

**REDEVELOPMENT AGREEMENT
FOR THE REHABILITATION OF 110 S. CROSS
IN THE CITY OF AURORA, ILLINOIS**

This Redevelopment Agreement (this "Agreement") is made and entered into as of the is made and entered into this ____ day of _____, 2023 ("Effective Date"), by and between the City of Aurora (the "City"), an Illinois non-home rule municipal corporation, and JH River and Cross LLC, an Illinois Limited Liability Company (the "Developer") and . The City and Developer may sometimes be referred to herein individually as a "Party" and together as the "Parties."

WITNESSETH:

IN CONSIDERATION of the Preliminary Statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereto agree as follows:

I. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The City is a home rule unit of government in accordance with Article VII, Section 6 of the Constitution of the State of Illinois, 1970.
- B. 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 and increase additional 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.
- C. The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended ("TIF Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the TIF Act, and the City is authorized under 65 ILCS 5/8-1-2.5 to appropriate and expend funds for economic development purposes, including making grants to commercial enterprises that the City deems necessary or desirable for the promotion of economic development within the City.
- D. The Developer owns real property in the City commonly known as 110 S. Cross Street (the "Property"), legally described and depicted in EXHIBITS A and B, respectively, attached hereto and made a part hereof, and the principals of the Developer are the Guarantors. The Property is in need of substantial rehabilitation.

- E. The Developer desires to redevelop the Property with fifteen (15) market rate residential units with ground floor restaurant/brewery space (the “Project”), all as depicted on the site plans and elevations attached hereto as EXHIBIT C, and made part hereof, and as described in further detail, including the pro forma, financial projections and timeline, in EXHIBIT D attached hereto and made part hereof (“Project”).
- F. The projected cost of the Project is estimated to be Five Million Four Hundred Seventy-Nine Thousand One Hundred Seventy-One and No/100 Dollars (\$5,479,171), as more fully set forth in EXHIBIT D. The Project shall be funded through the following sources:
 - 1. Developer Equity in the amount of Twelve Hundred Fifty Thousand Nine Hundred Seventy-One and 00/100 Dollars (\$1,250,971.00)
 - 2. Deferred Developer Fee in the amount of Four Hundred Ninety-Eight Thousand One Hundred Six and 00/100 Dollars (\$498,106.00)
 - 3. Commercial Mortgage Loan by Developer in the amount of One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00)
 - 4. Federal Historic Tax Credits in the amount of Seven Hundred Fifteen Thousand Nine Hundred and One and 00/100 Dollars (\$715,901.00)
 - 5. State Historic Tax Credits in the amount of One Million Fourteen Thousand One Hundred Ninety-Three and 00/100 Dollars (1,014,193.00).
 - 6. City Forgivable Loan (as defined below) in the amount of Three Hundred Seventy-Five Thousand and No/100 Dollars (\$375,000.00)
- G. Pursuant to Resolution R21-202, adopted on July 7, 2021, the City stated its intent to induce redevelopment of the Property and the New Redevelopment Project Area, by encouraging and potentially making expenditures in furtherance of the New TIF Plan prior to creation of the New TIF District.
- H. The City has begun the process of determining the eligibility of a new tax increment redevelopment plan and project (“New TIF Plan”), designating a new tax increment redevelopment project area, including the Property (“New Redevelopment Project Area”), and adopting tax increment financing relative to the New Redevelopment Project Area (“New TIF District”), in order to ensure that blighting factors in and around the Property are eliminated and to encourage economic growth within the City and the same area.
- I. This Agreement is in furtherance of the City’s goals to eliminate blighting factors, encourage growth and promote economic development and increased employment in the New Redevelopment Project Area and to ensure that the New Redevelopment Project Area, including the Property, are redeveloped in

accordance with the City's desires and in a way that serves the public's health, safety and welfare.

- J. The City is desirous of having the New Redevelopment Project Area rehabilitated, developed and redeveloped in accordance with the New TIF Plan, and particularly the Project as a part thereof, in order to serve the needs of the City, arrest physical decay and decline in the New Redevelopment Project Area, increase employment opportunities, stimulate commercial growth and stabilize the tax base of the City and, in furtherance thereof, the City is willing to undertake certain incentives, under the terms and conditions hereinafter set forth, to assist such development.
- K. It is necessary for the successful completion of the Project that the City enter into this Agreement with Developer to provide for the redevelopment of the Property, thereby further the goals of the New TIF Plan.
- L. Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Property with the Project, but for certain tax increment financing ("TIF") incentives, to be provided by the City in accordance with the TIF 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 Property with the Project, 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 from time to time.
- M. This Agreement has been submitted to the Corporate Authorities of the City (as defined below) for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the City according to the terms hereof, and any and all actions of the Corporate Authorities of the City precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.
- N. This Agreement has been submitted to the board of directors, corporate officers, shareholders, members and/or managers of the Developer for consideration and review, the Developer's board of directors, corporate officers, shareholders, members and/or managers have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Developer's board of directors, corporate officers, shareholders, members and/or managers, as the case may be, precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

II. DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, and as follows:

- A. **“Change in Law”** means the occurrence, after the Effective Date, of an event described below in this definition, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon:

Change in Law means any of the following: (1) 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); (2) the order or judgment of any federal or State court, administrative agency or other governmental body (other than the City); or (3) 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). Change in Law, for purposes of this Agreement, shall also include 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 actions to be performed under this Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the City, except as provided herein).

- B. **“City Code”** means the City of Aurora Municipal Code, as amended.
- C. **“Corporate Authorities”** means the Mayor and City Council of the City of Aurora, Illinois.
- D. **“Day”** means a calendar day.
- E. **“Effective Date”** means the day on which this Agreement is executed by the last of the signatories, as set forth below, with said date appearing on page 1 hereof.
- F. **“Incentive Fund”** means the special fund set up by the City into which the City will deposit Incremental Property Taxes.
- G. **“Incremental Property Taxes”** means that portion of the *ad valorem* real estate taxes, if any, arising from the taxes levied upon the Property, which taxes are actually collected and paid to the City, and which are attributable to the increase in the equalized assessed valuation (“EAV”) of the Property over and above the EAV of the Property at the time of the formation of the New TIF

District, all as determined by the County Clerk of the County of Kane, Illinois, pursuant to and in accordance with the TIF Act, the ordinances creating the New TIF District and this Agreement, and which have been collected by the City on and after the date the New TIF District is created.

- H. **“Party / Parties”** means the City and/or the Developer, individually/collectively, and their respective successors and/or assigns as permitted herein, as the context requires.
- I. **“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.
- J. **“State”** means the State of Illinois.
- K. **“TIF Eligible Redevelopment Costs”** means the Developer’s reasonable costs of the Project, to be reimbursed, in part, from Incremental Property Taxes pursuant to the TIF Act, by the City, as provided in this Agreement, including, but not limited to, those in EXHIBIT E attached hereto and made a part hereof, whether incurred prior to or after the Effective Date, and which are “redevelopment project costs” eligible for reimbursement to the Developer under the TIF Act, including Section 11-7.4-3(q) thereof, 65 ILCS 5/11-74.4-3(q).
- L. **“Uncontrollable Circumstance”** means any event which:
 - 1. is beyond the reasonable control of and without the fault of the Party relying thereon; and
 - 2. is one or more of the following events:
 - a. a Change in Law;
 - b. insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;
 - c. epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
 - d. governmental condemnation or taking other than by the City;
 - e. strikes or labor disputes, or work stoppages not initiated by the Developer or the City;
 - f. unreasonable delay in the issuance of building or other permits or approvals by the City or other governmental authorities having jurisdiction other than the City including but not limited to IDOT and/or IEPA;
 - g. shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;

- h. unknown or unforeseeable geo-technical or environmental conditions;
- i. major environmental disturbances;
- j. vandalism; or
- k. terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in subsection 2.g. 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 the Developer is delayed in its performance under this Agreement by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day without penalty or damages to either Party.

III. CONSTRUCTION OF TERMS

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

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.
- C. The word "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."
- D. Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, 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 means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- G. The City Mayor or his/her designee, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant

or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the City and with the effect of binding the City as limited by and provided for in this Agreement. Developer is entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the City as having been properly and legally given by the City.

- 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 Jay Punukollu as its authorized representative, who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of the Developer and with the effect of binding the Developer in that regard (such individual being designated as an "Authorized Developer Representative"). The Developer shall have the right to change its Authorized Developer Representative by providing the City with written notice of such change in accordance with Section XV.C. of this Agreement, as long as the new Authorized Developer Representative is similarly qualified.

IV. COOPERATION OF PARTIES

The City and the Developer agree to cooperate in implementing the Project in accordance with the Parties' respective obligations set forth in this Agreement. This cooperation shall not extend to the involvement of the City in any way in the acquiring of private financing by the Developer, including, but not limited to, the guaranty of any funds other than the commitment listed specifically in this Agreement.

V. REDEVELOPMENT OF THE PROPERTY

The Developer shall develop the Project per the schedule in EXHIBIT D and as set forth in this Agreement.

- A. **Funding Contingency**. This Agreement shall be null and void, and the Parties shall have no obligations hereunder, if the Project does not receive funding from third party sources to allow for the completion of the Project on or before October 2, 2023, or such later date as agreed to by the Parties.
- B. **Application for Permits and Approvals**. INSERT
- C. **Commencement of Construction**. The Developer shall, on or before October 6, 2023, subject to Uncontrollable Circumstances, commence construction of the Project.

- D. **Completion of Project.** Within thirty (30) days after written request from the Developer, and provided that Developer has not received any notice of default under this Agreement or notice of non-compliance with any City codes with respect to Developer's construction obligations, any of which have not been cured, and after the City has issued the final certificate of occupancy for the Project and has confirmed that a lease agreement is in place between the Developer and the operator of the Restaurant of sufficient length so as to allow Developer to repay the City Funding, and has confirmed that the related proposed improvements on the Property have been constructed in compliance with all City Code and this Agreement, the City shall deliver a certificate of completion and satisfaction of all construction terms, covenants and conditions contained in this Agreement ("Certificate of Project Completion") or, if not complete or satisfied, a written statement as to what deficiencies exist. The Developer shall submit its request to the City for a Certificate of Project Completion, subject to Uncontrollable Circumstances by no later than April 30, 2024, with the restaurant/brewery use thereafter operating on the Property by no later than June 1, 2024.
- E. **Limited Covenant for No Tax-Exemptions.** The Developer and its respective successors shall not assert a property tax-exempt status for the Property during its respective periods of ownership of, or having an interest in, the Property or the Project. The prohibition on asserting a property tax-exempt status of the Property includes portions owned, leased or operated by not-for-profit entities. This prohibition shall run with the land and shall end on the date the New TIF District expires or an earlier date if agreed by the City and the Developer.

VI. UNDERTAKINGS ON THE PART OF THE CITY

- A. **City Cooperation.** The City agrees to cooperate with the Developer in the Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the City and, upon request of Developer, will promptly execute any applications or other documents (upon their approval by the City) which the Developer intends to file with such other governmental or quasi-governmental entities in regard to the Project (excluding any such activities that would involve the private financing of the Project). The City shall further promptly respond to, and/or process, and consider reasonable requests of the Developer for applicable permits necessary for the construction and operation of the Project. Approval of any building permit applications and/or engineering plans shall be contingent on the Developer providing all required and requested documentation including but not limited to engineering reports, calculations, plans, engineering fees and security required to substantiate that said improvements fully conform with all applicable state statutes and all City ordinances and codes, as well as receipt of all required approvals from any federal, State, regional or county agencies having applicable jurisdiction. Subject to providing all applications, and all required and requested related documentation, the City agrees to issue a liquor license to the Developer or its operator for the Restaurant, subject to the Local Liquor Control Commissioner's

receipt, review and approval of a proper liquor license application by the operator of the Restaurant and a determination that the operator is qualified for a liquor license under the City Code. City Cooperation specifically excludes any commitment in the provision of Developer financing except as provided for in this Agreement for the City Funding.

- B. **New TIF District.** The City, within **one hundred twenty (120)** days after the Effective Date, shall commence procedures to establish the New TIF District in accordance with the requirements of the TIF Act, and shall thereafter continuously and diligently pursue such procedures to establish and approve the TIF District. The City's obligations under this Agreement shall cease in the event the TIF Act is abolished, repealed or revoked. In the event the TIF Act is amended or modified ("Legislative Changes"), provided such Legislative Changes would serve to modify the terms of this Agreement, the terms of this Agreement shall be amended or modified to be in accordance with the Legislative Changes. In the event the New TIF District is not established by December 31, 2023, (i) the City shall not be deemed to be in default of this Agreement and (ii) this Agreement shall be deemed null and void and the parties shall have no further obligations under this Agreement, except with respect to the Developer's obligation to repay the Forgivable Loan as required herein. The Parties' obligations under his Agreement, except as they relate to the Forgivable Loan, are conditioned upon the New TIF District being created.

C. Incentives.

1. The City shall provide the Developer with an incentive from two (2) sources:
(i) a Three Hundred Seventy-Five Thousand and No/100 Dollars (\$375,000.00) forgivable loan (the "Forgivable Loan"), which shall be allocated and repaid as set forth below, and (ii) the City shall reimburse the Developer from Incremental Property Taxes deposited into the Incentive Fund in accordance with this Agreement ("Ongoing Payments"), which shall in no event exceed One Million Six Hundred Thousand and 00/100 (\$1,600,000.00) in total reimbursement to the Developer for TIF Eligible Expenses ("TIF Funding Cap").
2. For the Ongoing Payments:
 - a. Upon receipt of Incremental Property Taxes, the City shall, after deductions for any payments by the City to library districts and school districts required by the TIF Act, which as of the Effective Date are in Sections 11-74.4-3(q)(7.5) and 11-74.4-3(q)(7.7) of the TIF Act, deposit Seventy Percent (70%) of the Incremental Property Taxes into the Incentive Fund, or such other percentage as set forth in this Agreement ("Deposit Percentage"), until the Developer has been paid its TIF Eligible Redevelopment Project Costs which shall in no event exceed the TIF Funding Cap. The City shall receive

Incremental Property Taxes not paid to the Developer.

- b. The City shall pledge and rely solely upon Incremental Property Taxes for reimbursement to the Developer for the Ongoing Payments and no other revenue sources or funds shall be pledged, set aside or paid to the Developer for the Ongoing Payments. THE CITY'S OBLIGATION TO PAY THE DEVELOPER THE ONGOING PAYMENTS IS A LIMITED OBLIGATION PAYABLE SOLELY FROM INCREMENTAL PROPERTY TAXES DEPOSITED IN THE INCENTIVE FUND AND SHALL NOT BE A GENERAL OBLIGATION OF THE CITY OR SECURED BY THE FULL FAITH AND CREDIT OF THE CITY. INSUFFICIENCY OF THE INCENTIVE FUND TO PAY THE ONGOING PAYMENTS WHEN DUE SHALL NOT BE AN EVENT OF DEFAULT THEREON, AND NO HOLDER OF THE RIGHT TO RECEIVE ANY ONGOING PAYMENTS SHALL HAVE ANY RECOURSE WHATSOEVER AGAINST THE CITY IN THE EVENT THAT THERE ARE INSUFFICIENT INCREMENTAL PROPERTY TAXES IN THE INCENTIVE FUND.

- D. **Conditions on Incentives.** Payments by the City to the Developer under this Agreement are conditioned as follows, in addition to the other terms and conditions in this Agreement:

1. The Forgivable Loan, shall be subject to simple interest accruing at the rate of five percent (5%) per annum beginning on the date that the deposits the City Funding into the Funding Escrow and shall be amortized over a thirteen (13) year period on an annual basis ("Loan Forgiveness Period"), and assuming compliance with this Agreement, during such period all accrued interest and principal will be forgiven in accordance with the schedule in EXHIBIT E attached hereto and made a part hereof. The Loan Forgiveness Period shall begin on the date that the restaurant/brewery use begins operation. As set forth in EXHIBIT E, the annual forgiveness amount is variable based on annual sales and Food and Beverage taxes received by the City related to the restaurant/brewery use. In the event that the amount of annual sales and Food and Beverage Taxes received by the City is less than seventy-five percent (75%) of the Developer's projections set forth in EXHIBIT D and EXHIBIT E hereto through year seven (7) of operation of the restaurant/brewery use, the Developer shall make a cash payment to the City to make up the difference within twenty-one (21) days of a written demand therefor by the City. The Forgivable Loan shall be unsecured, except that in the event of a Developer Event of Default (as defined below), the City shall have the authority and Developer hereby permits the City to record a judgment lien against the Property in the amount of any unamortized principal and interest at the time of the Event of Default,

and said amount shall be immediately due and owing by Developer to City. In the event that there is a balance of unpaid principal and/or interest at the end of the Loan Forgiveness Period, then the unpaid balance shall become immediately due and owing the City. In the event of a sale of the Property or any portion thereof prior to the thirteen (13) year amortization period elapsing the following shall apply:

- a. If the City agrees to the sale, then the Forgivable Loan shall transfer to the new owner who will assume all responsibilities of this Agreement; or
- b. If the City does not agree with the sale, then the Forgivable Loan shall be due immediately with any unamortized principal and interest payable at the closing. The Developer acknowledges that the City may withhold the City Property Transfer Stamp, pursuant to Section 44-223 of the City Code and other applicable provisions of Chapter 44, Article 44-X of the City Code, until the payment of unamortized principal and interest is made.

The funding will be disbursed as follows:

- \$100,000.00 at plan approval
- \$100,000.00 at rough in for the apartments
- \$100,000.00 at completion of the project
- \$75,000.00 for the build out of the brewery

Funding disbursement will require proof of expenditures equal to or greater than the above disbursement amount, and be subject to review by the Chief Financial Officer.

2. The City's obligation to pay the Developer the Ongoing Payments is subject to the following conditions:
 - a. The Developer obtains a Certificate of Project Completion; and
 - b. The Incentive Fund has adequate Incremental Property Taxes to pay the amounts requested for reimbursement by the Developer; and
 - c. The Project is not abandoned. Abandonment shall be deemed to have occurred when either work stops on the Property for more than thirty (30) days for any reason other than Uncontrollable Circumstances, or when the Property is vacant for more than thirty (30) days for any reason other than Uncontrollable Circumstances; and
 - d. The Developer is in compliance with its obligations under this Agreement.

E. Ongoing Payment Procedure. The City shall pay the Ongoing Payments to the Developer as follows, subject to adjustments provided for in this Agreement:

1. The City shall pay the Developer from the Incentive Fund beginning at the time of the issuance of the Certificate of Project Completion, and on each July 1st and December 1st thereafter (each a "Payment Date"), during the Term (as defined in Section XVI.P. below) of this Agreement, provided the City has received proof of payment of the property taxes for the entire Property and is in receipt of Developer's request for reimbursement of TIF Eligible Redevelopment Costs documented by the Developer to have been incurred by the Developer in relation to the Project (which documentation shall accompany each such request for reimbursement). Requests for reimbursement of TIF Eligible Redevelopment Costs paid by the Developer shall be signed under oath and forwarded to the City's Chief Financial Officer, accompanied by a copy of the paid receipt therefor, and any other information reasonably requested by the City. Unless the City has good cause to believe that the Developer's request for reimbursement seeks reimbursement for non-TIF Eligible Redevelopment Costs, the City shall pay such request for reimbursement on the next Payment Date, provided there are sufficient Incremental Property Taxes within the Incentive Fund to do so. If the City elects to withhold or deny such payment, the City shall promptly (and in any event not later than the date payment would otherwise have been due) advise the Developer in writing as to the specific basis for the City's position.
2. The Ongoing Payments paid to the Developer shall only be paid from Incremental Property Taxes actually received by the City from the Project and deposited into the Incentive Fund.
3. In the event that the City ceases to receive Incremental Property Taxes from the Project, as a result of a Change in the Law, and no alternate tax is enacted to replace the Incremental Property Taxes, the City shall not be obligated to make any further Ongoing Payments hereunder.
4. The Ongoing Payments shall only be paid to the Developer if it is in compliance with all its obligations in this Agreement.

VII. DEVELOPER'S OBLIGATIONS

The Developer shall have the obligations set forth below, in addition to those set forth elsewhere in this Agreement, for the development, construction, financing, completion and furtherance of the Project:

- A. **Use of Funds.** The Developer shall use Incremental Property Taxes solely for TIF Eligible Redevelopment Costs.
- B. **Construction in Accordance With Approvals and Laws.** The Developer shall construct the Project in full conformance with the approvals therefor from the City. The Developer shall at all times acquire, install, construct, operate and maintain the Project in substantial conformance with all

applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, 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 thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the City, or any of its rules or regulations or amendments thereto which are in effect from time to time during the construction and maintenance of the Project and/or during the term of this Agreement.

- C. **Construction Staging and Right-of-Way Work.** During the construction of the Project, the Developer shall stage its construction of the Project to avoid to the fullest extent possible any community disruption. During construction, the Developer shall also keep all public streets used by the Developer clean from construction debris on a daily basis, and for each day in which such construction debris on public streets is not properly clean, the Developer shall pay the City the sum of Two Hundred Fifty and No/100 Dollars (\$250.00) for each such violation. The Developer shall park and stage all construction equipment, materials and vehicles to be used in relation to the construction of the Project on the Property. The Developer shall provide the City with space to perform street and right-of-way improvements and construction at no cost to the City.

- D. **Sufficient Funds.** The Developer and the Guarantors have submitted written evidence to the Chief Financial Officer of the City (CFO), or his/her designee, in a form and substance satisfactory to the CFO, that Developer and Guarantors have access to sufficient funds to pay any costs of the Project.

Further, upon reasonable request of the CFO, the Developer and Guarantors shall submit written evidence to the CFO that Developer and Guarantor have access to sufficient funds to pay any costs of the Projects.

The Guarantors covenant and warrant to the City that, as of the Effective Date, and until the City funding is repaid in full, that they collectively have and will have at least Three Million Dollars (\$3,000,000) of liquid assets, and will maintain liquid assets equal to or greater than the outstanding balance on the City Funding until the City Funding is repaid and/or forgiven under this Agreement.

- E. **Meetings With City.** The Developer shall meet with the Corporate Authorities and City staff and make presentations to the Corporate

Authorities and City staff as reasonably requested by the City Mayor or his designees in order to keep the City apprised of the progress of the Project.

- F. **Requests For Information, Documents and Data.** The Developer shall timely provide the City, and the City's consultants, with all information, documents and data requested by the City, and the City's consultants, needed to complete the calculations called for in this Agreement.

Additionally, Developer shall provide the City with annual budgets in advance of each budget year. The Developer shall also provide the City with quarterly financial reports for the first two (2) years of operation of the Restaurant and, assuming no Event of Default occurs during the first two (2) years of operation of the restaurant/brewery, then the Developer shall provide the City with annual financial reports.

VIII. ADDITIONAL COVENANTS OF DEVELOPER

- A. **Continued Existence.** The 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 an Illinois limited liability company, so long as the Developer maintains an interest in the Property, or has any other remaining obligation pursuant to the terms of this Agreement.
- B. **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 and the Developer's sound legal discretion.
- C. **No Gifts.** The Developer covenants that no shareholder, director, manager, member, 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 as a means of influencing his or her action in his or her capacity with the City, other than as provided for under 5 ILCS 430/10-10 through 10-40.
- D. **Prevailing Wage.** The Project is subject to the Illinois Prevailing Wage Act (820 ILCS 130/0.01, *et seq.*) ("Prevailing Wage Act"). Accordingly, Developer shall pay any applicable "Prevailing Wage Rates" to any of its workers on the Project, and comply with the Prevailing Wage Act.

- E. **Open Book Project.** The Project shall be an “open book” project, meaning that the Developer, the Guarantors and the general contractor (or contractors, if more than one) will assure continuing access to the City’s employees and agents for the purpose of reviewing their respective books and records relating to any item necessary to determine the costs and revenues of the Project; provided, however, that all such access shall be limited to normal business hours upon reasonable prior notice. The City and its agents shall be provided copies of any documents requested by the City and the City’s agents related to the Project, the funding of the Project and the Property, including, but not limited to, partnership agreements, limited liability company operating agreements, corporate by-laws, joint venture agreements, funding agreements, loan agreements, and related documents, pertaining to the Property or the Project to which the Developer is a party. Failure to provide the documents or allow review of the books within fifteen (15) days after request by the City shall be an Event of Default. Developer shall exercise prudence and good faith in attempting to contract with persons or entities that are reputable and experienced in their respective areas for the provision of services or material for the design and construction of Project at costs not in excess of market rates. The general contractor (or general contractors) designated by Developer shall be experienced and reputable. Notwithstanding anything in this Agreement to the contrary, the City shall only be entitled to review materials related to the revenues of the Project one (1) time per year, however, the City shall be entitled to review materials related to expenditures and expenses of the Project at any time.

IX. ADHERENCE TO CITY CODES AND ORDINANCES

All development and construction of the Project shall comply in all respects with the provisions in the building, plumbing, mechanical, electrical, storm water management, fire prevention, property maintenance, zoning and subdivision codes of the City and all other germane codes and ordinances of the City in effect from time to time during the course of construction of the Project. The Developer, by executing this Agreement, expressly warrants that it has examined and is familiar with all the covenants, conditions, restrictions, building regulations, zoning ordinances, FoxWalk guidelines, property maintenance regulations, 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 thereafter) and land use regulations, codes, ordinances, federal, State and local ordinances, and the like, currently in effect.

X. REPRESENTATIONS OF WARRANTIES OF THE DEVELOPER

The Developer represents and warrants to the City as follows:

- A. **Existence and Authority of Developer.** The Developer is a limited liability company, duly organized and existing under the laws of the State, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.
- B. **No Conflict by Developer.** 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 (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer is now a party or by which Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer under the terms of any instrument or agreement to which Developer is now a party or by which Developer is bound.
- C. **Adequate Resources of Developer.** As of the Effective Date, the Developer has sufficient financial and economic resources to implement and complete the Developer's obligations contained in this Agreement.
- D. **No Adverse Notices to Developer.** The Developer has not received any notice from any local, State or federal official that the activities of the Developer with respect to the Property and/or the Project may or will be in violation of any environmental law or regulation. The Developer is not aware of any State or federal claim filed or planned to be filed by any person relating to the Property and/or the Project and any violation of any local, State or federal environmental law, regulation or review procedure, and the Developer is not aware of any violation of any local, State or federal law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute relative to the Property and/or the Project.
- E. **Experience of Developer.** The Developer, and its respective principals, are skilled in the development and operation of property similar to the uses in the Project and are able to provide the Project with the necessary skill,

knowledge and expertise as well as input from other experts and consultants in the construction and operation of such a Project.

- F. **Payment of Real Estate Taxes and Assessments.** Developer and successor owners agree to pay, or cause the Developer or successor owners to pay, all general and special real estate taxes levied during their respective period of ownership against their respective interest in the Property and/or the Project on or prior to the date same is due and said taxes shall not become delinquent. Developer and successor owners shall deliver, or cause Developer and successor owners to deliver, evidence of payment of such taxes to the City upon request.
- G. **Other Funds.** The Developer has adequate funds, from other sources, to construct and operate the Project in accordance with this Agreement.

Further, Developer and successor owners agree that no request for abatement, freeze, or exemption for, or an appeal of, the valuation of the assessed value of the Property by the assessor having jurisdiction shall be made until such time as the Forgivable Loan have been repaid in full.

- H. **Figures and Data.** The documents, information, figures and data supplied regarding the operations and financing of the Project by the Developer, its principals and the Guarantors to the City regarding the Project are true, accurate and complete. The Developer has not withheld any documents, information, figures or data relevant to the operations and financing of the Project that would have a material adverse effect on the City's decision to enter into this Agreement and provide for the incentives herein.

XI. REPRESENTATIONS AND WARRANTIES OF THE CITY

The City represents and warrants to the Developer as follows:

- A. **Existence.** The City is an Illinois home rule municipal corporation duly organized and validly existing under the laws of the State of Illinois, and has all requisite corporate power and authority to enter into this Agreement.
- B. **Authority.** The execution, delivery and the performance of this Agreement and the consummation by the City of the transactions provided for herein and the compliance with the provisions of this Agreement:
1. have been duly authorized by all necessary corporate action on the part of the City; and
 2. 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

3. 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.
- C. **Litigation.** To the best of the City's knowledge, there are no proceedings pending or threatened against or affecting the City or the New 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.

XII. HOLD HARMLESS, RELEASE, INDEMNIFICATION AND INSURANCE PROVISIONS

This Section XII shall survive the termination of this Agreement.

- A. **Hold Harmless, Release and Indemnification.** The Developer releases the City, its Corporate Authorities, officers, officials, agents, including independent contractors, consultants and legal counsel, servants and employees (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") from, and covenants and agrees, that the Indemnified Parties shall not be liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the Property, or arising under this Agreement or actions in furtherance thereof, to the extent not attributable to the gross negligence or willful misconduct of the Indemnified Parties.
- B. **Insurance.** The Developer, and any successor in interest to the Developer, shall obtain and continuously maintain insurance on the Property and the Project and, from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and continuously maintain, provided that the Developer shall obtain the insurance described in subsection 1. below prior to the commencement of construction of any portion of the Project (excluding excavation and footings):
1. Builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis", in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the City and its officers, agents and employees as additional insureds, with limits against bodily injury and property damage of not less than \$5,000,000.00 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
3. Workers compensation insurance, with statutory coverage.

All insurance required herein shall be obtained and continuously maintained through responsible insurance companies selected by the Developer or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided herein, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured and the City at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section. In lieu of separate policies, the Developer or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

- C. **Environmental Disclaimer.** The City makes no warranties or representations regarding, nor does it indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Property, or anywhere within the TIF District of any toxic or hazardous substances of wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "Hazardous Substances"). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Property, or within the TIF District, as well as any activity claimed to have been undertaken on or in the vicinity of the Property, that would cause or contribute to causing (1) the Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901 *et seq.*, or any similar State law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants

or contaminants, from the Property, within the meaning of, or otherwise bring the Property within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, or any similar State law or local ordinance. Further, the City makes no warranties or representations regarding, nor does the City indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Project, or anywhere within the Property or the TIF District, of any substances or conditions in or on the Property, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The City makes no representations or warranties regarding the existence of any above ground or underground tanks in or about the Property, or whether any above or underground tanks have been located under, in or about the Property have subsequently been removed or filled.

- D. **Waiver.** The Developer waives any claims against the Indemnified Parties for indemnification, contribution, reimbursement or other payments arising under federal, State and common law or relating to the environmental condition of the land which is part of the Property.
- E. **No Personal Liability.** No liability, right or claim at law or inequity shall attach to or shall be incurred by the City's Corporate Authorities, officers, officials, attorneys, agents and/or employees as a result of this Agreement, and any such rights or claims of the Developer against the City's Corporate Authorities, officers, officials, attorneys, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the City.

XIII. EVENTS OF DEFAULT AND REMEDIES

- A. **Developer Events of Default.** The following shall be Events of Default with respect to this Agreement:

If any representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default, within fifteen (15) days after written notice from the City.

- 2. Default by Developer for a period of fifteen (15) days after written

notice thereof in the performance or breach of any covenant contained in this Agreement concerning the existence, structure or financial condition of Developer, as the case may be; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and Developer within said fifteen (15) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice.

3. Default by Developer in the performance or breach of any 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 fifteen (15) days and the Developer within said fifteen (15) days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice.
4. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.
5. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer, or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.
6. Failure to have funds to meet Developer's obligations.
7. A sale, assignment, or transfer of the Project, except in accordance with this Agreement.

8. Change in the Developer, except in accordance with this Agreement. A change in the Developer shall not occur if a member leaves or if a member dies. A new member may be added to the Developer upon the City's written consent, which shall not be unreasonably withheld.
9. Developer abandons the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than thirty (30) days for any reason other than Uncontrollable Circumstances.
10. Developer fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the Project contemplated by this Agreement and such failure continues for more than fifteen (15) days after written notice thereof from the City; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and Developer within said fifteen (15) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice. The maintenance requirement of this provision shall not be covered by and shall survive any Certificate of Project Completion or Estoppel Certificate of any kind issued during the term of this Agreement.
11. A representation or warranty of Developer is not true for a period of fifteen (15) days after written notice from the City; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and Developer within said fifteen (15) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice.

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

1. If any material representation made by the City in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the City does not remedy the default, within fifteen (15) days after written notice from Developer.
2. Default by the City in the performance or breach of any material covenant contained in this Agreement concerning the existence,

structure or financial condition of the City; provided, however, that such default or breach shall constitute an Event of Default if the City does not, within fifteen (15) days after written notice from Developer, initiate and diligently pursue appropriate measures to remedy the default.

3. 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 fifteen (15) days after written notice from Developer, and in any event cures such default within sixty (60) days after such notice, subject to Uncontrollable Circumstances.

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

1. The defaulting Party shall, upon written notice from the non-defaulting Party/Parties, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured, 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 fifteen (15) additional days, unless extended by mutual agreement, the non-defaulting Party/Parties may institute such proceedings as may be necessary or desirable in its/their opinion to cure or remedy such Event of Default, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement.
2. 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, the Developer, Developer and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer, Developer and the City shall continue as though no such proceedings had been taken.
3. In the case of an Event of Default by the Developer and/or the Developer, in addition to any other remedies at law or in equity, the City shall be relieved of its obligations under this Agreement.

D. **Agreement to Pay Attorneys' Fees and Expenses.** In the event an Event of Default is not cured within the applicable cure periods and a Party employs an attorney or attorneys or incurs other expenses for the collection of the payments due under this Agreement or the enforcement of

performance or observance of any obligation or agreement herein contained, the non-prevailing Party shall pay, on demand, the prevailing Party's, or Parties', reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action. This Section XIV.D. shall survive the termination of this Agreement.

- E. **No Waiver by Delay or Otherwise.** Any delay by any 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 any Party should not 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.
- F. **Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.
- G. **Reimbursement of City for Legal and Other Fees and Expenses.** In the event that any third party or parties institute any legal proceedings against the Developer, the Developer and/or the City, which relate to the terms of this Agreement, but excluding legal proceedings regarding the creation of the New TIF District, then, in that event, the Parties shall cooperate in the defense of any such lawsuit, with each Party assuming, fully and vigorously, its own defense of such lawsuit, and the City's costs and expenses of its defense, of whatever nature (including attorney's fees), shall be paid by the Developer. This Section XIV.G. shall survive the termination of this Agreement.

XIV. EQUAL EMPLOYMENT OPPORTUNITY

- A. **No Discrimination.** Developer shall comply with all federal, State and local laws relating to equal employment opportunity. To the extent permitted by law, Developer shall use reasonable efforts to employ qualified residents of the City on the Project.
- B. **Advertisements.** Developer shall, 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.

- C. **Contractors.** Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in subsections A. and B. above.

XV. MISCELLANEOUS PROVISIONS

TIF Provisions. A delineation of some of the TIF Eligible Redevelopment Costs for the Project are set forth in EXHIBIT E, and the City shall not reimburse the Developer for any costs of the Project that are not eligible for reimbursement under the TIF Act.

- B. **Cancellation.** In the event any Party shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the New TIF Plan, including Developer's duty to build and operate the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the City in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Project 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 Parties within sixty (60) days after such final decision or amendment. If the City terminates this Agreement pursuant to this Subsection B., to the extent it is then appropriate, the City, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided. Further, the cancellation or termination of this Agreement shall have no effect on the authorizations granted to Developer for the Project, permitted and under construction, to the extent permitted by said court order.
- C. **Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service, (2) electronic communications, whether by telex, telegram or telecopy, (3) overnight courier, or (4) registered or certified first class mail, postage prepaid, return receipt requested.

If to City: City of Aurora
 44 E. Downer Place
 Aurora, Illinois 60507

Attention: City Mayor

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

And: City of Aurora, Law Department
1 S. Broadway Avenue, 3rd Floor
Aurora, Illinois, 60507
Attention: Corporation Counsel

And: Mayor's Office of Economic Development
5 S. Broadway Avenue
Aurora, Illinois, 60507
Attention: Executive Director

If to Developer:

With a copy to:

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 (1) or (2) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (3) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (4) shall be deemed received forty-eight (48) hours following deposit in the mail.

- D. **Time is of the Essence.** Time is of the essence of this Agreement.
- E. **Integration.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
- F. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and each of which shall constitute but one and the same Agreement.
- G. **Recordation of Agreement.** The Parties agree to record this Agreement with the Kane County Recorder's Office against title to the Property. The Developer shall pay the recording charges. The obligations of Developer in

this Agreement shall run with title to the land of the Property and be binding on future owners of the Property and any portion thereof.

- H. **Severability.** If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.
- I. **Choice of Law / Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois, and any court proceedings between the Parties hereto shall be brought in Kane County, Illinois.
- J. **Entire Contract and Amendments.** This Agreement (together with the exhibits attached hereto) is the entire contract between the City, the Developer, and the Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City, the Developer, and the Developer, and may not be modified or amended except by a written instrument executed by the Parties hereto. The Parties agree to cooperate and amend this Agreement to add new entities as needed to complete or effectuate the Project.
- K. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other Person other than the City and the Developer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.
- L. **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.
- M. **Cooperation and Further Assurances.** The City and the 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 and the Developer or other appropriate Persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

- N. **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 party to create the relationship of a partnership, agency or joint venture between or among such Parties.
- O. **Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances, or any part thereof, or any exhibit to this Agreement, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.
- P. **Term.** This Agreement shall remain in full force and effect until the end of the term of the New TIF District.
- Q. **Estoppel Certificates.** Each of the Parties hereto agrees to provide the other, upon not less than fifteen (15) days prior request, a certificate ("Estoppel Certificate") certifying that this Agreement is in full force and effect (unless such is not the case, in which case such Party/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 provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party. If any 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.
- R. **Assignment.** This Agreement, and the rights and obligations hereunder, may not be assigned by the Developer unless the City, in the exercise of its sole and absolute discretion, consents in a writing signed by the City Mayor to such assignment.
- S. **Municipal Limitations.** All City commitments hereunder are limited to the extent required by law.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

CITY OF AURORA,
an Illinois home rule municipal corporation

ATTEST:

By: _____
Richard C. Irvin, Mayor

By: _____
Jennifer Stallings, City Clerk

DEVELOPER:

_____, **LLC**,
an Illinois limited liability company

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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

ACKNOWLEDGMENT

State of Illinois)
) SS
County of Kane)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Richard C. Irvin and _____, personally known to me to be the Mayor and City Clerk of the City of Aurora, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the City Council of said Illinois home rule municipal corporation, as their free and voluntary acts, and as the free and voluntary act and deed of said Illinois home rule municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2023.

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of Kane)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO
HEREBY CERTIFY that _____ and _____,
personally known to me to be the _____ and
_____, respectively, of _____, and personally
known to me to be the same person whose name is subscribed to the foregoing
instrument, appeared before me this day in person and severally acknowledged that as
such _____ and _____, they signed and delivered
the said instrument and caused the corporate seal of said _____ to be affixed
thereto, pursuant to authority given by the _____, as their free and voluntary act,
and as the free and voluntary acts and deeds of said _____, for the uses and
purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____,
2023.

Notary Public