

ORIGINAL



CITY OF AURORA, ILLINOIS

RESOLUTION NO. R14-048
DATE OF PASSAGE February 25, 2014

A Resolution Authorizing the Execution of a Development Agreement for the Façade Repair and Restoration of 56-60 S LaSalle St.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the Corporate Authorities of the City of Aurora, Kane, Kendall, Will and DuPage Counties, Illinois have considered a Development agreement for certain property within the City of Aurora and the TIF #1 Redevelopment Project Area/Tax Increment Financing District, a true and correct copy of the Development Agreement (the "Development Agreement") being attached hereto and made a part hereof as EXHIBIT "A"; and

WHEREAS, a transfer to the 2014 City Budget has been requested to provide \$300,000.00 in Account Number 231-1830-465.55-78 in order to provide all necessary funding for the project; and

WHEREAS, the Corporate Authorities of the City of Aurora, Kane, Kendall, Will and DuPage Counties, Illinois have determined that it is in the best interests of the residents of the City of Aurora that the Redevelopment Agreement be entered into the City of Aurora, and further, that but for the provision for incentives as provided therein, the property would not otherwise be developed as provided therein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows:

Section 1: The Preambles hereto are hereby made a part of and operative provisions of the Resolution as fully as if completely repeated at length herein.

RESOLUTION NO. RI4-048
DATE OF PASSAGE February 25, 2014

Section 2: That the Mayor and City Council of the City of Aurora hereby find that it is in the best interests of the City of Aurora and its residents that the aforesaid "Development Agreement" with Jimi Allen Photography Inc. be entered into by the City of Aurora, with said Agreement to be substantially in the form attached hereto and made a part hereof as EXHIBIT "A".

Section 3: That the Mayor and City Clerk of the City of Aurora, Kane, Kendall, Will and DuPage Counties, Illinois, are hereby authorized to executive for and on the behalf of the City of Aurora, the aforesaid Redevelopment Agreement.

Section 4: That this Resolution shall take effect from and after its adoption and approval as required by law.

PASSED AND APPROVED on February 25, 2014

AYES 11 NAYS 0 NOT VOTING 0 ABSENT 1

Kristina Bohman
Alderman Bohman, Ward 1

Quincy Garza
Alderman Garza, Ward 2

[Signature]
Alderman Mesiacos, Ward 3

W. J. Donnell
Alderman Donnell, Ward 4

[Signature]
Alderman Peters, Ward 5

Michael B. Saville
Alderman Saville, Ward 6

[Signature]
Alderman Hart-Burns, Ward 7

[Signature]
Alderman Mervine, Ward 8

[Signature]
Alderman Bugg, Ward 9

Lynne M. Johnson
Alderman Johnson, Ward 10

[Signature]
Alderman Irvin, At Large

[Signature]
Alderman O'Connor, At Large

ATTEST: [Signature]
City Clerk

[Signature]
Mayor

EXHIBIT "A" - Development Agreement

Legistar Number: 14-00091

EXHIBIT "A"
TIF DEVELOPMENT AGREEMENT
FAÇADE REPAIR AND RESTORATION OF 56-58-60 S LASALLE ST

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into as of the _____ day of _____, _____ ("**Agreement Date**") by and between the CITY OF AURORA, ILLINOIS, an Illinois municipal home rule corporation, ("**CITY**"), and JIMI ALLEN PHOTOGRAPHY INC., ("**DEVELOPER**"). The CITY and the DEVELOPER are sometimes referred to individually as "**Party**" and collectively as "**Parties**".

WITNESSETH:

WHEREAS, the City of Aurora has a population of more than 25,000 persons in it and is, therefore, a home rule unit as defined in Article VII, section 6(a) of the 1970 Constitution of the State of Illinois; and

WHEREAS, the CITY has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the City and its inhabitants, to prevent the presence of blight, to encourage private re-development in order to enhance the local tax base, to increase additional tax revenues realized by the City, foster increased economic activity within the City, to increase employment opportunities within the City, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the City; and

WHEREAS, on August 19, 2013, Jimi Allen Photography Inc. filed with the City of Aurora a request for financial assistance for certain property within the City of Aurora and the TIF #1 Redevelopment Project Area/Tax Increment Financing District ("**TIF District**"); and

WHEREAS, this Agreement relates to the proposed revitalization of the property legally described in Attachment "A" attached hereto and made a part hereof ("**Property**").

WHEREAS, the DEVELOPER desires to cause the renovation of the Property as described in Article Five and the renovation and redevelopment description in Attachment "B" ("**Project**"); and

WHEREAS, the CITY is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended ("**Act**"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act; and

WHEREAS, to stimulate and induce redevelopment pursuant to the Act, the CITY has taken certain actions and adopted the following ordinances, after giving all notices required and after conducting the public hearings required by law ("**Enabling Ordinances**");

Tax Increment Financing District Number One (TIF #1)

1. The CITY authorized the preparation of reports, entitled "Downtown Aurora Redevelopment Project Report" ("**Original Plan**") prepared by Teska Associates, Inc., dated September 11, 1986, and the "First Amendment to the Downtown Redevelopment Plan and Project", prepared by Kane, McKenna and Associates, Inc., dated November, 2003 ("**Redevelopment Plan**") concerning the redevelopment of the central Aurora downtown area, including but not limited to the Property.
2. In accordance with the Act, the City of Aurora conducted a public hearing with respect to the Original Plan and a public hearing with respect to the Redevelopment Plan and the redevelopment of the TIF District at the meetings of the City Council of the City of Aurora,

Illinois ("**Corporate Authorities**") held on October 14, 1986 and October 14, 2003 respectively.

3. Ordinance No. 086-5596 adopted December 2, 1986, titled "An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois, Approving a Tax Increment Redevelopment Plan and Project for the Proposed Downtown Aurora Redevelopment Project Area."
4. Ordinance No. 086-5597, adopted December 2, 1986, titled "An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois, Designating the Downtown Aurora Redevelopment Project Area of Said City a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act."
5. Ordinance No. 086-5598, adopted December 2, 1986, titled "An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois, Adopting Tax Increment Allocation Financing for the Downtown Redevelopment Project Area."
6. Ordinance No. 003-146, adopted November 4, 2003, titled "Ordinance Amending the Downtown Redevelopment Project Area No. 1 Tax Increment Financing District Redevelopment Plan and Project."
7. Ordinance No. 003-147, adopted November 4, 2003, titled "An Ordinance Supplementing and Affirming Ordinance No. 086-5597 entitled 'An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois Designating the Downtown Aurora Redevelopment Project Area of Said City a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Project Act.'"
8. Ordinance No. 003-148, adopted November 4, 2003, titled "An Ordinance Supplementing Ordinance No. 086-5598 entitled 'An Ordinance of the City of Aurora, Kendall, DuPage, Kane and Will Counties, Illinois Adopting Tax Increment Allocation Financing for the Downtown Aurora Redevelopment Project Area.'"
9. It is understood that the aforesaid TIF District authorization was nearing its expiration date and that the City of Aurora has received an extension of such authorization from the State of Illinois, and the City has implemented the extension of the length of the TIF District to and including November 2023; and

WHEREAS, as part of the study of the redevelopment of the TIF District, the CITY found that the improvements on the Property suffer from the following factors: age, obsolescence, depreciation of physical maintenance, deterioration, inadequate utilities, excessive vacancies, deleterious land use or layout, excessive land coverage and lack of community planning; and

WHEREAS, this Agreement has been submitted to the Corporate Authorities of the CITY for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the CITY according to the terms hereof, and any and all actions of the Corporate Authorities of the CITY precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

WHEREAS, the Corporate Authorities of the City of Aurora, Kane, Kendall, Will and DuPage Counties, Illinois have determined that it is in the best interests of the residents of the city that this Agreement be entered into in that but for the incentive provision(s) herein, the property would not otherwise be developed as described herein; and

WHEREAS, the CITY has adopted Resolution Number _____ authorizing the execution of this Agreement; and

WHEREAS, the CITY, in order to stimulate and induce redevelopment of the Property, agreed to finance a portion of the TIF Eligible Project Costs through Net Incremental Property Taxes, and potential other sources, all in accordance with the terms and provisions of the Act and this Agreement.

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

ARTICLE ONE **INCORPORATION OF RECITALS**

1.1 Incorporation of Recitals. The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set forth in this Article One.

ARTICLE TWO **DEFINITIONS**

2.1 Definitions. For purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided herein, including above in the recitals hereto and as follows:

“Change in Law” means the occurrence, after the Effective Date, of an event described herein provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon. Change in Law means any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the CITY or with respect to those made by the CITY, if they violate the terms of this Agreement); (ii) the order or judgment of any federal or state court, administrative agency or other governmental body; (iii) except as otherwise provided herein, the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the services to be performed under this Agreement, unless due to the action or inaction of DEVELOPER; or (iv) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the CITY or with respect to those made by the CITY, only if they violate the terms of this Agreement).

“Collector” means the officer or officers of the County of Kane, Illinois, who is or are at the time obligated under applicable law to collect and pay over to the CITY the Incremental Property Taxes pursuant to and in accordance with the Act.

“Eligible Improvements” means costs of the Project eligible for payment under the Act.

“Effective Date” means the date as established pursuant to Article Thirteen.

“Incremental Property Taxes” means that portion of the *ad valorem* taxes, if any, arising from the taxes levied upon the Property, which taxes are attributable to the increases in the then current equalized assessed valuation (“**EAV**”) of the taxable lot, block, tract or parcel of all portions of

the Property in the TIF District over and above the total Initial EAV of all of said portions of the Property in the TIF District, all as determined by the County Clerk of the County of Kane, Illinois, pursuant to and in accordance with the Act, the TIF Ordinances and this Agreement, which are attributable to the Property and includes any replacement, substitute or amended taxes.

“Initial EAV” means the equalized assessed value of the Property for calendar year of the Enabling Ordinances, certified by the County Clerk of Kane County as provided in the Act.

“Net Incremental Property Taxes” means that portion of the Incremental Property Taxes remaining after those payments required to be made to the applicable public school districts based upon agreements entered into between the CITY and said school district or school districts, and payments to any other taxing jurisdictions which are required under applicable State law, and after deduction of administrative expenses of the CITY.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

“Project” means the renovation and redevelopment of the Property as described in Article Five and in Attachment “B”.

“Actual Project Cost” means all those actual and known costs expended by the DEVELOPER for the Project as presented in documentation to the CITY, as detailed in Attachment D.

“Estimated Project Costs” means all those costs estimated to be expended by the DEVELOPER associated with the Project as estimated in the Developer's Project Expense Estimates attached hereto and hereby made a part hereof in Attachment “D”.

“TIF Eligible” means those eligible qualified expenses as authorized by the Act.

“TIF Eligible Project Costs” means those eligible qualified Actual Project Costs as authorized by the Act.

“State” means the State of Illinois.

“Uncontrollable Circumstance” means any event which:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon;
and
- (b) is one or more of the following events:
 - (i) a Change in Law;
 - (ii) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, nuclear incident, war or naval blockade;
 - (iii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
 - (iv) governmental condemnation or taking other than by the CITY;
 - (v) strikes or labor disputes;

- (vi) unreasonable delay or unreasonable denial of the issuance of building or other permits or approvals by the CITY or by other governmental authorities having jurisdiction;
 - (vii) shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement; or
 - (viii) unknown or unforeseeable geo-technical or environmental conditions;
- (c) Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in b(vii) above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

ARTICLE THREE **CONSTRUABILITY OF TERMS**

3.1 Construability of Terms. This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) Definitions include both singular and plural.
- (b) Pronouns include both singular and plural and cover all genders.
- (c) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".
- (d) Headings of Articles and Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (e) All Attachments attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any Attachment and the terms of this Agreement, the Agreement shall control.
- (f) Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- (g) In connection herewith concerning written directions or authorization in respect of the investment of any funds, notwithstanding any provision hereof to the contrary, such direction or authorization orally by telephone, other telecommunication or otherwise, confirmed in writing, including by telecopier/facsimile transmission, shall be appropriate and is hereby approved. Failure of the investing agent to actually receive such written confirmation shall not render invalid or ineffective any such oral direction or authorization.

- (h) The City Mayor, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the CITY and with the effect of binding the CITY as limited by and provided for in this Agreement. DEVELOPER is entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the CITY as having been properly and legally given by the CITY.

ARTICLE FOUR **CITY CODES, ORDINANCES AND PROCEDURES**

4.1 Adherence to City Codes and Ordinances. All development and construction of the Project shall comply in all respects with the provisions in the Building, Plumbing, Mechanical, Electrical, Storm Water Management, Fire Prevention, Property Maintenance, FoxWalk Design Guidelines, Zoning and Subdivision Codes of the City of Aurora and all other germane codes and ordinances of said City in effect on the date that an application for a building permit and/or earth moving permit for such re-development or construction is filed, and during construction, except as otherwise provided herein and to the extent all such codes and ordinances are of general applicability to property within the city. DEVELOPER has examined and is familiar with all the current covenants, conditions, restrictions, building regulations, zoning ordinances, property maintenance regulations, environmental laws and land use regulations, codes, ordinances, federal, state and local ordinances, and the like, and represents and warrants that the Project shall be developed in accordance with same, or those that are in place at the time of building permit/earth moving permit.

4.2 Approval of Plans and Permits. DEVELOPER shall petition the City for all applicable approvals required for the renovation and construction of the Project including but not limited to: Certificate(s) of Appropriateness; Zoning Permit(s); Building Permit(s); Sign Permit(s); Stormwater Permit(s); Demolition Permit(s); Driveway Permit(s); Curb Cut Permit(s) and any improvements in the public right of way. Said petitions by DEVELOPER shall include making all submittal requirements in conformance with City policies, codes and ordinances. All documents and submittals shall adhere to all applicable codes and ordinances including but not limited to those listed in this Agreement.

The CITY'S review and approval shall not be unreasonably withheld. The CITY shall further promptly process, and not unreasonably withhold its approval of these requests of DEVELOPER.

4.3 Compliance with Applicable Laws. DEVELOPER shall at all times acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, FoxWalk Design Guidelines, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment, and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated there under), life safety codes, property maintenance codes and any other applicable codes and ordinances of the CITY in effect from time to time during the course of construction of the Project, unless the same conflicts with an express term of this Agreement.

4.4 Cooperation. The CITY and the DEVELOPER agree to cooperate in implementing the Project in accordance with the Parties respective obligations set forth in this Agreement and in

accordance with specific approvals by the CITY in the future of the site plans for the Property and Project. Whenever any Party is required to take any action pursuant to the terms of this Agreement, including but not limited to giving any consent, such action shall not be unreasonably withheld or delayed.

The CITY agrees to cooperate with DEVELOPER, and shall affirmatively support DEVELOPER's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the CITY and upon request of DEVELOPER, shall promptly execute any applications or other documents which DEVELOPER intends to file with such other governmental or quasi-governmental entities with respect to the Project.

4.5 Modifications. DEVELOPER may request and obtain certain modifications to this Agreement, without a public hearing except as required by state law, but with the approval of the Corporate Authorities of the CITY.

4.6 Reimbursement Procedures. The CITY shall authorize the distribution of funds to the DEVELOPER pursuant to Article Six, upon satisfaction of the conditions stated in this Agreement in addition to the Reimbursement Procedures included herein in Attachment "C".

ARTICLE FIVE **PROJECT**

5.1 Project. The DEVELOPER shall cause the completion of the Project, being the renovation of the Property pursuant to the description in Attachment "B".

5.2 Acquisition of Property. DEVELOPER has purchased the property at 56-58-60 S LaSalle St, Aurora IL 60505, and holds full fee simple title thereto.

ARTICLE SIX **CITY COVENANTS AND AGREEMENTS**

6.1 City Obligations. The CITY shall have the obligations set forth in this Article Six. All obligations of the CITY are expressly contingent upon DEVELOPER receiving all required CITY approvals for the Project, and upon DEVELOPER acting in accordance with all terms of this Agreement.

6.2 Financial Incentive. To stimulate and induce redevelopment in the TIF District the CITY agrees to provide an incentive to the DEVELOPER, for TIF Eligible Project Costs in an amount up to three hundred thousand dollars (\$300,000.00) or fifty percent (50%) of the Actual Project Costs, the lesser amount is the maximum amount of said incentive ("**Incentive Amount**"). Said Incentive Amount shall be subject to the following provisions and prior to the distribution of any CITY funds the DEVELOPER shall satisfy the conditions listed in Section 7.2 herein. Said Incentive Amount being a distribution, or reimbursement to the CITY, of Net Incremental Property Taxes, or revenue from other sources as determined by the CITY in its sole discretion.

- (a) In connection with certain TIF Eligible Project Costs, it is understood that the CITY shall provide the funds described in this Section 6.2 in accordance with the restrictions

and requirements of the Act and this Agreement including, but not limited to, the reimbursement procedures set forth in Section 4.6 herein.

- (b) This Incentive Amount is based solely on the Project and no further incentives shall be made available to the DEVELOPER for the completion of the Project.
- (c) The CITY is not required to issue any tax increment financing revenue bonds, CITY or DEVELOPER investment notes, or any other financing device of any kind to pay the Incentive Amount.
- (d) The CITY shall reimburse the DEVELOPER hereunder either from the existing fund balance in the TIF District Fund or such other source as may be determined by the CITY in its absolute and sole discretion. The Incentive Amount shall take the following form:
 - (i) Contractor Down Payment: One hundred thousand dollars (\$ 100,000.00) is the maximum amount the CITY shall contribute to reimburse DEVELOPER for the required contractor down payments for the Life Safety rehabilitation, reconstruction, repair and/or remodeling of the Property; said funds may be requested by the DEVELOPER after the Effective Date, upon submittal to the CITY the signed contracts for the work and to be distributed pursuant to the terms of this Agreement.
 - (ii) Professional Fee Reimbursement: Fifty-thousand dollars (\$ 50,000.00) is the maximum amount the CITY shall reimburse DEVELOPER for architectural plans, building plans, engineering plans and specifications for the plan renovation; said funds may be requested by the DEVELOPER as costs are incurred, to be distributed pursuant to the terms of this Agreement.
 - (iii) Construction Reimbursement: One hundred and fifty thousand dollars (\$ 150,000.00) is the maximum amount the CITY shall reimburse DEVELOPER for the Life Safety rehabilitation, reconstruction, repair and/or remodeling of the Property; said funds may be requested by the DEVELOPER once a building permit has been issued for the work, costs are incurred and paid by the DEVELOPER, and the Life Safety portion of the Project has been completed and inspected, to be distributed pursuant to the terms of this Agreement.
- (e) If the total cost for all of the TIF Eligible Project Costs (taken as a whole) is less than the Incentive Amount, the lesser amount is the maximum amount DEVELOPER shall be entitled to be reimbursed hereunder. If the acquisition cost of the Property and/or the cost of the TIF Eligible Project Costs exceed the Incentive Amount, DEVELOPER shall only be entitled to receive the maximum Incentive Amount stated herein from the CITY.

ARTICLE SEVEN
DEVELOPER'S COVENANTS AND AGREEMENTS

7.1 Developer's Obligations. DEVELOPER shall have the obligations set forth in this Article Seven for the re-development, reconstruction, construction, financing, completion and furtherance of the Project. These commitments shall include, but are not limited to the following:

- (a) Acquisition of Property: The DEVELOPER shall hold fee title to all of the Property. A contract to acquire the deed to the Property shall not satisfy this requirement.

Timing of this Obligation: The DEVELOPER covenants and agrees to satisfy the requirements of this Section 7.1(a) prior to the Effective Date. Failure of DEVELOPER to satisfy this obligation shall make this Agreement null and void ab initio.

- (b) Application for Approvals: The DEVELOPER shall petition the City for all applicable approvals pursuant to Article Four herein.

Timing of this Obligation: The DEVELOPER covenants and agrees to satisfy the requirements of this Section 7.1(b) within sixty (60) days after the Effective Date.

- (c) Progress Meetings: DEVELOPER shall meet with the Corporate Authorities and CITY staff and make presentations to the Corporate Authorities and CITY staff as reasonably requested by the CITY Mayor in order to keep the CITY apprised of the progress of the Project. The DEVELOPER shall document each of said meetings with the CITY.

Timing of this Obligation: Within fifteen (15) days after the Effective Date, the DEVELOPER shall begin regular meetings if requested by the CITY pursuant to this Section 7.1(c).

- (d) Project: The DEVELOPER shall complete the Project in accordance with all of the provisions set forth in this Agreement, and in accordance with future approvals by the CITY.

Timing of this Obligation: The DEVELOPER covenants and agrees to substantially complete the Project within ninety (90) days after acquiring the first approved building permit from the CITY for the Project.

- (e) Life Safety: The DEVELOPER shall complete any and all life safety portions of the Project in accordance with all of the provisions set forth in this Agreement, and in accordance with future approvals by the CITY.

Timing of this Obligation: The DEVELOPER covenants and agrees to substantially complete any and all life safety portions of the Project within ninety (90) days after acquiring the first approved building permit from the CITY for the Project. All life safety portions of the Project shall begin immediately upon receipt of said building permit.

- (f) Project Investment: DEVELOPER agrees that not less than Six hundred thousand dollars (\$ 600,000.00) will be spent by DEVELOPER on land acquisition and improvements made to the Property by completion of the Project with a portion of that investment to be reimbursed by the CITY pursuant to Section 6.2 herein. These Estimated Project Costs are further delineated in the Developer's Project Expense Estimates attached hereto and made a part hereof in Attachment "D".

Timing of this Obligation: Upon the request of the CITY, the DEVELOPER shall demonstrate in writing to the CITY's sole satisfaction that DEVELOPER has met the requirements of this Section 7.1(f).

(g) RESERVED

(h) Advertising, Promotions and Identification: The DEVELOPER and/or the DEVELOPER's tenants shall, in all advertisements and promotions relative to, and in all identifications of, the Property or the uses on the Property, regardless of the form thereof, clearly and prominently indicate that the Property or the uses on the Property is located in "Aurora," by use of the words "Aurora" or "City of Aurora" in said advertisement, promotion or identification. In this regard, where the advertising, promotion or identification indicates the Property or the uses on the Property as being associated with more than one municipality, the reference to "Aurora" or "City of Aurora" shall appear first.

Timing of this Obligation: Upon the request of the CITY, the DEVELOPER shall demonstrate to the CITY's sole satisfaction that DEVELOPER has met the requirements of this Section 7.1(h).

(i) Prohibited Uses: The DEVELOPER agrees that the following uses shall not be permitted on the Property for the entire Initial Use Term, plus an additional three (3) years:

1. Rooming and boarding / Single Room Occupancy (1320)
2. Used Clothing Stores (2120)
3. Pawn Shop (2160)
4. Flea Market (2170)
5. Banks, Financial Institutions and Insurance - this prohibition is limited to pay day loans and currency exchange uses (2200)
6. Laundromat (2610)
7. Certain Personal Services – this prohibition is limited to a tattoo parlors use (2630)
8. Poolrooms (5260)
9. Certain Special Purpose Recreational Institutions – this prohibition is limited to a roller skating rink use or a bowling alley use (5200)

Timing of this Obligation: Upon the request of the CITY, the DEVELOPER shall demonstrate to the CITY's sole satisfaction that DEVELOPER has met the requirements of this Section 7.1(i).

(j) No Contesting Real Estate Taxes: DEVELOPER shall not contest the assessed valuation of the Property, the equalized assessed valuation of the Property, and the applicable CITY tax levies on the Property during the term of this Agreement.

Timing of this Obligation: Upon the request of the CITY, the DEVELOPER shall demonstrate to the CITY's sole satisfaction that DEVELOPER has met the requirements of this Section 7.1(j).

- (k) Duty to Report Change in PINs: DEVELOPER shall notify the CITY from time to time of all new property index numbers (PINs) as they are issued by the County Clerk, it being understood that without such information the CITY shall be unable to calculate and determine the amount of Incremental Property Taxes, and failure of DEVELOPER to do so shall require the CITY to withhold any Incremental Property Taxes that may have been generated by the parcels that have the missing PINs that have not been reported by DEVELOPER to the CITY until such Incremental Property Taxes attributable to the missing PINs can be ascertained. The aforesaid duty to report change in pins shall be the exclusive obligation of DEVELOPER.

Timing of this Obligation: Upon the request of the CITY, the DEVELOPER shall demonstrate to the CITY's sole satisfaction that DEVELOPER has met the requirements of this Section 7.1(k).

(l) – (m) RESERVED

- (n) Payment of Fees: DEVELOPER shall pay the typical and customary fees including but not limited to recapture, permit, inspection review, and other fees for the Project in effect from time to time during the term of this Agreement.

Timing of this Obligation: Upon the request of the CITY, the DEVELOPER shall meet the requirements of this Section 7.1(n).

- (o) Prevailing Wage: DEVELOPER shall pay "Prevailing Wage Rates" (as established under 820 ILCS 130/0.01 et seq.) to any of its workers on the Project covered by this Agreement, regardless of whether such prevailing wages are required under Illinois law.

Timing of this Obligation: Upon the request of the CITY, the DEVELOPER shall demonstrate to the CITY's sole satisfaction that DEVELOPER has met the requirements of this Section 7.1(o).

- (p) Design Professional(s): DEVELOPER shall employ certified and responsible design professionals to produce architectural plans, building plans, engineering plans and specifications for the plan renovation as necessary for the Project. The materials produced shall and may be used by the DEVELOPER and the CITY to promote and market the Property.

Timing of this Obligation: Within thirty (30) days after the Effective Date, the DEVELOPER shall comply with this Section 7.1(p).

- (q) Licensed Contractor: DEVELOPER shall only employ contractor(s) which are licensed by the City to complete the Project.

Timing of this Obligation: Upon the request of the CITY, the DEVELOPER shall demonstrate to the CITY's sole satisfaction that DEVELOPER has met the requirements of this Section 7.1(q).

- (r) Partnership Sign: DEVELOPER shall post an identification sign, provided by the CITY, promoting the partnership with the CITY on the Project. Said sign shall be posted on

the Property for the duration of the Project or for a minimum of thirty (30) days whichever is longer.

Timing of this Obligation: Upon the request of the CITY, the DEVELOPER shall post the sign as provided by the CITY.

7.2 Financial Incentive. The DEVELOPER shall satisfy all of the following conditions prior to the CITY's distribution of any CITY funds referenced in Section 6.2 herein to the DEVELOPER:

- (a) The DEVELOPER may request the said funds referenced in Section 6.2 herein upon satisfaction of the Reimbursement Procedures in Section 4.6 herein and those conditions and provisions included in Section 7.1 herein.
- (b) The DEVELOPER shall have acquired and have fee title to all of the parcels which constitute the Property.
- (c) – (f) RESERVED
- (g) The DEVELOPER is not in default under this Agreement after expiration of all applicable cure periods.

7.3 City Security. Prior to the disbursement of any portion of the Incentive Amount referenced in Section 6.2 herein, the DEVELOPER shall execute a Developer Note and City Security guaranteeing repayment of the sum of three hundred thousand dollars (\$ 300,000.00) being the mutually agreed to security amount for the Incentive Amount. The form of the Developer Note and City Security shall be mutually agreeable to by the CITY and the DEVELOPER and shall include the following provisions:

- (a) DEVELOPER's payment and performance of the Developer Note and this Agreement shall be secured by a Security Agreement ("**City Security**") from DEVELOPER to the CITY, constituting a second lien on the Property.
- (b) This Agreement and the CITY's rights granted or referenced herein (including its rights to receive funds from the DEVELOPER), are subject to and subordinate to the rights and remedies of Fifth Third Bank ("**First Lien Lender**") set forth in that certain Note, ("**First Note**"), made by the DEVELOPER in favor of the First Lien Lender in the amount of one hundred twenty-seven thousand dollars (\$127,000.00), that certain Mortgage ("**First Lien**"), by the DEVELOPER in favor of the First Lien Lender, and recorded with the Kane County Recorder of Deeds and any other documents which evidence and/or secure the First Note and the First Lien.

And the CITY's rights granted or referenced herein (including its rights to receive funds from the DEVELOPER), are further subject to and subordinate to the rights and remedies of Wells Fargo ("**Second Lien Lender**") set forth in that certain Note, ("**Second Note**"), made by the DEVELOPER in favor of the Second Lien Lender in the amount of one hundred and five thousand dollars (\$105,000.00), that certain Mortgage ("**Second Lien**"), by the DEVELOPER in favor of the Second Lien Lender, and recorded with the Kane County Recorder of Deeds and any other documents which evidence and/or secure the Second Note and the Second Lien.

- (c) DEVELOPER hereby represents and warrants to the CITY that DEVELOPER's execution of and performance under this Agreement and all other documents and instruments required to be executed by DEVELOPER, do not violate or create a default under that certain First Lien or Second Lien given by DEVELOPER, to secure an indebtedness pursuant to the First Note or Second Note, given to the First Lien Lender or Second Lien Lender, said First Lien or Second Lien being heretofore recorded in the Office of the Kane County Recorder of Deeds against the Property.
- (d) As a condition precedent to the CITY's obligation to convey the Incentive Amount, DEVELOPER shall obtain First Lien Lender and Second Lien Lender consent and approval to the City Security.
- (e) DEVELOPER hereby represents and warrants to the CITY that there are no uncontested lien, other than the mortgage or mortgages set forth in this Section 7.3, exists against the Property. As supporting documentation a title search for the Property is shall be submitted to the CITY upon their request.
- (f) If at any time within three (3) years of the Effective Date, should DEVELOPER either sell the Property to any party, without the CITY's consent, or abandon the Project or commit an event of default as set forth in Article Ten, the Developer Note and City Security shall immediately become due and owing.
- (g) Provided conditions of this Agreement are met, the CITY shall release the Developer Note and the City Security three (3) years from the Effective Date. DEVELOPER's obligations under the Developer Note and City Security shall terminate and be automatically null and void and of no further force or effect.
- (h) Provided the conditions of the Agreement are met the DEVELOPER may request that the CITY release the Developer Note and the City Security prior to said three (3) year anniversary of the Effective Date. At the CITY's discretion said release may be granted and the DEVELOPER's obligations under the Developer Note and City Security shall terminate, be null and void and of no further force or effect.
- (i) Reserved.
- (j) As a condition precedent to the CITY's obligation to convey the Incentive Amount, DEVELOPER and the CITY shall execute such documents as are necessary to memorialize these agreements and understandings. The Developer Note and City Security shall be recorded as of the date of initial Incentive Amount being dispersed to the DEVELOPER.
- (k) The Parties agree to record an Original copy of the City Security at the appropriate County Recorder's Office. DEVELOPER shall submit one executed copy of the City Security to the CITY and pay the recording charges.

A sale shall be defined to include any transfer or assignment of any part of the Property, or any interest or part thereof in the DEVELOPER or any subsequent entity that operates or controls the Property, including but not limited to a sale or transfer of any interest or part thereof in the DEVELOPER between the owners of any interest in the DEVELOPER. Refinancing approved by the

CITY will not trigger the due on sale clause. If the CITY consents to the sale, it may also consent to the transfer to the buyer of the obligations under the Developer Note and the City Security.

Abandonment shall be deemed to have occurred when work or operations substantially cease on the Property for more than sixty (60) days for any reason other than Uncontrollable Circumstances.

ARTICLE EIGHT **REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

DEVELOPER represents warrants and agrees as the basis for the undertakings on its part herein contained that as of the date hereof and until completion of the Project:

8.1 Developer Existence. DEVELOPER shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as an Illinois limited liability company, so long as DEVELOPER maintains an interest in the Property or has any other remaining obligation pursuant to the terms of this Agreement.

8.2 Construction of Project. DEVELOPER shall diligently pursue obtaining all required permits and DEVELOPER shall cause construction of the Project on the Property to be prosecuted and completed pursuant to the terms hereof with due diligence, in good faith and without delay, subject to Uncontrollable Circumstances and the other provisions of this Agreement.

8.3 Further Assistance and Corrective Instruments. The CITY and DEVELOPER agree that they shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the CITY's sound legal discretion.

8.4 No Gifts. DEVELOPER covenants that no officer, member, manager, stockholder, employee or agent of DEVELOPER, or any other Person connected with DEVELOPER, has made, offered or given, either directly or indirectly, to any member of the Corporate Authorities, or any officer, employee or agent of the CITY, or any other Person connected with the CITY, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the CITY.

8.5 Disclosure. Concurrently with execution of this Agreement, DEVELOPER shall disclose to the CITY the names, addresses and ownership interests of all Persons that comprise DEVELOPER. At the time of execution of this Agreement and prior to Closing, no change shall be made in the Persons comprising DEVELOPER or in their ownership interests without the consent of the CITY which consent shall not be unreasonably withheld.

8.6 Organization and Authorization. Jimi Allen Photography Inc., is an Illinois Limited Liability Company duly organized and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper 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 the terms of this Agreement. To DEVELOPER's knowledge, there are no actions at law or similar proceedings which are pending or threatened against DEVELOPER which would result in any material and adverse change to DEVELOPER's financial condition, or which would materially and adversely affect the level of DEVELOPER's assets as of the date of this Agreement or

that would materially and adversely affect the ability of DEVELOPER to proceed with the Project. The DEVELOPER's signatory covenants that they are an authorized representative of the DEVELOPER and has the right, power and authority to execute this Agreement.

8.7 Non-Conflict or Breach. Neither the execution and delivery of this Agreement by DEVELOPER, the consummation of the transactions contemplated hereby by DEVELOPER, nor the fulfillment of or compliance with the terms and conditions of this Agreement by DEVELOPER conflicts with or shall result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of DEVELOPER (with DEVELOPER's prior written approval), any organizational documents, any restriction, agreement or instrument to which DEVELOPER or any of its partners or venturers is now a party or by which DEVELOPER or any of its partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of DEVELOPER, any related party or any of its venturers under the terms of any instrument or agreement to which DEVELOPER, any related party or any of its partners or venturers is now a party or by which DEVELOPER, any related party or any of its venturers is bound.

8.8 Financial Resources. DEVELOPER has sufficient financial and economic resources to implement and complete DEVELOPER's obligations contained in this Agreement.

8.9 Order Acceptance for Sales Tax Purposes. DEVELOPER shall not permit any sales at the PROPERTY to be accepted anywhere other than the PROPERTY. If DEVELOPER leases any portion of the PROPERTY to a tenant or tenants, each lease shall contain a provision in substantial conformance with the following language: "Tenant covenants that all of its sales at the [demised premises] shall be deemed to be accepted at the [demised premises]."

ARTICLE NINE **REPRESENTATIONS AND WARRANTIES OF THE CITY**

CITY represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

9.1 Organization and Authority. The City of Aurora is a municipal corporation duly organized and validly existing under the law of the State of Illinois, is a home rule unit of government, and has all requisite corporate power and authority to enter into this Agreement.

9.2 Authorization. The execution, delivery and the performance of this Agreement and the consummation by the CITY of the transactions provided for herein and the compliance with the provisions of this Agreement (i) have been duly authorized by all necessary corporate action on the part of the CITY, (ii) require no other consents, approvals or authorizations on the part of the CITY in connection with the CITY's execution and delivery of this Agreement, and (iii) shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the CITY is subject.

ARTICLE TEN **EVENTS OF DEFAULT AND REMEDIES**

10.1 Developer Events of Default. The following shall be Events of Default with respect to this Agreement:

- (a) If any representation made by DEVELOPER in this Agreement, or in any certificate, notice, demand or request made by a party hereto, in writing and delivered to the CITY pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if DEVELOPER does not remedy the default within thirty (30) days after written notice from the CITY.
- (b) Default by DEVELOPER for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of DEVELOPER; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and DEVELOPER within said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within ninety (90) days after such notice.
- (c) Default by DEVELOPER for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and the DEVELOPER, within said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within ninety (90) days after such notice.
- (d) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of DEVELOPER in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of DEVELOPER for any substantial part of its Property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order that has not been stayed and in effect for a period of sixty (60) consecutive days.
- (e) The commencement by DEVELOPER of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by DEVELOPER to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of DEVELOPER or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of DEVELOPER generally to pay such entity's debts as such debts become due or the taking of action by DEVELOPER in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within sixty (60) consecutive days.
- (f) Failure to have funds to meet DEVELOPER's obligations; provided, however, that such default shall constitute an Event of Default only if DEVELOPER does not remedy the default within thirty (30) days after written notice from the CITY.
- (g) DEVELOPER abandons the Project. Abandonment shall be deemed to have occurred when work stops on the Property for more than sixty (60) days for any reason other

than: (i) Uncontrollable Circumstances, or (ii) if DEVELOPER is ahead of its planned construction schedule.

- (h) DEVELOPER materially fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the Buildings contemplated by this Agreement; provided, however, that such default shall constitute an Event of Default only if the DEVELOPER does not, within ninety (90) days after written notice from the CITY, remedy the default.

10.2 City Events of Default. The following shall be Events of Default with respect to this Agreement:

- (a) If any representation made by the CITY in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to DEVELOPER pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the CITY does not remedy the default, within thirty (30) days after written notice from DEVELOPER.
- (b) Default by the CITY in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the CITY; provided, however, that such default or breach shall constitute an Event of Default only if the CITY does not, within thirty (30) days after written notice from DEVELOPER, initiate and diligently pursue appropriate measures to remedy the default.
- (c) Default by the CITY in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the CITY commences cure within thirty (30) days after written notice from DEVELOPER and in any event cures such default within ninety (90) days after such notice, subject to Uncontrollable Circumstances.
- (d) Failure to have funds to meet the CITY's obligations, within thirty (30) days after written notice from DEVELOPER of such failure.

10.3 Remedies for Default. In the case of an Event of Default hereunder:

- (a) The defaulting Party shall, upon written notice as provided in Sections 10.1 and 10.2 herein from the non-defaulting Party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured within thirty (30) days after receipt of the above notice, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than ninety (90) days from the receipt of notice as provided above in Sections 10.1 and 10.2 herein unless extended by mutual agreement, the non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement.

- (b) In case the CITY shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, DEVELOPER and the CITY shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of DEVELOPER and the CITY shall continue as though no such proceedings had been taken.
- (c) In the case of an Event of Default by DEVELOPER and its failure to cure such default after due notice and within the time periods provided in Sections 10.1 herein and this Section 10.3, in addition to any other remedies at law or in equity, the CITY shall be relieved of its obligations under this Agreement, if it so elects, and the CITY shall have the right, if it so elects, to terminate this Agreement.
- (d) In the case of an Event of Default by the CITY and its failure to cure such default after due notice and within the time periods provided in Section 10.2 herein and this Section 10.3, in addition to any other remedies at law or in equity, the DEVELOPER shall be relieved of its obligations under this Agreement, if it so elects, and the DEVELOPER shall have the right, if it so elects, to terminate this Agreement.

10.4 Reimbursement to City for Legal and Other Fees and Expenses.

- (a) To Effective Date of Agreement. The DEVELOPER concurrent with the adoption of this Agreement by the CITY shall reimburse the CITY for the following expenses of outside contractors and professionals incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Project:
 - (i) The reasonable costs incurred by the CITY for engineering services; and
 - (ii) The reasonable costs incurred by the CITY for landscape architect services; and
 - (iii) Attorneys' fees (up to \$5,000.00) incurred by the CITY; and
 - (iv) Miscellaneous out-of-pocket CITY expenses, such as legal publication costs, recording fees and copying expense.
- (b) From and After Effective Date of Agreement. Upon demand by CITY made by and through its Mayor, DEVELOPER from time to time shall promptly reimburse CITY for all enumerated expenses and costs incurred by CITY in the administration of the Agreement, including and not limited to reasonable engineering fees, reasonable attorneys' fees, landscape architect fees, financial consultant fees (if applicable) and out of pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder, the negotiation and preparation of letters of credit and escrow agreements to be entered into as security for the completion of land improvements, and the review and approval of any plats, easements or other documents related to the Project.

Such costs and expenses incurred by CITY in the administration of the Agreement shall be evidenced to the DEVELOPER upon its request, by a sworn statement of the CITY; and such costs and expenses may be further confirmed by the DEVELOPER at its option from additional documents relevant to determining such costs and expenses designated from time to time by the DEVELOPER.

Notwithstanding the immediately preceding paragraph, DEVELOPER shall in no event be required to reimburse CITY or pay for any expenses or costs of CITY as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by CITY ordinances or otherwise.

In the event that any third party or parties institute any legal proceedings against the DEVELOPER and/or the CITY which relate to the terms of this Agreement, then, in that event, the DEVELOPER, on notice from CITY shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto provided, however:

- (i) Neither Party shall make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, which would impose any liability on the other Party, without the prior approval of that Party.
- (ii) If the CITY, in its sole discretion, determines there is, or may probably be, a conflict of interest between CITY and the DEVELOPER, on an issue of importance to the CITY having a potentially substantial adverse effect on the CITY, then the CITY shall have the option of being represented by its own legal counsel. In the event the CITY exercises such option, then DEVELOPER shall reimburse the CITY from time to time upon written demand from the Mayor and upon notice of the amount due for any expenses, including but not limited to court costs, attorneys' fees and witnesses' fees, and other expenses of litigation incurred by the CITY in connection therewith.

10.5 No Waiver by Delay or Otherwise. Any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither Party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

10.6 Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

ARTICLE ELEVEN **EQUAL EMPLOYMENT OPPORTUNITY**

11.1 No Discrimination. DEVELOPER shall comply with all federal, state and local laws relating to equal employment opportunity. To the extent permitted by law, DEVELOPER shall use reasonable efforts to employ qualified residents of the CITY.

11.2 Advertisements. DEVELOPER shall, in all solicitations or advertisements for employees placed by or on behalf of DEVELOPER state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

11.3 Contractors. Any contracts made by DEVELOPER with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in Section 11.1 and 11.2 above.

ARTICLE TWELVE
MISCELLANEOUS PROVISIONS

12.1 Cancellation. In the event DEVELOPER or the CITY shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the Redevelopment Plan, including DEVELOPER's duty to build the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the CITY in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Redevelopment Plan or the covenants and agreements or rights and privileges of DEVELOPER or the CITY, then and in any such event, the Party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other within sixty (60) days after such final decision or amendment. If the CITY terminates this Agreement pursuant to this Section 12.1, to the extent it is then appropriate, the CITY, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided. Further, the cancellation or termination of this Agreement shall have no effect on the permits issued by the CITY for the Property and authorizations granted to DEVELOPER for units permitted and under construction to the extent permitted by said Court order; and the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded document.

12.2 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b) electronic communications, whether by telex, telegram or telecopy, (c) overnight courier, or (d) registered or certified first class mail, postage prepaid, return receipt requested.

If to CITY: City of Aurora
 44 E. Downer Place
 Aurora, Illinois 60507-2067
 Attention: City Mayor

With a copy to: City of Aurora
 44 E. Downer Place
 Aurora, Illinois 60507-2067
 Attention: City Clerk

And: City of Aurora
 Corporation Counsel
 44 E. Downer Place
 Aurora, Illinois 60507-2067

If to DEVELOPER: Jimi Allen Photography Inc.
 56 S LaSalle Street
 Aurora, IL 60505

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request

sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

12.3 Time of the Essence. Time is of the essence of this Agreement.

12.4 Integration. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

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

12.6 Recordation of Agreement. The Parties agree to record an Original copy of this Agreement in form and content mutually agreeable to the CITY and the DEVELOPER, and executed by the then current owners of the Property, in the appropriate land or governmental records. DEVELOPER shall submit two executed copies of the Agreement to the CITY and pay the recording charges.

12.7 Severability. If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

12.8 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois; Kane County shall be the locus for any court action on this Agreement.

12.9 Entire Contract and Amendments. This Agreement (together with the Attachments attached hereto) is the entire contract between the CITY and DEVELOPER relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the CITY and DEVELOPER, and may not be modified or amended except by a written instrument executed by the Parties hereto.

12.10 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 person other than the CITY and DEVELOPER, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the CITY or DEVELOPER, nor shall any provision give any third parties any rights of subrogation or action over or against either the CITY or DEVELOPER. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

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

12.12 Cooperation and Further Assurances. The CITY and DEVELOPER each covenant and agree that each shall do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the CITY or DEVELOPER or other appropriate persons all and singular the rights, property and revenues

covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

12.13 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective authorized successors and assigns.

12.14 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement, or any actions 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.

12.15 No Personal Liability of Officials of City or Developer. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Corporate Authorities, Mayor, any official, officer, partner, member, director, agent, employee or attorney of the CITY or DEVELOPER, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the CITY or DEVELOPER shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

12.16 No Assignment. The DEVELOPER may not assign this Agreement without the express written consent of the Corporate Authorities of the CITY. Notwithstanding any provision of this Agreement to the contrary, the DEVELOPER shall at all times during the term of this Agreement remain liable to the CITY for the faithful performance of all obligations imposed upon DEVELOPER by this Agreement until such obligations have been fully performed or until the CITY, at its sole option, has otherwise released DEVELOPER from any or all of such obligations. Nothing contained herein shall prohibit the DEVELOPER from selling or leasing fully constructed and completed portions of the Project/Property from time to time to affiliates or third parties, nor shall anything contained herein prohibit the DEVELOPER from selling or assigning uncompleted portions of the Project/Property from time to time to its parent or subsidiary corporations or otherwise legal (not contractual) affiliates of the DEVELOPER, said CITY agreement not to be unreasonably withheld.

12.17 Repealer. To the extent that any ordinance, resolution, rule, order or provision of the CITY's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful. This Agreement supersedes in its entirety any other redevelopment agreement the CITY has entered into concerning the Property and including specifically the Original Agreement.

12.18 Term. This Agreement shall remain in full force and effect until the TIF District expires (2023); provided, however, that the DEVELOPER's construction obligations hereunder shall terminate pursuant to certificates of completion issued by the CITY.

12.19 Estoppel Certificates. Each of the Parties hereto agrees to provide the other, upon not less than ten (10) business days prior written request, a certificate ("**Estoppel Certificate**") certifying that this Agreement is in full force and effect (unless such is not the case, in which case such Party(s) shall specify the basis for such claim), that the requesting Party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party. If either Party fails to comply with this provision within the time limit specified, it shall be deemed to have appointed the other as its attorney-in-fact for execution of same on its behalf as to that specific request only.

ARTICLE THIRTEEN
EFFECTIVENESS

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

For each day that the CITY or DEVELOPER is delayed by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

CITY OF AURORA,
an Illinois municipal corporation,



Mayor

ATTEST:



City Clerk

DEVELOPER:

Jimi Allen Photography Inc.,
an Illinois Corporation

By: 

Print Name/Title: James T. Allen

ATTEST:

By: 

Print Name/Title: Chris Rud

Attachment "A"
Legal Description of PROPERTY

Commonly known as (address): 56-58-60 S LaSalle Street
Tax Parcel Number: 15-22-383-003

The northerly 18 feet of the westerly 132 feet of lot 10 and the southerly 30 feet of the westerly 132 feet of lot 11 in block 15 of the original Town of Aurora, on the east side of the Fox River, in the City of Aurora, Kane County, Illinois

Attachment "B"
Project Description

The project consists of the façade restoration of a vacant 16,000 square foot building built in 1907 which once housed automobile dealerships and manufacturing uses. The front façade of the building is in dis-repair and is in jeopardy of collapse.

Life Safety Portions of the Project: The exterior life safety work includes the repair/replacement of the parapet wall and the front façade masonry, with ancillary railings, and any ancillary roof repair caused by the façade repair/replacement. No windows or doors shall be boarded-up at the end of the project and the Life Safety improvements shall not preclude the building from qualifying in the future for any Historic Tax Credit Program.

Attachment "C"
Reimbursement Procedures

Prior to the distribution of CITY funds the DEVELOPER shall satisfy the following standard conditions and procedures as may be required by the referenced Agreement Section:

13.1 Approval: Prior to or upon approval of this Agreement the DEVELOPER shall submit the following to the CITY:

- (a) DEVELOPER shall submit to the CITY, a **Financial Incentive Application** with supporting documents that may be required at the time of application, as determined by the Chief Development Officer, which may include any or all of the following: (3rd Whereas of the Agreement)
 - (i) Legal description of Property. (Attachment "B")
 - (ii.) Project Expense Estimates. (Attachment "D")
 - (iii.) A copy of the most recent paid annual property tax bill, sales tax bill, and Special Service Area tax bill.
 - (iv.) Signed and notarized **Affidavit of Property Ownership** including a copy of the purchase contract and authorization of owner OR a copy of the deed showing proof of ownership for the Property. (Section 5.2/Section 7.2(a)/Section 7.2(f))
 - (v.) Signed and notarized **Affidavit of Organization** stating that the DEVELOPER is duly organized and validly existing (Section 8.1 and 8.6); disclosure of the persons that comprise the DEVELOPER (Section 8.5); and that the DEVELOPER's representative has the right, power and authority to execute and to perform its obligations under the Agreement (Section 8.6).
 - (vi.) Signed and notarized **Affidavit of Representations and EEO Compliance** addressing all applicable provisions of Article 8 and 11 of the Agreement. (Section 8.3, 8.4, 8.7 and 11.1, 11.2 and 11.3)
 - (vii.) As determined by the Finance Director, a signed and notarized **Seize the Future Financial Resources Affidavit** from Seize the Future affirming that the DEVELOPER has sufficient financial and economic resources to implement and complete DEVELOPER's obligations contained in the Agreement. (Section 8.8)
- (b) DEVELOPER shall submit to the CITY, any additional information as is reasonably necessary for the CITY to determine that reimbursement is being sought for a TIF Eligible Project Costs and is otherwise due and payable hereunder, specifically including, but not limited to, such documents and/or information the CITY requests concerning the eligibility criteria in connection with payments due. (Section 8.3)

- (c) DEVELOPER shall submit to the CITY, two executed copies of this Agreement and the recording cost that is associated with recording the Agreement. (Section 12.6)

13.2 Prior to Reimbursement Requests: In addition to the requirements in Section 13.1 above, as a prerequisite to the submittal of a reimbursement request to the CITY for review DEVELOPER shall have the following documents on file with the CITY if applicable:

- (a) A current signed and notarized **Affidavit of Property Ownership** (Section 5.2/Section 7.2(a)/Section 7.2(f))
- (b) A current notarized **Affidavit of Organization** (Section 8.1, 8.5 and 8.6)
- (c) A current notarized **Affidavit of Representations and EEO Compliance** (Articles 8 and 11)
- (d) A current notarized **Seize the Future Financial Resources Affidavit** (Article 8.8)
- (e) Reserved.
- (f) DEVELOPER shall submit to the CITY, a signed and notarized **Affidavit of City Security** including the executed City Security and the recording cost that is associated with recording the City Security. (Section 7.3)
- (g) A copy of the recorded Agreement. (Section 12.6)

13.3 Each Reimbursement Request: In addition to the requirements in Section 13.1 and 13.2 above, as a prerequisite to the disbursement of any and each payment to DEVELOPER, DEVELOPER must certify to the CITY the following if applicable:

- (a) DEVELOPER shall submit to the CITY, a signed and notarized **Affidavit of Reimbursement Request Compliance** addressing all applicable provisions of Article 4 and 7 of the Agreement (Sections 4.1, 4.2, 4.3, and 7.1) and in addition addressing the following provisions:
 - (i) DEVELOPER covenants that the requested disbursement, submitted to the CITY, is for TIF Eligible Project Costs which are qualified for payment under this Agreement, the Act and applicable law.
 - (ii) DEVELOPER covenants that the requested disbursement, submitted to the CITY, does not contain items for which payment is requested has been the basis for a previous payment.
- (b) DEVELOPER shall submit to the CITY, a signed and notarized **Promissory Note/Developer Note** including an executed Promissory Note or Developer Note. (Section 7.3)
- (c) Updated **Affidavit of City Security** with the current City expenditure amount to date including the current request. (Section 7.3)

13.4 Reimbursement Requests for Improvements: In addition to the requirements in Sections 13.1, 13.2, and 13.3 above, as a prerequisite to the disbursement of any and each payment to DEVELOPER for improvement work completed, DEVELOPER must certify to the CITY, the following if applicable:

- (a) DEVELOPER shall submit to the CITY, a signed and notarized **Affidavit of Improvement Compliance** addressing all applicable provisions of Article 6, 7 and 8 of the Agreement (Sections 6.2, 7.2, and 8.1) and in addition addressing the following provisions:
 - (i) DEVELOPER covenants that the requested disbursement, submitted to the CITY, is due and owing (or has already been paid) from DEVELOPER to its construction manager, contractor, subcontractor or material supplier or others.
 - (ii) DEVELOPER has certified that the work for which payment is sought has been completed.

- (b) DEVELOPER shall submit to the CITY's Chief Financial Officer/City Treasurer and Director of Building and Permits a **Request Form for Improvement Reimbursement** on a form reasonably acceptable by the CITY for any and each payment to the DEVELOPER with respect to such reimbursement. Requests for disbursement shall minimally be accompanied by the following notarized sworn statements and waiver liens in a form acceptable to the CITY:
 - (i) DEVELOPER shall submit to the CITY, notarized sworn contractor statements indicating, DEVELOPER'S obligation to payment, payments made, change orders to date and any modifications to the project schedule of values.
 - (ii) DEVELOPER shall submit to the CITY, notarized certification of the sworn contractor statements indicating, DEVELOPER's obligation to payment, from the licensed design professional in responsible charge.
 - (iii) DEVELOPER shall submit to the CITY, notarized sworn contractor statements and weekly timesheets for all contractors' construction personnel demonstrating compliance with prevailing wage requirements.
 - (iv) DEVELOPER shall submit to the CITY, current waivers of lien for General contractor, Project Manager and suppliers with respect to the payment requested.
 - (v) DEVELOPER shall submit to the CITY, updated sub-contractor waivers of lien with respect to the last payment made, demonstrating the General contractor's payment to all sub-contractors on the last payment drawn.

13.5 Final Reimbursement Request: In addition to the requirements in Sections 13.1, 13.2, 13.3 and 13.4 above, the following additional documents shall be submitted by the DEVELOPER with the final reimbursement request if applicable.

- (a) Signed and notarized **Affidavit of Investment Compliance**, regardless of the deadline, affirming that the Project is complete and the Project Investment as specified in Section 7.1(f) was made to the Property, along with a copy of the permanent certificate of occupancy. (Section 7.1(d))
- (b) Reserved.
- (c) A copy of the recorded City Security. (Section 7.3)

Attachment "D"
Developer's Project Expense Estimates

<u>Items</u>	<u>Cost</u>
<u>Reimbursement to City for Legal and Other Fees and Expenses Pursuant to Section 10.4(a)</u>	
Engineering Services	None
Landscape Architect Services	None
Attorneys' Fees	None
Miscellaneous out-of-pocket expenses	None
REIMBURSEMENT TOTAL	None

<u>Land Acquisition</u>	
56-58-60 S LaSalle Street, Aurora IL 60505	\$256,000.00
LAND TOTAL	\$256,000.00

<u>Existing Building Renovations / Build Out</u>	
Soft Costs	
Architectural Fees	\$50,000.00
Permit Fees (Allowance)	\$5,000.00
Other Fees	\$1,000.00
SOFT COST SUB-TOTAL	\$56,000.00

Life Safety Building Improvements	
Masonry	\$236,576.77
Roof and other ancillary work	\$13,423.23
Contingency 10%	\$25,000.00
CONSTRUCTION SUB-TOTAL	\$275,000.00

RENOVATION/BUILD OUT SUB-TOTAL	\$331,000.00
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LAND AND RENOVATION TOTAL	\$587,000.00

<u>Other Investment Prior to Agreement</u>	
Legal fees and demolition	\$94,000.00
OTHER INVESTMENT TOTAL	\$94,000.00

TOTAL PROJECT COSTS	\$681,000.00
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50%	\$340,500.00
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