

Ordinance No. 15-27

**AN ORDINANCE APPROVING AN AMENDMENT AND RESTATEMENT OF REDEVELOPMENT AGREEMENTS BY AND BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS AND OTTO ENGINEERING, INC.**

**WHEREAS**, the Village of East Dundee, Cook and Kane Counties, Illinois (the "*Village*") is a duly organized and validly existing home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

**WHEREAS**, pursuant to the Business District Development and Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.3-1 *et seq.*, as from time to time amended (the "*BDD Act*"), on September 28, 2009, the President and Board of Trustees of the Village (the "*Corporate Authorities*"), after public hearings, passed Ordinance No. 09-30 designating the Route 25 and Route 72 Business District (the "*BD District*"); found the BD District to be a "blighted area" pursuant to the BDD Act; and, imposed a retailers' occupation tax and service occupation tax in the amount of one-half of one percent (0.5%) which has since been increased to three quarters of one percent (0.75%) on all commercial operations within the boundaries of this commercial district (the "*BD Taxes*") in order to pay project costs incurred in connection with the planning, execution and implementation of the BD District (the "*BD Plan*"); and,

**WHEREAS**, in accordance with the requirements of the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1 *et seq.*, as from time to time amended (the "*TIF Act*"), the Corporate Authorities, pursuant to Ordinances Nos. 08-34, 08-35, and 08-36, adopted on June 16, 2008, approved a Redevelopment Project Plan and Eligibility Report (the "*Redevelopment Plan*") for an area designated as the Downtown Tax Increment Redevelopment Project Area (the "*Project Area*"), and adopted tax increment financing for the payment and financing of redevelopment project costs incurred within the Project Area; and,

**WHEREAS**, beginning in 2010, Otto Engineering, Inc., an Illinois corporation (the "*Developer*") acquired several properties in the Project Area and the BD District and informed the Village that it was prepared to undertake the demolition of certain structures and the rehabilitation, renovation and expansion of other structures on these properties in furtherance of the Redevelopment Plan and the BD Plan on the condition that the Village provide financial assistance as permitted by the TIF Act and the BDD Act; and,

**WHEREAS**, in response to the Developer's request, the Village approved a Redevelopment Agreement on December 16, 2013, by and between the Village and the Developer providing for reimbursement of eligible redevelopment project costs from the BD Taxes and incremental real estate taxes in connection with the property commonly known as 611 East Main, as distributed to the Village as a result of its designation of the Project Area and the BD District; and,

**WHEREAS**, on July 21, 2014, the Village approved a second Redevelopment Agreement by and between the Village and the Developer providing for reimbursement of

eligible redevelopment project costs from incremental real estate taxes in connection with specific properties listed on *Exhibit A* to this second Redevelopment Agreement, as annually distributed to the Village as a result of its designation of the Project Area and the adoption of the TIF Act; and,

**WHEREAS**, the second Redevelopment Agreement was amended in 2015 to reflect the conveyance of one of the Developer's properties; and,

**WHEREAS**, it has become apparent that all prior commitments on the part of the Village require clarification of the projects to be undertaken by the Developer; sources for the payments of certain eligible Redevelopment Project Costs as defined in the TIF Act and the BDD Act; the total amount of reimbursement to be made to the Developer; date for payment by the Village of approved Redevelopment Project Costs; and, the procedures required to reimburse the Developer; and,

**WHEREAS**, it is the intent of the parties to restate all of their mutual commitments in connection with the redevelopment of all of the Developer's properties within the Project Area and the BD District, other than the property commonly known as 525 Main and the Summit School, into one agreement which shall prescribe the amounts which may be reimbursed; the sources for the payment of such amounts; the documentation required to permit payment; and, the date for each annual payment, all as set forth in the Amendment and Restatement of Redevelopment Agreements by and between the Village and the Developer.

**NOW, THEREFORE, BE IT ORDAINED** by the Village President and Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, as follows:

*Section 1.* That the Amendment and Restatement of Redevelopment Agreements by and between the Village of East Dundee, Cook and Kane Counties, Illinois and Otto Engineering, Inc., attached hereto and made a part hereof, is hereby approved and the Village President and Village Clerk are hereby authorized to execute and deliver said agreement on behalf of the Village.

*Section 2.* That the Village President and Village Administrator are hereby authorized and directed to undertake any and all actions as may be required to implement the terms of said agreement.

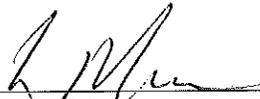
*Section 3.* That this Ordinance shall be in full force and effect upon its passage, approval, and publication as provided by law.

*Passed* by the Village President and the Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, this 1st day of June, A.D. 2015, pursuant to a roll call vote, as follows:

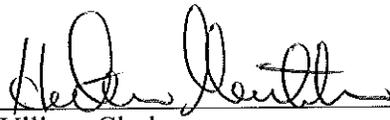
AYES: Trustees Lynam, Selep, Wood and Hall

NAYS: Trustee Skillicorn  
ABSENT: Trustee Gorman

APPROVED by me, as Village President of the Village of East Dundee, Cook and Kane Counties, Illinois, this 1st day of June, A.D. 2015.

  
\_\_\_\_\_  
Village President

*Attest:*

  
\_\_\_\_\_  
Village Clerk

Published in pamphlet form:

June 3, 2015

**AMENDMENT AND RESTATEMENT OF REDEVELOPMENT AGREEMENTS  
BY AND BETWEEN THE VILLAGE OF EAST DUNDEE,  
COOK AND KANE COUNTIES, ILLINOIS AND OTTO ENGINEERING, INC.**

**THIS REDEVELOPMENT AGREEMENT**, which supersedes all prior agreements by and between the Village of East Dundee, Kane and Cook Counties, Illinois (the "*Village*"), and Otto Engineering, Inc., an Illinois corporation (the "*Developer*"), is entered into this 1st day of June, 2015, by and between the Village and the Developer.

**PREAMBLES**

**WHEREAS**, pursuant to the Business District Development and Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.3-1 *et seq.*, as from time to time amended (the "*BDD Act*"), the President and Board of Trustees of the Village (the "*Corporate Authorities*") are empowered to undertake the development and redevelopment of business districts within the municipal boundaries of the Village which are in need of revitalization; and,

**WHEREAS**, pursuant to the BDD Act, on September 28, 2009, the Corporate Authorities, after public hearings, passed Ordinance No. 09-30 designating the Route 25 and Route 72 Business District (the "*BD District*"); found the BD District to be a "blighted area" pursuant to the BDD Act; and, imposed a retailers' occupation tax and service occupation tax in the amount of one-half of one percent (0.5%) which has since been increased to three quarters of one percent (.75%) on all commercial operations within the boundaries of this commercial district (the "*BD Taxes*") in order to pay project costs incurred in connection with the planning, execution and implementation of the BD District (the "*BD Plan*"); and,

**WHEREAS**, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1 *et seq.*, as from time to time amended (the "*TIF Act*"), the Corporate Authorities are empowered to undertake the development or redevelopment of a

designated area within the boundaries of the Village in which existing conditions permit such area to be classified as a “blighted area” as defined in Section 11.74.4-3(a) of the TIF Act; and,

**WHEREAS**, in accordance with the requirements of the TIF Act, the Corporate Authorities, pursuant to Ordinances Nos. 08-34, 08-35, and 08-36, adopted on June 16, 2008, approved a Redevelopment Project Plan and Eligibility Report (the “*Redevelopment Plan*”) for an area designated as the Downtown Tax Increment Redevelopment Project Area (the “*Project Area*”), and adopted tax increment financing for the payment and financing of redevelopment project costs incurred within the Project Area; and,

**WHEREAS**, beginning in 2010, the Developer acquired several properties in the Project Area and the BD District and informed the Village that it was prepared to undertake the demolition of certain structures and the rehabilitation, renovation and expansion of other structures on these properties in furtherance of the Redevelopment Plan and the BD Plan on the condition that the Village provide financial assistance as permitted by the TIF Act and the BDD Act; and,

**WHEREAS**, in response to the Developer’s request, the Village approved a Redevelopment Agreement on December 16, 2013, by and between the Village and the Developer providing for reimbursement of eligible redevelopment project costs (as hereinafter defined) from the BD Taxes and incremental real estate taxes (as hereinafter defined) in connection with the property commonly known as 611 East Main (the “*Summit School*”), as distributed to the Village as a result of its designation of the Project Area and the BD District; and,

**WHEREAS**, on July 21, 2014, the Village approved a second Redevelopment Agreement by and between the Village and the Developer providing for reimbursement of eligible redevelopment project costs from incremental real estate taxes (as hereinafter defined) in connection with specific properties listed on *Exhibit A* to this second Redevelopment Agreement, as annually distributed to the Village as a result of its designation of the Project Area and the adoption of the TIF Act; and

**WHEREAS**, the second Redevelopment Agreement was amended in 2015 to reflect the conveyance of one of the Developer's properties; and,

**WHEREAS**, it has become apparent that all prior commitments on the part of the Village require clarification of the projects to be undertaken by the Developer; sources for the payments of certain eligible Redevelopment Project Costs as defined in the TIF Act and the BDD Act; the total amount of reimbursement to be made to the Developer; date for payment by the Village of approved Redevelopment Project Costs; and, the procedures required to reimburse the Developer; and,

**WHEREAS**, it is the intent of the parties to restate all of their mutual commitments in connection with the redevelopment of all of the Developer's properties within the Project Area and the BD District, other than the property commonly known as 525 Main and the Summit School (the "*Subject Properties*"), into one agreement which shall prescribe the amounts which may be reimbursed; the sources for the payment of such amounts; the documentation required to permit payment; and, the date for each annual payment, all as hereinafter set forth.

**WHEREAS**, the Corporate Authorities have determined that the blighting factors noted on the Subject Properties have been detrimental to the public and have impaired development of

the BDD District and the Project Area and will continue to impair growth and development but for the use of the retailers' occupation tax and service occupation tax as imposed pursuant to the BDD Act and the use of tax increment allocation financing to assist the Developer to pay certain costs to be incurred by the Developer to undertake the redevelopment of the Subject Properties; and,

**WHEREAS**, the existence of the blighting factors and the extraordinary costs necessary for development and redevelopment have prevented developers from redeveloping and revitalizing the Subject Properties which has, in turn, limited the development and construction of commercial and industrial enterprises within the BD District and the Project Area; and,

**WHEREAS**, the Developer's proposal calls for the Developer to redevelop the Subject Properties in accordance with all applicable Village ordinances and the Village has determined that the Developer has the necessary qualifications, expertise and background to undertake the redevelopment of the Subject Properties (the "*Projects*"); and,

**WHEREAS**, the redevelopment of the Subject Properties is consistent with the approved BD Plan and Redevelopment Plan for the BD District and the Project Area and these Projects shall further the goals and objectives of the BD Plan and Redevelopment Plan; and,

**WHEREAS**, the Village is authorized under the BDD Act and TIF Act to incur costs and to make and enter into all contracts necessary or incidental to the implementation of the plans for the BD District and the Project Area; and,

**WHEREAS**, the Corporate Authorities have determined that the provision by the Village to the Developer of the assistance hereinafter described and the redevelopment by the Developer of the Subject Properties pursuant to this Agreement are in the best interests of the Village and

its residents and taxpayers, thereby providing job opportunities for the inhabitants of the Village, enhancing the tax base of the Village and other taxing districts and adding to the welfare and prosperity of the Village and its inhabitants.

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

***Section 1. Incorporation of Recitals***

(a) The Parties agree that all of 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.

(b) The Parties agree that all prior agreements between them, specifically Redevelopment Agreement dated December 16, 2013, and Redevelopment Agreement dated July 21, 2014, as amended January 20, 2105, are hereby terminated and shall have no force and effect upon the execution of this Agreement.

***Section 2. Developer's Obligations***

(a) The Developer has acquired the properties listed on *Exhibit A* hereto (collectively, the "*Subject Properties*") and has delivered to the Village an estimate of costs to be incurred by the Developer in connection with construction, rehabilitation, renovation and redevelopment of the Subject Properties, as itemized on *Exhibit A*, hereto for which reimbursement shall be requested.

(b) The Developer covenants and agrees that upon completion of the Projects there shall have been an investment of \$\_\_\_\_\_ in the Project Area.

(c) The Developer shall undertake and proceed with the Projects and complete the redevelopment of the Subject Properties in accordance with all approved plans and specifications, laws of the State and federal government, ordinances, resolutions and regulations of the Village and all other agencies or governmental bodies having jurisdiction over the Subject Properties (the “*Legal Requirements*”).

***Section 3. Developer Payments***

(a) In consideration for the redevelopment by the Developer of the Subject Properties in accordance with the terms of this Agreement and incurring the costs as itemized in Column II on *Exhibit A*, so long as no event described in Section 15 of this Agreement shall have occurred and be continuing, the Village shall reimburse the Developer for Redevelopment Project Costs actually incurred by the Developer in connection with the redevelopment of each of the Subject Properties (the “*Redevelopment Project Costs*”) over the term of this Agreement, subject to the limitations and authorization of the BDD Act, the TIF Act and this Agreement in an amount not to exceed the amount set forth in Column III of *Exhibit A*, for each of the Subject Properties, subject to Section 4 hereof. The Village shall annually reimburse the Developer for approved Redevelopment Project Costs for each of the Subject Properties in the years and in the amounts as set forth in *Exhibit B* commencing November 1, 2015, and continuing each November 1 thereafter through November 1, 2018 and until the Developer has been reimbursed the lesser of: (i) the actual Redevelopment Project Costs incurred; or, (ii) \$1,329,551.40.

(b) For purposes of this Agreement, “Redevelopment Project Costs” shall mean and include all costs defined as “business district project costs” as defined in Section 11-74.3-5 of the

BDD Act as from time to time amended and “redevelopment project costs” as defined in Section 11-74.4-3(q) of the TIF Act, as from time to time amended.

(c) For purposes of this Agreement, “Incremental Taxes” shall mean the amount equal to the amount of ad valorem taxes, if any, paid to the Village in respect of the Subject Properties and its improvements which is attributable to the increase in the equalized assessed value of the Subject Properties and its improvements over the initial equalized assessed value of the Subject Properties and its improvements.

***Section 4. Procedures for and Application of Reimbursement to the Developer***

(a) The Developer has advanced all funds and all costs necessary to construct and complete the redevelopment of the Subject Properties.

(b) To be eligible for reimbursement of any eligible Redevelopment Project Costs, the Projects shall have been constructed and completed in accordance with the Legal Requirements.

(c) To establish a right of reimbursement for specific Redevelopment Project Costs under this Agreement on or before October 1 each year during the term of this Agreement, the Developer shall have submitted to the Village President or his or her designated officer or employee, a written statement in the form attached to this Agreement as *Exhibit C* (a “*Request for Reimbursement*”) attaching all bills, contracts, invoices, lien waivers or other evidence as the Village President or his designee shall reasonably require to evidence the right of the Developer to reimbursement of Redevelopment Project Costs listed on *Exhibit A*, Column III. The Village President or his or her designee shall have twenty (20) days after receipt of any Request for Reimbursement from the Developer to recommend approval for payment or disapproval of such

Request and, if disapproved, to provide the Developer in writing and in detail with an explanation as to why he or she is not prepared to recommend such reimbursement. The only reasons for disapproval of any expenditure for which reimbursement is sought shall be that such expenditure is not an eligible Redevelopment Project Cost under the BDD Act or under the TIF Act, that it exceeds the amount stated on *Exhibit A*, Column III, or that the cost was not incurred and the construction was not completed by the Developer in accordance with Legal Requirements and the provisions of this Agreement. The parties acknowledge that the determination of Redevelopment Project Costs and qualifications for reimbursement under this Agreement are subject to the BDD Act and TIF Act, all amendments to the BDD Act and the TIF Act both before and after the date of this Agreement, the administrative rules and judicial interpretations rendered during the term of this Agreement. The Village has no obligation to the Developer to attempt to modify said rules or decisions but will cooperate with the Developer in obtaining approval of Redevelopment Project Costs.

***Section 5. Term***

Unless earlier terminated pursuant to Section 15, the term of this Agreement shall commence on the date of execution and end December 31, 2018.

***Section 6. Verification of Tax Increment***

The Developer shall use its best efforts to cooperate with the Village in obtaining certified copies of all real estate tax bills payable in 2015, and for each subsequent year during the term of this Agreement for each of the Subject Properties. The Developer shall also take any action as may be required to authorize the Illinois Department of Revenue to release all reports of all sales tax remittances as a result of the operations of businesses at the Subject Properties.

***Section 7. No Liability of Village to Others for Developer's Expenses***

The Village shall have no obligation to pay and cost relating to the development of the Subject Properties or to make any payment to any person other than the Developer, nor shall the Village be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to the Developer for the development of the Subject Properties.

***Section 8. Assignment***

This Agreement may not be assigned by the Developer without the prior written consent of the Village, which consent shall not be unreasonably withheld.

***Section 9. Developer Indemnification***

The Developer shall indemnify and hold harmless the Village, 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 attorney's fees) which may arise directly or indirectly from the failure of the Developer or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee thereof is hired by the Developer) to timely pay any contractor, subcontractor, laborer or materialman; from any default or breach of the terms of this Agreement by the Developer; or from any negligence or reckless or willful misconduct of the Developer or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the Developer). The 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 the Village, its agents, officers, officials or employees in any such action, the Developer shall have no obligation whatsoever,

with respect to any acts of negligence or reckless or willful misconduct on the part of the Village or any of its officers, agents, employees or contractors.

***Section 10. Waiver***

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

***Section 11. Severability***

If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of this Agreement or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

***Section 12. Notices***

All notices, demands, requests, consents, 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 or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, or as of the third (3<sup>rd</sup>) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

***To the Developer:***

Otto Engineering  
2 East Main  
Carpentersville, Illinois 60110  
Attn: Tom Roeser

*With a copy to:*

***To the Village:***

Village of East Dundee  
Village Administrator  
120 Barrington Avenue  
East Dundee, Illinois 60118

*With a copy to:*

Kathleen Field Orr  
Kathleen Field Orr & Associates  
53 West Jackson Blvd., Suite 964  
Chicago, Illinois 60604

***Section 13. 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.

***Section 14. No Discrimination and Prevailing Wage Act compliance***

(a) The Developer for itself and its successors and assigns agrees that in the construction of the improvements on the Subject Properties provided for in this Agreement the Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Developer shall take affirmative action to require that applicants are employed and that employees are treated during employment, without

regard to their race, creed, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising and solicitations or advertisements for employees; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices, which may be provided by the Village, setting forth the provisions of this nondiscrimination clause. The Developer shall comply with all applicable laws regarding rate of pay or other forms of compensation.

(b) *Prevailing Wage Act.*

The Developer, its contractors and subcontractors shall be responsible to determine if the Project is a “public work” within the meaning of the Illinois Prevailing Wage Act (the “Act”) (820 ILCS 130/0.01 *et seq.*) requiring it to pay workers performing services on this Project no less than the “prevailing rate of wages” in the county where the work is performed.

(c) The Developer agrees to indemnify and hold harmless the municipality, its agents, officers and employees as provided for in this Redevelopment Agreement for any violation by the Developer or its contractors and subcontractors’ failure to comply with any provision of the Act if applicable.

***Section 15. Remedies – Liability***

(a) If, in the Village’s judgment, the Developer is in material default of this Agreement relating to any one or more of the Subject Properties, the Village shall provide the Developer with a written statement indicating any failure on the Developer’s part to fulfill its

obligations under this Agreement. Except as required to protect against further damages, the Village may not exercise any remedies against the Developer in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) days period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Developer diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Village in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(b) If the Developer materially fails to fulfill its obligations under this Agreement after notice is given by the Village and any cure periods described in paragraph (a) above have expired, the Village may elect to terminate its obligations under this Agreement or exercise any right or remedy it may have at law or in equity, including the right to specifically enforce the terms and conditions of this Agreement. If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy or insolvency act shall be filed by or against the Developer, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Developer insolvent or unable to pay the Developer's debts, or the Developer makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Developer or for the major part of any of the Developer's property, the Village may elect, to the extent such election is permitted by law and is not unenforceable under applicable federal bankruptcy laws, but is not required, with or without notice of such election

and with or without entry or other action by the Village, to forthwith terminate this Agreement. To effect the Village's termination of this Agreement under this Section, the Village's sole obligation shall be to record, in the Office of the Kane County Recorder, a Certificate of Default, executed by the President of the Village or such other person as shall be designated by the Village, stating that this Agreement is terminated pursuant to the provisions of this Section, in which event this Agreement, by virtue of the recording of such certificate, shall *ipso facto* automatically become null and void and of no further force and effect.

(c) If, in the Developer's judgment, the Village is in material default of this Agreement, the Developer shall provide the Village with a written statement indicating in adequate detail any failure on the Village's part to fulfill its obligations under this Agreement. The Developer may not exercise any remedies against the Village in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Village diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. Any failure or delay by the Developer in asserting any of its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(d) In addition to any other rights or remedies, a party may institute legal action against the other party to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance; provided, however, no

recourse under or upon any obligation contained herein or for any claim based thereon shall be had against the Village, its officers, agents, attorneys, representatives or employees in any amount or in excess of any specific sum agreed to be paid by the Village hereunder, and no liability, right or claim at law or in equity shall be attached to or incurred by the Village, its officers, agents, attorneys, representatives or employees in any amount in excess of any specific sums agreed by the Village to be paid hereunder and any such claim is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. Notwithstanding the foregoing, in the event either party shall institute legal action against the other party because of a breach of any agreement or obligation contained in this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

(e) The rights and remedies of the parties are cumulative and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other party. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Illinois. Any legal proceedings shall be commenced in the current Court of Kane County.

***Section 16. Developer's Covenants***

The Developer covenants and agrees to promptly pay, when due, any and all fees, charges, taxes and any other financial obligation the Developer owes to the Village throughout the term of this Agreement.

***Section 17. Force Majeure***

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 of its obligations under 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, weather conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, acts of terrorism, 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 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 18. Amendment***

This Agreement, and any exhibits attached to this Agreement, may be amended, only in writing, signed by all parties with the adoption of any ordinance or resolution of the Village approving said amendment, as provided by law, and by execution of said amendment by the parties or their successors in interest. Except as otherwise expressly provided herein, this

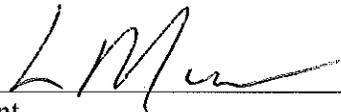
Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof.

*Section 19. Counterparts*

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

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

Village of East Dundee, an Illinois municipal corporation

By:   
President

*Attest:*

  
Village Clerk

Otto Engineering, Inc.

  
Its President

*Exhibit A*

<i>Column I</i>	<i>Column II</i>	<i>Column III</i>
<i>Subject Properties</i>	<i>Total Estimation of Redevelopment Project Costs</i>	<i>Maximum Amount Eligible for Reimbursement</i>
311 Barrington	\$82,000	\$24,600
211 Barrington	\$15,000	\$4,500
310 River	\$50,000	\$15,000
320 River	\$260,000	\$78,000
102 River	\$641,284	\$192,385.20
316 River	\$114,694	\$34,408.20
319 Meier	\$520,000	\$156,000
207 Barrington	\$237,591	\$71,277.00
315 Barrington	\$225,000	\$67,500
104 River	\$450,000	\$135,000
220 River	\$1,825,000	\$547,500
543 Main	\$365,000	<u>\$109,500</u> \$1,435,670.40 <u>106,119.00</u> Amount Paid \$1,329,551.40 Max Amount Eligible

*Exhibit B*

	2014	2015	2016	2017	2018	Maximum Amount Due TIF Total
311 Barrington		\$24,600				\$24,600
211 Barrington		\$1,500	\$1,500	\$1,500		\$4,500
310 River		\$5,000	\$5,000	\$5,000		\$15,000
320 River		\$26,000	\$26,000	26,000		\$78,000
102 River	70,716	\$60,834.60	\$60,834.60			\$121,669.20
316 River	35,403					(994.80)
319 Meier			\$52,000	\$52,000	\$52,000	\$156,000
207 Barrington			\$71,277			\$71,277
315 Barrington					\$67,500	\$67,500
104 River			\$45,000	\$45,000	\$45,000	\$135,000
220 River			\$182,500	\$182,500	\$182,500	\$547,500
543 Main			\$36,500	\$36,500	\$36,500	\$109,500
		\$117,934.60	\$480,611.60	\$348,500	\$383,500	\$1,330,546.20
					<i>Over Payment</i>	<u>- 994.80</u>
						\$1,329,551.40

*Exhibit C*  
**REQUEST FOR REIMBURSEMENT**

[Date]

Village of East Dundee  
120 Barrington Avenue  
East Dundee, Illinois 60118

**Re:    Redevelopment Agreement dated \_\_\_\_\_, by and between the Village of East Dundee, Illinois, and Otto Engineering, Inc. (the “Developer”)**

Dear Sir:

You are requested to reimburse the Developer described above in the amount of \$\_\_\_\_\_ for the purpose(s) set forth in this Request for Reimbursement.

1.     The amount of \$\_\_\_\_\_ requested to be disbursed pursuant to this Request for Reimbursement will be used to reimburse the Developers for those Redevelopment Project Costs detailed in Schedule 1 attached to this Request for Reimbursement.
2.     The undersigned certifies that:
  - (i)     the amounts included in 1 above were made or incurred in accordance with the construction contracts, and building permits heretofore in effect;
  - (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 represent proper Redevelopment Project Costs identified in the Redevelopment Project Costs Exhibit B described in the Redevelopment Agreement, have not been included in any previous Request for Reimbursement;
  - (iv)    the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Developer for its funds actually advanced for Redevelopment Project Costs;
  - (v)     the Developer is not in default under the Agreement and nothing has occurred to the knowledge of the Developer that would prevent the performance of its obligations under the Agreement.
3.     Attached to this Request for Reimbursement is Schedule 1, together with copies of invoices or bills of sale and Mechanic’s Lien Waivers covering all items for which reimbursement is being requested, on which it has been noted all Redevelopment Project Costs heretofore reimbursed to the Developer.

Otto Engineering, Inc.  
Date: \_\_\_\_\_

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

Approved: Village of East Dundee,  
an Illinois municipal corporation

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

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