 **Notice.** Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a

receipt requested therefore; or (ii) sent by telecopy facsimile; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their respective addresses set forth below, and the same shall be effective (a) upon receipt or refusal if delivered personally or by telecopy facsimile; (b) one (1) business day after depositing with such an overnight courier service, or (c) two (2) business days after deposit in the mail, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance herewith. All notices by telecopy facsimile shall be subsequently confirmed by U.S. certified or registered mail.

If to the City:

City of Rolling Meadows  
Attn: City Manager  
3600 Kirchoff Road  
Rolling Meadows, Illinois 60008  
Fax No. (847) 394-8710

with a copy to:

James E. Macholl, Esq.  
Storino Ramello & Durkin  
9501 West Devon Avenue  
8<sup>th</sup> Floor  
Rosemont, Illinois 60018  
Fax No. (847) 318-9509

If to the Developer:

Fritz L. Duda, Jr.  
Clark Street Development, LLC  
980 N. Michigan Ave.  
Suite 1280  
Chicago, Illinois 60611  
Fax No. (312) 377-9101

with a copy to:

Kevin J. Wolfberg  
Schain, Burney, Banks & Kenny, Ltd.  
70 West Madison St.  
Suite 4500

Chicago, Illinois 60602  
Fax No. (312) 345-5701

4.12 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

4.13 **Term of Agreement; Extension of Term of TIF.** The term ("Term") of this Agreement shall commence on the date first above written and continue for a period of twenty (20) years. In the event the City pursues and receives an extension of the term of the Redevelopment Project Area and associated tax increment allocation financing, the Developer shall have no additional rights under the terms and provisions of this Agreement and this Agreement shall terminate upon expiration of the Term.

4.14 **Good Faith and Fair Dealing.** City and Developer acknowledge their duty to exercise their rights and remedies hereunder and to perform their covenants, agreements and obligations hereunder, reasonably and in good faith.

4.15 **Drafting.** Each Party and its counsel have participated in the drafting of this Agreement therefore none of the language contained in this Agreement shall be presumptively construed in favor of or against either Party.

4.16 **Recording.** The Parties agree to record a memorandum of this Agreement with the Cook County Recorder of Deeds.

4.17 **Covenants Run with the Land/Successors and Assigns.** It is intended that the covenants, conditions, agreements, promises, obligations and duties of each Party as set forth in this Agreement shall be construed as covenants and that, to the fullest extent legally possible, all such

covenants shall run with and be enforceable against both the covenanted and the Project. Such covenants shall terminate upon termination or expiration of this Agreement.

This Agreement shall inure to the benefit of, and shall be binding upon each Developer and each Developer's respective successors, grantees and assigns, and upon successor corporate authorities of the City and successor municipalities.

**4.18 Default Shall Not Permit Termination of Agreement.** No default under this Agreement shall entitle any Party to terminate, cancel or otherwise rescind this Agreement; provided, however, this limitation shall not affect any other rights or remedies the Parties may have by reason of any default under this Agreement.

**4.19 Right to Enjoin.** In the event of any violation or threatened violation of any of the provisions of this Agreement by a Party or Occupant, any other Party shall have the right to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation, and/or for a decree of specific performance.

**4.20 Partial Funding.** Except as otherwise set for in this Agreement, the Developer acknowledges and agrees that the economic assistance to be received by the Developer as set forth in this Agreement is intended to be and shall be a source of partial funding for the Project and agrees that any additional funding above and beyond said economic assistance shall be solely the responsibility of the Developer. The Developer acknowledges and agrees that the amount of economic assistance set forth in this Agreement represents the maximum amount of economic assistance to be received by the Developer under the terms of this Agreement, provided the Developer complies with the terms and provisions set forth in this Agreement. The Developer further acknowledges and agrees that the City is not a joint developer or joint venturer with the Developer and the City is in no way responsible for completion of any portion of the Project. This

Section does not limit the Developer's ability to request additional economic assistance relating to the Project at some later date but any additional requests for assistance will be subject to the City's sole discretion.

4.21 **Attorney Fees.** Should it become necessary to bring legal action or proceedings to enforce this Agreement, or any portion thereof, or to declare the effect of the provisions of this Agreement, the prevailing party shall be entitled to recover or offset against sums due, its costs, including reasonable attorney's fees, in addition to whatever other relief the prevailing party may be entitled.

4.22 **No Joint Venture, Agency or Partnership Created.** Neither anything in this Agreement nor any acts of the Parties to this Agreement shall be construed by the Parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such Parties.

4.23 **Waiver.** Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

4.24 **No Personal Liability of Officials of Village or Developer.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Mayor, City Council Member, City Manager, any official, officer, partner, member, director, agent, employee or attorney of the City or Developer, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the City or Developer shall be liable under this Agreement or be subject to any personal liability or accountability by person of or

in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

4.45 **Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the City's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

4.26 **Estoppel Certificates.** Each of the parties hereto agree to provide the other, upon not less than ten (10) business days prior request, a certificate ("*Estoppel Certificate*") certifying that this Agreement is in full force and effect (unless such is not the case, in which case such parties shall specify the basis for such claim), that the requesting party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting party.

4.27 **Municipal Limitations.** All municipal commitments are limited to the extent required by law.

4.28 **Effectiveness.** The Effective Date for this Agreement shall be the day on which this Agreement is fully executed pursuant to a duly enacted City ordinance authorizing the execution and adoption of this Agreement.

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**CITY OF ROLLING MEADOWS,**  
an Illinois Municipal Corporation

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

ATTEST:

\_\_\_\_\_  
City Clerk

**CLARK STREET DEVELOPMENT, LLC**

By: \_\_\_\_\_  
Managing Member

**EXHIBIT A**

**Legal Description of Redevelopment Project Area**

**EXHIBIT A-1**

**Map of Redevelopment Project Area**

**EXHIBIT B**

**Legal Description of Property**

**EXHIBIT B-1**

**Map of Property**

**EXHIBIT C**

**Site Plan**

**EXHIBIT D**

**Redevelopment Project Costs**

**EXHIBIT E**

**Form of a Tax Increment  
Financing Requisition Certificate**

TO: CITY OF ROLLING MEADOWS, ILLINOIS

FROM: CLARK STREET DEVELOPMENT, LLC

SUBJECT: CITY OF ROLLING MEADOWS TAX INCREMENT FINANCING  
REDEVELOPMENT AGREEMENT (PROJECT)

This represents Requisition Certificate No. \_\_\_\_\_ in the total amount of \$\_\_\_\_\_ for payment of costs of the Project.

The undersigned does certify that:

1. All of the expenditures for which moneys are requested hereby represent proper costs of the Project, have not been included in a previous Requisition Certificate and have been properly recorded on the City's books.
2. The moneys requested hereby are not greater than those necessary to meet obligations due and payable or to reimburse Clark Street Development, LLC for funds actually advanced for costs of the Project. The moneys requested do not include retention or other moneys not yet due or earned under construction contracts.
3. After payment of moneys hereby requested, there sufficient funds available to Clark Street Development, LLC to complete the Project substantially in accordance with the plans and specifications therefor.
4. All of the payment herein requested from the Special Tax Allocation Fund have been used or are being used by the Developer for eligible tax increment financing costs of the Project first incurred on or after \_\_\_\_\_.
5. Attached are executed Contractor's Affidavits and current lien waivers for the amount requested herein.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CLARK STREET DEVELOPMENT, LLC

By: \_\_\_\_\_  
Managing Member

Approved:

City of \_\_\_\_\_

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

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

Acknowledged:

\_\_\_\_\_,  
as City Financial Advisor

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

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

SCHEDULE TO REQUISITION CERTIFICATE NO. \_\_\_\_\_

PAYEE

AMOUNT

PURPOSE