

**REDEVELOPMENT AGREEMENT**

**THIS REDEVELOPMENT AGREEMENT ("Agreement")**, dated this \_\_\_\_ day of November , 2017, is made by and between the **CITY OF AURORA**, Kane, Kendall, Will and DuPage Counties, Illinois, an Illinois Municipal Corporation and home rule unit of local government (the "**City**") and the **Fox Valley Music Foundation**, an Illinois non-profit corporation (the "**Developer**").

**RECITALS**

**WHEREAS**, the City is a duly constituted and existing municipality within the meaning of Section 1 of Article VII of the 1970 Constitution of the State of Illinois and is a "home rule unit" under Section 6(a) of Article VII of the 1970 Constitution; and

**WHEREAS**, the City has the authority to promote the health, safety and welfare of the City and its inhabitants, to encourage private development in order to enhance the local tax base, create employment and ameliorate blight, and to enter into contractual agreements with third persons to achieve these purposes; and

**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 "**Act**"), the Mayor and City Council of the City 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 "conservation area" as defined in Section 11.74.4-3(b) of the Act; and

**WHEREAS**, The CITY authorized the preparation of reports, entitled "Downtown Aurora Redevelopment Project Report" ("**Original Plan**") prepared by Teska Associates, Inc., dated September 11, 1986, and the "First Amendment to the Downtown Redevelopment Plan and Project", prepared by Kane, McKenna and Associates, Inc., dated November, 2003 ("**Redevelopment Plan**") concerning the redevelopment of the central Aurora downtown area, including but not limited to the Property.; and

**WHEREAS**, In accordance with the Act, the City of Aurora conducted a public hearing with respect to the Original Plan\_and a public hearing with respect to the Redevelopment Plan\_and the redevelopment of the TIF District\_at the meetings of the City Council of the City of Aurora, Illinois ("**Corporate Authorities**") held on October 14, 1986 and October 14, 2003 respectively; and.

**WHEREAS**, in furtherance of its commitment to develop the Redevelopment Project Area, the City has from time to time invited proposals for redevelopment of certain land within the Redevelopment Project Area in an effort to encourage its revitalization as outlined in the TIF Plan; and

**WHEREAS**, Ordinance No. 086-5596 adopted December 2, 1986, titled "An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois, Approving a Tax Increment Redevelopment Plan and Project for the Proposed Downtown Aurora Redevelopment Project Area."

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

**WHEREAS**, Ordinance No. 086-5598, adopted December 2, 1986, titled "An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois, Adopting Tax Increment Allocation Financing for the Downtown Redevelopment Project Area."

**WHEREAS**, Ordinance No. 003-146, adopted November 4, 2003, titled "Ordinance Amending the Downtown Redevelopment Project Area No. 1 Tax Increment Financing District Redevelopment Plan and Project."

**WHEREAS**, Ordinance No. 003-147, adopted November 4, 2003, titled "An Ordinance Supplementing and Affirming Ordinance No. 086-5597 entitled 'An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois Designating the Downtown Aurora Redevelopment Project Area of Said City a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Project Act.'"

**WHEREAS**, Ordinance No. 003-148, adopted November 4, 2003, titled "An Ordinance Supplementing Ordinance No. 086-5598 entitled 'An Ordinance of the City of Aurora, Kendall, DuPage, Kane and Will Counties, Illinois Adopting Tax Increment Allocation Financing for the Downtown Aurora Redevelopment Project Area.'"

**WHEREAS**, It is understood that the aforesaid TIF District authorization was nearing its expiration date and that the City of Aurora has received an extension of such authorization from the State of Illinois, and the City has implemented the extension of the length of the TIF District to and including November 2023; and

**WHEREAS**, as part of the study of the redevelopment of the TIF District, the CITY found that the improvements on the Property suffer from the following factors: age, obsolescence, depreciation of physical maintenance, deterioration, inadequate utilities, excessive vacancies, deleterious land use or layout, excessive land coverage and lack of community planning; and

**WHEREAS**, Developer has proposed to lease from the City, remodel, rehabilitate and redevelop the existing property located at 19-21 South Broadway, Aurora, Illinois (the “**Site**”) which is legally described on **Exhibit “A”** to this Agreement, along with certain improvements, all as described in more detail in this Agreement (collectively, the “**Project**”), on a portion of the Site located within the Redevelopment Project Area upon which Developer has contractual rights pursuant to a lease agreement entered into with the City and dated November \_\_\_\_\_, 2017 (“**Lease**”), and attached hereto and incorporated herein as **EXHIBIT “B”** and made a part hereof. Developer has submitted plans to the City for rehabilitation and redevelopment of the Site (the “**Redevelopment Plans**”), attached hereto and incorporated herein as Group **EXHIBIT “C”** and made a part hereof; and

**WHEREAS**, the City is desirous of having the Site redeveloped in order to serve the needs of the City and the community and in order to further promote the downtown through arts and culture by offering a greater variety of art and culture attractions for area residents; and

**WHEREAS**, in order to induce Developer to construct the Project, the Mayor and City Council of the City have determined it is in the best interest of the City to grant Developer an amount not to exceed One Hundred Twenty Five Thousand Dollars and no/100 (\$125,000.00), plus a 10% Construction Management Fee for Eligible Redevelopment Project Costs (collectively, the “**City Incentives**”) as further described herein; and

**WHEREAS**, but for the City incentives, Developer could not successfully complete the Project in the matter provided within this Agreement; and

**WHEREAS**, this Agreement has been submitted to Developer for consideration and review, Developer has consulted with an attorney with experience in the field of redevelopment of real property in Illinois, and Developer has taken all actions required to be taken prior to the execution of this Agreement, including the approval of necessary resolutions and other appropriate Developer documents, in order to make the same binding on Developer in accordance with their respective terms, and any and all actions of Developer precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

**WHEREAS**, the Mayor and City Council of the City, after due and careful consideration, have determined the redevelopment of the Site with the Project by Developer and the provision by the City of the City Incentives, in each case pursuant to this Agreement, will be in furtherance of the TIF Plan and thereby increase art and cultural opportunities, improve the environment of the City, foster increased economic activity within the City, and otherwise be in the best interests of the City and the health, safety, morals and welfare of its residents and taxpayers.

**NOW THEREFORE**, in consideration of the foregoing recitals, the mutual covenants and promises and payment of money as contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**ARTICLE I  
INCORPORATION OF RECITALS**

The foregoing recitals are material to this Agreement and are incorporated into and made a part of this Agreement as though they were fully set forth in this Article I.

**ARTICLE II  
MUTUAL ASSISTANCE**

The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, and in the City's case, the adoption of such ordinances or resolutions, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**ARTICLE III  
REDEVELOPMENT PROJECT**

**Section 301. Redevelopment Plan.**

(A) Developer agrees and covenants that the Project will consist of the lease of the Site from the City, the remodeling and redevelopment pursuant to the Redevelopment Plans, and the operation of a business pursuant to Section 505 herein, and all of same meeting the requirements of this Agreement.

(B) Developer submitted the Redevelopment Plans for the various components of the Project in accordance with the provisions of this Agreement. Developer also submitted to the City a proposed, estimated construction budget and construction schedule, copies of which are attached hereto and incorporated herein as **EXHIBIT "D"** ("**Construction Budget and Construction Schedule Report**").

(C) Within approximately thirty (30) days of the approval of the Redevelopment Plans by the City, Developer will prepare and submit final building and construction plans for all building and other improvements (the "**Construction Plans**") to the City for approval in accordance with the rules, regulations and ordinances of the City, and consistent with the Redevelopment Plans. Upon approval, the Construction Plans shall be incorporated by reference into this Agreement. The Redevelopment Plans and the Construction Plans, when approved shall constitute the **Final Project Documents**.

(D) Developer shall cause the Project to be constructed substantially in accordance with the Final Project Documents, the Construction Budget and Construction Schedule and the terms and conditions of this Agreement. Approval of the Final Project Documents shall be a prerequisite for the issuance of all necessary building permits.

(E) Before construction of the Project begins, in accordance with the Final Project Documents and as described in this Agreement, (**the “Work”**), Developer shall, at its expense, secure or cause to be secured any and all permits required for the Work by City ordinances existing as of the date of this Agreement, and any other governmental agencies having jurisdiction over such Work, or such portion of the Work being performed, including, without limitation, any applications and permits which may be required to be obtained from any local, federal or state environmental protection agency, or from any other agency which may have or exercise any jurisdiction of any type whatsoever which may affect the Site. It is further noted that Developer shall not be charged for the City’s typical and customary permit fees, but may be required to pay any out-of-pocket expenses that may be incurred in relation to the permit process.

(F) The Parties agree and acknowledge development of the Project is in compliance with the TIF Plan and all other requirements of the Act.

(G) To the best of Developer’s knowledge after appropriate legal review, the Final Project Documents shall comply with all applicable federal, state, county, municipal or administrative laws, ordinances, rules, regulations, codes and orders (collectively, the "**Legal Requirements**") relating in any manner to the Work, including, without limitation, all environmental laws and the Americans With Disabilities Act.

(H) To the best of Developer’s knowledge after appropriate legal review, Developer shall carry out the Work and development in conformity with all applicable Legal Requirements.

### **Section 302. Lease, Construction Commencement and Completion.**

(A) Developer and City have entered into a Lease for the Site, giving Developer contractual rights to take all actions with regards to the Site as are necessary and required of the Developer in this Agreement (**See EXHIBIT “B”**).

(B) Developer will commence construction of the Project within sixty (60) days of the date of this Agreement, or when the City completes its obligations under this agreement, whichever is earlier, and thereafter will diligently pursue completion of the Project. Developer shall use commercially reasonable efforts to complete the Project within one hundred eighty (180) days of the date of this Agreement, which date may be extended by the City.

(C) Developer has the sole responsibility for the planning, design, development, construction and installation of the Work.

(D) Developer, at its expense, will engage the services of architects, engineers, lighting, HVAC, life safety and other design consultants, as Developer shall deem necessary and appropriate, to prepare the Final Project Documents.

## **ARTICLE IV CITY INCENTIVE**

**Section 401. Type and Amount of City Incentive.** The City Incentive shall consist of a grant to the Developer not to exceed One Hundred Twenty Five Thousand and no/100 Dollars (\$125,000.00) of eligible Redevelopment Project Costs as described in Section 402. There shall also be a ten percent (10%) construction management fee available to the Developer to cover costs associated with the rehabilitation project.

**Section 402. Grant Payment for TIF Eligible Costs.**

(A) City shall grant Developer funds and all costs necessary to (i) Lease the Site; (ii) construct the Project; and (iii) undertake other matters eligible for reimbursement pursuant to this Agreement in connection with the Work.

(B) Developer shall pay for any planning, consulting, legal and other professional service fees ("Professional Fees") incurred in connection with the Project.

(C) Grant payment, including construction management fee, to Developer shall be made within sixty days (60) of the approval of this agreement, and approval of the lease of the premises.

(D) For purposes of this Agreement, "**Total Costs**" shall mean the actual documented costs paid to third parties and actually expended by Developer to fully and totally complete the Project as set forth within the Final Redevelopment Plans and the Construction Budget and Construction Schedule Report. Eligible "**Redevelopment Project Costs**" shall mean and include all costs defined as "redevelopment project costs" in Section 11-74.4-3(q) of the Act which are eligible for reimbursement under the Act.

(E) To establish a right of reimbursement for specific Redevelopment Project Costs under this Agreement, Developer shall submit to the City such documentation, including lien waivers and releases, as may be reasonably required by the City.

(F) The City shall have thirty (30) days after receipt of any Request for Reimbursement from Developer to approve or disapprove any of the expenditures for which reimbursement is sought in such request and, if disapproved, to provide Developer in writing and in detail with an explanation as to why such request was disapproved; provided, the only reasons for disapproval of any expenditure for which reimbursement is sought shall be such expenditure is not an eligible Redevelopment Project Cost or the documentation therefore is insufficient

**Section 402. City Obligation under this Agreement.** The City shall undertake any necessary environmental remediation at the site prior to commencement of work by the Developer. If the City and Developer find it important and necessary for the Developer to perform certain construction tasks prior to

the remediation work (i.e. interior demolition work), the Developer shall only pay for the non-remediation tasks in connection with the Developers eligible project costs. The City shall also perform certain masonry and roofing work involving the removal of brick parapet along a portion of the exterior of the site, and shall have furnished and installed all materials necessary to complete the roofing repair and coping work in connection with the parapet removal. The City and Developer shall coordinate the timing and scheduling of work being proposed by either party so as to make a safe and secure work site.

**Section 403. No Individual or Personal Liability.** Notwithstanding any other statement in this Agreement, the Parties agree the representations made by the City in this Agreement and incentives offered in this Article IV are made on behalf of the City, and the City Staff, Mayor, and City Council are not making such representations personally, are not parties to this Agreement, and shall incur no personal liability in conjunction with this Agreement.

## **ARTICLE V SPECIAL COVENANTS OF DEVELOPER**

### **Section 501. Lease Payments and Taxes.**

(A) Developer agrees it shall pay, when due, any and all payments pursuant to the lease agreement attached hereto as **Exhibit B**, together with all improvements on the Site. Failure to timely pay said payments shall constitute a breach of this Agreement.

(B) Developer acknowledges the Project is within a Tax Increment Redevelopment Project Area and all grant payments provided herein shall be paid from tax increment generated within the Redevelopment Project Area.

**Section 502. Compliance with Laws.** Developer represents and warrants to the City, both as of the date of execution and delivery of this Agreement and for the term of the Agreement, as follows:

(A) It is not barred from contracting with any unit of state or local government and Developer shall comply with all applicable laws, regulations, rules, ordinances and other legal requirements of the City, County, the State of Illinois, and United States.

(B) Developer agrees to maintain full compliance with changing government requirements that govern or apply to the construction of the Project. Developer understands and agrees the most recent of such federal, county, state, and local laws and regulations will govern the administration of this Agreement at any particular time. Likewise, new federal, county, state and local laws, regulations, policies and administrative practices may be established after the date of the Agreement has been executed and may apply to this Agreement and the Project. Any lawsuit or complaint of violation of laws received by Developer relative to this Agreement or the Project shall be immediately forwarded to the City.

(C) Developer shall at all times keep a record of redevelopment costs associated with the Project. The City shall be entitled to review such records from time to time, and shall also be entitled to review said records to insure grant funds were used for TIF eligible expenses.

**Section 503. Indemnification of City.** Developer, its successors and assigns shall defend, indemnify and hold harmless the City and its elected or appointed officers and officials, mayor, aldermen, agents, volunteers, representatives and/or employees, from and against any and all civil liabilities, actions, responsibilities, obligations, losses, damages and claims, and all costs and expenses, including but not limited to attorney's fees and expenses (collectively, "**Losses**") pursuant to any federal, state and local laws (including common law), statutes, ordinances, rules, regulations and other requirements relating to or which the City and/or its elected or appointed officers and officials, mayor, aldermen, agents, volunteers, representatives and/or employees may incur from Developer's use and development of the Site, any tests or surveys conducted by Developer, and the construction of the Project, including but not limited to any Losses incurred which are based on tort law, wrongful death and/or a personal injury claim, suit or action and/or any Losses relating to environmental investigation, cleanup, or abatement, whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, arisen or to arise, and in any manner whatsoever incurred by reason of Developer's or worker's activities at the Site or the Work. It is expressly understood, agreed upon and the specific intent of this Agreement that the City and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees will not assume responsibility or liability for the actions of Developer or any workers or other persons on the Site. As between the City and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees and Developer, Developer shall at all times be held solely responsible to all persons on the Site present there because of the Project and Work thereon. Developer and its successors and assigns hereby agree to release, waive, covenant not to sue and forever discharge the City and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees, from any claim, suit or action, whether or not well founded in fact or in law, which Developer and the workers have, or may have, arising out of the Project, except to the extent any contamination occurs as a result of actions taken after the date of this Agreement by the City or any of its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees.

**Section 504. Insurance.**

(A) Developer, and any successor in interest to Developer, shall obtain and continuously maintain insurance on the Project and at the request of the City, furnish proof to the City the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage Developer must continuously maintain:

- (1) Prior to and during construction of the Project, builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis", in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.



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

(3) After completion of the Project and for the term of this Agreement, Property and Casualty Insurance in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion.

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

**Section 505. Operations.** Developer agrees it will, from and after the date an occupancy permit is issued by the City in accordance with this Agreement and for the full term of this Agreement, maintain and operate a business in compliance with the executed lease for the Site as further described in **Exhibit B**. For purposes of this Agreement, this requires Developer to maintain the site in good order, repair and condition; making all repairs, alterations, additions or replacements to the Site as required by any law or ordinance or any order or regulation of any public authority; to keep the Site equipped with all safety appliances required because of the use of the Site; and to procure any licenses and permits required and otherwise comply with the orders and regulations of all governmental authorities relating to the use of the Site by Developer.

**Section 506. Assignment.** Developer agrees it will not transfer all or any interest in this Agreement without the prior written consent of the City, which approval shall not be unreasonably withheld; provided, however, nothing in this Agreement shall preclude the granting of easements, tenant leases, licenses or rights of way to utility companies.

**Section 510. Environmental Matters.** It is understood that the City shall undertake environmental remediation activities on the Site, and shall make available to Developer that the Site has been sufficiently remediated pursuant to the scope of work approved by the City. Subsequent to the City's work, Developer shall not dispose of or release, or allow the disposal or release, of any hazardous substance, material, contaminant, or pollutant, as defined by any federal or state environmental laws, in, under, on or about the Site. Developer, at its cost, shall remediate any hazardous substance, contaminant or pollution or other

dangerous environmental condition it (or its lessees, employees, agents or contractors) creates or causes with respect to the Site in accordance with all federal, state, county and local applicable laws and regulations. Developer shall indemnify and hold the City and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees harmless against any claim, suit, loss, liability or damage, including, attorneys fees and expenses incurred by the City and/or its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees in defending itself or complying with applicable laws and regulations, arising out of or relating to the disposal or release of any hazardous substance, material, contaminant, or pollutant in, under, on or about the Site.

## **ARTICLE VI REMEDIES FOR BREACH OF AGREEMENT**

**Section 601. Developer Events of Default.** The following shall be Events of Default with respect to this Agreement:

(A) If any material representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, such default shall constitute an Event of Default only if Developer does not remedy the default within thirty (30) days after written notice from the City.

(B) After written notice of any breach in the performance of any material covenant contained in this Agreement, or any other agreement, financing or otherwise, concerning the existence, structure or financial condition of Developer and/or the Project and Site, if the breach is not remedied within thirty (30) days of the notice or, of the breach is of the nature as cannot be remedied within thirty (30) days of the notice, the Developer fails to begin to remedy the breach within thirty (30) days after the notice and/or fails to continue diligently to remedy the breach thereafter.

(C) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, (or similar official) of Developer for any part of the Site, 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 thirty (30) consecutive days.

(D) The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer or its Lessee to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, (or similar official) of Developer for any part of the Site, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such

entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within thirty (30) consecutive days.

(E) Developer abandons the Project on the Site. Abandonment shall be deemed to have occurred when work stops on the Site for more than sixty (60) days for any reason other than: (i) force majeure or (ii) if Developer is ahead of its planned construction schedule.

(F) Developer's Lessee fails to operate as required under Section 505 herein for a continuous period of sixty (60) days for any reason other than force majeure; provided that, if the failure to operate is related the maintenance, repair and upkeep of the property, the Developer shall not be considered in default unless the Developer has received written notice of the issue that needs to be remedied and the Developer fails to remedy the issue within thirty (30) days from the receipt of the written notice or, if the issue cannot be remedied within thirty (30) days, fails to begin to remedy the issue within thirty (30) days and continues to diligently address the issue until fully remedied.

**Section 602. City Events of Default.** The following shall be Events of Default with respect to this Agreement:

(A) if any representation made by the City in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, such default shall constitute an Event of Default only if the City does not remedy the default within thirty (30) days after written notice from Developer.

(B) 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, such default shall constitute an Event of Default only if the City does not remedy the default within thirty (30) days after written notice from Developer.

(C) Default by the City in the performance or breach of any material covenant or obligation contained in this Agreement; provided, however, such default shall constitute an Event of Default only if the City does not remedy the default within thirty (30) days after written notice from Developer.

**Section 603. Remedies for Default.** In the case of an Event of Default hereunder:

(A) The defaulting Party shall, upon written notice from the non-defaulting Party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured within thirty (30) days, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not

be cured or remedied within a reasonable time, but in no event more than ninety (90) additional days after receipt of such notice, unless extended by mutual agreement, the non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement.

(B) In the case of an Event of Default by Developer, and its failure to cure such default within the time frames provided for in this Agreement, in addition to any other remedies at law or in equity, the City shall be relieved of its obligations under this Agreement for as long as the Event of Default is continuing, including but not limited to its obligation to pay any incentive amounts to Developer, and should any incentive amounts have already been paid to Developer at the time of an Event of Default, then in that event Developer shall reimburse the City all incentive amounts previously paid to Developer within sixty (60) days of such Event of Default.

(C) In the case of an Event of Default by the City and its failure to cure such default within the time period provided for in this Agreement, in addition to any other remedies at law or in equity, Developer shall be relieved of its obligations under this Agreement if it so elects, and Developer shall have the right, if it so elects, to terminate this Agreement.

(D) In the event any Party shall institute legal action because of a breach of any provision or obligation contained in this Agreement, and a breach shall be established by a final, non-appealable judgment against a Party, the prevailing Party shall be entitled to recover all costs of filing suit and reasonable litigation expenses including reasonable attorneys' fees incurred therefore.

**Section 604. No Waiver by Delay or Otherwise.** Any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision neither Party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

**Section 605. 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.

**ARTICLE VII**  
**REPRESENTATIONS AND WARRANTIES**

**Section 701. Developer's Representations and Warranties.** Developer represents and warrants to its best knowledge and belief:

(A) It is a duly organized and validly existing nonprofit corporation under the laws of the State of Illinois and legally operating as a nonprofit corporation in the State of Illinois. Developer will upon execution of this Agreement cause to be delivered to the City a Certificate of Authority to do business issued by the appropriate authorities in the State of Illinois. Developer has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement and this Agreement has been duly executed and delivered by authorized members of Developer and is legally binding upon and enforceable against Developer in accordance with its terms.

(B) Developer is not a party to any contract or agreement or subject to any charter, operating agreement, article of organization or other limited liability company restriction which materially and adversely affects its business, property or assets, or financial condition. Neither the execution and delivery of this Agreement nor compliance with the terms of this Agreement will conflict with, or result in any breach of the terms, conditions or restrictions of, or constitute a default under, or result in any violation of, or result in the creation of any liens upon the properties or assets of Developer pursuant to, the operating agreement or articles of incorporation of Developer, any award of any arbitrator or any agreement (including any agreement with members), instrument, order, judgment, decree, statute, law, rule or regulation to which Developer is subject.

(C) There is no action, suit, investigation or proceeding pending, or to the knowledge of Developer, threatened against or affecting Developer, at law or in equity, or before any court, arbitrator, or administrative or governmental body, nor has Developer received notice in respect of, nor does it have any knowledge of, any default with respect to any judgment, order, writ, injunction, or decree of any court, governmental authority or arbitration board or tribunal, which in either case might reasonably be expected to result in any material adverse change in the business, condition (financial or otherwise) or operations of Developer or the ability of Developer to perform its obligations under this Agreement.

(D) The execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action.

(E) Developer has filed all federal, state and other income tax returns which, to the knowledge of the officers of Developer, are required to be filed, and has paid all taxes as shown on such returns and on all assessments received by it to the extent such taxes have become due, except taxes being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with generally accepted accounting principles. Developer knows of no proposed additional tax or assessment

against it by any governmental authority that would be reasonably likely to have a material adverse effect on the business, condition (financial or otherwise) or operations of Developer.

(F) Developer has funds in an amount not less than that required to complete construction of the Project and shall provide adequate working capital for operation as provided in Section 505 herein.

**Section 702. City Representations and Warranties.** The City represents and warrants:

(A) The City is a municipal corporation under the laws of the State of Illinois with power and authority under its home rule powers and the Act to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

(B) The execution of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any breach of, or constitute a default under, any agreement, contract, lease, mortgage, indenture, deed of trust or other instrument to which the City is a party.

(C) All actions of the Mayor and City Council of the City required to be taken to authorize execution of this Agreement have been validly and duly taken in accordance with law and the officers of the City signing this Agreement have been duly authorized to execute this Agreement on behalf of the City.

(D) The Project as set forth in this Agreement will not result in the displacement of residents from inhabited units under Section 11-74.4-3(n)(5) of the Act.

## **ARTICLE VIII GENERAL PROVISIONS**

**Section 801. Entire Agreement; Successors and Assigns; Amendments.** This Agreement, and the Exhibits attached to it contain the entire agreement between the Parties in connection with these transactions, and there are no oral or parole agreements, representations or inducements existing between the Parties relating to these transactions which are not expressly set forth in this Agreement and covered by this Agreement. This Agreement may not be modified except by a written agreement signed by all of the Parties or their successors in interest, and in the case of the City, shall require the adoption of an ordinance or resolution by the Mayor and City Council of the City approving such amendment. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement, their respective heirs, legal representatives, administrators, successors, successors in interest and assigns.

**Section 802. Governing Law; Interpretation; Partial Invalidity.** This Agreement shall be governed by the laws of the State of Illinois. The captions, section numbers and article numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope or intent of such paragraphs or articles of this Agreement nor in any way affect this Agreement. The

invalidity of any provision of this Agreement or portion of a provision shall not affect the validity of any other provision of this Agreement or the remaining portions of the applicable provision.

**Section 803 Notices.** All notices, demands, approvals or other instruments required or permitted to be given under this Agreement shall be in writing and shall be executed by the Party or an officer, agent or attorney of the Party, and shall be deemed to have been effective as of the date of actual delivery, if by messenger delivery, on the date of transmission if transmitted via facsimile during normal business hours (9:00 a.m. to 5:00 p.m.), or as of the third (3rd) day from and including the date of posting, if deposited in the United States mail, postage prepaid, registered or certified mail, addressed as follows (or to such other address as may be designated from time to time by either Party by written notice to the other):

Developer: Fox Valley Music Foundation  
c/o Steve Warrenfeltz  
103 S. Calumet Ave.  
Aurora, IL 60506

Copy to: Kevin G. Drendel  
Drendel & Jansons Law Group  
111 Flinn Street  
Batavia, IL 60510

City: City of Aurora  
44 E. Downer Place  
Aurora, Illinois 60507-2067  
Attn: Office of the Mayor

Copy to: City of Aurora  
44 E. Downers Place  
Aurora, Illinois 60506  
Attn: Law Department

**Section 805. Conflict of Interest: City's Representative Not Individually Liable.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement; nor shall any such member, official or employee participate in any decision relating to this Agreement which affects such person's interests or the interests of any corporation, partnership, or association in which such person is directly or indirectly interested. No member or employee of the City has acquired any interest direct, or indirect, in the Site. No member, official, or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement, except as such shall be found to be caused by a violation of Section 4(n) of the Act.

**Section 806. Municipal Limitation.** All commitments or obligations of the City undertaken pursuant to this Agreement shall be limited to the extent such obligations are within its powers as a municipal corporation.

**Section 807. No Joint Venture.** Nothing contained in this Agreement is intended by the Parties to create a joint venture between the Parties. It is understood and agreed this Agreement does not provide for

the joint exercise by the Parties of any activity, function or service, nor does it create a joint enterprise, nor does it constitute either Party as an agent of the other for any purpose whatsoever.

**Section 808. Counterparts.** This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute but one and the same instrument.

**Section 810. Authority to Execute.** Each signatory on behalf of a Party to this Agreement warrants and represents he or she is a duly authorized representative of that Party, with full power and authority to agree to this Agreement, and all terms herein, on behalf of that Party.

**Section 811. Exhibits.** The attached exhibits are incorporated herein by reference and made a part hereof.

**Section 816. Effective Date – Term of Agreement.** This Agreement shall be deemed dated and become effective on the date the last signatory signs this Agreement and shall remain in effect until the termination of the Redevelopment Project Area.

**IN WITNESS WHEREOF,** the Parties to this Agreement have set their hands and seals to this Agreement on the day and year first above written.

**CITY OF AURORA**

**Fox Valley Music Foundation  
An Illinois Nonprofit Corporation**

By: \_\_\_\_\_  
Name: Richard C Irvin  
Title: Mayor

By: \_\_\_\_\_  
Name: Steve Warrenfeltz  
Title: President

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Name: Wendy McCambridge  
Title: City Clerk

By: \_\_\_\_\_  
Name: Karen Christensen  
Title: Secretary



**ACKNOWLEDGMENTS**

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On November \_\_\_\_, 2017, Richard C. Irvin, as City Mayor, and Wendy McCambridge, as City Clerk, of the City of Aurora, Illinois, a municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person, and acknowledged they signed, sealed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of the City of Aurora, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_ day of November, 2017.

---

Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On November \_\_\_\_, 2017, Steve Warrenfeltz, as President, and Karen Christensen, as Secretary, of Fox Valley Music Foundation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person, and acknowledged they signed, sealed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_ day of November, 2017.

---

Notary Public

# Exhibit A

**Common Address:**

19-21 South Broadway  
Aurora, Illinois

**PIN Number:**

15-22-336-010 & 15-22-336-011, containing the building and the land that is subject to the Lease between Developer and the City dated November \_\_\_\_\_, 2017.

**Legally Described:**

THAT PART OF LOT 2 IN BLOCK 12 OF THE ORIGINAL TOWN OF AURORA, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE WESTERLY LINE OF SOUTH BROADWAY, 156.75 FEET NORTHEASTERLY OF THE NORTHERLY LINE OF FOX STREET, MEASURED ALONG THE NORTHWESTERLY LINE OF SOUTH BROADWAY, WHICH IS THE POINT OF BEGINNING; THENCE NORTHWESTERLY ON A LINE PARALLEL WITH THE NORTHERLY LINE OF FOX STREET, 162 FEET TO THE EASTERLY LINE OF WATER STREET; THENCE NORTHEASTERLY ALONG THE EASTERLY LINE OF WATER STREET, 41.5 FEET TO A POINT; THENCE SOUTHEASTERLY ON A LINE PARALLEL WITH THE NORTHERLY LINE OF FOX STREET 162 FEET TO THE WESTERLY LINE OF SOUTH BROADWAY; THENCE SOUTHWESTERLY ALONG THE WESTERLY LINE OF SOUTH BROADWAY, 41.5 FEET TO THE POINT OF BEGINNING IN THE CITY OF AURORA, KANE COUNTY, ILLINOIS.

# **Exhibit B**

(LEASE)

# Exhibit C

## **Redevelopment Plan:**

The initial spark for the formation of the Fox Valley Music Foundation came from the annual Blues on the Fox (BOTF) Festival which takes place in downtown Aurora each June and provides area music lovers with some of the finest in live blues on the planet.

Blues on the Fox began as a grassroots volunteer effort, led by a group of blues-loving locals who were turned on by the history of the blues and the historic recordings made in the Sky Club of the Leland Hotel in downtown Aurora. Now in its 21st year, the Festival has undergone numerous changes and the role of the original organizing committee has been redefined.

One thing hasn't changed: the commitment of the core group of music lovers who nurtured the festival during its formative years and ensured that it would become a "destination event." This group has reinvented itself by forming a nonprofit, 501(c) 3 foundation, the Fox Valley Music Foundation. The FVMF Board of Directors would like to make Aurora our base of operations by opening a new venue that could function as the Old Town School of Folk Music (in Chicago) and the Rock & Roll Hall of Fame (in Cleveland) rolled into one.

The proposed use of this building would concentrate activity on the first floor and include an indoor music venue with a seating capacity of 250+. The venue would serve as a centralized place for musicians and artists to perform, and as a community gathering space to support arts and culture. A possible cut-out behind the stage, opening onto Mundy Park, is contemplated, where (weather permitting) performers could face the park from the stage for outdoor concerts. Retail space would be located facing Broadway where Foundation merchandise would be available. This could potentially be a site for Kiss the Sky, an independent record store now making its home in Batavia. Additional plans include a cultural museum and archive space with a research library and art gallery. Space for an office and conference room are under consideration as well.

In order to accomplish this, interior demolition will need to occur on the first floor, opening up the wall space, removing the ceiling and a portion of the parapet wall, installing an HVAC unit, undertaking some electrical and plumbing repairs, installing an alarm system, and adding other items to make the space a clean, safe and sanitary “white envelope” . The City is committing to environmental remediation, and the partial removal of the parapet wall, funded by the TIF grant from the City. The Foundation plans a new flooring system, carpentry work, chairs, tables, retail racks, shelving, stage and sound systems, and items specifically geared toward the arts and cultural experience at the building. The FVMF would undertake a fundraising campaign and solicit donations of materials and equipment to help offset their overall costs. Volunteers would be recruited to assist with some of the tenant build-out.

Knowing that the City’s comprehensive plan for this area is for complete redevelopment, including the demolition of this and other buildings nearby, the Foundation will work with the City to insure many of these improvements can be “portable” or considered non-permanent so that FVMF could move to another downtown location if the City deemed this necessary and desirable. For example, the HVAC system can be sized for use on another City building in the future; the alarm system hardware can be moved; lighting can be salvaged and used elsewhere; the stage, chairs, racks, shelves, office furniture and other equipment can be re-located.

# Exhibit D

## Construction Budget

(All costs are estimates)

Budget Range

### **Building Demolition/Improvements**

Environmental Remediation (by City)	\$40,000
Parapet wall removal/weatherproofing (by City)	15,000
<ul style="list-style-type: none"><li>• Take down north/west corner and rebuild properly</li><li>• Install roofing materials to repair area</li><li>• Provide coping</li></ul>	
Interior Demolition – First Floor	30,000
<ul style="list-style-type: none"><li>• Remove suspended grid and ceiling tile system</li><li>• Remove suspended black iron and plaster ceilings.</li><li>• Remove gypsum and stud partitions and miscellaneous millwork</li><li>• Remove glued down carpet</li><li>• Remove ceramic floor tile and thin set</li><li>• Remove Wood Flooring at 21 S Broadway</li><li>• Remove miscellaneous loose debris (w/basement and 2<sup>nd</sup> floor)</li></ul>	
Electrical	15,000
<ul style="list-style-type: none"><li>• Make safe electric in ceilings and walls prior to demo</li><li>• Install 12 ceiling fixtures (non-permanent)</li></ul>	
Plumbing	10,000
<ul style="list-style-type: none"><li>• Provide for one additional fixture in women’s bathroom</li><li>• Relocate utility sink and water heater</li><li>• Remove and replace bathroom stalls</li></ul>	
Mechanical	25,000
<ul style="list-style-type: none"><li>• Option: Install second rooftop unit, ductwork and piping</li><li>• Option: Replace existing rooftop unit/eliminate second unit new unit sized accordingly (transferable)</li></ul>	
South wall cut out	20,000
<ul style="list-style-type: none"><li>• Tuck-point surrounding brick surface</li><li>• Saw cut opening and install header support</li><li>• Install commercial garage door with clear panels (transferrable)</li></ul>	
Painting/minor carpentry	10,000

## **Other Improvements**

Estimated value	\$50,000
Flooring./carpeting	
Stage Construction (non-permanent)	
Retail display racks and museum shelving (non-permanent)	
Chairs and table (non-permanent)	
Carpentry (non-permanent)	
Sound system (non-permanent)	
Specialty lighting (non-permanent)	

## **Construction Schedule**

Day 1 through 30	Environmental Remediation Parapet removal (weather permitting)
Day 30 through 60	Interior demolition Debris removal
Day 60 through 90	Misc plumbing and electrical HVAC systems Lighting South wall cut out
Day 90 through 150	Painting Flooring/carpeting Stage construction Misc electrical Finish carpentry Finish plumbing Retail display/shelving Chairs, tables, office furnishings Sound systems/specialty lighting

# **Exhibit E**

(City to provide its form of "*Sworn Affidavit of Ownership Interest*")