

**AN ORDINANCE APPROVING A SALES TAX REBATE AGREEMENT
BY AND BETWEEN THE CITY OF ROLLING MEADOWS AND
UNCLE JOE'S TUSCAN FRESH MARKET, LLC**

WHEREAS, Uncle Joe's Tuscan Fresh Market, LLC, an Illinois limited liability company ("Company") and the City of Rolling Meadows ("City") desire to enter into a Sales Tax Rebate Agreement ("Agreement") in connection with the Property commonly known as 2801-2915 Kirchoff Road, Rolling Meadows, Illinois (the "Property"), for a retail sales food establishment (the "Company"); and

WHEREAS, the Company intends to enter into a 55,000 square foot lease with BBC Kirchoff Land, Inc. to conduct and operate a retail food store at the Property; and

WHEREAS, absent this Agreement, the Company would not be able to operate its retail food store at the Property due to the construction build-out and other costs; and

WHEREAS, the Property which the Company proposes to lease has been vacant for several years; and

WHEREAS, the Company is expected to create jobs within the City; and

WHEREAS, the Company will strengthen the commercial sector of the City; and

WHEREAS, the Company will create a level of Sales Tax Revenue otherwise not generally realized by a single use within a commercial area of the City.

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

Section 1. The foregoing recital clauses are incorporated herein and adopted as the findings of the Corporate Authorities of the City of Rolling Meadows.

Section 2. The Sales Tax Rebate Agreement is hereby approved and the Mayor is directed to execute, and the Deputy City Clerk is directed to attest, the Sales Tax Rebate Agreement, in substantially the form attached hereto as Exhibit "A" with such changes therein as may be approved by the City manager and City Attorney.

Section 3. This Ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

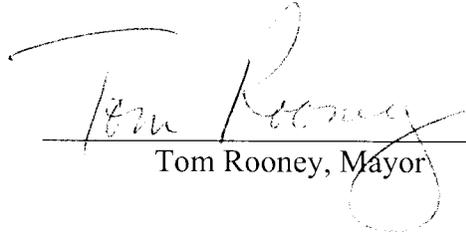
YEAS: Allen, Majikes, D'Astice, Larsen

NAYS: Cannon, Judd, Banger

ABSENT: 0

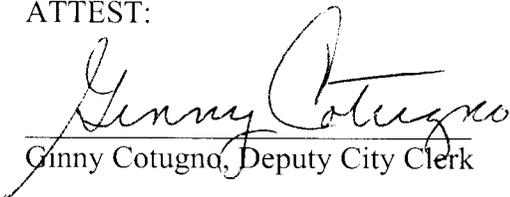
Passed this 9th day of April 2013.

Approved this 9th day of April 2013.



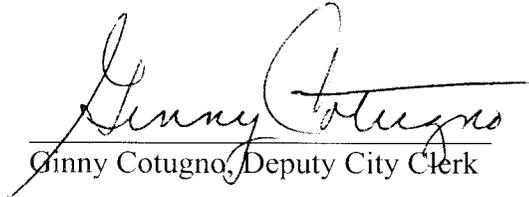
Tom Rooney, Mayor

ATTEST:



Ginny Cotugno, Deputy City Clerk

Published this 10th day of April 2013



Ginny Cotugno, Deputy City Clerk

EXHIBIT "A"

SALES TAX REBATE AGREEMENT

SALES TAX REBATE AGREEMENT

Between the

CITY OF ROLLING MEADOWS, ILLINOIS

And

UNCLE JOE'S TUSCAN FRESH MARKET, LLC

SALES TAX REBATE AGREEMENT

THIS SALES TAX REBATE AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 2013 (the "Effective Date"), by and between the **CITY OF ROLLING MEADOWS**, an Illinois municipal corporation (the "City"), and **UNCLE JOE'S TUSCAN FRESH MARKET, LLC**, an Illinois limited liability company (the "Company").

RECITALS:

WHEREAS, the Company intends to enter into a 55,000 square foot lease with BBC Kirchoff Land, Inc. to conduct and operate a retail food store within the property commonly known as 2801-2915 Kirchoff Road, Rolling Meadows, Illinois ("Property"); and

WHEREAS, absent this Agreement, the Company would not be able to operate its retail food store at the Property due to the construction build-out and other costs; and

WHEREAS, the Property which the Company proposes to lease has been vacant for several years; and

WHEREAS, the Company is expected to create jobs within the City; and

WHEREAS, the Company will strengthen the commercial sector of the City; and

WHEREAS, the Company will create a level of Sales Tax Revenue otherwise not generally realized by a single use within a commercial area of the City.

NOW, THEREFORE, in consideration of the Recitals, the covenants, terms and conditions hereinafter set forth and other valuable consideration, the receipt and sufficiency of which are acknowledged, it is mutually agreed by the parties hereto as follows:

1. Recitals

The parties hereby agree that the Recitals set forth hereinabove are incorporated herein by reference, as if fully set forth herein.

2. Definitions

A. For purposes of this Agreement, the terms "Sales Tax" or "Sales Tax Revenue" shall mean any and all Retailer Occupation Taxes, Retail Service Occupation Taxes, Retailers Use Tax, Retailers Service Use Tax, or any other "sales tax" or successor tax that may be enacted by the State of Illinois which the City is able to verify by reference to the documents described in Section 4, *infra*, hereinafter being assessed, accruing, or arising as a result of the Company at the Property and received by the City from the State of Illinois or other such government agency or body created as aforesaid.

B. For the purposes of this Agreement, "Revenue Year" shall mean each twelve month period commencing January 1 and ending December 31 of each calendar year.

C. For purposes of this Agreement, "Certificate of Occupancy" shall mean a certificate issued by the City authorizing the occupancy of the Property, not on a temporary basis, for the conduct of a business of the Company.

3. Economic Incentives

A. It is understood that the parties and declared by the City that the Company will generate a substantial level of Sales Tax Revenue not ordinarily realized by a business use. The Company represents, warrants and covenants that the Company will comply in all respects with Retailers Occupation Tax Act, as amended (35 ILCS 115/1 *et seq.*) and the Service Occupation Tax Act, as amended (35 ILCS 120/1 *et seq.*).

B. The Term of this Agreement shall commence as of the Effective Date and shall expire upon the earlier of (i) January 1, 2029, or (ii) the Company receiving One Million Eight Hundred Thousand Dollars (\$1,800,000.00) (the "Expiration Date").

C. Sales Tax Rebate

(1) From the Effective Date to December 31, 2013, the Sales Tax Revenue shall be shared by the City and the Company equally. Thereafter, during each Revenue Year the City and the Company shall share the Sales Tax Revenue equally; however, the amount the City shall be obligated to pay the Company during each Revenue Year shall not exceed Two Hundred Thousand Dollars (\$200,000.00).

(2) The City shall, during each Revenue Year over the term of this Agreement and subject to Sections 3.C(3) and 3.C(4) *infra*, rebate to the Company that portion of the Sales Tax Revenue due to the Company, as set forth in Section 3.C(1) *supra*, if any, ("Rebate") in semi-annual disbursement amounts equivalent to the Company's portion of accrued Sales Tax Revenue, if any, for the immediately preceding six-month period during the term of this Agreement ("Rebate Disbursement Period"); provided, however, the first Rebate Disbursement Period shall commence on the issuance of a Certificate of Occupancy, and the first Rebate in the first Revenue Year shall be due no earlier than the first June 30 date or December 31 date, as the case may be, which is at least six (6) months from the issuance of the first Certificate of Occupancy. The City's obligation to disburse a Rebate to the Company in accordance with this Section 3.C(2) shall be subject to the City's prior receipt from the Illinois Department of Revenue of (i) all Sales Tax Revenue attributable to the specific Rebate Disbursement Period for which a Rebate may be due to the Company in accordance with this Agreement, and (ii) a report itemizing or otherwise identifying, in a discernable manner, all Sales Tax Revenue paid to the City as a result of taxable sales activities at the Property ("Sales Tax Report").

(3) The City shall have no obligation to procure the Sales Tax Report from the Illinois Department of Revenue, but the City shall reasonably cooperate with the Company to the extent required by the Illinois Department of Revenue for the Company to provide all information to the Illinois Department of Revenue that may be required for said Department to then provide the City with the Sales Tax Report for each Rebate Disbursement Period for each Revenue Year.

(4) The City shall have no obligation to disburse a Rebate for a specific Rebate Disbursement Period if the City does not receive the Sales Tax Report relevant to that specific Rebate Disbursement Period within six (6) months of the date of close of that Rebate disbursement Period for which the Rebate to be distributed to the Company is attributed. In the event that the City does not receive the Sales Tax Report then due within such six (6) month period, the City shall notify the Company of such non-delivery in accordance with Section 14 hereof ("City Notice"). In the event that the City does not receive the Sales Tax Report then due within six (6) months of the date of the City Notice, then the City shall be fully entitled to retain the Rebate attributable to the Rebate Disbursement Period for which the Sales Tax Report yet unreceived by the City relates.

(5) Each Rebate paid to the Company shall be accompanied by a certificate from the City Manager setting forth the determination of Sales Tax Revenue then payable to the Company pursuant to this Agreement.

4. Sales Tax Reports

A. Concurrent with the filing of any and all reports with the Illinois Department of Revenue or any successor agency, the Company shall furnish or cause to be furnished to the City copies of any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity by the Company at the Property. Such documents shall be sent to the attention of the City Manager. To the extent permitted by law, the City shall maintain the confidentiality of the information contained in such reports. In addition, prior to any payments to the Company pursuant to this Agreement, the Company shall provide, or cause to be provided to, the State of Illinois with properly executed authorizations granting the City the right to access the sales tax records for the Property. The Company acknowledges and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments made by the City to the Company pursuant to this Agreement. The Company further covenants and agrees that upon the request of the City, the Company shall furnish or cause to be furnished such consents or waivers as may reasonably be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in form and content satisfactory to the State and the City, in order to release the above-described sales tax information to the City. The Company agrees and acknowledges that any disbursements of the City made pursuant to this Agreement can only be made from and to the extent of the data submitted to the State of Illinois in accordance with this Section.

In the event that any returns or documentation from the Illinois Department of Revenue are delayed, then the City may request and the Company shall furnish the City with executed copies of the monthly returns filed with the Illinois Department of Revenue for the operations of the Company at the Property. Whenever the City deems it necessary to the fulfillment of this Agreement, the City shall have the right to conduct an audit of the books and records of the sales, returns and payments of sales taxes relating to the operation of the Company at the Property, upon the giving to the Company reasonable notice, at reasonable times and at City expense.

5. Reimbursement Mechanism

The City shall remit in full to the Company, or its designee, the Company's share of the Sales Tax Revenue to which the Company is entitled, within sixty (60) days and as determined in Section 3(c), *supra*. The City shall be liable to the Company for disbursement of monies hereunder only to the extent of the Sales Tax Revenue generated by virtue of the Property and actually received by the City from the Illinois Department of Revenue or other applicable governmental agency or body; provided, however the City reserves the right to make such earlier and/or additional payments in such amounts and at such times as the City, in its sole discretion, deems appropriate. Any payments due the Company pursuant to this Agreement shall be reduced by an amount equal to all collection fees imposed upon the City by the State of Illinois or the Illinois Department of Revenue or other applicable governmental agency or body, for collection of Sales Tax Revenue generated by the Property.

6. Casualty/Extension of Term

If the retail operations of the Company at the Property cease due to casualty or force majeure, then, in each case, provided the conditions set forth in Section 14 hereof have been satisfied, the term of this Agreement shall be automatically extended for a period equal to the period commencing on the date of said casualty, or the date said force majeure commences (as applicable), through the date of final completion of the reconstruction of said improvements and re-opening of the tax generating business, or the date of cessation of said force majeure (if applicable), and the City's payment obligations hereunder shall, with respect to the City's Tax Revenue Share arising or accruing during said extended term, continue for said period.

7. Mutual Assistance

The Company and the City agree to do all things practicable and reasonable to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out its terms; provided, however that no party will be obligated to incur or assume any liability or cost not otherwise expressly provided for herein.

8. Default Remedies

Except as otherwise provided in this Agreement, in the event of any default or breach of this Agreement or any terms or conditions by any party hereto, such party shall, upon written notice from the non-defaulting party, proceed promptly to cure or remedy such default or breach within sixty (60) days after receipt of such notice. If any such default is incapable of being cured within

said sixty (60) day period, and the defaulting party commences to cure the default within said sixty (60) day period and proceeds with due diligence, then such party shall not be deemed in default under this Agreement. If the defaulting party has not commenced to cure the default within the sixty (60) day period, notice will be sent to the defaulting party and they shall be granted another sixty (60) day period in which to cure the default. If the defaulting party commences to cure the default within the second sixty (60) day period and proceeds with due diligence, then such party shall not be deemed in default under this Agreement. In case any action hereunder is not taken or not diligently pursued or the default or breach shall not be cured within the above periods, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, an action to restrain any such default or breach of its obligations, an action to compel specific performance by the party in default or breach of its obligations, an action to recover damages against any party liable pursuant to the provisions hereof, or any other action at law or in equity and shall have the right to recover all costs and expenses. Except as otherwise set forth in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other party. Any delay by any party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way; it being the intent of this provision that such party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any party with respect to any specific default by any other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

9. Cessation of Company Business at the Property

Within sixty (60) days from the date the Company ceases its business at the Property, except as provided herein at Section 6, with a minimum of 55,000 square feet, the Company shall reimburse the City for all of the Rebate payments made by the City to the Company pursuant to Section 3.C(1). Provided, however, the City may agree to waive the Company's reimbursement if another retail food establishment leases a minimum of 55,000 square feet of the Property and expressly agrees with the City to be bound by the terms of this Agreement for the remainder of its term. The City, in its sole discretion, may refuse to accept the proposed new retail food establishment, in which event, the Company shall reimburse the City as provided for herein, within the time herein provided.

10. Entire Agreement

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Company and the City relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those herein set forth.

11. Survival of Terms, Binding upon Successors

The covenants, terms, conditions, representations, warranties, agreements and undertakings set forth in this Agreement (and specifically including, without limitation, those covenants, terms, conditions, representations, warranties, agreements and undertakings which survive the termination of this Agreement) shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assignees, sub-lessees and legal representatives. Provided however, an assignment by the Company shall require the express written consent of the City which consent shall not be unreasonably withheld.

12. Governing Law

The validity, meaning the effect of this Agreement shall be determined in accordance with the laws of the State of Illinois.

13. Supplemental Agreements

The parties agree to cooperate in order to execute such supplemental agreements, memoranda and similar documents as may reasonably be deemed necessary to implement the terms of this Agreement.

14. Force Majeure

Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than twenty (20) days after the commencement of the cause or not more than twenty (20) days after the party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later. Force majeure shall not include economic hardship or commercial or economic frustration of purposes.

15. Notices

Any notice, request, demand or other communication made in connection with this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery, if delivered to the persons identified below in person, by courier service or by facsimile copy (with original copy mailed the same day in accordance with the provisions of this Paragraph), or five (5) business days after mailing if mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the City: City of Rolling Meadows
 3600 Kirchoff Road
 Rolling Meadows, Illinois 60008

Attn: City Manager

With a copy to: James E. Macholl
Storino, Ramello & Durkin
9501 West Devon Avenue, 8th Floor
Rosemont, Illinois 60018

If to the Company: Uncle Joe's Tuscan Fresh Market, LLC
c/o Louie Ruffolo
412 Craig Court
Mount Prospect, Illinois 60056

With a copy to: Michael Alesia
1000 N. Plaza Drive, Suite 680
Schaumburg, Illinois 60173

16. Severability

If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purposes of the Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

17. City Approval

This Agreement is subject to the approval of the City of Rolling Meadows City Council. A certified copy of the ordinance (or other City action) approving the terms and conditions of this Agreement and authorizing and directing the City to execute this Agreement on behalf of the City, certified by the City Clerk, shall be provided to the Company.

18. Amendments

This Agreement may be amended from time to time only by written agreement between the parties hereto.

19. Representations, Warranties and Covenants

A. The Company represents, warrants and covenants, as of the date of this Agreement, as follows:

(1) The Company is an Illinois Limited Liability Company duly organized, validly existing, qualified to do business in Illinois;

(2) The Company has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(3) The execution, delivery and performance of this Agreement by the Company has been duly authorized by all necessary corporate action, and does not and will not violate its Operating Agreement, any applicable provision of law, or constitute a breach of, default under or require any third-party consent under any agreement, instrument or documents to which the Company is a party or by which the Company is now or may become bound.

B. The City of Rolling Meadows, an Illinois municipal corporation, represents, warrants and covenants, as of the date of this Agreement and throughout the term of this Agreement, as follows:

(1) The City has the right, power and authority to enter into, execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

(2) The individuals executing this Agreement on behalf of the City have the power and authority to execute and deliver the Agreement on behalf of the City.

(3) The execution, delivery and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of the City; (ii) will not result in the breach or default under any agreement to which the City is a party or to which the City in whole or in part is bound; and (iii) will not violate any restriction, court order, or agreement to which the City is subject.

20. Third Parties

Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Company, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the City or the Company, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Company. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

21. Indemnification

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, is made a party-defendant in any proceeding arising out of or in connection with this Agreement or the

operation of the Company at the Property, the Company shall defend and hold the City, its officers, officials, agents and employees harmless from all claims, liabilities, losses, taxes, judgments, costs, fines, fees, including expenses and reasonable attorneys' fees. The City and its officers, officials, agents and employees shall have the right to retain independent counsel should it choose to defend any action resulting from this Agreement or the operation of the Company at the Property. In such event, the Company shall reimburse the City for all legal expenses incurred in connection with such defense. The City and its officers, officials, agents and employees shall cooperate in the defense of such proceedings and be available for any litigation-related appearances which may be required. Further, the Company 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, with the prior approval or consent of the City, its officers, agents and employees as the case may be, provided the City shall not be required to contribute to such settlement.

22. Limited Liability of Corporate Authorities

The parties hereto acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the City are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the year and date first above written.

CITY OF ROLLING MEADOWS,
an Illinois municipal corporation

By: Tom Rooney
Mayor

ATTEST:

Genny Cotugno
Deputy City Clerk

UNCLE JOE'S TUSCAN FRESH MARKET, LLC
an Illinois limited liability company

By: [Signature]
Its MEMBER