



CITY OF AURORA, ILLINOIS

ORDINANCE NO. 014-097
DATE OF PASSAGE December 23, 2014

An Ordinance Authorizing the Execution of a Redevelopment Agreement with Fox Island Apartments, LLC for the Properties Located at 7 South Stolp, 33-35 South Stolp, and 77 South Stolp Avenue

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 Redevelopment Agreement for certain properties within the City of Aurora and the TIF #1 Redevelopment Project Area/Tax Increment Financing District, a true and correct copy of the Redevelopment Agreement (the "Redevelopment Agreement") being attached hereto and made a part hereof as EXHIBIT 1; 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 by the City of Aurora, and further, that but for the provision for incentives as provided therein, the properties would not otherwise be developed as provided therein, and

WHEREAS, funding for the project is available in the 2015 City Budget under Account Number 231-1830-465-55-63 (Major Project Development) in Tax Increment Financing District Number 1 (Downtown TIF)

NOW, THEREFORE, BE IT ORDAINED 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 Ordinance as fully as if completely repeated at length herein.

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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 "Redevelopment Agreement" with Fox Island Apartments 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.

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.

PASSED AND APPROVED on December 23, 2014

AYES 12 NAYS 0 NOT VOTING 0 ABSENT 0

ATTEST:

Ischl N. K
City Clerk

Teuhwason
Mayor

Attachments: Exhibit 1 Redevelopment Agreement

14.00989

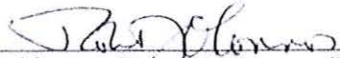
RECOMMENDATION

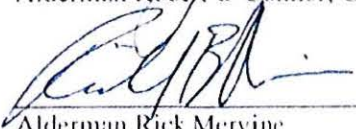
TO: THE COMMITTEE OF THE WHOLE

FROM: THE FINANCE COMMITTEE

The Finance Committee at the regular scheduled Finance Meeting on Tuesday, December 9, 2014 Recommended **APPROVAL** of An Ordinance Authorizing the Execution of a Redevelopment Agreement with Fox Island Apartments, LLC for the Properties Located at 7 South Stolp, 33-35 South Stolp, and 77 South Stolp Avenue

The Vote 3-0

Submitted By 
Alderman Robert O'Connor, Chairman


Alderman Rick Mervine


Kristina "Tina" Bohman

John "Whitey" Peters, alternate

Dated this 9th day of December, 2014

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (hereinafter "*Agreement*") is made and entered into as of the 23 day of December 2014 ("*Agreement Date*") by and between the CITY OF AURORA, ILLINOIS, an Illinois Municipal home rule corporation, (the "*City*") and Fox Island Apartments, LLC (the "*Developer*").

RECITALS

WHEREAS, Developer recently acquired property commonly know as the Graham Building located at 33-35 S. Stolp Avenue, Aurora, Illinois and legally described on *Exhibit A*; and

WHEREAS, Developer recently acquired property commonly known as Leland Tower located at 7 S. Stolp Avenue, Aurora, Illinois and legally described on *Exhibit B*; and

WHEREAS, the City is the owner of property commonly known as the Elks Club Building located at 77 S. Stolp Avenue, Aurora, Illinois and legally described on *Exhibit C*; and

WHEREAS, the City purchased the Elks Club Building on _____ for \$12,000; and

WHEREAS, Developer desires to own and redevelop the Elks Club Building, and the City desires to sell the Elks Club Building; and

WHEREAS, the City published notice of its intent to sell the Elks Club Building to Developer on December 23, 2014; 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 development in order to enhance the local tax base, to increase tax revenues realized by the City, to 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, the City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et. seq.* (the "*Act*"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act; and

WHEREAS, this Agreement relates to the acquisition, redevelopment and continued use of the Elks Club Building, the Graham Building and Leland Tower; and

WHEREAS, 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 Elks Club Building; and

WHEREAS, in accordance with the Act, the City conducted a public hearing with respect to the Original Plan and a public hearing with respect to the Redevelopment Plan at meetings of the City Mayor and the City Council ("**Corporate Authorities**") held on October 14, 1986 and October 14, 2003, respectively; and

WHEREAS, as part of the study of the redevelopment of the TIF District, the City found that the improvements in the TIF District 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, to stimulate and induce redevelopment in the TIF District pursuant to the Act, the City has adopted the following ordinances, after giving all notices required and after conducting public hearings as required by law ("**Enabling Ordinances**"):

1. 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";

2. Ordinance No. 086-5597, adopted December 2, 1986, titled "An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois, Approving a Tax Increment Redevelopment Project Area of Said City a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act";

3. 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";

4. 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";

5. 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'";

6. Ordinance No. 003-148, adopted November 4, 2003, titled "An Ordinance Supplementing Ordinance No. 86-5598 Entitled 'An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois Adopting Tax Increment Allocation Financing for Downtown Aurora Redevelopment Project Area'"; and

WHEREAS, it is understood that the Downtown TIF District authorization was nearing expiration and that the City has received an extension of such authorization from the State of Illinois and the City has implemented the extension of the length of the Downtown TIF District; and

WHEREAS, Developer is uniquely positioned to redevelop the Elks Club Building by virtue of its ownership of the Graham Building and Leland Tower, and by virtue of its ability to meet the capital requirements of the City; and

WHEREAS, Developer intends to acquire from the City and redevelop the Elks Club Building to be operated in conjunction with the Graham Building and Leland Tower as a restaurant and residential apartment complex; and

WHEREAS, it is necessary for the successful completion of the Project (as defined in *Section 2.1* below) that the City enter into this Agreement with Developer to provide for the acquisition and redevelopment of the Elks Club Building, the operation of the Elks Club Building in conjunction with the Graham Building and Leland Tower, and the continued maintenance and operation of the Elks Club Building, the Graham Building and Leland Tower in conformance with the City's property standards and maintenance codes, thereby implementing the Redevelopment Plan; and

WHEREAS, Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Elks Club Building but for certain tax incentive financing ("*TIF*") incentives to be provided by the City in accordance with the Act and the home rule powers of the City, which the City is willing to provide under the terms and conditions contained herein. The Parties acknowledge and agree that but for the TIF incentives, to be provided by the City, Developer cannot successfully and economically develop the Elks Club Building in a manner satisfactory to the City. The City has determined that it is desirable and in the City's best interests to assist Developer in the manner set forth herein and as this Agreement may be supplemented and amended; and

WHEREAS, the City, in order to stimulate and induce redevelopment of the Elks Club Building and to ensure continued maintenance and operation of the Graham

Building and Leland Tower in conformance with the City's property standards and maintenance codes, has agreed to finance certain redevelopment project costs through Incremental Property Taxes all in accordance with the terms and provisions of the Act and this Agreement; 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 Agreement binding upon the City; 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, this Agreement has been submitted to Developer for consideration and review; Developer has taken all actions required to be taken prior to execution of this Agreement in order to make the same binding upon the Developer; and any and all actions of the Developer precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

NOW, THEREFORE, in consideration of the foregoing and 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 **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 out *verbatim* in this **Article One**, and constitute findings, representations and agreements of the City and of the Developer.

ARTICLE TWO
DEFINITIONS

2.1 **Definitions.** For purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement including those in the recitals hereto shall have the following meaning:

"Act" means the Tax Increment Allocation Redevelopment Act 65 ILCS 5-11-74.4-1 *et. seq.* as supplemented by the Local Government Debt Reform Act, as amended, and the home rule powers of the City.

"Agreement" means this redevelopment agreement.

"Change in Law" means the occurrence, after the Effective Date, of an event described in subsection (a) below, 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:

(a) 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, only 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 performed under this Agreement; 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).

"City" means the City of Aurora, Illinois, an Illinois home rule municipal corporation.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Collector" means the officer or officers of the County of Kane, Illinois, who are obligated under applicable law to collect and pay over to the City the Incremental Property Taxes pursuant to and in accordance with the Act.

"Corporate Authorities" means the Mayor and City Council of the City of Aurora, Illinois.

"Developer" means Fox Island Apartments, LLC, a Wisconsin Limited Liability Company or any successors in interest thereof.

"Elks Club Building" means 77 S. Stolp Avenue, Aurora, Illinois and legally described on **Exhibit C**.

"Elks Club Acquisition Project" means the acquisition and redevelopment of the Elks Club Building pursuant to the scope of work attached hereto as **Exhibit D**.

"Funding Cap" means one million two hundred thousand dollars (\$1,200,000) the maximum amount the City shall reimburse developer for costs associated with the acquisition of the Graham Building and Leland Tower.

"Graham Building" means 33-35 S. Stolp Avenue, Aurora, Illinois and legally described on **Exhibit A**;

"Graham Building Base Year Property Taxes" means the total property taxes levied against the Graham Building for tax year 2013, payable in calendar year 2014.

"Incremental Property Taxes" means that portion of the *ad valorem* taxes, if any, arising from the taxes levied upon the Elks Club Building, the Graham Building, Leland Tower, or other property in the TIF Area which taxes are attributable to the increase in the then current equalized assessed valuation ("EAV") of the taxable 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 Ordinance and this Agreement and includes any replacement, substitute or amended taxes.

"Incremental Graham Building Property Taxes" means the difference between the "Graham Building Base Year Property Taxes" and the total property taxes levied against the "Graham Building" for the then current tax year.

"Incremental Leland Tower Property Taxes" means the difference between the "Leland Tower Base Year Property Taxes" and the total property taxes levied against "Leland Tower" for the then current tax year.

"Leland Tower" means 7 S. Stolp Avenue, Aurora, Illinois and legally described on **Exhibit B**;

"Leland Tower Base Year Property Taxes" means the total property taxes levied against the Graham Building for tax year 2013, payable in calendar year 2014.

"Party" means the City and/or Developer and its successors and/or assigns as permitted herein.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof.

"Project" means, collectively, the acquisition, redevelopment and operation of the Elks Club Building as provided for in the Elks Club Acquisition Project, the acquisition and operation of the Graham Building, and the acquisition and operation of Leland Tower.

"Redevelopment Plan" means the "Redevelopment Plan" for the TIF District as approved by City Ordinance No. 003-146.

"Redevelopment Project Costs" means those costs necessary to complete the Project.

"State" means the State of Illinois.

"TIF District" means the Downtown Redevelopment Project Area of the City.

"TIF Ordinance" means Ordinance Numbers 086-5596, 086-5597, 086-5598 (all adopted December 2, 1986), 003-146, 003-147, and 003-148 (all adopted November 3, 2003), all as described in the Recitals to this Agreement.

"Uncontrollable Circumstances" 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 weather conditions or other similar act of God;
 - (iv) governmental condemnation or taking;
 - (v) strikes or labor disputes;
 - (vi) unreasonable delay in the issuance of building or other permits or approvals by the City or other governmental authority 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.

Uncontrollable Circumstances 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).

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.

ARTICLE THREE **CONSTRUCTION**

3.1 Construction. 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 word "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 or reference and do not constitute a part hereof and shall not affect the meaning, construction or effect of the text of this Agreement.
- (e) All exhibits attached to this Agreement shall be and are operative provisions of this Agreement 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 exhibit and the terms of this Agreement, the terms of this 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 shall be in writing whether or not a writing is specifically mentioned.
- (g) The City Mayor, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make, 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 such authority by the City.
- (h) In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates *David Karademas* as its authorized representative who shall individually have the power and authority to do all things required or described in this Agreement for and on behalf of Developer and with the effect of binding Developer (such individual being an "*Authorized Developer Representative*"). Developer shall have the right to change its Authorized Developer Representative by providing the City with written notice of such change which notice shall be sent in accordance with *Section 14.2*.

ARTICLE FOUR
PURCHASE AND SALE OF THE ELKS CLUB BUILDING

4.1 Sale and Purchase of the Elks Club Building. On the Closing Date (as hereinafter defined), and subject to the terms and conditions of this Agreement, City hereby agrees to sell and convey the Elks Club Building to Developer, and Developer hereby agrees to purchase the Elks Club Building from the City, at the price and upon the terms and conditions set forth herein, such property to be conveyed with all rights, title and interest of the City in and to all easements, rights, privileges, appurtenances and other rights and improvements to all the property.

4.2 Purchase Price. The purchase price for the Elks Club Building shall be Ten Dollars (\$10.00). In addition, at the time of Closing, Developer shall deliver to the City a cash security deposit in the amount of Five Hundred Thousand Dollars (\$500,000.00) to ensure the Developer fulfills the conditions set forth in **Section 6.6(a)**. The City shall hold the security deposit in an account in the name of the City at First Midwest Bank, if and only if First Midwest Bank provides the City with an appropriate collateralization agreement that complies with the City's investment policy.

4.3 Terms of Payment. The Developer shall pay the entire amount of the purchase price and security deposit in cash or by wire transfer at the closing.

4.4 The Deed. The City shall convey or cause to be conveyed to Developer, or Developer's nominee, by recordable, stamped deed, good title to the Elks Club Building subject only to the following "permitted exceptions", if any: (a) general real estate taxes not due and payable at the time of closing; (b) special assessments confirmed after the date of this contract; (c) building, building line and use or occupancy restrictions, conditions and covenants of record; (d) zoning laws and ordinances; (e) easements for public utilities; (f) public road and highways and easements pertaining thereto; and (g) right-of-way for drainage tiles, ditches, laterals and feeders.

4.5 Title. The City covenants that it has full legal, beneficial and equitable ownership of the Elks Club Building, and that it has the right and power to convey the Elks Club Building. The Elks Club Building is to be sold and conveyed free of liens, and title is to be good of record, merchantable and insurable. Within 30 days from the date of execution of this Agreement, the City shall provide Developer a preliminary title commitment in the amount of the purchase price showing title in the City to the entire premises.

- (a) Title shall be fully insurable under a full coverage owner's title policy in the amount of the purchase price, at standard rates and without requirement or exception, subject only to: (1) the permitted exceptions as set forth in **Section 4.4** above; (2) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount, which may be removed by the payment of money at the time of closing, in which case an amount sufficient to secure the release of such title exceptions shall be deducted from the proceeds of sale due the City at closing; and (3)

acts done or suffered by, or judgments against Developer, or those claiming by, through or under Developer.

- (b) If the title commitment discloses unpermitted exceptions, the City shall have thirty (30) days from the date of delivery thereof to have said exceptions waived, or to have the title insurer commit to insure against loss or damage that may be caused by such exceptions and the closing date shall be delayed, if necessary, during said thirty (30) period to allow City time to have said exceptions waived. If the City fails to have unpermitted exceptions waived or, in the alternative, to obtain a commitment for title insurance as specified above, within the time specified, the Developer may terminate this Agreement, or may elect, upon notice to the City within ten (10) days after the expiration of the thirty (30) day period, to take title as it then is, with the right to deduct from the purchase price liens or encumbrances of a definite or ascertainable amount. If the Developer does not so elect, this Agreement shall become null and void, without further actions of the Parties, and all monies paid by the Developer hereunder shall be refunded.
- (c) Any title commitment which conforms with subparagraph (a) above shall be conclusive evidence of good title as therein shown, as to all matters insured by the policy, subject only to special exceptions therein stated. Also, prior to closing, the City shall furnish to Developer a current survey of the Elks Club Building prepared by a surveyor licensed by the State of Illinois.

4.6 Affidavit of Title. The City shall furnish the Developer at closing an Affidavit of Title, covering the date of closing, subject only to those permitted special exceptions set forth in **Section 4.4**, and unpermitted exceptions, if any, as to which the title insurer commits to extend insurance in the manner specified by **Section 4.5**.

4.7 Closing. Subject to the provisions set forth below, the Closing shall be on or before December __, 2014 at a time and place mutually agreeable to the Parties.

4.8 City's Representations, Warranties and Covenants. The City hereby represents and covenants to Developer that:

- (a) The City has good and marketable title to the Elks Club Building insurable at regular rates by reputable insurance companies and without exceptions, and will convey the same at closing.
- (b) At closing, Developer will be entitled to immediate, exclusive and unconditional possession of the Elks Club Building and the Elks Club Building will be free and clear of all tenants, and there shall be no claims of possession against or affecting the Elks Club Building.

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- (c) The City has made no written commitments or representations to the applicable governmental authorities or any adjoining or surrounding property owners, and to the best of the City's knowledge has made no such oral commitments or representations, which would in any manner be binding upon the Developer or interfere with Developer's ability to redevelop the Elks Club Building. The City covenants and agrees that the City will not make any such commitment or representation after the date of this Agreement except as specifically requested by Developer in writing.
- (d) All contractors, sub-contractors, laborers and material men performing work upon or furnishing labor or materials to improve or benefit the Elks Club Building at the City's request have been paid or will be paid in full by the City. Accordingly, the City hereby agrees to indemnify and hold Developer harmless from any claims, liabilities, damages, or expenses which Developer, its successors and assigns, may incur by reason of any mechanic's or material men's liens filed against the Elks Club Building or claims against the Developer for work performed or materials furnished by or at the request of the City. The City will promptly execute the necessary affidavits, indemnification agreements and other documents required by title insurance companies to eliminate from their title policies (including owner's policies) any exception to filed or unfiled mechanics' liens and will supply Developer or Developer's title insurance company with copies of all such documents affecting the Elks Club Building or any portion thereof along with final lien waivers.
- (e) The City will not further encumber the Elks Club Building or negotiate for, or agree to, its sale.
- (f) In all other respects, the Elks Club Building is being sold "as is" and the City makes no warranties as to the condition of the Elks Club Building. The Developer acknowledges regulated asbestos containing materials are present in the Elks Club Building. Specifically, the following regulated asbestos containing materials have been identified in the Elks Club Building:
- 9" x 9" floor tiles and associated mastic located in the basement.
 - Thermal System Insulation (TSI) located in shaft closets on floors 2, 3 and 4 (paper cardboard-like air-cell pipe wrap).
 - Joint Tape Compound on the HVAC ductwork wrap on the second floor Mechanical Store and adjacent Community Rooms.

The Developer acknowledges that additional regulated asbestos containing materials may be present in the Elks Club Building. In addition, the Developer acknowledges that the Elks Club Building contains lead containing paint. Lead containing paint has been found in the basement wall paint and basement doorframes. The Developer acknowledges that additional lead containing paint may be present in the Elks Club Building.

- (g) The execution, delivery and performance of this Agreement by the City and the consummation of the transaction contemplated hereby in the manner contemplated herein will not violate any provision of any legal requirement to which the City or the Elks Club Building is subject, or violate any judgment, order, writ, injunction or decree of any court applicable to the City or the Elks Club Building.

4.9 Insurance. Prior to entering onto the Elks Club Building for any purpose, Developer shall execute a standard form of license agreement for the benefit of the City and Developer and Developer's consultants shall provide the City with certificates of insurance, naming the City as an additional primary, non-contributory insured, issued by such companies and in such amounts as shall be determined by the City in the exercise of its discretion.

4.10 Compliance with Governmental Orders. The Developer and City shall provide, and consent to the reporting of all information regarding this sale required by any act, regulation or statute, including all amendments thereto, of the United States of America, the State of Illinois (or any agency of subdivision thereof), including but not limited to the following: (a) all provisions of Section 1445 of the Internal Revenue Code including any withholding requirements thereof; (b) all provisions of Section 6045 of the Internal Revenue Code including disclosure of tax identification numbers, sales price, net sale proceeds and forwarding addresses; (c) if the Developer is a business that is subject to the provisions of the Illinois Retailers' Occupation Tax Act, Developer and the City shall provide all information and documentation necessary, file any and all reports, and withhold from the proceeds of sale such funds, as may be required of Section 444j of Chapter 120 of the Illinois Revised Statutes, as amended. In addition, all notes and notices of violation of county, state, federal or other governmental orders, directives, statutes, ordinances or other requirements noted or issued by any governmental department, or action in any court on account hereof or affecting the Elks Club Building on the effective date of the Agreement shall be complied with prior to closing and the Elks Club Building shall be conveyed free of the same. Any such notices received subsequent to the date hereof but prior to the closing shall be the responsibility of the City unless precipitated solely by an act or omission of Developer including, but not limited to, all notices which may be received as a result of any required notice to governmental officials which must be given as a result of Developer's investigations. The City agrees to advise the Developer promptly upon receipt of any such notice and of any information adversely affecting the Elks Club Building.

4.11 Transfer Tax Stamps. This transaction is exempt from the payment of State of Illinois, County of Kane, and City of Aurora transfer tax stamps.

4.12 Closing Costs. The Developer will bear any and all closing costs customarily charged to the buyer in real estate transactions in Kane County, Illinois.

4.13 Survey. At least fifteen (15) days prior to closing, the City shall provide to the Developer a current survey of the Elks Club Building, prepared by an Illinois licensed surveyor showing all corners staked, all easements of record and all road rights-of-way.

4.14 Commission Fees. The City and Developer each warrant to the other that neither has dealt with any agent, broker or finder with respect to the transaction contemplated by this Agreement.

4.15 Possession and Occupancy. The City shall give the Developer sole and exclusive possession and occupancy of the Elks Club Building at closing.

ARTICLE FIVE **REDEVELOPMENT PLAN**

5.1 Redevelopment Plan. 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 specific approvals by the City in the future of the zoning, and site plans for the Elks Club Acquisition 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.

ARTICLE SIX **CITY REDEVELOPMENT COVENANTS AND AGREEMENTS**

6.1 City's Redevelopment Obligations. The City shall have the obligations set forth in this *Article Six*.

6.2 Elks Club Building Reimbursement Expenses. Upon the Developer fulfilling the conditions set forth in *Section 6.6(a)*, the City shall return to Developer the Five-Hundred Thousand Dollar (\$500,000.00) cash security deposit deposited with the City pursuant to *Section 4.2*.

6.3 Leland Tower Reimbursement Expenses. For tax years 2014 through 2022, the City shall annually reimburse the Developer from Incremental Property Taxes an amount equal to the Incremental Leland Tower Property Taxes as reimbursement for costs incurred by the Developer in acquiring Leland Tower. Such reimbursement payment is contingent upon the Developer meeting the conditions provided for in

Section 6.6(c). Such reimbursement payment shall be made annually, starting in calendar year 2015 and ending in calendar year 2023, within 45 days of receipt by the City of the second distribution of property taxes from the Collector to the TIF District.

6.4 **Graham Building Reimbursement Expenses.** For tax years 2014 through 2022, the City shall annually reimburse the Developer from Incremental Property Taxes an amount equal to the Incremental Graham Building Property Taxes as reimbursement for costs incurred by the Developer in acquiring the Graham Building. Such reimbursement payment is contingent upon the Developer meeting the conditions provided for in **Section 6.6(d)**. Such reimbursement payment shall be made annually, starting in calendar year 2015 and ending in calendar year 2023, within 45 days of receipt by the City of the second distribution of property taxes from the Collector to the TIF District.

6.5 **Graham Building and Leland Tower Funding Cap.** It is understood that the Funding Cap is the total maximum amount the City will be required to reimburse the Developer for the costs incurred by the Developer in acquiring Leland Tower (**Section 6.3**) and the Graham Building (**Section 6.4**). In no event shall the total amount reimbursed to Developer under **Sections 6.3** and **6.4** be more than the Funding Cap. If the total amount of the reimbursement provided in **Sections 6.3** and **6.4** (taken as a whole) is less than the Funding Cap, the lesser amount is the maximum amount the Developer will be entitled to hereunder. If the total amount of the reimbursement provided in **Sections 6.3** and **6.4** (taken as a whole) exceeds the Funding Cap, the Developer shall be entitled to receive up but not in excess of the Funding Cap.

6.6 Conditions to Reimbursement.

- (a) The City shall authorize the return of the Five-Hundred Thousand Dollar (\$500,000.00) cash security deposit to the Developer (or First Midwest Bank) under **Section 6.2** within forty-five (45) of the Developer's disbursement request upon satisfaction of each of the following conditions:
 - (i) The Developer acquires the Elks Club Building from the City pursuant to the terms set forth in **Article 4** of this Agreement;
 - (ii) Within four hundred fifty (450) days of the date of Closing as set forth in **Section 4.7**, or any applicable cure periods as provided in **Section 12.1(k)**, the Developer has, to the satisfaction of the Chief City Building Official, completed the Elks Club Acquisition Project and certificates of occupancy have been issued for all residential units;
 - (iii) Developer has submitted to the City Treasurer a disbursement request on a form reasonably acceptable to the Developer and the City and, to the satisfaction of the City Treasurer, established

- that Developer has fulfilled its obligations under this Agreement; and
- (iv) Developer is not in default under this Agreement after expiration of all applicable cure periods.
- (b) If the Developer does not complete the Elks Club Acquisition Project within four hundred fifty (450) days of Closing, or any applicable cure periods as provided in **Section 12.1(k)**, the Developer shall not be entitled to return of the Five-Hundred Thousand Dollar (\$500,000.00) cash security deposit provided for in **Section 6.2** and the City shall have the right to retain the security deposit as damages for the Developer's failure to timely complete the Elks Club Acquisition Project. In addition, if the Developer does not complete the Elks Club Acquisition Project within four hundred fifty (450) days of Closing, or any applicable cure periods as provided in **Section 12.1(k)**, the City shall have the first right to purchase the Elks Club Building from the Developer by matching any proposed sale price offered by a third party bona fide purchaser. Said right of first refusal shall be exercisable within forty-five (45) days following notice of a bona fide sale offer.
- (c) The City shall authorize the distribution of Incremental Property Taxes to the Developer under **Section 6.3** to reimburse the Developer for costs associated with the acquisition of Leland Tower within forty-five (45) of the Developer's disbursement request upon satisfaction of the following conditions:
- (i) All property taxes then due and owing from the Developer for Leland Tower have been paid in full;
 - (ii) Developer has submitted to the City Treasurer a disbursement request on a form reasonable acceptable to the Developer and the City and proof of payment of the property taxes for Leland Tower;
 - (iii) Developer is not in default under this Agreement after expiration of all applicable cure periods; and
 - (iv) The Developer is not in violation of any applicable laws, rules, ordinances, regulations or any other applicable codes and ordinances of the City, including but not limited to all building and property standards and maintenance codes.
- (d) The City shall authorize the distribution of Incremental Property Taxes to the Developer under **Section 6.4** to reimburse the Developer for costs associated with the acquisition of the Graham Building within forty-five (45) of the Developer's disbursement request upon satisfaction of the following conditions:

- (i) All property taxes then due and owing from the Developer for the Graham Building have been paid in full;
- (ii) Developer has submitted to the City Treasurer a disbursement request on a form reasonable acceptable to the Developer and the City and proof of payment of the property taxes for the Graham Building;
- (iii) Developer is not in default under this Agreement after expiration of all applicable cure periods; and
- (iv) The Developer is not in violation of any applicable laws, rules, ordinances, regulations or any other applicable codes and ordinances of the City, including but not limited to all building and property standards and maintenance codes.

6.6 City's Cooperation. The City agrees to cooperate with Developer and when reasonable, will affirmatively support Developer's attempts to obtain necessary approvals from any governmental or quasi-governmental entity, other than the City and upon request of Developer, when reasonable, will promptly execute any applications or other documents that Developer intends to file with such other governmental or quasi-governmental entities with respect to the Elks Club Acquisition Project. The City shall further promptly process, and not unreasonably withhold its approval of requests of Developer for applicable building permits or other permits necessary for completion of the Elks Club Acquisition Project.

ARTICLE SEVEN
DEVELOPER'S REDEVELOPMENT COVENANTS AND AGREEMENTS

7.1 Developer's Redevelopment Obligations. Developer shall have the obligations set forth in this *Article Seven*.

7.2 Developer's Commitments.

- (a) The Developer shall acquire from the City the Elks Club Building pursuant to the terms of this Agreement;
- (b) Within 120 days of the Developer's acquisition of the Elks Club Building as provided for in this Agreement, Developer shall have applied for all requisite building permits and all other necessary land use and construction approvals as shall be necessary or appropriate for the Elks Club Acquisition Project;
- (c) The Developer shall at all times construct, operate and maintain the Elks Club Acquisition Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Elks Club Acquisition Project shall conform to all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, 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 standards and 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 Elks Club Acquisition Project, unless the same conflicts with an express term of this Agreement;

- (d) The Developer shall complete the Elks Club Acquisition Project within four hundred fifty (450) days of the date of acquiring the Elks Club Building;
- (e) The Developer shall pay in full when due all property taxes for the Elks Club Building, the Graham Building and Leland Tower;
- (f) The Developer shall at all times maintain and operate the Elks Club Building, the Graham Building, and Leland Tower in conformance with all applicable laws, rules, ordinances, regulations and any other applicable codes and ordinances of the City, including but not limited to all building and property standards and maintenance codes; and
- (g) The Developer will pay all City fees and, in addition, any recapture due to the City and/or Fox Metro Water Reclamation District collected either directly by said District or by the City on its behalf or on behalf of the District;
- (h) The Developer shall pay City the customary permit, inspection review and tap-on fees for the Project in effect at the date of execution of this Agreement, unless fees are subsequently reduced by the City, in which case the Developer shall only be required to pay the amount of such reduced fees; and
- (i) The City shall be named as a beneficiary on all performance, labor, and material bonds for public improvements and completion guarantees required by Developer's Lender or any other entity providing labor and/or material relative to the Project. Duplicate originals of said bonds and/or completion guarantees naming the City as a beneficiary shall be provided to the City no later than the date that a building permit is issued and shall be a condition to the issuance of a building permit.

ARTICLE EIGHT
ADDITIONAL COVENANTS OF DEVELOPER

8.1 Developer Existence. Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as a Wisconsin Limited Liability Company, so long as Developer maintains an interest in the Elks Club Building, the Graham Building or Leland Tower or has any other remaining obligations 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 Elks Club Acquisition Project 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 will, 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, 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 the Developer. At the time of execution of this Agreement and prior to Closing, no change shall be made in the Person comprising Developer or in their ownership interests without the consent of the City. The City agrees to reasonably consent to any transfers of interests in the Developer that are made to family members, or trusts created for family members.

ARTICLE NINE **ADHERENCE TO CITY CODES AND ORDINANCES**

9.1 City Codes and Ordinances. All development and construction of the Elks Club Acquisition Project shall comply in all respects with the provisions of the Building, Plumbing, Mechanical, Electrical, Storm Water Management, Fire Prevention, Property Maintenance, Zoning and Subdivision Codes of the City and all other germane codes and ordinance of the City in effect on the date that an application for a building permit for such development or construction is filed, and from time to time during construction as applicable, 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 covenants, conditions,

restrictions, building regulations, zoning ordinances, property maintenance codes, standards and regulations, environmental laws and land use regulations, codes, ordinances, federal, state and local ordinances, and the like, and represents and warrants that the Project will be developed in accordance with same.

ARTICLE TEN
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:

10.1 Organization and Authorization. Developer is a Wisconsin Limited Liability Company organized and existing under the laws of the State of Illinois.

10.2 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 will 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, any organizational documents, any restrictions, agreements or instruments to which Developer or any of its partners, shareholders or venturers is bound, or constitutes a default under any of the foregoing, or results in the creation of imposition of any prohibited lien, charge or encumbrance upon any of the assets or rights of Developer, any related party or any of its ventures under the terms of any instrument or agreement to which Developer, any related party or any of its partner, shareholders or venturers is now a party or by which Developer, any related party or any of its venturers is bound.

10.3 Financial Resources. Developer has sufficient financial and economic resources to timely implement and complete Developer's obligations contained in this Agreement as evidence on the attached *Exhibit E*.

10.4 Real Estate Tax Assessments. Developer covenants that it shall not challenge any real estate tax assessments or taxes levied against the Elks Club Building, the Graham Building or Leland Tower during the term of this Agreement (See *Section 14.18*). Any property tax assessment complaints pending for the Graham Building and Leland Tower relative to the 2014 assessment year shall be withdrawn with prejudice and with no reduction in the assessed value.

ARTICLE ELEVEN
REPRESENTATIONS AND WARRANTIES OF THE CITY

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

11.1 Organization and Authority. The City is a municipal corporation duly organized and validly existing under the laws 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.

11.2 Authorization. The execution, delivery and 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.

11.3 Litigation. To the best of the City's knowledge, there are no proceedings pending or threatened against or affecting the City or the TIF District in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the City to perform its obligations under this Agreement.

ARTICLE TWELVE **EVENTS OF DEFAULT AND REMEDIES**

12.1 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 this Agreement, 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, with said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default and, in any event, cures such default with ninety (90) days after such notice, subject to Uncontrollable Circumstances.

- (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 of 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 unstayed and in effect for a period of sixty (60) 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 Elks Club Building, 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 with thirty (30) days after written notice from the City.
- (g) Developer abandons the Elks Club Acquisition Project. Abandonment shall be deemed to have occurred when work stops for more than ninety (90) 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 Developer

does not, within ninety (90) days after written notice from the City, remedy the default.

- (i) Developer fails to comply with any applicable laws, rules, ordinances, regulations or any other applicable codes and ordinances of the City, including but not limited to all building and property maintenance codes as it relates to the operation of the Elks Club Building, the Graham Building, or Leland Tower; provided, however, that such default shall constitute an Event of Default only if Developer does not, within thirty (30) days after written notice from the City, remedy the default.
- (j) Developer fails to pay when due all *ad valorem* real property taxes levied against the Elks Club Building, the Graham Building, or Leland Tower; provided, however, that such default shall constitute an Event of Default only if Developer does not, within thirty (30) days after written notice from the City, remedy the default.
- (k) Developer fails to complete the Elks Club Acquisition Project within four hundred fifty (450) days of Closing; provided, however, that such default shall constitute an Event of Default only if Developer does not, within ninety (90) days after written notice from the City, remedy the default.
- (l) Developer fails to provide the City with appropriate documentation evidencing completion of the Developer's obligations under this Agreement; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default with thirty (30) days after written notice from the City.

12.2 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 in the City does not remedy the default, within thirty (30) days after written notice from Developer.
- (b) Default by the City in the performance of breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the City; provide, 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.

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

- (a) The defaulting Party shall, upon written notice 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 with 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 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 period provided, in addition to any other remedies at law or in equity, the City shall be relieved of its obligations under this Agreement provided; however, the cancellation or termination of this Agreement shall have no effect on construction permits already issued by the City for the Elks Club Acquisition Project (unless such permits are the basis for the litigation). Cancellation or termination of this Agreement shall have no effect on perpetual easements.
- (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 this

Agreement, 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.

- (c) In the event the Developer fails to meet its obligations as set forth in **Sections 7.2(e)** and **7.2(f)**, and such failure is not cured within thirty (30) days after receipt of notice from the City, the City shall have the following additional remedies:
- (i) In the first (1st) year following the Effective Date of this Agreement, the City shall be repaid one-hundred percent (100%) of any sums paid to Developer pursuant to **Sections 6.3** and **6.4** of this Agreement.
 - (ii) In the second (2nd) year following the Effective Date of this Agreement, the City shall be repaid ninety percent (90%) of any sums paid to Developer pursuant to **Sections 6.3** and **6.4** of this Agreement.
 - (iii) In the third (3rd) year following the Effective Date of this Agreement, the City shall be repaid eighty percent (80%) of any sums paid to Developer pursuant to **Sections 6.3** and **6.4** of this Agreement.
 - (iv) In the fourth (4th) year following the Effective Date of this Agreement, the City shall be repaid seventy percent (70%) of any sums paid to Developer pursuant to **Sections 6.3** and **6.4** of this Agreement.
 - (v) In the fifth (5th) year following the Effective Date of this Agreement, the City shall be repaid sixty percent (60%) of any sums paid to Developer pursuant to **Sections 6.3** and **6.4** of this Agreement.
 - (vi) In the sixth (6th) year following the Effective Date of this Agreement, the City shall be repaid fifty percent (50%) of any sums paid to Developer pursuant to **Sections 6.3** and **6.4** of this Agreement.
 - (vii) In the seventh (7th) year following the Effective Date of this Agreement, the City shall be repaid forty percent (40%) of any sums paid to Developer pursuant to **Sections 6.3** and **6.4** of this Agreement.
 - (viii) In the eighth (8th) year following the Effective Date of this Agreement, the City shall be repaid thirty percent (30%) of any sums paid to Developer pursuant to **Sections 6.3** and **6.4** of this Agreement.
 - (ix) In addition to the foregoing, the City shall be entitled to cease any further payments under this Agreement to Developer, and this Agreement shall be null and void.

12.4 Reimbursement of City for Legal and Other Fees and Expenses. The Developer shall not be obligated to reimburse the City for attorneys' fees, City staff 's time incurred in the negotiation, preparation and review of this Agreement, and any ordinances, or other documents relating to the Project; any costs attributable to the administration and enforcement of this Agreement; and any miscellaneous out-of-pocket City expenses, such as legal publication costs, recording fees and copying expenses.

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

- (a) 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.
- (b) If the City, in its sole discretion, determines there is, or may be, a conflict of interest between the 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 on written demand from the City and notice of the amount due for any expenses, including but not limited to court costs, attorneys' fees and witness fees, and other expenses of litigation, incurred by the City in connection therewith.

12.5 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.

12.6 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, or any other remedies for the same Event of Default.

ARTICLE THIRTEEN
EQUAL EMPLOYMENT OPPORTUNITY

13.1 No Discrimination. Developer will comply with all federal, state and local laws relating to equal employment opportunity. To the extent permitted by law, Developer will use reasonable efforts to employ qualified residents of the City.

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

13.3 Contractors. Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Elks Club Acquisition Project shall contain language similar to that recited in **Section 13.1** and **13.2** above.

ARTICLE FOURTEEN
MISCELLANEOUS PROVISIONS

14.1 Authority to Contract. Each individual executing this Agreement respectively represents and warrants in his or her individual and official capacities that such person has been duly authorized to execute this Agreement on behalf of the Party in whose name the Agreement is executed, and that no further approvals, authorizations or signatories are required for a binding agreement, and that this Agreement is a valid and binding obligation of such Party.

14.2 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 complete the Elks Club Acquisition 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 Party with sixty (60) days after such final decision or amendment. If the City terminates this Agreement pursuant to this **Section 14.2**, to the extent it is then appropriate, the City, at its option, may also terminate its duties, obligations and liability under all or any related documents and agreements. Further, the cancellation or termination of this

Agreement shall have no effect on the permits issued by the City for the Elks Club Acquisition Project and authorizations granted to Developer for buildings 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.

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

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:

David Karademas
Karademas Management
4532 North Wilson Drive
Shorewood, WI 53211

With a copy to:

First Midwest Bank
Attn: Loan Servicing Department
Reference: Fox Island Apartments, LLC
770 West Dundee Road

Arlington Heights, Illinois 60004

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 when received by addressee.

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

14.5 Integration. Except as otherwise 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.

14.6 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.

14.7 Recordation of Agreement. The Parties agree to record a memorandum of this Agreement in form and content mutually agreeable to the City and the Developer, and executed by the Parties, in the appropriate land or governmental records office. Developer shall pay the recording charges.

14.8 Severability. If any provision of this Agreement is held invalid the remainder of the 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.

14.9 Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and venue for any litigation shall lie solely in the Circuit Court of Kane County, Illinois.

14.10 Entire Contract and Amendments. This Agreement (together with the Exhibits 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 written instrument executed by the Parties hereto.

14.11 Collateral Assignment. The City hereby acknowledges the grant of the security interest to First Midwest Bank of Developer's rights to receive reimbursement

pursuant to this Agreement and affirms the Collateral Assignment of Developer's rights as provided in **Exhibit F**.

14.12 Third Parties. Except as provided in **Section 14.11**, 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.

14.13 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.

14.14 Cooperation and Further Assurances. The City and Developer each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, 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 the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

14.15 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.

14.16 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.

14.17 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, its Mayor, any official, officer, partner, shareholder, director, agent, employee or attorney of the City or Developer, in his or her individual capacity, and no official, officer, partner, shareholder, 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.

14.18 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 such obligations. Nothing contained herein shall prohibit the Developer from selling or leasing fully redeveloped portions of the Elks Club Building 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 Elks Club Building from time to time to its parent or subsidiary corporations or otherwise legal (not contractual) affiliates of the Developer.

14.19 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.

14.20 Term. This Agreement shall remain in full force and effect until the TIF District expires in calendar year 2023; provided, however, that the Developer's redevelopment obligations under the Elks Club Acquisition Project shall terminate pursuant to certificates of completion issued by the City.

14.21 Estoppel Certificates. Each of the Parties hereto agrees to provide the other, upon not less than ten (10) business days prior notice, a certificate ("Estoppel Certificate") certifying that this Agreement is in full force and effect (unless such is not the case, in which case such Parties 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 provisions (or specify 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 FIFTEEN **EFFECTIVENESS**

15.1 Effective Date. 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.

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

CITY OF AURORA,
an Illinois municipal corporation,

By: Touli Wagon
Its: Mayor

ATTEST:
By: Ischl N. K.
City Clerk

DEVELOPER:
Fox Island Apartments, LLC

By: Joe Kardman
Its: Member

ATTEST:
By: Shelli N. K.
Its: Manager

EXHIBIT A

Legal Description
33 South Stolp Avenue

Exhibit A

Legal Description

LOT 3 (EXCEPT THE SOUTHWESTERLY 8 FEET), LOT 4 AND LOT 5 (EXCEPT THE NORTHEASTERLY 14 FEET) IN BLOCK 1 OF ISLAND AVENUE ADDITION TO AURORA, IN THE CITY OF AURORA, KANE COUNTY, ILLINOIS.

Street Address: 33 South Stolp Avenue Aurora, Illinois, 60506

P.I.N.: 15-22-313-005

EXHIBIT B

Legal Description
7 South Stolp Avenue

Exhibit B

Legal Description

LOTS 15, 16, 17 AND 18 IN BLOCK 1 OF ISLAND AVENUE ADDITION TO AURORA, IN THE CITY OF AURORA, KANE COUNTY, ILLINOIS.

Street Address: 7 South Stolp Avenue Aurora, Illinois, 60506

P.I.N.: 15-22-313-001

Exhibit D

Scope of Work
77 South Stolp Avenue

The scope of work consists of the renovation of 77 South Stolp Avenue, commonly known as the Elks Club Building, into a mixed use residential/restaurant building. The first floor is planned to be a restaurant with an outdoor patio along the south portion of the building. The number of residential units shall range from 25-29, with each unit having a minimum square footage of 480. They will be a mix of studios, studio lofts, 1-bedroom and 2-bedroom units. The determination on building elevations and plans will be upon the submittal for review by the FoxWalk Overlay District Design Review Committee (DRC). The DRC was established by resolution and their key purpose has been to provide review of physical changes to buildings and sites with the FoxWalk Overlay District, of which this building is a part of.

The Elks Building Estimated Construction budget is as follows:

ELKS BUILDING CONSTRUCTION BUDGET

TOTAL RESTAURANT EXPENSES		\$182,500.00
APARTMENT COSTS	UNIT	
Sprinkler & Fire	\$8,000.00	\$200,000.00
Demolition & Debris Removal	\$1,500.00	\$37,500.00
Insulation & Reframing of Outside Walls	\$2,500.00	\$62,500.00
Kitchen & Bathroom (Including Plumbing & Electric)	\$20,000.00	\$500,000.00
Framing & Drywall	\$5,000.00	\$125,000.00
Heating & Cooling (Including Ductwork)	\$7,500.00	\$187,500.00
Finishing (Woodwork, Painting, etc.)	\$3,000.00	\$75,000.00
Doors	\$1,750.00	\$43,750.00
Appliances	\$2,170.00	\$67,750.00
Hardwood Floors	\$3,000.00	\$75,000.00
Water Heaters	\$1,200.00	\$30,000.00
Plumbing/Wiring Besides Kitchen/Bath	\$3,000.00	\$75,000.00
Miscellaneous Allowance	\$3,000.00	\$75,000.00
Total Unit Expenses	\$62,160.00	\$1,554,000.00
Contingency		\$100,000
TOTAL CONSTRUCTION BUDGET		\$2,400,000.00