

**REDEVELOPMENT AGREEMENT
FOR REDEVELOPMENT OF 2 N. RIVER STREET
IN THE CITY OF AURORA, ILLINOIS**

This **REDEVELOPMENT AGREEMENT FOR REDEVELOPMENT OF 2 N. RIVER STREET IN THE CITY OF AURORA , ILLINOIS** ("Agreement") is made and entered into as of the ____ day of March, 2023 ("Effective Date") by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation ("City"), Leilani Asian Fusion, Inc., an Illinois business corporation ("Developer"), and JH Real Estate, LLC, an Illinois limited liability company, Harish Ananthapadmanabham and Jay Punukollu, (each a "Guarantor" and collectively the "Guarantors"). The City and the Developer are sometimes referred to herein individually as a "Party," and collectively as the "Parties."

WITNESSETH:

IN CONSIDERATION of these 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 65 ILCS 5/8-1-2.5 to appropriate and expend funds for economic development purposes, including making grants and loans to commercial enterprises that the City deems necessary or desirable for the promotion of economic development within the City.
- D. New restaurants in the downtown have been a long-sought goal of the City, its consolidated population and the new residents attracted by recently approved residential developments in the downtown area; and the increasing number of visitors that have been attracted to the City's more popular destinations, such as the Paramount, RiverEdge Park. Restaurants

support a population living, working, or visiting a city that in turn adds to an environment that encourages more economic development.

- E. The Developer owns certain vacant real property located within what is commonly known as the “Hobbs Building” located at 2 North River Street, Aurora, Illinois, legally described and depicted in EXHIBITS A and B, respectively, attached hereto and made a part hereof (the “Property”). The Property is vacant and has not generated any rental income for the City or housed a tax-generating business for a significant period of time.
- F. The Developer desires redevelop the Property with three (3) separate restaurant uses with full service bars, subject to approval in accordance with the City Code, pursuant to three (3) separate redevelopment agreements. The restaurant use subject to this Agreement shall be an Asian fusion restaurant known as Leilani Asian Fusion (the “Restaurant”), to be located in a 7,979 square foot space (3967 sq. ft. on first floor and 4,012 sq. ft. in basement) at 2 N. River Street all as depicted and described on the business plans and depictions 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”), with total capital investment of approximately One Million Nine Hundred Ninety Thousand Nine Hundred Forty-Nine and 52/100 Dollars (\$1,990,949.52). The Project is to be financed as provided herein through:
 - 1. Developer Equity/deferred developer fee in the amount of One Million, Ninety Thousand, Nine Hundred Forty-Nine and 52/100 Dollars (\$1,090,949.52)
 - 2. City Forgivable Loan (as defined below) in the amount of Four Hundred Thousand and No/100 Dollars (\$400,000.00)
 - 3. City Loan (as defined below) in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00)
- G. In addition to this Agreement, the City, Guarantors and related business entities are parties to a Redevelopment Agreement for 2-12 N. River Street, dated September 24, 2019 and approved by Resolution No. R19-330, as amended by the First Amendment to Redevelopment Agreement dated February 23, 2021 and approved by resolution R21-038 (collectively the “Hobbs RDA”).
- H. Simultaneous with the execution of this Agreement, the Guarantors and related business entities will be executing two additional redevelopment agreements, one for a French restaurant in a 3,460 square foot space at 6 N. River Street and the other for an Italian restaurant in a 3,408 square foot space at 12 N. River Street. The Hobbs RDA, together with the two (2) restaurant redevelopment agreements referenced in this Section shall be collectively referred to in this Agreement individually as a “Related Agreement” or collectively as the “Related Agreements.”

- I. Keystone Management Group will be the Front-office management company for the Restaurant that will be responsible for front of house day-to-day operations. This company is currently managing ninety-one (91) restaurants across both Illinois, Iowa and Indiana and has extensive experience in the restaurant management arena. Jay Punukollu of Keystone Management boasts of over 21 years in the food industry Managing and operating multiple restaurant concepts.
- J. This Agreement is in furtherance of the City's goals to eliminate blighting factors, encourage growth and promote economic development and increased employment in and to ensure that the Property is redeveloped in accordance with the City's desires and in a way that serves the public's health, safety and welfare.
- K. The redevelopment of the Property with the Project would significantly assist in the stabilization and revitalization of the Property, the area in the vicinity of the Property and the City as a whole.
- L. The City is desirous of having the Property rehabilitated, developed and redeveloped in accordance with the Agreement, and particularly the Project as a part thereof, in order to serve the needs of the City, arrest physical decay and decline in the area of the Property, 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.
- M. 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.
- N. Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Property with the Project, but for certain incentives, to be provided by the City in accordance its statutory and home rule powers, which the City is willing to provide under the terms and conditions contained herein. The Parties acknowledge and agree that but incentives contained herein, 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.
- O. The City, in order to stimulate and induce development of the Property with the Project, has agreed to finance certain development costs through and otherwise assist with the development of the Project, all in accordance with

the terms and provisions of State law and the City's home rule authority, and this Agreement.

- P. 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.
- Q. 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.
- R. The City finds that this Agreement is in the best interests of the City, its residents and the public.

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 City and the Developer, with said date appearing on page 1 hereof.
- F. **"Party / Parties"** means the City, the Developer and/or the Developer, individually/collectively, and their respective successors and/or assigns as permitted herein, as the context requires.
- G. **"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.
- H. **"State"** means the State of Illinois.
- I. **"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, pandemic, 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 with respect to the City's obligations hereunder);
- 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 with respect to the City's obligations hereunder) including but not limited to IDOT, FWRD, and/or the 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, the Agreement shall control.

- F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- G. The City Mayor, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the City and with the effect of binding the City as limited by and provided for in this Agreement. Developer is entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the City as having been properly and legally given by the City.
- 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 Harish Ananthapadmanabhan 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, subject to approval by the City's Director of the Mayor's Office of Economic Development, to change its Authorized Developer Representative by providing the City with written notice of such change from both authorized representatives which notice shall be sent in accordance with Section XVI.C. of this Agreement. The new Authorized Developer Representative will be approved if the City's Director of the Mayor's Office of Economic Development determines the person to be a competent replacement with sufficient experience and expertise to serve as the Authorized Developer Representative.

IV. COOPERATION OF THE 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. DEVELOPMENT OF THE PROPERTY

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

- A. **Application for Permits and Approvals.** The Developer shall, no later than May 1, 2023, subject to Uncontrollable Circumstances and at its sole cost and expense, present Schematic Designs for the Project to the City ("Schematic Designs").
- B. **Application for Permits and Approvals.** The Developer shall, by no later than May 15, 2023, subject to Uncontrollable Circumstances and at its sole cost and expense, apply for all necessary permits and approvals from all governmental agencies having jurisdiction over the Project as may be required to commence construction of the Project ("Permit Approvals").
- C. **Funding Contingency.** The City's obligation to fund the Funding Escrow (as defined below) is contingent on the Developer satisfying all of the following conditions (the "Funding Contingency"):
 - 1. The Developer has provided the City with the Schematic Designs as required by this Agreement.
 - 2. The Developer has applied for the Permit Approvals as required by this Agreement.
 - 3. The Developer has provided with City an executed copy of the lease for the Restaurant as required by this Agreement.

This Agreement shall be null and void, and the Parties shall have no obligations hereunder, if the Developer fails to satisfy the Funding Contingency by no later than July 3, 2023.

In the event that the Developer fails to satisfy the Funding Contingency (as may be extended), then this Agreement shall terminate and the Parties shall have no further obligations or responsibilities hereunder.

- D. **Commencement of Construction.** The Developer shall commence construction of the Project by no later than July 7, 2023.

- E. **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 September 8, 2023, with the Restaurant thereafter operating on the Property by no later than October 31, 2023.
- F. **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.

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. Incentives.

1. **Conditions for Economic Incentives.** The Developer's right to receive the City Funding under this Agreement is conditioned on the Developer's ongoing compliance with the following conditions, in addition to the conditions elsewhere in this Agreement:

- a. The Developer is in compliance with its obligations in this Agreement and all timelines required in this Agreement.
- b. The Developer is in compliance with all federal, State, Kane County, City and other local laws, ordinances, codes, rules, regulations and directives.
- c. On the Effective Date, the Developer shall provide the City with a copy of a binding lease agreement in place between the Developer and the operator of the Restaurant of sufficient length so as to allow Developer to repay the City Funding.
- d. The Developer is in compliance with its obligations to its lenders, subject to all applicable notice and cure rights with such lenders.
- e. The Developer has deposited the Developer Funding in the Funding Escrow as required by this Agreement.
- f. There is no Event of Default under a Related Agreement.

2. **City Funding.**

- a. Subject to the terms and conditions of this Agreement, the City shall reimburse the Developer or pay the costs directly to a contractor for Eligible Project Costs from two (2) sources: (i) a Four Hundred Thousand and No/100 Dollars (\$400,000.00) forgivable loan ("Forgivable Loan"), which shall be repaid as set forth below, and (ii) a Five Hundred Thousand and No/100 Dollars (\$500,000.00) construction loan ("City Loan"), which shall be unsecured. The Forgivable Loan and the City Loan, shall be collectively referred to in this Agreement as the "City Funding." The City shall fund the Forgivable Loan and the City Loan through

a third-party escrow with Chicago Title & Trust Company (the "Funding Escrow"). Funding through the Forgivable Loan and the City Loan shall be provided on a pari passu basis with the Developer Funding, which shall also be deposited into the Funding Escrow in such amount as is necessary for the pari passu funding of the Project to occur through the Funding Escrow (as defined below). As noted in this Agreement, estimated total funding for this Project is \$1,990,949.52. The total funding through the Forgivable Loan and the City Loan is \$900,000.00 and shall in no event exceed this amount. The City shall deposit the City Funding into the Funding Escrow within twenty-one (21) days of the Funding Contingency being satisfied by the Developer.

Within fourteen (14) days of the date on which the Developer satisfies the Funding Contingency, the Parties shall cause a strict joint order construction escrow for the Project ("Funding Escrow"), with instructions approved by the Parties, with the Chicago Title Insurance Company ("Escrow Agent") to be created. The Developer shall pay the costs and fees of the Escrow Agent for the City Funding Escrow.

- b. Disbursement of Funds from the Funding Escrow by the Escrow Agent shall be done upon:
 - i. The provision of invoices, waivers of lien of Eligible Project Costs by Developer for each draw request and other documents necessary for the CFO to approve a draw request under this Agreement, as applicable
 - ii. Approval of said documentation by the City's Chief Financial Officer
 - iii. Confirmation that sufficient funds are available in the Funding Escrow.
- c. If this Agreement is no longer in effect for any reason, any City Funding remaining in the Funding Escrow shall belong to, be owned by, and be released to, the City.
- d. If this Agreement is no longer in effect for any reason, any Developer Funding remaining in the Funding Escrow shall first be paid to the City to satisfy any amount due the City with respect to the City Funding provided to the Developer under this Agreement and then to the Developer.

3. **Repayment/Amortization and Additional Terms of the Forgivable Loan.** 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 begins operation, as required by Section VII.H. of this Agreement. 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. 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, 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.

4. **Repayment and Additional Terms of City Loan.** The City Loan shall be subject to simple interest accruing at the rate of five percent (5%) per annum beginning on the date that the City Funding is deposited into the Funding Escrow and repaid on an monthly basis

according to the schedule in EXHIBIT F and the promissory note to be executed by Developer. From the time that the interest begins to accrue hereunder until the end of the third month that the Restaurant is operating as required hereunder, the Developer shall only be required to make interest payments. Thereafter, principal and interest shall be paid on a monthly basis. All payments made on the City Loan shall be due on the first day of each month. In the event the Developer does not make the minimum payment as provided in this Agreement, the City may declare an Event of Default and pursue remedies set forth in Section XIV hereof. Further, 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, stopping any transfer of the Property until the City Loan payments are current.

4. THE CITY'S OBLIGATION TO PAY THE DEVELOPER THE CITY FUNDING FROM THE CITY FUNDING ESCROW, IS A LIMITED OBLIGATION PAYABLE SOLELY FROM THE CITY FUNDING DEPOSITED IN THE CITY FUNDING ESCROW AND SHALL NOT BE A GENERAL OBLIGATION OF THE CITY OR SECURED BY THE FULL FAITH AND CREDIT OF THE CITY. INSUFFICIENCY OF THE FUNDING ESCROW TO PAY THE CITY FUNDING WHEN DUE SHALL NOT BE AN EVENT OF DEFAULT, AND THE DEVELOPER SHALL HAVE NO RECOURSE WHATSOEVER AGAINST THE CITY IN THE EVENT THAT THERE IS AN INSUFFICIENT AMOUNT OF CITY FUNDS IN THE FUNDING ESCROW.
5. A default by the Developer, the Guarantors or any party to the Related Agreements other than the City shall be a default under this Agreement. If there is a default under a Related Agreement by any party to the Related Agreement other than the City, then the City's obligations under this Agreement shall be offset in direct proportion to the default under the Related 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 the City Funding only for reimbursement of legitimate costs of the Project, as detailed in EXHIBIT D (the "Eligible Project Costs"). Further, the City Funding shall not be used to pay down any other third-party financing of the Developer related to the

Project. Distribution of the Forgivable Loan and the City Loan to the Developer shall be governed through the Funding Escrow.

- 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, then the Developer shall provide the City with annual financial reports.

- G. **Guaranty.** Guarantors, jointly and severally, hereby absolutely, irrevocably and unconditionally guaranty to the benefit of the City the full and prompt payment of each and all payments required by the Developer under this Agreement in Section V.B., when the same shall become due and payable in accordance with their terms (collectively, the "Guaranty"). This Guaranty shall constitute a guaranty of payment and performance when due, and not of collection. Guarantors specifically agree that, in the event of a failure by the Developer to timely pay or perform any of its obligations, the City shall have the right from time to time to proceed first and directly against Guarantors under this Guaranty, and without proceeding against the Developer or exhausting any other remedies against the Developer. Without limiting the foregoing, Guarantors agree that it shall not be necessary, and Guarantors shall not have the right, and specifically waives any right it may have, to require, as a condition of enforcing this Guaranty, that the City: (a) file suit or proceed to obtain a personal judgment against the Developer or any other person that may be liable for the obligations or any part of the obligations; (b) make any other effort to obtain payment or performance of the obligations from Developer other than providing Developer with any notice of such nonpayment or nonperformance as may be required under the terms of the Agreement; (c) foreclose against or seek to realize upon any security for the outstanding obligations; or (d) exercise any other right or remedy that the City is or may be entitled in connection with the outstanding obligations or any security therefor or any other guarantee thereof. Notwithstanding the right of City to proceed immediately and directly against Guarantors, the City shall not be entitled to more than a single full performance of the obligations regarding any breach or non-

performance thereof. Subject to the foregoing, at the City's election, which may be made in its sole judgment, the City may, following demand upon Guarantors hereunder, perform or cause to be performed any and all outstanding obligations on the Developer's behalf. The City shall not be obligated to undertake any of the foregoing actions, and shall not incur any liability to Guarantors, the Developer or any other person because of taking or not taking any of the foregoing actions. No such actions or inactions by the City shall release or limit the liability of Guarantors hereunder, and shall not serve as a waiver of any of the rights of the City pursuant to this Section of this Agreement. The liability of Guarantors shall be effective, and the obligations shall immediately be paid and performed, only upon any failure by Developer in the timely payment or performance of any obligation and the giving of such notice or demand, if any, to Developer as may be required under this Agreement, and the failure to cure the same. Guarantors specifically reaffirm the representations and warranties of the Developer as set forth in this Section. The obligations of Guarantors hereunder are absolute, irrevocable and unconditional and shall remain in full force and effect until the Developer's obligations have been fully discharged in accordance with their respective terms and not subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, the obligations or any other defense that Developer may have) based on any claim that Guarantors may have against the Developer, the City, or any other person. Without limiting the foregoing, the obligations of Guarantors hereunder shall not be released, discharged or in any way modified. Notwithstanding any provision to the contrary, nothing in this Section limits or waives the City's rights under this Agreement.

- H. **Operation of Restaurant.** During the term of this Agreement and until such time as all City Funding is repaid in full, unless forgiven under this Agreement, the Developer agrees that the Restaurant shall be continuously in operation once the Project is complete. For purposes of this Agreement, the Restaurant shall be considered continuously in operation if the Restaurant or another restaurant of the same or similar quality and character as the Restaurant is open to the public six (6) days per calendar week 11:00 a.m. to 10:00 p.m., without any interruption in being so open for more than twenty (20) consecutive calendar days. Notwithstanding the above schedule, the Restaurant must be open when the Paramount Theatre has scheduled performances.
- I. **Management of Restaurant.** The management of the Restaurant shall be in substantial conformance with the management plan document attached hereto as EXHIBIT G attached hereto and made a part hereof.

VIII. ADDITIONAL COVENANTS OF DEVELOPER

- A. **Continued Existence.** The Developer and Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect their existence and standing as Illinois corporations , 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. **Disclosure.** Concurrently with the execution of this Agreement, Developer shall disclose to the City the names, addresses and ownership interests of all Persons that have an ownership interest in the Developer, together with such supporting documentation that may be requested by the City. Developer further agrees to notify the City throughout the term of this Agreement of the names, addresses and ownership interests of any new owners of the Developer.
- E. **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.
- F. **Open Book Project.** The Project shall be an "open book" project, meaning that the Developer and the Guarantor will assure continuing access to the City's agents for the purpose of reviewing and auditing their respective books and records relating to any item necessary to determine the costs of the Project; provided, however, that all such access shall be limited to normal business hours upon reasonable prior notice and shall not occur more frequently than once per calendar quarter. The foregoing City review rights shall terminate one (1) year after the issuance of the Certificate of

Project Completion with respect to costs for the Project, unless the Developer has failed to make available any such books and/or records requested in writing by the City. Developer shall provide to the City copies of any partnership agreements, corporation operating agreements, corporate by-laws or joint venture agreements pertaining to the Property to which the Developer is a party; provided that the Developer may, (if Developer has previously provided the City not less than thirty (30) days to review such confidential financial materials), remove from the copies of such agreements any confidential financial information previously disclosed to the City and not since changed in form or substance and the City shall keep such agreements confidential, to the maximum extent permitted by law. Failure to provide the documents or allow review of the books within thirty (30) 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.

- G. If an Event of Default occurs under this Agreement or any Related Agreement, Developer and the Guarantors shall not be entitled to collect any rent from the Restaurant or collect any deferred developer fees until such time as the Event of Default is cured, as said rent and/or deferred developer fees shall be allocated to curing the Event of Default.

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, property maintenance regulations, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, FoxWalk Design Guidelines, 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 AND WARRANTIES OF DEVELOPER

The Developer represents and warrants to the City as follows:

- A. **Existence and Authority of Developer** The Developer is an Illinois Corporation duly organized and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action have been duly authorized to execute, deliver and perform, this Agreement. The Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer and/or Guarantors which would result in any material and adverse change to Developer's or Guarantors' financial condition, or which would materially and adversely affect the level of Developer's or Guarantors' assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer or Guarantors 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 or any of its managers, members or venturers is now a party or by which Developer 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 Developer, any related party or any of its managers, members or venturers under the terms of any instrument or agreement to which Developer, any related party or any of its managers, members or venturers is now a party or by which Developer, any related party or any of its managers, members or venturers is bound.
- C. **Adequate Resources of Developer and Guarantor.** The Developer and Guarantor have 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 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.

- 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.
- 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 City Loan and Forgivable Loan have been repaid in full.
- G. **Other Funds.** The Developer and Guarantor have adequate funds, from other sources, to construct and operate the Project in accordance with this Agreement.
- 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 Guarantor to the City regarding the Project are true, accurate and complete. The Developer and Guarantor have 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.
- I. **Liens and Encumbrances.** The Developer has not and will not suffer or permit the creation (whether voluntary or involuntary) of, or any attempt to create, any mortgage, security interest or mechanic's lien or judgment lien upon the Property, except as expressly authorized herein, including any fixtures now or hereafter attached thereto, or the making or any attempt to make any levy, seizure or attachment thereof. Developer may cure the attachment of any mechanic's lien or judgment lien by removing or bonding or insuring over such lien in an amount equal to the monetary claim of the lien within thirty (30) days of attachment.

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 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. INSURANCE

- A. **Insurance Coverages.** The Developer, and any of its successors in interest, 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:
 - 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. Builder's risk insurance shall only be required through the completion of construction of the Project.

2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Developer'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 \$2,000,000.00 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.
- B. **Continuity of Insurance.** All insurance required in this Section XII. 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 in this Section XII., cancellation relative to each policy shall be as provided by the policy; however, the City must be named as a cancellation notice recipient. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successors or assigns, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section XII. In lieu of separate policies, the Developer, or its successors or assigns, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

XIII. INDEMNIFICATION, HOLD HARMLESS AND RELEASE PROVISIONS

This Section XIII. shall survive the termination of this Agreement.

- A. **Release.** The Developer 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, and covenant and agree that the Indemnified Parties shall not be liable to Developer for 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. **Indemnification.** Except for fraud, gross negligence or willful misconduct of the Indemnified Parties, Developer agrees to indemnify the Indemnified Parties, now and forever, and further agree to defend and 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 purportedly arising from the actions or inactions of Developer (or if other Persons acting on its behalf or under either of their 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.

- C. **Waiver.** The Developer waive 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.
- D. **No Personal Liability.** No liability, right or claim at law or inequity shall attach to or shall be incurred by the City's Mayor, Aldermen, officers, officials, attorneys, agents and/or employees, and any such rights or claims of the Developer against the City's Mayor, Aldermen, officers, officials, attorneys, agents, employees, contractors and/or consultants are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the City.

XIV. EVENTS OF DEFAULT AND REMEDIES

- A. **Developer and Guarantor Events of Default** . Each of the following shall be an "Event of Default" with respect to this Agreement:
 - 1. If any representation made by Developer or Guarantor in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default, within thirty (30) days after written notice from the City.
 - 2. Default by Developer or Guarantor 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 or Guarantor, 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 and/or Guarantor 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 or Guarantor 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 or Guarantor 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 or Guarantor 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 or Guarantor 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 Developer generally declares it is unable to pay its 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 or Guarantor's obligation; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default, within thirty (30) days after written notice from the City.
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 without the City's written consent, so long as there is no change in the control of finances and/or management of the Developer.

9. Developer abandons construction of the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than sixty (60) 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 ninety (90) 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 or Guarantor 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.** Each of the following shall be an “Event of Default” by the City 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 and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the 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 or Guarantor, in addition to any other remedies at law or in equity, the City shall be relieved of its obligations under this Agreement unless and until such time as the Event of Default is cured by the Developer or Guarantor in accordance with 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 and/or the City, which relate to the terms of this Agreement, 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.

XV. 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.
- 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.

XVI. MISCELLANEOUS PROVISIONS

- A. **Employment Opportunities.** To the extent feasible, the Developer shall make reasonable efforts to notify City residents of employment opportunities that are available relative to the Project, and, to the extent permitted by law, make reasonable efforts to employ qualified residents of the City in relation to the Project.
- B. **Cancellation.** In the event the City shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, by the order of any court of competent jurisdiction, or in the event that 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 the City, then and in any such event, the City 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 Developer within sixty (60) days after such final decision or amendment. Provided however, prior to such termination the City agrees to meet with the Developer and negotiate in good faith amendments and modifications to this Agreement to comply with the applicable order, ordinance or other law while attempting to preserve the parties rights and obligations hereunder to the greatest extent possible. 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 or email, (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:
Leilani Asian Fusion Inc
105 E Galena Blvd, Ste 804
Aurora, IL 60505

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. If notice is sent by email under clause (2), then the sending party will send a copy of such notice by another permitted method unless the receiving party waives such requirement within forty-eight (48) hours of the original email. 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. **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.
- H. **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.
- I. **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.
- J. **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.
- K. **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.
- L. **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.

- M. **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.
- N. **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.
- O. **Term.** This Agreement shall remain in full force and effect until the Forgivable Loan and the City Loan are repaid in full (or forgiven in the case of the Forgivable Loan in accordance with its terms.
- P. **Assignment.** Except as set forth in this Section R, 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.
- Q. **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:

_____, **INC** ,
an Illinois Corporation **ATTEST:**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

GUARANTOR:

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

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____

GUARANTOR:

Jay Punukollu

GUARANTOR:

Harish Ananthapadmanabham

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 February, 2023.

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

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 persons whose names are subscribed to the foregoing instrument,
appeared before me this day in person and severally acknowledged that, as such
_____ and _____, they each signed and delivered the said
instrument as their free and voluntary acts, and as the free and voluntary act and deed of
said _____, for the uses and purposes therein set forth.

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

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

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 persons whose names are subscribed to the foregoing instrument,
appeared before me this day in person and severally acknowledged that, as such
_____ and _____, they each signed and delivered the said
instrument as their free and voluntary acts, and as the free and voluntary act and deed of
said _____, for the uses and purposes therein set forth.

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

Notary Public

INSERT ADDITIONAL GUARANTOR NOTARY PAGES

EXHIBIT A

Legal Description of the Property

Legal Description:

PINs:

Common Addresses:

EXHIBIT B

Depiction of the Property

(attached)

EXHIBIT C

Business Plans

EXHIBIT D

**Detailed Description of the Project,
Including *Pro Forma*, Financial Projections and Timeline**

The detailed description of the Project, including *pro forma*, financial projections and timeline are attached, and consist of:

1. List documents here by title, date and number of pages.
2. List documents here by title, date and number of pages.
3. List documents here by title, date and number of pages.

EXHIBIT E

**Forgivable Loan Repayment/Amortization Schedule
(attached)**

EXHIBIT F

**City Loan Repayment Schedule
(attached)**

EXHIBIT G

Restaurant Management Plan