



MEMORANDUM

COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT

TO: Thomas Thomas

SUBJECT: LRC Agreement

DATE: Sept. 4, 2013

In an effort to promote development of the Columbia Park area, LRC Developers along with City Staff are recommending approval of the attached redevelopment agreement. This agreement gives LRC ability to earn some TIF payments for qualified expenses up to \$200,000 but only when the additional increment above any bond payments and only from increment generated from LRC property. This is intended to be the first step of a larger redevelopment effort between LRC Developers, Inc and the City of Rock Island.

Recommendation:

Staff recommends Council authorize the redevelopment agreement and payment per the agreement, allow for minor attorney modifications and authorize City Manager to execute documents.

Submitted by: Jeffery Eder, Community & Economic Development Director

Approved: Thomas Thomas, City Manager

REDEVELOPMENT AGREEMENT

THIS AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 2013, by and between THE CITY OF ROCK ISLAND, an Illinois municipal corporation (“City”), and LRC DEVELOPERS, INC., an Illinois corporation (“Developer”).

WHEREAS, City and Developer have a common interest in the redevelopment of an area located within the corporate boundaries of City, which area is known as Columbia Park; and

WHEREAS, in furtherance of the redevelopment of Columbia Park, City, on _____, 20____, created a tax increment allocation financing district commonly known as the Columbia Park TIF District pursuant to its powers granted under 65 ILCS 5/11-74.4-1 *et seq.* (“the TIF Act”); and

WHEREAS, as part of the creation of the Columbia Park TIF District, the City adopted its Tax Increment Financing Redevelopment Plan & Project for the Columbia Park Redevelopment Project Area (“the Columbia Park Plan”), which plan constitutes a “redevelopment plan” under the TIF Act and serves as the conceptual framework for redevelopment of property owned by Developer and others in Columbia Park; and

WHEREAS, Developer owns real property comprised of approximately ____ acres situated in the Columbia Park TIF District, which real property is legally described in Exhibit A attached hereto and incorporated herein (“the Subject Property”); and

WHEREAS, despite the best efforts of Developer, Developer has been unable to redevelop the Subject Property due to the extraordinary costs of redeveloping the Subject Property and the impact of the economic recession which has broadly impeded economic development activities across the United States by, among other reasons, reducing property values and limiting access to capital; and

WHEREAS, Developer has requested the assistance of City in support of the redevelopment of the Subject Property, which redevelopment shall be for uses in general conformance with the Columbia Park Plan, which plan shall be amended by the City as required in Section 3(a) of this Agreement (such uses, to be set forth in the amended Columbia Park Plan, are described on Exhibit B attached hereto and incorporated herein and are hereinafter referred to as “the Approved Uses”); and

WHEREAS, it is anticipated that redevelopment of the Subject Property for the Approved Uses will result in the creation and retention of jobs within City and the expansion of City’s tax base; and

WHEREAS, City desires to exercise its powers under the TIF Act to provide incentives to Developer to redevelop the Subject Property for the Approved Uses by using incremental increases in real estate taxes derived from the Subject Property, which incentives include the payment or reimbursement to Developer of all Redevelopment Project Costs (as such term is hereafter defined) incurred in the redevelopment of the Subject Property.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Section 1.

The recitals contained in the preambles to this Agreement are true and correct and are hereby incorporated into this Agreement as though they were fully set forth in this Section 1.

Section 2.

Unless earlier terminated pursuant to Section 10 hereof, the term of this Agreement shall commence on the date of its execution and terminate on or before _____ which is the ending date of the TIF. Only eligible costs expended after the date of execution and before the termination are eligible for reimbursement.

Section 3.

(a) Promptly following the execution of this Agreement, City shall take all action required by law to amend the Columbia Park Plan and, if necessary, the City's comprehensive plan, so as to permit the Approved Uses on the Subject Property and to allow Developer's redevelopment of the Subject Property as set forth in this Agreement. The amendment of the Columbia Park Plan shall be at the sole cost and expense of Developer and shall in all respects be completed within six (6) months of the date of this Agreement.

(b) Developer's project consists of the redevelopment of the Subject Property for the Approved Uses, including but not limited to the demolition or rehabilitation of existing buildings, the construction of new buildings, the installation of public infrastructure and storm water management facilities, and such other development and construction activities that Developer deems necessary to redevelop the Subject Property for the Approved Uses ("the Project").

(c) Developer shall develop and construct the Project in a good and workmanlike manner in conformance with all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, zoning and building codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of City (collectively referred to as "the Legal Requirements"). The parties acknowledge and agree that Developer shall be under no obligation to commence or complete the Project in accordance with any particular timing requirement; provided, that Developer shall use reasonable efforts to redevelop the Subject Property, which efforts may include the marketing of properties within the Subject Property to third parties who will redevelop or utilize the Subject Property for Approved Uses. Developer shall provide a written update the City no less than semi-annually as to its efforts to redevelop the Subject Property and to provide a presentation to the City Council as requested. Developer is to provide a written marketing plan within 3 months of the execution of this agreement. Failure to do so and given 30 days to remedy the situation the City at its option may void this agreement.

(d) City and Developer shall use reasonable efforts to cooperate with each other in connection with all permit and other approvals required for the Project. City agrees to

expeditiously process, consider and act on all applications for City approvals as may be necessary, in accordance with all Legal Requirements, provided such applications are consistent with the Project.

In addition, the parties acknowledge and agree that it may be necessary for the Subject Property to be re-subdivided in order for the Developer to redevelop the Subject Property for the Approved Uses. Following each request by Developer for re-subdivision of the Subject Property and submission of all required applications and plats, City shall promptly take all action required by law to approve such re-subdivision request provided such request is in furtherance of the Approved Uses.

The parties further acknowledge and agree that the zoning designation of the Subject Property under the City's zoning ordinance is currently "I-1 Light Industrial" and that said designation may require amendment in order for Developer to redevelop the Subject Property for the Approved Uses. Following each request by Developer for such an amendment, City shall promptly take all action required by law to amend the zoning designation of the Subject Property as requested provided such request is in furtherance of the Approved Uses.

City agrees that the re-subdivision and zoning of the Subject Property may be done on a parcel by parcel basis as may be requested by Developer. Further, Developer shall use all reasonable efforts to re-subdivide the Subject Property as may be necessary from time to time such that each individual project to be developed will be located on a separate parcel.

(e) The Project shall be developed and constructed at the cost and expense of Developer, subject to reimbursement pursuant to Section 4 hereof.

Section 4.

(a) As long as no event described in Section 10 hereof shall have occurred and be continuing, City shall pay or reimburse Developer for the Redevelopment Project Costs incurred by Developer in connection with the Project (including but not limited to costs incurred by others in furtherance of the Subject Property or assignees of Developer) which have been approved by City pursuant to Section 4(d). For purposes of this Agreement, "Redevelopment Project Costs" shall mean and include all costs defined as "redevelopment project costs" in Section 11-74.4-3(q) of the TIF Act.

(b) In connection with the establishment and ongoing administration of the Columbia Park TIF District, City has established a special tax allocation fund pursuant to the requirements of the TIF Act ("the STAF") into which City shall deposit all Incremental Taxes (defined below) generated in respect of the Subject Property each year during the term of this Agreement promptly upon receipt of the same from Rock Island County. "Incremental Taxes" shall mean the amount of ad valorem taxes, if any, paid in respect of the Subject Property and its improvements which is attributable to the increase in the equalized assessed value of the Subject Property and its improvements over the initial equalized assessed value of the Subject Property, calculated as set forth in the TIF Act.

(c) City shall further establish, upon execution of this Agreement, a segregated special sub-account of the STAF designated as "the LRC Sub-Account" into which City shall deposit all

Net Increment generated in respect of the Subject Property each year during the term of this Agreement promptly upon receipt of Incremental Taxes from Rock Island County. "Net Increment" shall mean Incremental Taxes in respect of the Subject Property each year less the following: (i) amounts retained by City to provide for administration of the Columbia Park TIF District pursuant to paragraph 4 of the agreement dated December 23, 2008, by and between City and Columbia Park, LLC, which amounts shall be capped at \$5,000 per year, (ii) amounts necessary for the annual debt service payment of the City in respect of _____ (the "Existing Bonds"), which bonds were issued by the City pursuant to the agreement dated December 23, 2008, by and between City and Columbia Park, LLC, and (iii) amounts retained by City constituting the City's Share as described on The Allocation of Incremental Taxes as Between City and Developer set forth on Exhibit C attached hereto and incorporated herein.

(d) Net Increment deposited from time to time in the LRC Sub-Account in respect of the Subject Property shall be used to pay or reimburse Developer for Redevelopment Project Costs as hereafter set forth and as further limited by the provisions of Exhibit C.. On December 1 of each year during the term of this Agreement (or, if later, the date which is thirty (30) days following the date which City receives the final installment of annual real estate taxes from Rock Island County (the "STAF Allocation Date")), Net Increment credited to the LRC Sub-Account during the period from the immediately preceding STAF Allocation Date (or the date of this Agreement in the case of the period from the date of this Agreement to the first STAF Allocation Date) to, but not including, the current STAF Allocation Date shall be used annually for the following purposes and in the following priority:

(i) To the extent there are monies available in the LRC Sub-Account, such monies shall be paid to Developer to reimburse it for Redevelopment Project Costs in accordance with Section 4(e); and

(ii) Following (i) above, to the extent there are any monies remaining in the LRC Sub-Account, such monies shall be transferred to the STAF and used in the discretion of City.

CITY'S OBLIGATION TO MAKE THE PAYMENTS DESCRIBED ABOVE IS A LIMITED OBLIGATION PAYABLE SOLELY FROM NET INCREMENT DEPOSITED IN THE LRC SUB-ACCOUNT FROM TIME TO TIME AND SHALL NOT BE A GENERAL OBLIGATION OF CITY OR SECURED BY THE FULL FAITH AND CREDIT OF CITY.

(e) To establish a right of reimbursement for a specific Redevelopment Project Cost under this Agreement, Developer shall submit to the City Manager or his designee a written statement in the form attached to this Agreement as Exhibit D (a "Request for Reimbursement") setting forth the amount of reimbursement and the specific Redevelopment Project Costs for which reimbursement is sought. Each Request for Reimbursement shall be accompanied by such bills, paid receipts, contracts, invoices, lien waivers or other evidence as City shall reasonably require to evidence the right of Developer to payment or reimbursement under this Agreement. All receipts shall contain the date of service, type of service, location of service, amount paid, name/address/telephone number of the service provider and other information as necessary to establish the identity of the provider, type of service and amount invoiced / paid. The City Manager or his designee shall have thirty (30) days after receipt of any Request for Reimbursement from Developer to approve or disapprove of any of the expenditures for which reimbursement is sought.

If said Request for Reimbursement is not approved, the City Manager or his designee shall provide to Developer a written explanation setting forth the reason or reasons for the denial. Provided, however, the only reasons for disapproval of any expenditure for which reimbursement is sought shall be that such expenditure was not incurred by Developer in accordance with the Legal Requirements or the provisions of this Agreement. Reimbursement of Redevelopment Project Costs shall be made annually on each STAF Allocation Date only to the extent money is available in the LRC Sub-Account of the STAF following City's payment of the items described in Section 4(d)(i). To the extent money in the LRC Sub-Account is insufficient to reimburse Developer for Redevelopment Project Costs, such Redevelopment Project Costs shall be reimbursed on the next succeeding STAF Allocation Date on which there are available monies in the LRC Sub-Account.

(f) The parties acknowledge that the determination of Redevelopment Project Costs and qualification for reimbursement under this Agreement are subject to the TIF Act, all amendments to the TIF Act after the date of this Agreement, and administrative rules and judicial interpretations rendered during the term of this Agreement. City has no obligation to Developer to attempt to modify said rules or decisions.

(g) City acknowledges that it is the intention of Developer that any payments to Developer made pursuant to this Agreement qualify as IRS Code Section 118 contributions to the capital of Developer.

(h) The maximum award to the Developer under this agreement is Two Hundred Thousand Dollars (\$200,000.00)

(i) The Developer has Ten (10) years from the date of the agreement to earn the maximum award amount.

Section 5. Intentionally Omitted.

Section 6.

City hereby acknowledges that the Subject Property is situated in the Rock Island Enterprise Zone as certified by the State of Illinois and therefore Developer shall be eligible to receive any generally available benefits that are made through the Enterprise Zone program so long the zone is in existence. The EZ Zone is set to expire in 2014 and is pending State of Illinois legislative action.

Section 7.

In addition to the other covenants and agreements of Developer set forth in this Agreement, Developer represents and warrants as follows as of the date of this Agreement:

(a) Developer is a corporation duly organized and existing under the laws of the State of Illinois and is authorized to enter into, and by proper corporate action has been duly authorized to execute, deliver and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform all of the terms of this Agreement. To Developer's knowledge, there are no actions, suits or similar proceedings pending or threatened before any court or governmental or administrative body or agency affecting Developer which would result in

any material adverse change to Developer's financial condition or which would materially and adversely affect the ability of Developer to undertake and complete the Project.

(b) Developer covenants that no officer, employee or agent of Developer, or any other person connected with Developer, has made, offered or given, either directly or indirectly, to the corporate authorities of City or any other person connected with City, except for payments for which adequate and fair consideration was received in return, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her official capacity with City.

Section 8.

Developer shall indemnify and hold harmless City, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorneys' fees) which may arise directly or indirectly from (i) the failure of Developer to timely pay any contractor, subcontractor, laborer or materialman or any claim or cause of action whatsoever brought by a third party arising out of the development or construction of the Project; (ii) the failure of Developer to comply with any Legal Requirements; (iii) any material default or breach of the terms of this Agreement by Developer; or (iv) any negligence or reckless or willful misconduct of Developer or any contractor, subcontractor or agent or employee thereof. Developer shall, at its own cost and expense, appear, defend and pay all charges of attorneys, costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against City, its agents, officers, officials or employees in any such action, Developer shall, at its own expense, satisfy and discharge the same. This Section 8 shall not apply, and Developer shall have no obligation whatsoever, with respect to any acts of negligence or reckless or willful misconduct on the part of City or any of its, officers, officials, agents, employees or contractors.

Section 9

Time is of the essence of this Agreement; provided, however, a party shall not be deemed in material breach of this Agreement with respect to any obligations of this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("Force Majeure"). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate the same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

Section 10.

In the event of a default under this Agreement by any party hereto (the “Defaulting Party”), which default is not cured within the cure period provided for below, then the other party (the “Non-defaulting Party”) shall have an action for damages, or in the event damages would not fairly compensate the Non-defaulting Party for the Defaulting Party’s breach of this Agreement, the Non-defaulting Party shall have such other rights and remedies as are available to them at law or in equity. In the event a Defaulting Party shall fail to perform a monetary covenant which it is required to perform under this Agreement, it shall not be deemed to be in default under this Agreement unless it shall have failed to perform such monetary covenant within thirty (30) days of its receipt of a notice from a Non-defaulting Party specifying that it has failed to perform such monetary covenant. In the event a Defaulting Party fails to perform any non-monetary covenant as and when it is required to under this Agreement, it shall not be deemed to be in default if it shall have cured such default within thirty (30) days of its receipt of a notice from a Non-defaulting Party specifying the nature of the default, provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, it shall not be deemed to be in default if it commences curing within such thirty (30) days period, and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

Section 11.

The parties covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts as may be reasonably required to carry out the terms, provisions and the intent of this Agreement. City agrees to reasonably cooperate with Developer in Developer's attempts to obtain all necessary governmental approvals for the Project. City shall further promptly process and consider reasonable requests of Developer for relief or variances from any City ordinances, applicable building permits, or other permits necessary for the development and construction of the Project.

Section 12.

This Agreement shall be governed and constructed in accordance with the laws of the State of Illinois with jurisdiction and venue in Rock Island County, Illinois.

Section 13.

The rights and obligations of Developer are fully assignable by means of written notice to City, provided that no assignment shall be deemed to release Developer of its obligations to City under this Agreement unless the written consent of the City is first obtained, which consent shall not be unreasonably withheld.

Section 14.

Any party may elect to waive any right or remedy it may enjoy under this Agreement, 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.

Section 15.

If any term or provision of this Agreement is held to be invalid or unenforceable, to any extent, the remainder of this Agreement shall continue to be fully valid and enforceable.

Section 16.

Notices, demands, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent, attorney of the such party, and they shall be deemed to have been effective as of the date of actual delivery, if delivered personally, or as of the third day from and including the date on which it is mailed by registered or certified mail, return receipt requested, with postage prepaid addressed as follows:

To Developer: LRC Developers, Inc.
350 44th St.
Rock Island, IL 61201
Attention: Scott Christiansen

To City: City Clerk
City of Rock Island
1528 3rd Avenue
Rock Island, IL 61201

Section 17.

This Agreement (together with the Exhibits attached hereto) constitutes the entire agreement between City and Developer and supersedes all prior agreements, negotiations and discussions between them relating to the subject matter hereof. This Agreement may not be modified or amended except by a written instrument executed by all the parties or their permitted successors or assigns.

Section 18.

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

Section 19.

City and Developer represent and warrant to the other that each has the full right, power and authority to enter into this Agreement and to fully perform its obligations.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at Rock Island, Illinois.

CITY OF ROCK ISLAND, ILLINOIS,
an Illinois municipal corporation

LRC DEVELOPERS, INC., an Illinois
corporation

City Manager

President

ATTEST:

City Clerk

Exhibit A

Legal Description

(see attached)

Exhibit B

Approved Uses

1. McLaughlin Body or its affiliates shall be permitted to continue its existing use on the Subject Property, including any physical expansion of McLaughlin Body or its affiliates to new areas of the Subject Property.
2. Developer shall consult with City prior to making any zoning or re-subdivision requests with respect to the Subject Property; however, the exact location and layout of the Approved Uses on the Subject Property shall be determined by Developer as experience is gained in the process of redeveloping the Subject Property.
3. Notwithstanding anything to the contrary contained in this Exhibit B, to the extent the applicable portion of the Project shall contain any residential use under R-5 and R-6, or a PUD containing a residential component, such portion shall require the prior approval of the City Council, which the City Council may withhold in its discretion, after consultation with the Developer.

Exhibit C

Allocation of Incremental Taxes as Between City and Developer

1. 100% of all tax increment generated under the terms and provisions of the TIF Act within the Columbia Park TIF District, including all Incremental Taxes, shall be allocated to payment of the debt service on the Existing Bonds, as described in the agreement dated December 23, 2008, by and between City and Columbia Park, LLC.

2. Incremental Taxes in excess of the amount used in connection with 1. above shall be allocated annually as set forth below.

(a) 75% of the Incremental Taxes in respect of Developer's first project that is located on the Subject Property following the date of this Agreement shall be allocated to Developer; and 25% shall be allocated to City.

(b) 50% of the Incremental Taxes in respect of any project subsequent to the project described in 2. (a) above shall be allocated to Developer; 25% shall be allocated to City; and an additional 25% shall be allocated to Developer provided that such 25% shall be project-specific such that it shall only be utilized to pay or reimburse Redevelopment Project Costs incurred in connection with such subsequent project otherwise this funds are available for to the City. Except as set forth in the immediately preceding sentence, Incremental Taxes may be used to reimburse any Redevelopment Project Costs incurred by Developer regardless of when incurred or for which project they were incurred as long as they were expended after the effective date of this agreement.

3. To the extent, if any, that City incurs Redevelopment Project Costs in furtherance of the Subject Property at the request of Developer, then Increment Taxes in excess of the amount used in connection with 1. above shall be utilized to reimburse such City Redevelopment Project Costs prior to allocating any Incremental Taxes pursuant to 2. above.

4. Incremental Taxes to be allocated to City pursuant to 1. and 2. above are collectively referred to as "the City's Share."

Exhibit D

Form of Request for Reimbursement

REQUEST FOR REIMBURSEMENT

[DATE]

City of Rock Island
1528 3rd Avenue
Rock Island, IL 61201
Attention: City Manager

RE: Redevelopment Agreement, dated _____, 2013,
 by and between the City of Rock Island, Illinois, and
 LRC Developers, Inc. (the “Developer”)

Dear City Manager:

You are requested to disburse funds from the Special Tax Allocation Fund pursuant to Section 4 of the Redevelopment Agreement described above in the amount(s), to the person(s) and for the purpose(s) set forth in this Request for Reimbursement. The terms used in this Request for Reimbursement shall have the meanings given to those terms in the Redevelopment Agreement.

1. REQUEST FOR REIMBURSEMENT NO.: _____
2. PAYMENT DUE TO: _____
3. AMOUNT TO BE DISBURSED: _____
4. The amount requested to be disbursed pursuant to this Request for Reimbursement will be used to reimburse the Developer for those Redevelopment Project Costs for the development or construction of the Project detailed in Schedule 1 attached to this Request for Reimbursement.
5. The undersigned certifies that:
 - (i) the amounts included in 3 above were made or incurred and were necessary for the development or construction of the Project and were made or incurred in accordance therewith;
 - (ii) the amounts paid or to be paid, as set forth in this Request for Reimbursement, represents a part of the funds due and payable for Redevelopment Project Costs;

- (iii) the expenditures for which amounts are requisitioned have not been included in any previous Request for Reimbursement, have been properly recorded on Developer's books and are set forth in Schedule 1, with paid invoices attached for all sums for which reimbursement is requested;
 - (iv) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse Developer for its funds actually advanced or required for Redevelopment Project Costs; and
 - (v) Developer is not in default under the Redevelopment Agreement and nothing has occurred to the knowledge of Developer that would prevent the performance of its obligations under the Redevelopment Agreement.
6. Attached to this Request for Reimbursement is Schedule 1, together with copies of invoices or bills of sale covering all items for which reimbursement is being requested,

APPROVED:

CITY OF ROCK ISLAND, ILLINOIS

By: _____
City Manager

Date: _____

LRC DEVELOPERS, INC., an Illinois corporation

By _____
President