



CITY OF AURORA, ILLINOIS

RESOLUTION NO. *R15-261*
DATE OF PASSAGE *September 8, 2015*

A Resolution Authorizing the Execution of a Sales Tax Revenue Sharing Agreement between the City of Aurora and JTE Family Properties, LLC for the Property Located at 1032 Prairie Street, Aurora Illinois

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 City of Aurora desires to enter into a Sales Tax Revenue Sharing Agreement with JTE Family Properties LLC to facilitate the construction and establishment of a restaurant at the above address; and

WHEREAS, given that the total investment of the project exceeds \$800,000.00, the project would not be viable without economic assistance from the City of Aurora through a sales tax revenue sharing agreement; and

WHEREAS, the Seize the Future Development Foundation Grant Committee has recommended that the City Council of the City of Aurora favorably consider the Sales Tax Revenue Sharing Agreement.)

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

Section 1: 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 Sales Tax Revenue Sharing Agreement with JTE Family Properties LLC 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 1.

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Section 2: That the Mayor and City Clerk of the City of Aurora, Kane, Kendall, Will and DuPage Counties, Illinois, are hereby authorized to execute for and on behalf of the City of Aurora, the aforesaid Sales Tax Revenue Sharing Agreement

RESOLUTION NO. R15-261
DATE OF PASSAGE September 8, 2015

PASSED AND APPROVED ON September 8, 2015

AYES 11 NAYS 0 NOT VOTING 1 ABSENT 0

Kristina Bohman
Alderman Bohman, Ward 1

Alderman Mesiacos, Ward 3

Carl Franco
Alderman Franco, Ward 5

Chet Hart-Burns
Alderman Hart-Burns, Ward 7

[Signature]
Alderman Bugg, Ward 9

[Signature]
Alderman Irvin, At Large

Juan Garza
Alderman Garza, Ward 2

W. J. Sull
Alderman Donnell, Ward 4

Michael B. Saville
Alderman Saville, Ward 6

[Signature]
Alderman Mervine, Ward 8

Lynne M. Johnson
Alderman Johnson, Ward 10

[Signature]
Alderman O'Connor, At Large

ATTEST:

Wendy McCambridge
City Clerk

[Signature]
Mayor

15.00688

R E C O M M E N D A T I O N

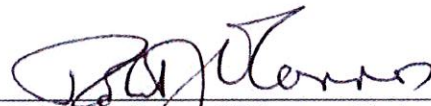
TO: THE COMMITTEE OF THE WHOLE

FROM: THE FINANCE COMMITTEE

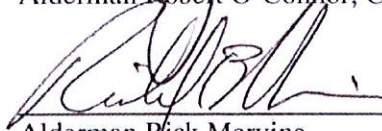
The Finance Committee at the regular scheduled Finance Meeting on Tuesday, August 25, 2015 Recommended APPROVAL of A Resolution Authorizing the Execution of a Sales Tax Revenue Sharing Agreement between the City of Aurora and JTE Family Properties, LLC for the Property Located at 1032 Prairie Street, Aurora Illinois

The Vote 3-0

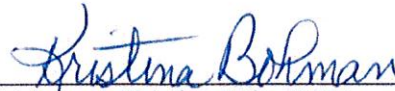
Submitted By



Alderman Robert O'Connor, Chairman



Alderman Rick Mervine



Alderman Kristina "Tina" Bohman

Alderman Ted Mesiacos, alternate

Dated this 25th day of August, 2015

SALES TAX REVENUE SHARING AGREEMENT

This Sales Tax Revenue Sharing Agreement (the "Agreement") is entered into on this ____ day of _____, 2015 (the "Effective Date") by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation (the "City"), and JTE Family Properties, L.L.C., Series E, an Illinois limited liability company ("JTE"). (The City and JTE are sometimes referred to herein collectively as the "Parties" and individually as a "Party.")

RECITALS

- A. The City is an Illinois home rule municipality, and hereby enters into this Agreement pursuant to its home rule powers; and, pursuant to Section 6(a) of Article VII of the Constitution of the State of Illinois of 1970, the City has determined that it has the authority to enter into this Agreement.
- B. The City deems it to be of significant importance to encourage development and redevelopment within the City, so as to maintain a viable real estate tax and sales tax base and employment opportunities.
- C. On June 30, 2015, in anticipation of proceeding with the Project (as defined in Recital D. below), JTE purchased the real estate commonly known as 1030-1034 Prairie Street, Aurora, Illinois 60506 for Two Hundred Sixty-Two Thousand Nine Hundred and No/100 Dollars (\$262,900.00), with said location being legally described and depicted on Exhibit A-1 and Exhibit A-2, respectively, attached hereto and made a part hereof (the "Subject Property").
- D. JTE intends to rehabilitate, repair, reconstruct, remodel and equip the building and parking lot located on the Subject Property, as well as proceed with all required right-of-way improvements to Prairie Street, and thereafter operate a restaurant on the Subject Property, to be known as the Spartan Ale House (the "Restaurant"), as more fully

described and depicted on Group Exhibit B attached hereto and made part hereof (the "Project").

- E. The cost of the Project, including the cost of the acquisition of the Subject Property, is estimated to be Eight Hundred Forty-One Thousand Four Hundred and No/100 Dollars (\$841,400.00), as more fully set forth on Exhibit C attached hereto and made part hereof (the "Total Investment Cost").
- F. The Parties anticipate that the Project will enhance the City's real estate and sales tax bases, and create additional employment opportunities in the City.
- G. JTE and the City acknowledge that JTE requires economic assistance from the City in order to complete the Project, given the Total Investment Cost, and that the Project would not be economically feasible, but for the economic assistance promised by the City in this Agreement.
- H. In light of the Total Investment Cost, and because the Project would not be economically feasible but for the economic assistance promised by the City in this Agreement, the City agrees, pursuant to the terms of this Agreement, to rebate to JTE up to One Hundred Ten Thousand and No/100 Dollars (\$110,000.00) over a ten (10) year period, in JTE Sales Taxes, (as defined in Section 3.01(A)(3) below), generated by the Restaurant (the "Maximum Reimbursement Amount"), subject to the other terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements herein made, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, the City and JTE hereby agree as follows:

ARTICLE I
RECITALS AS PART OF AGREEMENT

The Parties acknowledge that the statements and representations contained in the foregoing

recitals are true and accurate, and incorporate such recitals into this Agreement as if fully set forth in this Article I.

ARTICLE II
OBLIGATIONS OF JTE -
CONDITION PRECEDENT TO CITY UNDERTAKINGS

2.01 Condition Precedent. Each of the obligations specified in this Article II shall be a condition precedent to the City's financial undertakings in this Agreement. The City shall have no financial obligation to JTE under this Agreement until the satisfaction by JTE of each and every condition of this Article II.

2.02 Construction of the Project.

(A) JTE shall apply for all necessary permits, relative to the construction of the Project, within thirty (30) days of the Effective Date of this Agreement, subject to the *force majeure* provisions of Section 4.01 hereof, and shall begin construction of the Project within fifteen (15) days of the issuance of all necessary permits for the Project, subject to the *force majeure* provisions of Section 4.01 hereof ("Commencement of Construction").

(B) JTE shall receive a certificate of occupancy for the Project on or before the date which is six (6) full months after the Commencement of Construction, subject to the *force majeure* provisions of Section 4.01 hereof, and further subject to:

(1) Delays caused by the City not granting the required approvals, except delays caused as a result of the acts or omissions of JTE, which cause the delay by the City; and

(2) Delays caused by the City not issuing the required certificate of occupancy, except delays caused as a result of the acts or omissions of JTE, which cause the delay by the City.

The date on which the certificate of occupancy is issued for the Project shall be

the "Occupancy Date."

- (C) The Project shall be built in accordance with all applicable ordinances, rules and regulations of the City. JTE shall not knowingly cause or permit the existence of any violation of City ordinances, rules or regulations, including, but not limited to, the Building Code, the Zoning Ordinance, the Fire Code, and all rules and regulations thereunder applicable to the Restaurant and the Project.
- (D) JTE shall pay the prevailing rate of wages (as established under 820 ILCS 130/0.01 *et seq.* – the "Prevailing Wage Act") to all workers involved with the Project, and shall comply with the Prevailing Wage Act, regardless of whether such prevailing wages are required to be paid under Illinois law, or whether the Prevailing Wage Act is required to be followed relative to the Project.
- (E) The Developer will be required to have all Public Improvements designed by a licensed Professional Engineer and approved by the City of Aurora prior to the start of Construction. Engineering fees for the Right of Way improvements will be considered a reimbursable expense in the sales tax rebate agreement. The developer will be required to construct all improvements (at their cost) in the Prairie Street Right-of-way (driveway aprons, sidewalk, landscaping).

2.03 State Sales Taxes Information. JTE shall supply the City with State Sales Taxes (as defined in Section 3.01(A)(5) below) information for the Restaurant, including, but not limited to, copies of the monthly State Sales Taxes returns submitted by JTE to the Illinois Department of Revenue relative to the Restaurant, certified as true by the manager of JTE, in the format, and in compliance with the timing, as requested by the City's Chief Financial Officer/City Treasurer. JTE represents and warrants that all such information produced to the City pursuant to this provision is, and will be at all times in the future, true and accurate, and agrees and acknowledges that the City relies on the truth and accuracy of said information as a basis for its entering into this Agreement.

JTE shall submit to the City an executed Illinois Department of Revenue form PTAX 1002-21 for the Restaurant with a reporting period from the Effective Date through December 31, 2027.

2.04 State Sales Taxes Reporting, Audits and Confidentiality.

- (A) JTE hereby agrees to provide the City with written reports of all the State Sales Taxes (as defined in Section 3.01(A)(4) below) generated by the Restaurant, including, but not limited to, copies of the monthly State Sales Taxes returns submitted by JTE to the Illinois Department of Revenue relative to the Restaurant, during each calendar year of the Revenue Sharing Term (as defined in Section 3.01(B) below), as requested by the City's Chief Financial Officer/City Treasurer. Such reports shall be certified as true by the manager of JTE. JTE will deliver said reports to the City on a quarterly basis before the fifteenth (15th) day following the end of the calendar quarter for which JTE is reporting.
- (B) Upon request, the City shall have the right to audit JTE's records of Project costs, Restaurant sales, and State Sales Taxes (as defined in Section 3.01(A)(4) below) returns from time-to-time. The City hereby represents and warrants that any and all information regarding Restaurant sales and State Sales Taxes (as defined in Section 3.01(A)(4) below) shall be confidential and used only for the purpose of calculating any amounts due and owing to JTE pursuant to this Agreement. The City and JTE acknowledge that JTE's Restaurant sales and State Sales Taxes (as defined in Section 3.01(A)(4) below) information is financial information obtained from a business that is proprietary, privileged and/or confidential, and that disclosure of the Restaurant sales and State Sales Taxes (as defined in Section 3.01(A)(4) below) information would cause competitive harm to JTE, and, therefore, would not be subject to disclosure pursuant to a request under the Illinois Freedom of Information Act, 5 ILCS

140/1, *et seq*, as amended (the "FOIA"). JTE agrees to reimburse the City for the reasonable attorneys' fees and costs incurred by the City in responding to any requests for information under FOIA, subpoena or otherwise relating to this Agreement or JTE's Restaurant sales and State Sales Taxes (as defined in Section 3.01(A)(4) below) information supplied under this Agreement. JTE agrees that the City's compliance with any court order to produce information shall not subject the City to any liability hereunder for said information release.

- 2.05 Guaranteed Occupancy and Operation of the Restaurant. JTE agrees that it shall occupy and operate the Restaurant on the Subject Property for a minimum of ten (10) years from the Commencement Date (as defined in Section 3.02 below). JTE further agrees that the City shall receive State Sales Taxes (as defined in Section 3.01(A)(4) below) and Home Rule Sales Taxes (as defined in Section 3.01(A)(1) below) from the Restaurant for a minimum of ten (10) years from the Commencement Date (as defined in Section 3.02 below).
- 2.06 Real Estate Taxes and Other Charges. JTE hereby covenants and agrees to promptly pay or cause to be paid before becoming delinquent, subject to any appeal rights, any and all real estate taxes and governmental charges of general applicability that may at any time be lawfully finally assessed with respect to the Project and any portion of the Restaurant which is owned and controlled by JTE
- 2.07 Certification of Project Costs. JTE shall supply the City with a statement of the costs of the Project certified as true by the manager of JTE, and such other information reasonably requested by the City's Engineer or Chief Financial Officer/City Treasurer. JTE represents and warrants that all such information produced to the City pursuant to this provision is, and will be at all times in the future, true and accurate, and agrees and acknowledges that the City may, and does, rely on the truth and accuracy of said information as a basis for its entering into this Agreement.

2.08 Reimbursement of Legal Fees. JTE shall reimburse the City for all legal fees incurred by the City relative to verifying JTE's compliance with the provisions of Article II of this Agreement, for purposes of the City carrying out its obligations and undertakings pursuant to the provisions of Article III of this Agreement. The total reimbursement for legal fees relative to verifying said compliance shall not exceed three thousand dollars (\$3,000). Payment shall be made to the City within thirty (30) days of a written demand for reimbursement from the City. Any amounts not paid within said thirty (30) day period shall accrue interest at the rate of two percent (2%) per month, with the minimum interest payment being for a one (1) month period.

2.09 No Default. JTE shall not be in default of any term of this Agreement.

ARTICLE III
CITY OBLIGATIONS AND UNDERTAKINGS

3.01 Economic Assistance.

(A) Definitions.

(1) "Home Rule Sales Taxes" shall be those taxes received by the City pursuant to the Home Rule Municipal Retailers' Occupation Tax Act (65 ILCS 5/8-11-1), as amended, and the Home Rule Municipal Service Occupation Tax Act (65 ILCS 5/8-11-5), as amended, or any taxes received by the City as a replacement for the taxes currently received pursuant to the Home Rule Municipal Retailers' Occupation Tax Act or the Home Rule Municipal Service Occupation Tax Act.

(2) "JTE Sales Tax Allocation" shall be as follows:

(i) First twelve (12) month period after the Commencement Date – Ninety Percent (90%).

(ii) Second twelve (12) month period after the Commencement Date – Eighty Percent (80%).

(iii) Third twelve (12) month period after the Commencement Date –

Seventy Percent (70%).

- (iv) Fourth twelve (12) month period after the Commencement Date – Sixty Percent (60%).
 - (v) Fifth twelve (12) month period after the Commencement Date – Fifty Percent (50%).
 - (vi) Sixth twelve (12) month period after the Commencement Date – Fifty Percent (50%).
 - (vii) Seventh twelve (12) month period after the Commencement Date – Fifty Percent (50%).
 - (viii) Eighth twelve (12) month period after the Commencement Date – Fifty Percent (50%).
 - (ix) Ninth twelve (12) month period after the Commencement Date – Fifty Percent (50%).
 - (x) Tenth twelve (12) month period after the Commencement Date – Fifty Percent (50%).
- (3) "JTE Sales Taxes" shall be: (i) those State Sales Taxes generated by the Restaurant, which are distributed to the City by the State, during each twelve (12) month period after the Commencement Date, during the term of this Agreement, net of any prompt payment discount; multiplied by (ii) the JTE Sales Tax Allocation for the particular twelve (12) month period. "JTE Sales Taxes" shall not include any Home Rule Sales Taxes received by the City.
- (4) "State Sales Taxes" shall be those taxes received by the City pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1, *et seq.*, as amended, and the Service Occupation Tax Act, 35 ILCS 115/1, *et seq.*, as amended, or any taxes received by the City as a replacement for the taxes currently received pursuant to the Retailers' Occupation Tax Act or the Service Occupation Tax Act.

(B) Assistance.

- (1) Upon satisfaction by JTE of all of the conditions stated in Article II of this Agreement, the City shall rebate to JTE the JTE Sales Taxes. Said payments shall be made by the City to JTE for a period of ten (10) years from the Commencement Date (as defined in Section 3.02 below) or until the Maximum Reimbursement Amount is reached, whichever occurs first (the "Revenue Sharing Term").
- (2) In conjunction with the Project, the City of Aurora will construct the Hartford Avenue curb and landscaping during the 2016 construction season.

3.02 Commencement Date. JTE shall give the City written notice that it has satisfied all of the conditions of Article II of this Agreement, and that it is electing to commence the Revenue Sharing Term. The notice shall specify the commencement date as the next following July 1st or January 1st (the "Commencement Date"). The City shall thereafter confirm whether JTE has satisfied all of the conditions of Article II of this Agreement and determine whether JTE is entitled to receive the JTE Sales Taxes.

3.03 Payment Procedure. After the Commencement Date, so long as the City has confirmed that JTE has satisfied all the conditions of Article II of this Agreement, during the Revenue Sharing Term, the City shall pay to JTE the JTE Sales Taxes, on a quarterly basis, within forty-five (45) days of the City's receipt of all requested documentation as referenced in Sections 2.03 and 2.04(A) for each calendar quarter, upon receipt of State Sales Taxes.

ARTICLE IV **GENERAL PROVISIONS**

4.01 Delay and Force Majeure. For the purposes of any of the provisions of this Agreement, neither the City nor JTE, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of

any delay caused by damage or destruction by fire or other casualty, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain or storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornados and other events or conditions beyond the reasonable control of the Party affected which in fact interfere with the ability of such Party to discharge its respective obligations hereunder.

4.02 Assignment of Agreement. This Agreement may be assigned by JTE to any affiliate of JTE or to a bonafide purchaser of its business, provided:

- (A) the transaction does not violate 65 ILCS 5/8-11-20, as amended, or any statute enacted to amend or replace 65 ILCS 5/8-11-20;
- (B) at least thirty (30) days prior written notice of such assignment is given to the City; and
- (C) that the assignee agrees to be bound by all of the terms, conditions and provisions of this Agreement, including, but not limited to, the City's default remedies.

4.03 JTE Authority. JTE hereby represents and warrants that it is a limited liability company authorized to do business in, and in good standing with, the State of Illinois. JTE further represents and warrants that all actions necessary to make JTE's obligations hereunder enforceable against JTE have been taken, and that no further approvals or actions are required.

4.04 Defaults; Remedies.

- (A) In the event of any default under or violation of this Agreement (the "Default"), the Party not in Default shall serve notice upon the Party in Default (the "Defaulting Party"), which notice shall be in writing and shall specify the particular Default (the "Default Notice"). The Defaulting Party shall have the right to cure the Default within thirty (30) days from written notice of such Default; provided,

however, if such Default cannot practically be cured within said thirty (30) days, provided the Defaulting Party has commenced the cure within such thirty (30) day period, and is actively and diligently proceeding with such cure, the Defaulting Party shall be granted such additional time to cure the Default as shall be reasonable under the circumstances. In this regard, the Defaulting Party shall advise the other Party, in writing, during the initial thirty (30) day cure period, of the amount of time needed to cure said Default, and why the additional time is needed. After issuance of the Default Notice, and the Defaulting Party's failure to cure within the time frame required, the Party which served the Default Notice may terminate this Agreement, or may proceed to seek a cure of the Default by any action or proceeding at law or in equity, including seeking specific performance of the covenants and agreements herein contained, and/or an award for money damages for failure of performance. Notwithstanding the foregoing:

- (1) In the event of a Default by the City, relative to its obligations to JTE under Article III, JTE's sole and exclusive remedies shall be to terminate this Agreement or seek specific performance from a court of competent jurisdiction, and JTE shall not be entitled to any monetary damages from the City, and hereby expressly waives any claim for monetary damages; and
 - (2) The time period to cure a Default in relation to compliance with Section 2.05 above shall not exceed ninety (90) days.
- (B) In the event that JTE fails to meet its obligations as set forth in Section 2.05 above, the City shall have the following additional remedies, after giving JTE the notice required by Section 4.04(A) above:
- (1) In the first twelve (12) month period after the Commencement Date, the

City shall be repaid one-hundred percent (100%) of any sums paid or rebated to JTE pursuant to this Agreement, since the Commencement Date.

- (2) In the second twelve (12) month period after the Commencement Date, the City shall be repaid ninety percent (90%) of any sums paid or rebated to JTE pursuant to this Agreement, since the Commencement Date.
 - (3) In the third twelve (12) month period after the Commencement Date, the City shall be repaid eighty percent (80%) of any sums paid or rebated to JTE pursuant to this Agreement, since the Commencement Date.
 - (4) In the fourth twelve (12) month period after the Commencement Date, the City shall be repaid seventy percent (70%) of any sums paid or rebated to JTE pursuant to this Agreement, since the Commencement Date.
 - (5) In the fifth twelve (12) month period after the Commencement Date, the City shall be repaid sixty percent (60%) of any sums paid or rebated to JTE pursuant to this Agreement, since the Commencement Date.
 - (6) In the sixth twelve (12) month period after the Commencement Date, the City shall be repaid fifty percent (50%) of any sums paid or rebated to JTE pursuant to this Agreement, since the Commencement Date.
 - (7) In the seventh twelve (12) month period after the Commencement Date, the City shall be repaid forty percent (40%) of any sums paid or rebated to JTE pursuant to this Agreement, since the Commencement Date.
 - (8) In the eighth twelve (12) month period after the Commencement Date, the City shall be repaid thirty percent (30%) of any sums paid or rebated to JTE pursuant to this Agreement, since the Commencement Date.
 - (9) In the ninth twelve (12) month period after the Commencement Date, the City shall be repaid twenty percent (20%) of any sums paid or rebated to JTE pursuant to this Agreement, since the Commencement Date.
 - (10) In the tenth twelve (12) month period after the Commencement Date, the City shall be repaid ten percent (10%) of any sums paid or rebated to JTE pursuant to this Agreement, since the Commencement Date.
 - (11) In addition to the foregoing, the City shall be entitled to cease any further payments under this Agreement to JTE, and this Agreement shall be null and void.
- (C) JTE shall make any repayment owed to the City under this Agreement within thirty (30) days of a written demand from the City. Any amounts not repaid within said thirty (30) day period shall accrue interest at the rate of two percent (2%) per month, with the minimum interest payment being for a one (1) month period.

(D) The provisions of Section 4.04(B) and (C) above shall survive the termination of this Agreement.

4.05 Notices. All notices and requests required pursuant to this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, or by personal or overnight delivery, as follows:

If to JTE: Michael J. Poulakidas
346 North Lake Street
Aurora, Illinois 60506

If to the City: City Clerk
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

with copies to: Corporation Counsel
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

and: Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606
Attn: Thomas P. Bayer / Gregory T. Smith

or at such other addresses as either Party may indicate in writing to the other Party. Service by personal or overnight delivery shall be deemed to occur at the time of the delivery, and service by certified mail, return receipt requested, shall be deemed to occur on the third (3rd) day after mailing.

4.06 Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Venue for any legal action brought by either Party as a result of entering into the Agreement shall be in the Circuit Court of Kane County, Illinois.

4.07 Time. Time is of the essence under this Agreement and all time limits set forth herein are mandatory, and cannot be waived except by a lawfully authorized and executed written waiver by the Party excusing such timely performance.

4.08 Limitation of Debt. Any obligations of the City created by or arising out of this Agreement

shall not be a general debt of the City on, or a charge against, the City's general credit or taxing powers, but shall be a limited obligation payable solely out of the JTE Sales Taxes as set forth in Article III. Provided, however, if the City no longer receives State Sales Taxes from the Restaurant due to a law change by the State of Illinois, then the City shall make payments to JTE from any alternate sources of revenue provided to the City, by the State of Illinois, specifically as a replacement or substitute for State Sales Taxes presently received by the City (the "Alternate Source Revenues") and, in that event, the payment to JTE shall be calculated as if the City were continuing to receive the State Sales Taxes at a rate equal to the sales tax rate applicable to the City's share of the State Sales Taxes immediately prior to the elimination of the City's State Sales Taxes, multiplied by JTE's sales that would have been subject to State Sales Taxes. The amount to be tendered to JTE from any Alternate Source Revenues shall be subject to a proportionate reduction in the event that the Alternate Source Revenues do not constitute, or are not intended to constitute, a one hundred percent (100%) replacement of the State Sales Taxes previously received by the City. The City's obligation to provide JTE with JTE Sales Taxes is restricted to State Sales Taxes generated by JTE and actually received by the City, or Alternate Source Revenues actually received by the City.

- 4.09 No Waiver or Relinquishment of Right to Enforce Agreement. Failure of either Party to this Agreement to insist upon the strict and prompt performance of the terms covenants, agreements, and conditions herein contained, or any of them, upon the other Party imposed, shall not constitute or be construed as a waiver or relinquishment of the Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- 4.10 Article and Section Headings. All Article and Section headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or

application of any of the provisions thereunder whether covered or relevant to such heading or not.

- 4.11 City's Authorization to Execute. The Mayor and City Clerk of the City hereby warrant that they have been lawfully authorized by the City Council to execute this Agreement.
- 4.12 Amendment; Conflict with Annexation Agreement. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between JTE and the City relative to the subject matter thereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced to writing and signed by them.
- 4.13 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
- 4.14 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.
- 4.15 Changed Conditions. In the event it is finally determined by any court of competent jurisdiction (after exhaustion of all regular appeals) that any of the covenants of this Agreement cannot legally be performed by the City or are not within the constitutional authority conferred upon the City as a home rule municipality, or the State of Illinois constitutional or statutory scheme shall become inconsistent with this Agreement, notwithstanding such judicial determination, or constitutional or statutory change, the City agrees to make every reasonable effort within its lawful authority to carry out the intention of the Parties as hereinabove agreed. The City shall, after such judicial determination, or constitutional or statutory change, make every reasonable effort to substitute a mechanism to accomplish the intent of this Agreement within its power as a

home rule municipality. Notwithstanding anything to the contrary contained herein, the City shall not be obligated to pay any sums to JTE hereunder, in the event the City no longer receives State Sales Taxes, unless Alternate Source Revenues are provided to the City from the State of Illinois, and provided payment hereunder from Alternate Source Revenues is not illegal.

4.16 Limitation of Liability. No recourse under or upon any obligation, covenant or agreement of this Agreement, or for any claim based thereon or otherwise in respect thereof shall be had against any elected official, officer, agent or employee of the City, and all and any such rights or claims of JTE against any elected official, officer, agent or employee of the City are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the City.

City of Aurora,
an Illinois home rule municipal corporation

By: 
Thomas J. Weisner, Mayor


JTE Family Properties, L.L.C., Series E,
an Illinois limited liability company,

By: _____
Michael J. Poulakidas, Manager

Date: September 11, 2015

Date: _____

ATTEST:

By: 
Wendy McCambridge, City Clerk

Date: September 11, 2015

Exhibit A-2

Depiction of the Location of the Subject Property

(attached)

Group Exhibit B

Description and Depiction of the Restaurant and the Project

DESCRIPTION: The building and parking lot on the Subject Property will be rehabilitated, repaired, reconstructed, remodeled and equipped to create the Spartan Ale House, a sports themed pub serving all types of people (the "Restaurant"). The Restaurant will provide a fun and enjoyable atmosphere. The Restaurant will offer a menu of pub food in a casual dining environment, interactive vending (i.e., darts, music, foosball, NTN Buzztime predictive sports and trivia games, etc.), and five Video Gaming Terminals for the Restaurant's customers' gaming enjoyment. The Restaurant will also provide all televised sporting events (i.e., NFL, MLB, NBA, NHL, etc.), including pay per view events (i.e., the Ultimate Fighting Championship, boxing, etc.).

The Restaurant's aim is simple: it will provide a completely sophisticated, sensual, yet casual dining experience for the many Aurorans and visitors who frequent the City's casual dining spots and entertainment venues. It will be an affordable venue for customers, one that will encourage them to return on many occasions. The Restaurant will provide a wide range of food, drink and entertainment for the customers. The goal is to keep up with customer trends and always offer excellent food and drinks of the highest quality. The meats will be locally sourced and the produce will be locally grown.

The Restaurant will also provide a much needed neighborhood-based casual dining food operation in Aurora's Fourth Ward neighborhood, and it is projected that the Restaurant will generate approximately twenty-five (25) new jobs.

DEPICTION: See attached plans and drawings.

Exhibit C

Estimated Project Costs

(attached)