

REDEVELOPMENT AGREEMENT
[CEDARWOOD DEVELOPMENT, 75th St. and Ogden Ave.] (ATCA)

THIS REDEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 2019 by and between the CITY OF AURORA, ILLINOIS, an Illinois municipal corporation (the “City”), and [AURORA TOWN CENTER ASSOCIATES, L.L.C., an Ohio limited liability company] (“ATCA”) (with the City, the “Parties” and each of the City or ATCA alone, a “Party”). Notwithstanding the date set forth above, the “Effective Date” of this Agreement shall be the date that this Agreement is executed by the last of the City, by the Mayor of the City after receiving all necessary City authorizations and approvals, and ATCA.

PREAMBLES

WHEREAS, 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.

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, et seq., as from time to time amended (the “TIF Act”), the Mayor and Aldermen of the City (collectively, the “Corporate Authorities”) are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a redevelopment project area as such term is defined in the TIF Act; and

WHEREAS, in accordance with the requirements of the TIF Act, the Corporate Authorities intend to establish a redevelopment plan (the “Redevelopment Plan” or the “TIF Redevelopment Plan”) and a redevelopment project area (the “Redevelopment Project Area” or the “TIF District”), and approve tax increment financing for the purpose of implementing the TIF Redevelopment Plan for the TIF District to induce development within the City; and

WHEREAS, [CDI Development Services, L.L.C., an Ohio limited liability company, an entity under common control with ATCA], is the contract purchaser from Old Second National Bank, a national banking association of the real property depicted on **Exhibit A** and legally described on **Exhibit B** (the “Property”), and ATCA proposes to redevelop the Property by constructing a senior housing development initially consisting of an “assisted living” facility containing approximately [87] residential dwelling units (“Phase I”) followed by an “independent living” facility containing approximately [144] residential dwelling units (“Phase II”) and various other commercial uses (all of which shall hereinafter be referred to together as, the “Project”); and

WHEREAS, the Project is located within the proposed TIF District; and

WHEREAS, ATCA intends to undertake the following in connection with the Project: (i) pay for the costs of all plans and specifications, the recordation of documents and construction site observations, and professional fees, (ii) apply for all required plan review approvals and permits; and (iii) undertake and complete the Project in compliance with the approved plans and permits and City codes and other applicable Legal Requirements as defined below; and

WHEREAS, ATCA has submitted a preliminary design plan (the “Preliminary Design Plan”) a copy of which is attached hereto as **Exhibit C**, and a proposed Project Timeline, as defined below, to the City to provide the City with proposed details of the Project.; and

WHEREAS, upon substantial completion, Phase I and Phase II of the Project would represent an estimated investment on the part of ATCA of \$28,857,000.00; and

WHEREAS, there exists that certain [Annexation Agreement for Ocean Atlantic – Hageman Farm dated September 22, 1998 [together with any and all other instruments in effect as of the Effective Date that govern the relationship between the City and the developer of the Property, the “1998 Agreement”], a copy of which is attached hereto as **Exhibit D-1**, by and between the City and [Harris Bank Naperville, as Trustee under Trust Agreement Dated August 10, 1978 and known as Trust No. 3316 and Ocean Atlantic Woodland Corp.] governing the relationship between the City and the prior developer of the Property as such pertains to development of the Property and which specifically requires the developer of the Property to promptly pay and cover the majority of the costs associated with the extension of Commons Drive; and

WHEREAS, the City and ATCA acknowledge that the aforementioned- requirement in the 1998 Agreement requiring the developer of the Property to cover the majority of the costs regarding the extension of Commons Drive, as well as stormwater improvements, utility connections and traffic related expenses, has heretofore prevented the Property from being developed; and

WHEREAS, the City has commissioned a study for the development of a master plan for the Route 59 Corridor located within the City (the “Master Plan”); and

WHEREAS, the City and ATCA acknowledge that the City and ATCA have spent a significant amount of time and effort attempting to make the Project economically viable and consistent with the mutual goals of the City, ATCA, the various taxing districts located within the City and the Master Plan; and

WHEREAS, the Corporate Authorities have determined that it is in the best interests of the City and the health, safety, morals and welfare of the residents of the City, on the terms and subject to the conditions set forth in this Agreement, for the City to execute an amendment to the 1998 Agreement (the “1998 Agreement Amendment”), a copy of which is attached hereto and incorporated herein as **Exhibit D-2**; and

WHEREAS, the 1998 Agreement Amendment will remove certain provisions deemed by the City and ATCA to prevent the desired development of the Property; and

WHEREAS, the Corporate Authorities have further determined that it is in the best interests of the City and the health, safety, morals and welfare of the residents of the City to create the Redevelopment Plan and the Redevelopment Project Area, approve tax increment financing for the purpose of implementing the Redevelopment Plan and the Redevelopment Project Area and to finance and complete the necessary construction for the extension of Commons Drive and improvements to an existing retention pond located in the northeast corner of the Property east of the Commons Drive extension (hereinafter, “Retention Pond A”); and

WHEREAS, the Parties acknowledge that the conditioned and contingent obligation of the City to build the Commons Drive extension which, for all purposes hereunder, shall be deemed to include the design and construction of the roadway and other infrastructure improvements situated within the Commons Drive right-of-way, Ogden Avenue, and 75th Street (as approved by IDOT and

DuPage County as applicable (as designed pursuant to this Agreement such Commons Drive extension and related infrastructure improvements shall be referred to together herein as, the “Commons Drive Extension”), as well as improvements to Retention Pond A, all as described and depicted on **Exhibit E**, is conditioned upon ATCA’s commencement of construction of Phase II of the Project and the establishment of the TIF District and the TIF Plan; and

WHEREAS, the Parties acknowledge that ATCA’s obligation to dedicate the land for the Commons Drive Extension to the City as set forth in this Agreement is conditioned upon the execution of the 1998 Agreement Amendment and the City’s commitment to construct the Commons Drive Extension and the improvements to Retention Pond A upon ATCA’s commencement of Phase II of the Project; and

WHEREAS, the Corporate Authorities have determined that the rights and obligations of the City and ATCA as described herein and the completion of the Project by ATCA pursuant to this Agreement are in the best interests of the City and the health, safety, morals and welfare of its residents and taxpayers, thereby providing for economic development, enhancing the tax base of the City and other taxing districts and adding to the welfare and prosperity of the City and its inhabitants.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Section 1. Incorporation of Recitals.

The recitals contained in the Preambles to this Agreement are true and correct and are hereby incorporated into this Agreement as though they were fully set forth in this Section 1.

Section 2. Development of the Project and Construction of the Commons Drive Extension and Improvements to Retention Pond A.

(a) Phase I.

(i) ATCA, on the Effective Date, shall commence the drafting and other work necessary to produce plans and specifications for Phase I as is generally proposed and set forth on **Exhibit F** (the “Phase I Preliminary Site Plan”). The plans and specifications for Phase I shall be completed no later than eighteen (18) months after the Effective Date.

(ii) Conditioned upon ATCA having provided the City with sufficient proof of financing, as reasonably determined by the City, for the completion of construction of Phase I of the Project, concurrent with: (1) ATCA’s (or an affiliate thereof) closing of its purchase of the Property; (2); and ATCA receiving building permits for Phase I of the Project; the City shall execute and record in the public record the 1998 Agreement Amendment and ATCA shall dedicate, without encumbrances, liens and with clear title, except as specifically enumerated below, the real property underlying the Commons Drive Extension to the City, at no cost to the City, which real property shall serve as the Commons Drive Extension right-of-way. Notwithstanding the foregoing: (1) ATCA’s dedication may restrict the real property comprising the Commons Drive Extension such that the same must be used for public purposes and may not be sold, leased, or otherwise transferred to a private, for-profit, enterprise for a period of forty (40) years after the date such real property is transferred to the

City; and (2) ATCA may reserve easements necessary to tie or otherwise ‘tap’ into sanitary, water, and other utility infrastructure improvements comprising Commons Drive Extension, and to place so-called ‘curb cuts’ onto Commons Drive Extension from the Property at agreed-upon locations.

In order to effectuate the intent of this subsection, the following documents shall be recorded with the DuPage County Recorder in the order listed as a single transaction:

- (1) the 1998 Agreement Amendment;
- (2) the deed transferring ownership of the Property to ATCA or an affiliate or assignee;
- (3) the plat separating the land for the Commons Drive extension from the Property; and
- (4) the deed transferring ownership of the land for the Commons Drive extension to the City.

(iii) No later than October 1, 2021, provided that ATCA or an affiliate or assignee thereof has closed on its purchase of the Property and provided that the terms set forth in Section 2(a)(ii) have been satisfied, ATCA shall commence, undertake and complete Phase I (or contract to commence, undertake and complete Phase I) in accordance with the schedule set forth in **Exhibit H** (the “Project Timeline”), subject to reasonable changes in scope and time agreed upon by ATCA and the City and/or, events of Force Majeure, as is hereinafter defined. ATCA shall diligently undertake the work to complete Phase I in accordance with the Preliminary Design Plan, the City Code, and all Legal Requirements, as hereinafter defined, until completion. The “completion” of either Phase of the Project, or any derivative terms carrying equal meanings, shall be evidenced by ATCA receiving a certificate of occupancy from the City for the applicable Phase of the Project. The City shall process any application for a certificate of occupancy in good faith and in accordance with law, and the issuing of such certificate/s of occupancy shall not be unreasonably withheld

(iv) The City, at the time ATCA initiates Phase I construction, shall, together with input from ATCA, shall at its cost commence the design and engineering plans for the Commons Drive Extension and the improvements to Retention Pond A to be reasonably consistent with the configuration (including the total area to be dedicated by ATCA) depicted in Exhibit E, including, but not limited to, lighting, sidewalks, landscaping, signage, sanitary sewer, water, and storm sewer (including stubs for future Phases, if any) and other utility infrastructure reasonably consistent with the Preliminary Design Plan, and shall periodically submit drafts of the same to ATCA for ATCA’s review and comment, the intent of the parties being that the Commons Drive Extension and the improvements to Retention Pond A be designed and completed in order to mutually benefit the Project and the City. Notwithstanding the foregoing, all final decisions regarding the design and engineering plans for the Commons Drive Extension shall be made at sole and absolute discretion of the City, provided, however, that the portion of the Property to be dedicated to the City by ATCA for the Commons Drive Extension shall not be increased from that depicted on Exhibit E without ATCA’s consent, which may be withheld or conditioned in ATCA’s reasonable discretion. All final decisions

regarding the design and engineering plans for Retention Pond A shall be mutually agreed upon by the City and ATCA. Notwithstanding any other term set forth herein, in the event any temporary improvements to Retention Pond A are required to be completed prior to the commencement of construction of Phase II, such improvements shall be completed by and at the cost of ATCA.

(b) Phase II.

(i) ATCA shall commence construction of Phase II (or contract to commence Phase II) in accordance with the Preliminary Design Plan, the City Code, and all Legal Requirements, as hereinafter defined, on a date no later than the three (3) year anniversary date of the City's issuance of the certificate of occupancy for Phase I. Phase II, as contemplated on the date of this Agreement, is described generally on **Exhibit G** hereto (the "Phase II Preliminary Site Plan").

(ii) The City's obligation to obtain financing for and initiate construction of the Commons Drive Extension and the improvements to Retention Pond A shall be concurrent with and conditioned upon ATCA providing sufficient evidence, as reasonably determined by the City, of the initiation of construction of Phase II by ATCA. If for any reason, ATCA determines not to move forward with the construction of Phase II of the Project, the City shall be immediately relieved of its obligation to construct the Commons Drive Extension and the improvements to Retention Pond A. The City shall have the right to terminate this Agreement if ATCA fails to commence construction of Phase II prior to the seven (7) year anniversary date of the City establishing the proposed TIF District, due to the nature of the debt financing needed to construct the Commons Drive Extension and the improvements to Retention Pond A.

(iii) Notwithstanding the foregoing, ATCA may propose to the City an alternative age-restricted residential or other non-residential use, consistent with the Master Plan, for the balance of the Property, including that portion of the Property intended for Phase II (the "Substitute Use") at any time prior to the deadline set forth in Subsection 2(b)(i) above. The City is under no obligation to approve any Substitute Use, however, the City's approval shall not be unreasonably withheld.

(iv) The City shall determine, in its sole and absolute discretion, the mechanism to finance the construction of the Commons Drive Extension and the improvements to Retention Pond A, subject to the terms and conditions of this Agreement, and shall be the recipient of reimbursements from the Incremental Taxes, as hereinafter defined, generated within the entire area designated as the TIF District. The City's obligation to construct the Commons Drive Extension and the improvements to Retention Pond A is predicated on the City's reasonable determination that the anticipated future Incremental Taxes from Phase I and Phase II (including a Substitute Use) and future phases of the Project are \$975,000 annually (which shall be equal to or greater than an amount sufficient to amortize the full cost to construct the Commons Drive Extension and the improvements to Retention Pond A) (the "Required Incremental Taxes"). "Incremental Taxes" shall mean the amount of ad valorem taxes, or payments in lieu or in substitution thereof, paid in respect of the Redevelopment Project Area and improvements therein which is attributable to the increase in the equalized assessed value of the Redevelopment Project Area and its improvements over the initial equalized assessed

value of the Redevelopment Project Area, as calculated in accordance with the TIF Act.

(v) Within one hundred eighty (180) days after the earlier to occur of the date ATCA commences construction of Phase II or the Substitute Use, or the date that the City deems, in its reasonable discretion, the valuation of the Property and improvements thereon for real estate tax purposes is sufficient to generate the Required Incremental Taxes (i.e., \$975,000), the City shall commence construction of Commons Drive Extension and the improvements to Retention Pond A and thereafter take or undertake all steps to timely complete construction of Commons Drive Extension and the improvements to Retention Pond A in a good, workman like manner, and shall complete the same within __ days thereafter.

(vi) The City shall manage and direct all steps regarding the construction of the Commons Drive Extension and the improvements to Retention Pond A. ATCA shall have no responsibility for construction of the Commons Drive Extension and the improvements to Retention Pond A, but shall provide input with respect to plans and specifications as such relate to the Property's reasonable access to utility and other infrastructure improvements as well as ingress and egress between the Commons Drive Extension and the Property and to any temporary improvements to Retention Pond A prior to the commencement of construction of Phase II.

(vii) ATCA shall provide the City with all necessary rights of access, licenses, or easements reasonably necessary for the City to complete the improvements to and subsequent maintenance of Retention Pond A. The City shall have the right to establish a Special Service Area (the "SSA") for the maintenance of Retention Pond A and ATCA consents to the establishment of the SSA and waives any and all protest or notice rights regarding the same. The SSA shall remain dormant until the City, in its sole discretion, determines that ATCA has failed to properly maintain Retention Pond A and thereafter undertakes to complete such maintenance. Notwithstanding the foregoing, ATCA shall retain ownership of the real property underlying Retention Pond A and shall be responsible for the ongoing and routine maintenance of Retention Pond A following the City's completion of the improvements thereto as contemplated by this Agreement. The City shall contribute available incremental taxes from the TIF District toward the maintenance of Retention Pond A for a period of ten (10) years after the City's improvements thereto have been substantially completed. The City's contribution shall be paid no later than thirty (30) days after the City's receipt of an invoice from ATCA or any successor owner or association formed by ATCA that is tasked with maintaining Retention Pond A. The City shall discharge its payments in accordance with all applicable laws. Other than as set forth herein, the City shall bear no responsibility, legal or otherwise, regarding the maintenance of Retention Pond A. When applicable, ATCA shall provide the City with contact information for any association tasked with maintenance of Retention Pond A. ATCA shall not be required to contribute any funds or procure additional real property or 3rd-party easements for the construction of the Commons Drive Extension or the improvements to Retention Pond A. ATCA, however, shall be responsible for the cost of construction of all other infrastructure improvements that may be required by ATCA in its construction of each phase or portion of the Project which improvements are currently anticipated to be as depicted on Exhibits F and H, including the construction of an on-site storm water management system for the Project that may utilize Retention Pond A. Notwithstanding the foregoing, at such time as the City installs sanitary sewer, water, and storm sewer lines in rights of way adjacent to the Property, the City shall install 'tee(s)' or

'wye(s)' in locations agreed upon by ATCA and the City for ATCA's use to tap into such utility services. The City shall only be obligated to complete such improvements as contemplated herein or as otherwise required by law.

Section 3. Creation of a Redevelopment Plan and Redevelopment Project Area.

The City, within ninety (90) days after the Effective Date, shall commence procedures to establish the TIF Redevelopment Plan and the TIF District and to approve tax increment financing for the purpose of implementing the TIF Redevelopment Plan for the TIF District in accordance with the requirements of the TIF Act and subject to the terms and conditions of this Agreement, and shall thereafter continuously and diligently pursue such procedures to establish and approve the foregoing. 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 (the "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 read in accordance with the Legislative Changes unless such Legislative Changes impose materially greater obligations (including costs) on either Party, or materially reduce the benefit of this Agreement to either Party, in which event either Party may terminate this Agreement.

Section 4. Term; Time is of the Essence.

The term of this Agreement shall commence on the Effective Date and end upon the earlier of the termination of the Redevelopment Project Area and the reimbursement, through the receipt of Incremental Taxes, to the City of the cost to construct the Commons Drive Extension and the improvements to Retention Pond A unless earlier terminated pursuant to the terms of this Agreement. Time is of the essence in the performance of all the terms of this Agreement.

Section 5. Project Reporting.

Upon the reasonable request of the other Party, but not less than once every six (6) months, the City and ATCA shall each provide the other with written status reports on its respective work regarding the Project, the Commons Drive Extension and the improvements to Retention Pond A.

Section 6. Construction Requirements.

(a) Prior to commencing construction, ATCA shall apply to the City for necessary building permits for the improvements to be made imminently by ATCA by submitting all plans and specifications required pursuant to the City Code of Ordinances (the "City Code"). ATCA shall be responsible for and promptly pay when due all building permit fees. The City shall review the building permit application as provided in the City Code. The plans and specifications and all other required submissions shall also comply with all applicable federal, state, county, municipal or administrative laws, ordinances, rules, regulations, codes and orders relating in any way to the development of the Project (collectively, the "Legal Requirements"). ATCA's scope of services hereunder shall include all required improvements along Ogden Avenue and along 75th Street not associated with Commons Drive.

(b) ATCA shall make all necessary applications (including paying all required fees, costs and expenses) for any and all land use adjustments and/or entitlements required for the successful

completion of the Project (the “Land Use Application(s)”). Upon receipt of a Land Use Application(s) the City shall process the same in accordance with all applicable laws, including and without limitation, the City Code. Nothing set forth herein provides ATCA with a guarantee of the approval of any Land Use Application.

(c) Land Use Classification.

(i) Special Use Planned Development.

In accordance with all applicable provisions of the City of Aurora Zoning Ordinance (the “Zoning Ordinance”), ATCA shall submit a special use planned development application (the “Planned Development Application”). The Planned Development Application shall include the rezoning and the associated preliminary plan/plat for the Property. If the preliminary plan/plat is approved by the City, ATCA shall provide the City with the final plan and final plat for the portions of the Property to be subdivided and the lot(s) to be constructed, including final engineering plans related to the lot upon which Phase I of the Project is to be constructed, associated water detention facilities, and required access to the Property (each lot shall require a final plan and final engineering plan as the same is developed). Provided ATCA is not then in default of this Agreement and submits the Planned Development Application in accordance with the Zoning Ordinance and all relevant Legal Requirements, the City, including all relevant departments and agencies, shall not file an objection to the Planned Development Application, failing which ATCA may terminate this Agreement.

(ii) Zoning Designation.

ATCA anticipates requesting one or more of the following zoning classifications for the Property: 1140 (or such category sufficient to use the Property for age restricted Multi-Family Dwelling), 1200 (Housing Services for the elderly), 2000 (General Sales, Services, or Office), 2100 (Retail Sales or Service), 7300 (Stormwater Management Facilities, Drainage Area, and Common Landscaping Areas), and 8000 (Planned Development).

(iii) Request for Variances.

ATCA anticipates requesting relief from the following City Code and Zoning Ordinance requirements for the Project:

1) The total number of parking spaces required and the need for structured parking, parking integration with the building, and/or enclosed or covered parking spaces (City of Aurora Building/Zoning Code _____).

2) Sound attenuating construction practices and procedures to meet heightened STC ratings for airborne and structure borne sound (City of Aurora Building Code Amendment 1207.2.3 and 1207.3.1). ATCA plans to request a STC/IIC rating of not less than 50 (45 if field tested) for both conditions.

3) Separated unit by unit utility meters for gas, electric, and water (City of Aurora Building Code Amendment 2701.1.2, 2801.1.1, 2901.1.2). ATCA plans to request one gas, electric and water meter for each building by phase.

4) Percentage of full wythe masonry on all elevations (City of Aurora Building Code Amendment 1404.1.1). ATCA plans to request 50% of all street frontage elevations in standard full wythe masonry, and additionally that masonry shall not be required on the interior courtyard elevations.

5) Balconies for buildings with common corridors (City of Aurora Building/Zoning Code _____). ATCA may eliminate balconies from residential dwelling units in Phase I and Phase II buildings.

(d) City staff has reviewed the potential requests provided in subsection (c)(ii) and (c)(iii) of this Section and has deemed such requests reasonable. Provided ATCA is not then in default of this Agreement submits all necessary application materials compliant with all relevant Legal Requirements and consistent with the Preliminary Design Plan, the City, including all agencies and departments, shall not file an objection to the applications for relief from the above City Code and Zoning Ordinance requirements, failing which ATCA may terminate this Agreement.

(e) Nothing set forth in subsections (c) and (d) of this Section is applicable to a Substitute Use.

(f) Each Party agrees to grant to the other reasonable rights of access, licenses, or easements, including and without limitation those for ingress, egress, access, clearing and staging to allow the obliged party to discharge its duties and obligations hereunder.

Section 7. No Liability of City to Others for ATCA's Expenses.

The City shall have no obligations to pay costs of the Project or to make any payments to ATCA, nor shall the City be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to ATCA for the development of the Project. Prior to issuance of a building permit for either Phase of the Project, the City may request, and ATCA shall provide, reasonable proof of financial resources and availability of funds sufficient to complete such Phase.

Section 8. Representations and Warranties.

(a) ATCA's Representations and Warranties.

ATCA agrees, and to its current, actual knowledge represents and warrants to the City as of the Effective Date, as follows:

(i) Existence and Authority of ATCA.

ATCA is an entity authorized to do business under the laws of the State of Illinois and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. ATCA is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To ATCA's knowledge, there are no actions at law or similar proceedings which are pending or threatened against ATCA which would result in any material and adverse change to ATCA's financial condition, or which would materially and adversely affect the level of ATCA's assets as of the

date of this Agreement or that would materially and adversely affect the ability of ATCA to proceed with the construction and development of the Project.

(ii) No Conflict by ATCA.

Neither the execution and delivery of this Agreement by ATCA, the consummation of the transactions contemplated hereby by ATCA, nor the fulfillment of or compliance with the terms and conditions of this Agreement by ATCA 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 ATCA (with ATCA's prior written approval), any organizational documents, any restriction, agreement or instrument to which ATCA or any of its managers, members or venturers is now a party or by which ATCA or any of its managers, members or venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of ATCA, any related party or any of its managers, members or venturers under the terms of any instrument or agreement to which ATCA, any related party or any of its managers, members or venturers is now a party or by which ATCA, any related party or any of its managers, members or venturers is bound.

(iii) Adequate Resources of ATCA.

ATCA, or its affiliates have sufficient financial and economic resources to implement and complete ATCA's obligations contained in this Agreement.

(iv) Experience of ATCA.

ATCA, and its affiliates, are skilled in the development of real property, and to the extent ATCA lacks such expertise, ATCA shall retain professionals that are skilled in the development of real property and shall seek input from other experts and consultants regarding the construction of the Project.

(v) Payment of Real Estate Taxes.

For so long as ATCA or an affiliate thereof owns a portion of the Property, ATCA or such affiliate shall pay all general and special real estate taxes levied against the portion(s) of the Property so owned on or prior to the date the same is due and said taxes shall not become delinquent.

(vi) Appealing of Real Estate Taxes.

Provided the Redevelopment Project Area is active, the City has constructed, or commenced to construct, the Commons Drive Extension and the improvements to Retention Pond A, and the cost (including principal, interests and other expenses associated with the with obtaining financing) of the Commons Drive Extension and the improvements to Retention Pond A has not been fully reimbursed from Incremental Taxes, and further provided that the Project is being taxed at fair market value consistent with similar properties and uses within the City, any owner of any portion of the Property may, upon providing the City with written notice, appeal real estate tax assessments. Notwithstanding the foregoing, if the

Incremental Taxes resulting from any such successful appeal would be less than the Required Incremental Taxes (i.e., \$975,000), the City may either protest such appeal and use the provisions of this Agreement as prima facie evidence of the agreed-upon value of the Property, or seek injunctive relief to prevent the filing or hearing of such appeal in which event the owner of the Property filing such appeal shall be deemed to have consented to such injunctive relief and to have waived any right of appeal thereof.

(vii) No Tax-Exempt Status.

Provided the City has commenced the process to establish the TIF District, consistent with the covenant in Subsection (vi) above, no owner of any portion of the Property may assert a tax-exempt status during its respective periods of ownership of, or interest in, the Property, or the Project if the resulting Incremental Taxes would be reduced below the Required Incremental Taxes (i.e., \$975,000). This prohibition shall run with the land and shall expire on the earlier of: (x) the date the Redevelopment Project Area expires or otherwise terminates; (y) the date the cost and all interest accrued thereon of the Commons Drive Extension and improvements to Retention Pond A has been fully reimbursed from Incremental Taxes; or (z) an earlier date if agreed by the City and the then owner(s) of the Project in writing.

(viii) Litigation.

To the best of ATCA's knowledge, there is no litigation, proceeding or investigation pending or threatened against ATCA seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of ATCA to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by ATCA of the terms and provisions of this Agreement.

(ix) Compliance with Legal Requirements.

To the best of ATCA's knowledge, ATCA is in compliance in all material respects with the Legal Requirements as of the Effective Date.

(b) Representations and Warranties of the City.

The City represents, warrants and agrees to ATCA as of the Effective Date as follows:

(i) 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.

(ii) 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; (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, with the exception of the approval of the Redevelopment Project Area and the Redevelopment Plan and any Substitute Use has been proposed by ATCA; 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.

Section 9. [intentionally omitted]

Section 10. Indemnification, Hold Harmless and Release Provisions.

(a) Release.

ATCA releases the City, its governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") from liability, and covenants and agrees that the Indemnified Parties shall not be liable for, and agree to defend, 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 negligent or willful act or omission of the Indemnified Parties.

(b) Indemnification.

ATCA agrees to defend, protect, and indemnify the Indemnified Parties, agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or from the actions or inactions of ATCA (or others acting on ATCA's behalf or under ATCA's direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement. The provisions of this Section shall be applicable to each Phase of the Project until the issuance of a certificate of occupancy for such Phase.

(c) Environmental Disclaimer.

Neither Party makes any warranties or representations regarding, nor does it indemnify the other Party with respect to, the existence or nonexistence on or in the vicinity of the Property, or anywhere within the Redevelopment Project Area of any toxic or hazardous substances or 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 Redevelopment Project Area, 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, neither Party makes any warranties or representations regarding, nor does either Party indemnify the other with respect to, the existence or nonexistence on or in the vicinity of the Project, or anywhere within the Property or the Redevelopment Project Area, 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. Neither Party makes any 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) [intentionally omitted]

(e) No Personal Liability.

No liability, right or claim at law or in equity shall attach to or shall be incurred by the City's Mayor, aldermen, officers, officials, attorneys, agents and/or employees acting within the scope of their employment or official capacity, and any such rights or claims of ATCA against the City's Mayor, aldermen, officers, officials, attorneys, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the City.

No liability, right or claim at law or in equity shall attach to or shall be incurred by ATCA's shareholders, officers, attorneys, agents and/or employees acting within the scope of their employment or official capacity, and any such rights or claims of the City against ATCA's shareholders, officers, attorneys, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by ATCA.

Section 11. Insurance.

When ATCA undertakes any construction on the Property, ATCA must carry or cause its contractors to carry All Risk/Builders Risk Insurance at replacement costs for materials, supplies, equipment, machinery and fixtures that are or will be part of the Project.

From and after the issuance of a certificate of occupancy for a Phase of the Project until such time as the City has been reimbursed for the cost of the Commons Drive Extension and the improvements to Retention Pond A, ATCA or the then owner of a portion of the Project, shall maintain or cause to be maintained fire and extended coverage insurance insuring the improvements and other structures comprising the respective Phase of the Project, if any, for their full replacement cost.

The City shall at all times during planning and construction of Commons Drive Extension,

Retention Pond A, and related improvements cause its contractors and any subcontractors (together, the “Contractors”) granted access to the Property to maintain commercial general liability insurance in commercially reasonable amounts and with commercially reasonable deductibles naming ATCA as an additional insured with respect to claims arising out of the use of the Property. Upon the request of ATCA, the City shall cause each such Contractor to deliver to ATCA a certificate of insurance evidencing that such coverage is in full force and effect.

ATCA shall not be liable for any injury, damage or loss of any nature whatsoever to person or property occurring as a result of the exercise of rights under this Agreement unless such injury, damage, or loss is directly and solely the result of ATCA’s willful misconduct or gross negligence. To the extent available or otherwise permissible by law, any person (“Third Party”) granted access to the Property by the City shall indemnify and agree to defend and save ATCA harmless from and against any and all claims, demands, actions, suits, losses, damages, costs, expenses, and liabilities whenever arising on or after the date hereof arising out of or due to (a) any act of Third Party or any of its agents, employees, representatives, or contractors with respect to the Property, (b) the exercise by Third Party of the City's rights or the performance by Third Party of the City's covenants and obligations under this Agreement, or (c) the use or occupancy of the Property by any of the foregoing.

Upon the request of a Party, the other Party shall cause a certificate(s) of insurance to be delivered to the requesting Party evidencing that the coverages required to be carried hereunder is/are in full force and effect.

Section 12. No Discrimination.

ATCA for itself and its successors and assigns agrees that, in the construction and completion of the Project, ATCA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. ATCA shall take affirmative action to require that applicants are employed and that employees are treated in compliance with law during employment, and without regard to their race, creed, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising and solicitations or advertisements for employees; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ATCA agrees to post in conspicuous places, available to employees and applicants for employment, notices, which may be provided by the City, setting forth the provisions of this nondiscrimination clause. Notwithstanding the foregoing, ATCA may employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions and shall comply with all Legal Requirements regarding the subject of this Section of this Agreement.

Section 13. Prevailing Wage.

The parties acknowledge the adoption of Public Act 96-0058, effective January 1, 2010 which provides that under the Prevailing Wage Act, 820 ILCS 130/.01 et seq. (the “PWA”), the term “public works” includes all projects funded in whole or in part through bonds, grants, loans or other funds made available by or through the State or any of its political subdivisions. The PWA requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in the county where the work is performed. Information regarding current prevailing wage rates is provided on the Illinois Department of Labor’s website. All contractors and subcontractors rendering

services under this Agreement in furtherance of public works must comply with all requirements of the PWA, *including but not limited to*, all wage, notice and record keeping duties.

Section 14. Waiver.

Either Party to this Agreement may elect to waive any remedy it may enjoy hereunder, provided that such waiver shall be in writing. No such waiver shall obligate such Party to waive any right or remedy hereunder or shall be deemed to constitute a waiver of other rights and remedies provided said Party under this Agreement.

Section 15. Assignment.

(a) This Agreement, subject to the terms of Section 18 below, may be assigned or transferred by ATCA without the prior written consent of the City, provided that ATCA must provide the City with notice of any such assignment or transfer and the identity of the prospective assignee or transferee no less than 30 days prior to the proposed date of assignment or transfer.

(b) Notwithstanding the foregoing, during the periods when Phase I and Phase II are under construction and prior to the issuance of a certificate of occupancy for each respective Phase of the Project, ATCA may only assign or transfer this Agreement to a transferee or assignee that is not an affiliate of ATCA with the City's consent, which consent shall not be unreasonably conditioned, delayed, or withheld if such assignee or transferee reasonably demonstrates to the City experience in the development of property similar to that of ATCA and provides reasonable proof of financial resources sufficient to complete the Phase of the Project then under construction. The City's chief management officer is authorized to execute any such consents on the behalf of the City without any further actions of the Corporate Authorities.

(c) Nothing in this Agreement shall be construed to prohibit ATCA's owner(s) or shareholder(s) as the case may be, from transferring ownership interest(s) or stock, or to prohibit ATCA from transferring or assigning its obligations and rights under this Agreement to an affiliate having financial resources sufficient to satisfy its obligations under this Agreement.

(d) In the event the terms of this Agreement are assigned or otherwise transferred by an owner of any portion of the Property other than ATCA or an affiliate thereof, no such assignment or transfer shall be effective unless (a) such assignment or transfer is undertaken in accordance with the terms of this Agreement, and (b) the assignor or transferor provides the City with the name, mailing and email addresses, and fax and telephone numbers of the (proposed) assignee or transferee prior to the assignment or transfer in a manner consistent with Section 17 below. Notwithstanding the foregoing, no assignment or transfer shall be made hereunder to any proposed assignee or transferee that is prohibited from engaging in business with the City or any other body of government.

(e) For the purposes of this Section 15, "affiliate" means any entity under common control with ATCA.

Section 16. Severability.

If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said

The terms, conditions and covenants set forth in this Agreement shall extend to, be binding upon, and inure to the benefit of the respective successors and assigns of the City and ATCA and shall run with the land. Any person or entity now or hereafter owning legal title to all or any portion of the Property, including ATCA, shall be bound to this Agreement only during the period such person or entity is the legal titleholder of the Property or portion thereof, provided, however, that all such legal title holders shall remain liable after their ownership interest in the Property ceases as to those liabilities and obligations which accrued during their period of ownership but remain unsatisfied or unperformed. To the extent reasonable and applicable, the term “ATCA” shall mean successors and assigns of ATCA. A memorandum of this Agreement shall be recorded.

Section 19. No Joint Venture, Agency or Partnership Created.

Neither anything in this Agreement nor any acts 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.

Section 20. Default; Remedies – Liability.

(a) If ATCA is in default of this Agreement, the City shall provide ATCA with a written statement setting forth the alleged default of ATCA. Default is defined as ATCA’s material lack of fulfillment of any obligation under this Agreement beyond any applicable period for cure including but limited to the following:

(i) ATCA fails to discharge (by act or omission) any material obligation under this Agreement.

(ii) If any representation or warranty made by ATCA in this Agreement, or in any certificate, notice, demand or request made by ATCA 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.

(iii) ATCA’s failure or inability to dedicate the land for the Commons Drive Extension to the City:

(iv) ATCA materially fails to comply with Legal Requirements in relation to the construction of the Project beyond any applicable period for cure.

Except as required to protect against further damages, the City may not exercise any remedies against ATCA in connection with a charged default until thirty (30) days after providing written notice of the same. If such default cannot be cured within such thirty (30) day period, said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as ATCA is diligently proceeding to cure such default, as determined by the City in its reasonable discretion. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the City in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

Notwithstanding anything set forth herein to the contrary, the Parties agree that in the event ATCA has not closed on its purchase of the Property prior to the date that is two (2) years after the Effective Date, or such extended period as agreed upon by the parties, or if ATCA determines that it cannot proceed with development of Phase II of the Project prior to the deadline set forth in Subsection 2(b)(i) above, ATCA shall not be deemed to be in default of this Agreement and with the exception of the obligations under Section 10 as such pertains to matters occurring or arising prior to the date this Agreement is terminated, the provisions of Section 17 and Section 25, which shall survive for a period of three hundred sixty-five (365) days after the date the balance of this Agreement is terminated, the balance of the Agreement shall be deemed terminated and of no further force and effect.

(b) If ATCA shall fail to cure any default under this Agreement, the City may, after the expiration of the cure period described in subparagraph 20(a), elect to (1) terminate this Agreement pursuant to the provisions set forth below; or (2) seek as an available remedy available remedies of injunctive relief, specific performance, mandamus, and *quo warranto* to compel the performance of ATCA under this Agreement; or (3) undertake self-help to cure the default, and ATCA agrees to reimburse the City, no later than thirty (30) days after ATCA's receipt of an invoice for all reasonable costs and expenses incurred by the City in so doing, plus interest at a rate equal to the Wall Street Journal Prime Rate. The City shall notify ATCA as to which remedy it will seek within a reasonable time of making its election. The City's right to self-help shall be subordinate to any remedy available to any lender of ATCA, and the City shall notify all such lenders of an intent to undertake self-help before commencing the same. The Parties acknowledge that the remedies set forth herein, including the right to self-help, allow the City to receive reimbursement for all costs and expenses in the design of the Commons Drive Extension and the improvements to Retention Pond A if ATCA defaults after the City starts the design and before the City commences construction of the Commons Drive Extension and the improvements to Retention Pond A.

(c) If, notwithstanding any provision set forth in this Agreement to the contrary, any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy or insolvency act shall be filed by or against ATCA, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare ATCA insolvent or unable to pay the debts of ATCA, or ATCA makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for ATCA or for the major part of ATCA's property, the City may elect, to the extent such election is permitted by law, but is not required, with or without notice of such election and with or without entry or other action by the City, to terminate this Agreement.

(d) The rights and remedies of the City are, subject to any limitations specifically set forth herein, cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by ATCA. The City shall not be entitled to speculative or remote damages in the event of an uncured default by ATCA.

(e) If the City is in default of this Agreement, ATCA shall provide the City with a written statement setting forth the default. The following shall be events of default by the City with respect to this Agreement:

(i) If any material representation is 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

ATCA 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.

(ii) Failure by the City in the performance or breach of any material covenant or obligation contained in this Agreement, including the obligation to commence and complete the Commons Drive Extension and the improvements to Retention Pond A as set forth in Section 2(b)(vi) above.

ATCA may not exercise any remedies against the City in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as the City is diligently proceeding to cure such default. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by ATCA in asserting its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach. Upon the occurrence of an uncured default of the City, ATCA shall have the available remedies of injunctive relief, specific performance, mandamus, and *quo warranto*. ATCA shall not be entitled to speculative or remote damages in the event of an uncured default by the City. The rights and remedies of ATCA are subject to any limitations specifically set forth herein.

(f) Notwithstanding anything set forth herein to the contrary, the Parties agree that in the event the TIF Redevelopment Plan and TIF District are not established by the date provided on the Project Timeline, (1) the City shall not be deemed to be in default of this Agreement; (2) with the exception of Section 10 as such pertains to matters occurring or arising prior to the date this Agreement is terminated, Section 17, and Section 26 which shall survive for a period of three hundred sixty-five (365) days after the date the balance of this Agreement is terminated, the balance of the Agreement shall terminate and be of no further force and effect, and such termination shall not in any manner revoke, terminate, or otherwise affect any entitlements granted to ATCA by the City in respect of the Project or the Property, and the City, at no additional costs or expenses to the City, shall in good faith strive to assist ATCA in gaining ingress to public rights of way and access to public utilities for the balance of the Property.

(g) In the event of a breach of the terms of this Agreement or any occurrence related to the Project that constitutes a bona fide emergency to the property, health, safety or welfare of ATCA, the City or its residents, either party shall be permitted to take any and all reasonable steps to mitigate such occurrence without being in default of the terms of this Agreement, but shall take reasonable steps to notify the other party of the occurrence prior to the commencement of such steps to mitigate the outstanding occurrence.

(h) Notwithstanding anything to the contrary set forth herein, the Parties acknowledge and agree that the termination of this Agreement by a Party pursuant to a termination right specifically granted herein shall not in any manner be deemed a default of this Agreement.

Section 21. Amendment.

This Agreement, and any exhibits attached to this Agreement, may be amended only in a writing signed by all the Parties and/or their successors in interest. Except as otherwise expressly

provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof.

Section 22. Exhibits.

Exhibits A through I attached to this Agreement are incorporated herein by this reference and are made part of this Agreement.

Section 23. Signs.

The City may erect a sign of reasonable size and style in a conspicuous location on the Property during the development of the Project indicating that the City provided funding to assist the Project.

Section 24. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement in Portable Document Format (PDF) or by facsimile transmission shall be effective as delivery of a manually executed original counterpart of this Agreement.

Section 25. Force Majeure.

A party shall not be deemed in default of this Agreement with respect to any obligation(s) of this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("Force Majeure") related to the Project. If one of the foregoing events shall occur or either party shall notify the other party that such an event shall have occurred, the party to whom such notice is provided is made has the right, but not the obligation to investigate the notification and consult with the party making such claim of Force Majeure regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was caused or exacerbated by such Force Majeure.

Section 26. Choice of Law/Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois with venue lying in the Circuit Court for DuPage County, Illinois.

Section 27. Cooperation and Further Assurances.

The Parties covenant and agree that each will undertake, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts as may be reasonably required to carry out the terms, provisions and the intent of this Agreement. The City agrees to cooperate with ATCA in ATCA's attempts to obtain all necessary governmental approvals for the Project at no additional cost or expense. The City shall process and consider reasonable requests of ATCA for relief or variances from any City ordinances, applicable building permits, or other permits necessary for the construction of the Project in accordance with Legal Requirements. Notwithstanding the foregoing, the City shall have no obligation to approve, to be a party to, or to be associated in any way with any third-party financing of the Project by ATCA.

Section 28. Repealer.

To the extent that any ordinance, resolution, rule, order or provision of the Code, 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.

<signature page follows>

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first set forth above.

AURORA TOWN CENTER ASSOCIATES, L.L.C.
An Ohio limited liability company

By _____

Its: _____

CITY OF AURORA, ILLINOIS
A Municipal Corporation

By _____
Mayor

ATTEST:

City Clerk

EXHIBIT A
PROPERTY DEPICTION

EXHIBIT B
LEGAL DESCRIPTION

EXHIBIT C
PRELIMINARY DESIGN PLAN

EXHIBIT D-1
THE “1998 AGREEMENT”

EXHIBIT D-2
THE "1998 AGREEMENT AMENDMENT"

EXHIBIT E

**DESCRIPTION AND DEPICTION OF COMMONS DRIVE EXTENSION AND
RETENTION POND A**

EXHIBIT F
PHASE I PRELIMINARY SITE PLAN

EXHIBIT G

PHASE II PRELIMINARY SITE PLAN

EXHIBIT H
PROJECT TIMELINE