

Draft dated 11/29/16

**DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF AURORA,  
AURORA METROPOLITAN EXPOSITION, AUDITORIUM AND  
OFFICE BUILDING AUTHORITY  
AND AURORA ARTS CENTER DEVELOPER LLC  
(Commercial Project)**

This Development Agreement (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016 (“Effective Date”), by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation (“City”), the Aurora Metropolitan Exposition, Auditorium and Office Building Authority, a political subdivision, body politic and municipal corporation of the State of Illinois (“ACCA”), and Aurora Arts Center Developer LLC, an Illinois limited liability company (“Developer”). (The City, ACCA and the Developer are sometimes referred to herein individually as a “Party” or collectively as the “Parties”).

**R E C I T A L S**

**WHEREAS**, the City has a population of more than 25,000 persons and is, therefore, a home rule unit under Section 6(a) of Article VII of the Illinois Constitution of 1970; and

**WHEREAS**, subject to the limitations set forth in Section 6 of Article VII of the Illinois Constitution of 1970, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

**WHEREAS**, the City has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the City and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase 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 to otherwise take action in the best interests of the City; and

**WHEREAS**, the City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (the “TIF Act”), to finance redevelopment and expansion in accordance with the conditions and requirements set forth in the TIF Act; and

**WHEREAS**, pursuant to Ordinance Numbers O86-5596, O86-5597 and O86-5598, all adopted December 2, 1986, Ordinance No. O03-146, O03-147 and O03-148, all adopted November 4, 2003, the City has approved a tax increment redevelopment plan and project (the “Redevelopment Plan”), designated the tax increment redevelopment project area (the “Redevelopment Project Area”), and adopted tax increment financing relative to the City’s Downtown Increment Financing District No. 1 (the “TIF District”); said TIF District being legally described and depicted as set forth in Exhibit A and Exhibit B attached hereto and made part hereof; and

**WHEREAS**, ACCA was formed pursuant to the Aurora Civic Center Law of 1997, 70 ILCS 200/10-1 et seq. (the “Act”), with a purpose of enhancing the ability of citizens in Aurora to avail themselves of civic and cultural centers; and

**WHEREAS**, the Developer (directly or through affiliated entities) desires to undertake, or (with respect to the Aurora Arts Centre Commercial Project) to assist ACCA as it undertakes, the following development activities within the City boundaries and the Redevelopment Project Area: (i) acquisition, rehabilitation and development of the four story, approximately 83,000 square foot building located at 5 East Galena Boulevard and 2-20 South Stolp Avenue, Aurora, Illinois (the “Aurora Arts Centre”) into a mixed-use project consisting of (A) approximately 35,000 square feet of commercial/residential space located on the bottom two floors of the Aurora Arts Centre (the floor at street level on Galena Boulevard and the basement), which will include a restaurant space, rehearsal and support spaces for the Paramount Theater, a performing arts academy, and four residential apartments (the “Aurora Arts Centre Commercial Project”, and also referred to herein as the “Project”) and (B) approximately 48,000 square feet located on a portion of the street level and the upper two floors of the Aurora Arts Centre which will be used for 38 units of affordable rental housing with a leasing preference for working households involved in artistic activities (the “Aurora Arts Centre Residential Project”) (the Aurora Arts Centre Commercial Project and the Aurora Arts Centre Residential Project are collectively referred to herein as the “Aurora Arts Centre Project”); and (ii) acquisition and rehabilitation and development of the existing 38-unit Coulter Court Residences rental apartment building located at 104 East Downer Place and 32-34 Broadway, Aurora, Illinois, and a nearby site which is used for parking (the “Coulter Court Project”). The Aurora Arts Centre Residential Project and the Coulter Court Project are collectively referred to herein as the “Rental Housing Projects”); and

**WHEREAS**, the Aurora Arts Centre Commercial Project includes a proposed restaurant space, which consists of approximately 4,500 square feet on the street level (on Galena Boulevard) of the Aurora Arts Centre (the “Restaurant Space”); and

**WHEREAS**, the land on which the Aurora Arts Centre is located is legally

described on Exhibit C attached hereto and made a part hereof (the “Aurora Arts Centre Property” or the “Property”); and

**WHEREAS**, the Aurora Arts Centre is currently owned by Seize the Future Development Foundation, a/k/a Invest Aurora, an Illinois not for profit corporation (“Invest Aurora”), and the Developer (or its affiliate) has entered into separate purchase options with Invest Aurora (the “Purchase Options”) for the purchase of the portions of the Aurora Arts Centre in which the Aurora Arts Centre Commercial Project and the Aurora Arts Centre Residential Project, respectively, would be located; the Parties expect that the Purchase Option for the Aurora Arts Centre Commercial Project will be assigned by the Developer to the QALICB (defined below) prior to the Closing for that Project; and

**WHEREAS**, the Parties anticipate that, prior to the acquisition of the Aurora Arts Centre by the Developer (or any of its affiliates) or by the QALICB (pursuant to the Purchase Option), Invest Aurora, as the current owner of the Aurora Arts Centre, will execute and record such documents necessary to create a condominium ownership structure for the Aurora Arts Centre; under this condominium structure, the Aurora Arts Centre would be divided into two condominium units, one of which would be the portion of the Aurora Arts Centre in which the Aurora Arts Centre Residential Project would be located (the “AAC Residential Condo”), and a second unit which would include the portion of the Aurora Arts Centre in which the Aurora Arts Centre Commercial Project, would be located (the “AAC Commercial Condo”); and

**WHEREAS**, in connection with the development of the Project, the Developer has created or intends to create one or more affiliated entities, including the following: (A) Aurora Revitalization Owner LLC, an Illinois limited liability company to own the Aurora Arts Centre Residential Project and the Coulter Court Project (the “Residential Project Entity”), (B) Aurora Revitalization MM LLLC, an Illinois limited liability company (the “Residential Managing Member”), which is the managing member of the Residential Project Entity and is an affiliate of the Developer; and (C) an Illinois limited liability company which will be the owner of the Aurora Arts Centre Commercial Project (the “Aurora Arts Centre Commercial Project Entity”, also referred to herein as the “QALICB”, as described on the NMTC Chart) (the Residential Project Entity and the Aurora Arts Centre Commercial Project Entity are singly referred to herein as a “Project Entity” and collectively as the “Project Entities”); and

**WHEREAS**, it is anticipated that the members of the QALICB will be (i) the Developer (or its affiliate), (ii) the Master Tenant (as described in the basic structure for the NMTC financing, which is shown on the chart attached hereto as Exhibit D and referred to herein as the “NMTC Chart”), (iii) Aurora Downtown, an Illinois not for profit corporation (“Aurora Downtown”) and (iv) a not for profit entity to be

identified by The Community Builders, Inc., a Massachusetts charitable corporation and an affiliate of the Developer (“TCB”), but unrelated to TCB (referred to collectively herein as the “QALICB Members”), and the QALICB Members will enter into an operating agreement regarding their respective rights and obligations (the “QALICB Operating Agreement”); and

**WHEREAS**, the Developer (or its affiliate) and the QALICB will enter into a development agreement regarding the obligations of the Developer with respect to the development of the Aurora Arts Centre Commercial Project (the “Commercial Development Agreement”); and

**WHEREAS**, the City and the Developer (or its affiliate) have entered into a separate Development Agreement dated as of the date hereof (the “HOME Development Agreement”) regarding the City agreement to loan HOME funds to the Developer (or the Residential Project Entity) to assist in the financing of the Rental Housing Projects; and

**WHEREAS**, it is intended that one of the sources of financing for the Aurora Arts Centre Commercial Project will be New Markets Tax Credit Financing (“NMTC”); the Parties acknowledge that, between the date of this Agreement and the Closing Date for the Aurora Arts Centre Commercial Project, certain structural elements (and amounts) may change from what is set forth on the attached NMTC Chart, but any changes will be subject to the reasonable approval of the Parties hereto; and

**WHEREAS**, it is necessary for the successful completion of the Project, and for the promotion of economic development within the City, that the City enter into this Agreement with the Parties to provide for the acquisition, improvement and redevelopment of the Property by the Developer and the Aurora Arts Centre Commercial Project Entity, thereby implementing the Redevelopment Plan; and

**WHEREAS**, due to the unique site characteristics of the Property, it is necessary for the City to provide the Project with certain tax increment financing (“TIF”) and other incentives in accordance with the TIF Act, federal and State law, and under the City’s Municipal Code. Such other incentives may include, but shall not be limited to, Section 108 Loan Funds, and CDBG Funds. The City is willing to provide the various incentives under the terms and conditions contained herein. The Parties acknowledge and agree that due to the unique site characteristics of the Property, the Project cannot successfully and economically acquired and developed in a satisfactory manner but for the incentives set forth in this Agreement. The City has determined that it is desirable and in the City’s best interests to assist the Developer, ACCA and the Aurora Arts Centre Commercial Project Entity in the manner set forth herein and as this Agreement may be supplemented and amended from time to time; and

**WHEREAS**, the City is desirous of having the Redevelopment Project Area rehabilitated, developed and redeveloped in accordance with the TIF Plan, and particularly the Project as a part thereof, in order to serve the needs of the City, 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; and

**WHEREAS**, the City Council finds that it is essential to the public interest to foster economic development projects, like the Project, for the public purposes of enhancing the tax base, stabilizing and promoting employment, encouraging private investment in the community and contributing to the welfare and improvement of conditions for the citizens of the City; and

**WHEREAS**, the Parties also agree that the Developer is working with ACCA, the City and third parties (the proposed general contractor, the architect and proposed investors and lenders) to finalize the Project budget and secure sufficient financing sources for the Project, and that the commitment of funds by the Developer, City and ACCA hereunder will be used by the Developer to help evidence funding commitments for this Project in order to secure additional financing; and

**WHEREAS**, the City, ACCA and the Developer desire to further the development of the Project by providing funds and taking actions as set forth herein.

**WITNESSETH:**

**IN CONSIDERATION** of the Recitals, 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. **INCORPORATION AND CONSTRUCTION.**

- A. **Recitals.** All recitals set forth above are incorporated herein and made part hereof, the same constituting the factual basis for this Agreement.
- B. **Headings.** The section headings of the Sections and Subsections of this Agreement are for convenience of reference only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.
- C. **Construction.** This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

1. Definitions include both singular and plural. Certain terms not defined in this Agreement are defined with reference to the NMTC Chart.
2. Pronouns include both singular and plural and cover all genders.
3. The word “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”
4. Headings of articles and 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.
5. 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 terms of this Agreement shall control.
6. 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.
7. The City Mayor or Chief Community Services Officer, 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. The Developer and ACCA 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.
8. 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 each of William Woodley, and Terri Hamilton Brown, as its authorized representatives 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 Developer and with the effect of binding Developer in that connection (such individual being an “Authorized Developer Representative”). Developer shall have the right to change its Authorized Developer Representative by providing the City and ACCA with written notice of such change, which notice shall be sent in accordance with Subsection IX(H) below.

9. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by ACCA in a different manner, ACCA hereby designates each of Tim Rater and Jonathan Hylton, as its authorized representatives 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 ACCA and with the effect of binding ACCA in that connection (such individual being an “Authorized ACCA Representative”). ACCA shall have the right to change its Authorized ACCA Representative by providing the City and Developer with written notice of such change, which notice shall be sent in accordance with Subsection IX(H) below.

- D. **Exhibits.** The following exhibits are attached hereto and made a part hereof:

**Exhibit A** – Legal Description – TIF Area;

**Exhibit B** – TIF Area Depiction

**Exhibit C** – Legal Description - Aurora Arts Centre Property

**Exhibit D** – NMTC Chart

**Exhibit E** – Unwind Process

**Exhibit F** – Drug Free Workplace Certification;

## II. OBLIGATIONS OF DEVELOPER AND ACCA.

### **A. Developer’s Obligations and Commitments.**

The Developer shall have the obligations and commitments set forth in this Section II.A., in addition to all other obligations set forth elsewhere in this Agreement, for the development, acquisition, construction, financing, operation, completion and furtherance of the Project. For any obligation of the Developer set forth herein, the Aurora Arts Centre Commercial Project Entity,

or any other applicable Project Entity may meet the requirements set forth herein instead of the Developer; however the parties hereto acknowledge that the Developer does not and will not have the power to control the actions of the Aurora Arts Centre Commercial Project Entity so the Developer is not responsible for the actions (or failure to act) of the Aurora Arts Centre Commercial Project Entity. The Developer is responsible for its actions (or failure to act) as directed by the Aurora Arts Centre Commercial Project Entity pursuant to the Commercial Development Agreement and under this Agreement.

1. **Proof of Financing.** Other than any acquisition, demolition or predevelopment financing funded by the CDBG Funds (as described below), prior to the disbursement of any funding from the City or ACCA under this Agreement for the Aurora Arts Centre Commercial Project at Closing (defined below), the Developer will submit to the City and ACCA executed letters of intent, commitment letters and/or executed term sheets, from lenders and investors evidencing firm investment and lending commitments to the Developer, the Aurora Arts Centre Commercial Entity or any other applicable Project Entity for the Aurora Arts Centre Commercial Project, which are reasonably satisfactory to the City and ACCA and establish, to the City's and ACCA's reasonable satisfaction, that there are or will be adequate financial and economic resources available to implement and complete the Aurora Arts Centre Commercial Project ("Commercial Project Financing Commitments"). If at the time of Closing the Rental Housing Projects are not also ready to close, then the Commercial Project Financing Commitments will need to include evidence that there will be sufficient financing for the Project even if the Rental Housing Projects do not close.

2. **Rehabilitation/Construction of the Property.**

The Developer shall fulfill its obligations under the Commercial Development Agreement with the goal of aiding the Aurora Arts Centre Commercial Project Entity as it undertakes the following actions with respect to the Project (but any such actions by the Aurora Arts Centre Commercial Project Entity are subject to the approval of the QALICB Members as set forth in the QALICB Operating Agreement):

- a. Commence rehabilitation within twelve (12) months of the date of this Agreement;
- b. Within nine (9) months after the date hereof ("Commercial Rehabilitation Plan Deadline"), submit a proposed Rehabilitation



Plan for the Aurora Arts Centre Commercial Project (“Commercial Rehabilitation Plan”) to the City and ACCA. The City and ACCA shall review the Commercial Rehabilitation Plan and any modifications submitted by the Developer or the Aurora Arts Centre Commercial Project Entity and provide a response as set forth in Subsections II (3) and III.B, respectively. If the Commercial Rehabilitation Plan which is submitted to, and approved by, the City and ACCA is for a different proposed use of the Aurora Arts Centre Commercial Project space than is set forth in this Agreement, the term “Project” in this Agreement will be deemed to refer to the scope and usage of the project as set forth in the approved Commercial Rehabilitation Plan;

- c. The Aurora Arts Centre Commercial Project Entity shall complete rehabilitation in accordance with the Commercial Rehabilitation Plan, and receive a certificate of occupancy from the City for the Aurora Arts Centre Commercial Project, on or before eighteen (18) months after commencement of construction (but this time frame may be extended for up to an additional eighteen (18) months to accommodate any proposed or future tenant improvement plans);
- d. While it is the collective intent of the Parties to develop the Rental Housing Project and the Aurora Arts Centre Commercial Project simultaneously, the Developer, ACCA and the City acknowledge and agree that the Rental Housing Projects and Aurora Arts Centre Commercial Project may be developed independently; the development of the Rental Housing Projects is not a condition of the City’s, ACCA’s or the Developer’s agreement to provide assistance to the Aurora Arts Centre Commercial Project, and the development of the Aurora Arts Centre Commercial Project is not a condition of the City’s agreement (under the HOME Development Agreement) to provide assistance to the Rental Housing Projects;
- e. The obligations of the Developer and the Aurora Arts Centre Commercial Project Entity hereunder with respect to the Aurora Arts Centre Commercial Centre Project are subject to (i) the receipt by such entities of sufficient financing sources (in the determination of such entities) for the Project (including Developer’s determination that sufficient funds are being provided to the Developer (or its affiliates) so that the Developer will provide the Developer LL Funds, as defined below) , (ii) the execution by the QALICB Members of the QALICB Operating

Agreement in a form satisfactory to the Developer, (iii) the compliance by the City and ACCA with their respective obligations hereunder, (iv) approval by the Project investors and lenders of the provisions of this Agreement, and (v) approval by counsel to the Developer and the Aurora Arts Centre Commercial Project Entity of the Commercial Closing Documents (defined below).

- f. Notwithstanding any other provision of this Agreement, neither the Developer nor the Aurora Arts Centre Commercial Project Entity shall have any obligation to purchase the AAC Commercial Condo or receive City Funds which are federal funds, and no transfer of title to such property to, or funding to, either entity may occur, unless the applicable governmental authority has provided Developer and the Aurora Arts Centre Commercial Project Entity with a written notification (the "Environmental Review Notice") that (i) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other contingencies in the Purchase Options, (1) the purchase may proceed, or (2) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (ii) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required.

**3. Closing Timing and Closing Documents.** For the Aurora Arts Centre Commercial Project, the Developer will provide the City and ACCA with at least 60 days' written notice of its intent to close on the financing for the Project (the "Closing Notice"). The date of closing for the financing of the Project is the "Closing". Prior to the Closing Notice, the Developer will provide the City and ACCA with at least 60 days' written notice of the date on which the relevant parties will engage counsel and begin reviewing and preparing the Commercial Closing Documents (defined below). The Developer may provide one Closing Notice for the Rental Housing Projects and a separate notice for the Aurora Arts Centre Commercial Project. On the Closing Date for the Project, the Developer, ACCA and the City will execute documents and provide funds as set forth herein. For the Aurora Arts Centre Commercial Project, the documents to be executed by the Developer, the Aurora Arts Centre Commercial Project Entity and other entities (collectively, the "Commercial Closing Documents") will reflect terms consistent with the Commercial Project Financing Commitments (with any changes approved by the City, ACCA and the Developer), and shall

be subject to the prior review and approval of each Party and its counsel. The documents to be executed by the Developer and the Aurora Arts Centre Commercial Project Entity are more specifically described below.

- a. The Aurora Arts Centre Commercial Project Entity (the QALICB) will execute (i) loan documents with the Sub-CDEs (as referred to in the NMTC Chart) regarding the QLICI loans, (ii) the Commercial Development Agreement, (iii) the Master Lease with the Master Tenant, (iv) documents required by the Investment Fund, NMTC Investor or Sub-CDEs, (v) the condominium declaration, (vi) the QALICB Servicing Agreement, and such other documents as required by the funders or investors for the Aurora Arts Centre Commercial Project.
- b. The Developer (or its affiliates) will execute (i) the Commercial Development Agreement, (ii) the QALICB Operating Agreement, (iii) the loan or grant documents relating to (A) an amount of funds (estimated to be in the range of \$100,000 to \$500,000) being provided by the Developer to the Leverage Lender which will be equal to the amount by which the investor approved developer fee paid to the Developer under the Commercial Development Agreement exceeds \$1,200,000.00 (the "Developer LL Funds") and (B) to the extent required, some or all of the amounts of costs incurred by the Developer prior to Closing and reimbursed by the QALICB at Closing, (iv) in its capacity as the general partner (or managing member) of the Master Tenant (subject to the approval by the Federal HTC Investor), (A) the Master Tenant limited partnership agreement (or operating agreement), (B) the Master Lease with the QALICB, (C) the loan documents relating to an amount of funds equal to the amount of the historic tax credit equity net of bridge loan interest and fees (estimated to the approximately \$1,365,000) from the Master Tenant to the Leverage Lender (the "Master Tenant Loan"), and (D) the Master Sub-Lease with the Master Sub-Tenant, (v) any guarantees and indemnities required by the QALICB, Federal HTC Investor, Investment Fund, or the Sub-CDEs, (vi) the QALICB Servicing Agreement, (vii) bridge loan documents with respect to the bridge of HTC Equity by a loan to the Master Tenant, and (viii) such documents are reasonably required by the City in order for the City to provide the City NMTC Funding as required pursuant to Section III below (but the Parties acknowledge that the City may not impose additional requirements regarding the construction and operation of the Project other than those set forth herein) (for any

document in this subsection, with such changes as the Developer and its counsel, may reasonably agree),

- c. The Developer and the Aurora Arts Centre Commercial Project Entity agree that, in connection with the Closing, these entities (and their respective affiliates) may be required to execute, deliver and record additional documents not listed above.

**4. Payment and Disbursement Requirements.** For the Closing, once the Developer has disbursed the Developer LL Funds to the Leverage Lender, the Developer will have no further control over the disbursement of such funds pursuant to the terms of this Agreement, and any control of such disbursement will be under the terms of the Commercial Closing Documents.

**5. Further Assistance and Corrective Instruments.**

- a. The Developer and its affiliates with obligations hereunder shall timely provide the City and ACCA with such additional documentation and/or information in the possession of Developer or such affiliates which the City or ACCA reasonably determines is necessary to determine whether the Developer (or its affiliates) is in compliance with this Agreement.
- b. The Developer and its affiliates with obligations hereunder shall, upon request from the City or ACCA, 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, in all cases consistent with the Commercial Closing Documents.

**6. Meetings.** The Developer shall meet with the City or ACCA, and make presentations to the City or ACCA, as reasonably requested by the City or ACCA, in order to keep the City and ACCA apprised of the Developer's progress on the Project.

**7. Limitations on Funding.** The Developer's obligation to provide funds for the Project is limited to its obligations hereunder, and, other than as provided in any reasonable and customary guaranty agreement signed by the Developer (or its affiliates) with respect to the construction of the Project, neither the Developer nor its affiliates is responsible for any construction cost overruns or Project

development budget shortfalls.

**8. Local Employment Preference.** The Developer and the Aurora Arts Centre Commercial Project Entity shall make reasonable efforts to utilize the services of local consultants, contractors, and vendors to rehabilitate, construct and operate the Aurora Arts Centre Commercial Project.

**9. Continuity of Corporation.** The Developer (and each of its affiliates with obligations hereunder) and the Aurora Arts Centre Commercial Project Entity shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as a corporation, limited liability company or limited partnership, as applicable, in good standing in the State of Illinois during the term of this Agreement, and so long as Developer (or its affiliates) or the Aurora Arts Centre Commercial Project Entity has any other remaining obligation pursuant to the terms of this Agreement.

**10. Insurance.** For the purpose of this paragraph, the term subcontractor includes the general contractor engaged by the Aurora Arts Centre Commercial Project Entity to construct the Project, and the insurance requirements may be met by the Aurora Arts Centre Commercial Project Entity, the Developer, a Developer Affiliate or its subcontractor. The Aurora Arts Centre Commercial Project Entity shall maintain at all times the insurance coverages on the Project as set forth below, and the Property, which insurance shall be placed with insurers with an A.M. Best's rating of no less than A-: VI. The Aurora Arts Centre Commercial Project Entity and the Residential Project Entity will obtain separate insurance for the Rental Housing Projects and the Aurora Arts Centre Commercial Project. The Aurora Arts Centre Commercial Project Entity shall not commence work under the Agreement until it has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the insurance company, written or countersigned by an authorized Illinois State agency, shall be filed with the City for review and approval. The Aurora Arts Centre Commercial Project Entity shall require that any and all subcontractors, which are not protected under the Aurora Arts Centre Commercial Project Entity's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of the Aurora Arts Centre Commercial Project Entity. The Aurora Arts Centre Commercial Project Entity shall not allow any subcontractor to commence work on a subcontract until all insurance required for the subcontractor has been obtained and approved by the City. If so requested, the Aurora Arts Centre Commercial Project Entity shall also submit copies of insurance policies for inspection and approval of the City before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days' notice in advance to the City and consented to by the City in writing and the policies shall so provide. Instead of obtaining separate insurance policies for the Aurora Arts Centre Commercial Project and for the portion of the Rental Housing Project located in the Aurora Arts Centre, the

Developer may, at its option, obtain property insurance for the Aurora Arts Centre as a whole, with the Residential Project Entity and the Aurora Arts Centre Commercial Project Entity each named as an insured party.

a. For fire and casualty insurance, coverages in an amount no less than the estimated fair market value of the Project upon completion of the Project, and with sufficient business interruption coverage.

b. Commercial General Liability Insurance, written on an occurrence form, including but not limited to premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, personal injury and advertising injury and liability assumed under an insured contract, with limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate and products/completed operations aggregate of \$2,000,000.

c. Excess Liability (Umbrella) Insurance with a minimum limit of \$4,000,000 per occurrence and \$4,000,000 annual aggregate. This policy will be in excess of the General Liability, follow the form or at least as broad in coverage

The City, ACCA, and their respective elected officials, officers, agents, and employees (“Additional Insured”) shall be additional insureds on all policies set forth in this Subsection II.A.10. All insurance of any tier shall state that the coverage afforded to the Additional Insureds shall be primary noncontributory insurance of the Additional Insureds with respect to any claims arising out of the Project.

**11. Ongoing Management of QALICB.** The Developer anticipates that the QALICB Operating Agreement will provide for each QALICB Member to have rights to make decisions for the QALICB relative to its percentage interest; provided, that some actions of the QALICB will require the consent of all members of the QALICB. In addition, the Developer anticipates that the Aurora Arts Centre Commercial Project Entity will enter into a lease servicing and loan compliance agreement with the Developer or its affiliate (the “QALICB Servicing Agreement”), under which the Developer will manage the ongoing business and operations of the Aurora Arts Centre Commercial Project Entity.

**12. Rehabilitation and Maintenance of Property.** The Aurora Arts Centre Commercial Project Entity shall at all times professionally maintain and manage the Aurora Arts Centre Commercial Project in accordance with the standard for

similarly sized market-rate properties in the greater Aurora region, but the Parties hereby acknowledge and agree that, upon completion of construction of the Project, day to day management responsibilities for the Project will be delegated to the Master Tenant, and then to the Master Sub-Tenant (ACCA), under their respective leases (subject to further discussion amongst the Parties with regard to responsibilities for payment of real estate taxes), and the Developer is not responsible hereunder for the actions (or failure to act) of such entities under those leases. The Parties acknowledge that common area maintenance costs will be shared by all owners of the condominium units in the Aurora Arts Centre pursuant to the applicable condominium declaration.

**13. Compliance.** The Aurora Arts Centre Commercial Project Entity shall at all times acquire, construct, operate and maintain the Project (and the Developer (or its affiliate) will comply with its obligations under the Commercial Development Agreement and the QALICB Servicing Agreement regarding construction and operation of the Project) in substantial conformance with all applicable Federal, State, and City laws, rules, ordinances and regulations, including but not limited to compliance with all requirements to be observed to obtain the federal historic tax credits and the federal new markets tax credits anticipated to be generated by completion of the Project. All work with respect to the Project shall conform to all applicable Federal, State, and City laws, regulations and ordinances, including, but not limited to, all requirements under the National Park Service Part 1 and Part 2 approvals for the Project, 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. The Aurora Arts Centre Commercial Project Entity and, as set forth in this section, the Developer, shall require such compliance and assurances in all lower tier contracts and subcontracts associated with this Agreement. The Aurora Arts Centre Commercial Project Entity and, as set forth in this section, the Developer, shall perform all acts with responsibility to the City in the same manner as City is required to perform all acts with responsibility to the Federal government. To the extent required by Illinois law (820 ILCS 130/0.01 *et seq.*), Developer and the Aurora Arts Centre Commercial Project Entity shall pay any applicable “Prevailing Wage Rates” to any of its workers on the Project. With respect to the maintenance and operation of the Project, the Parties hereby acknowledge and agree that, upon completion of construction of the Project, day to day management responsibilities for the Project will be delegated to the Master Tenant, and then to the Master Sub-Tenant (ACCA), under their respective leases (subject to further discussion amongst the Parties with regard to responsibilities for payment of real estate taxes), and the

Developer is not responsible hereunder for the actions (or failure to act) of such entities under those leases.

**14. Additional Standards.** Although acting as a developer, Developer shall comply with the requirements and standards of OMB Circular A-122, "Cost Principles for Non-profit Organizations" to the extent they apply to Developer. This Circular establishes principles for determining allowable costs. Although acting as a developer, Developer must comply with OMB Circular A-133 "Audit Requirements." For any year that Developer expends more than Five Hundred Thousand and No/100 Dollars (\$500,000.00) in Federal funds, Developer must undergo a single audit which includes its financial statements and its federal awards from all applicable federal programs.

**15. Representations and Warranties of Developer.** The Developer represents, warrants and agrees to the following as the basis for the undertakings on its part herein contained, as of the date hereof and until completion of the Project:

- a. Developer is a limited liability company which is duly organized and existing under the laws of the State of Illinois, qualified to do business in the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. The Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To the best of the Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the Project.
- b. Subject to the receipt of the Environmental Review Notice, 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 any related party or any of its



partners or venturers is now a party or by which Developer or any of its related parties, partners or its 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 partners or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party, any of its partners or any of its venturers is bound.

- c. Developer covenants that no officer, member, manager, stockholder, employee or agent of Developer, or any other person connected with Developer, has made, offered or given, either directly or indirectly, to any elected official of the City, or any officer, employee or agent of the City, or any other person connected with the City, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the City.
- d. Concurrently with execution of this Agreement, Developer shall disclose to the City the names, addresses and ownership interests of all persons that comprise Developer.
- e. Developer has sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement.
- f. Developer is not delinquent in payment of any taxes to the Illinois Department of Revenue.

**16. Unwind Process.** The Parties understand that, with respect to the NMTC financing, there may be an "unwind" process which will occur seven years after the Closing. **Exhibit E** sets forth a summary of the Parties' current understanding of how this "unwind" process would occur at that time; however, since the process outlined on **Exhibit E** assumes that certain entities (which are not a Party to this Agreement and are not controlled by any Party) will take certain actions, there can be no assurance that the "unwind" will occur at all or in the manner as described.

## **B. ACCA Obligations and Commitments.**

ACCA shall have the obligations and commitments set forth in this Section II.B., in addition to all other obligations set forth elsewhere in this Agreement, regarding the Project.

**1. Financing.** ACCA will make the Leverage Loan to the Investment Fund on the Closing Date (as described on the NMTC Chart). ACCA's obligation to make the Leverage Loan is subject to its receipt of (i) the Developer LL Funds, (ii) the City NMTC Funding, and (iii) the Master Tenant Loan, in each case upon terms and conditions satisfactory to ACCA.

**2. Closing Documents; Lease Terms.**

- a. On the Closing date for the Project, ACCA will execute documents and provide funds as set forth herein. For the Aurora Arts Centre Commercial Project, the Commercial Closing Documents to be executed by ACCA will reflect terms consistent with the Commercial Project Financing Commitments (with any changes approved by the City, ACCA and the Developer). ACCA will execute (i) the Leverage Loan Documents with the Investment Fund, (ii) documents relating to the City NMTC Funding, the Developer LL Funds and the Master Tenant Loan, (iii) the Lease between the Master Tenant and the Master Sub-Tenant (the "Master Sub-Lease"), with ACCA executing the lease as the Master Sub-Tenant, and (iv) to the extent a tenant has been identified at Closing, each of the commercial leases with respect to the commercial space in the Aurora Arts Centre Commercial Project (each a "Commercial Sub-Lease" and collectively the "Commercial Sub-Leases"). The Master Lease and the Master Sub-Lease shall have terms of 19 years. Any Commercial Sub-Leases will not have a term in excess of nineteen (19) years, including extensions, and will not grant the sub-tenants any purchase option with respect to the leased space. In addition, under each Commercial Sub-Lease, each tenant will agree to maintain its leased property in accordance with historic property maintenance standards which ACCA will set forth in each lease (which standards are subject to the approval of the Developer and the City).
- b. ACCA acknowledges that, in connection with closing the financing of the Aurora Arts Centre Commercial Project, ACCA may be required to execute, deliver and record additional documents not listed above, which documents shall be subject to the prior review and approval of ACCA and its counsel.

- c. The obligations of ACCA to make the Leverage Loan and to enter into the Commercial Closing Documents to which ACCA will be a party is also subject to (i) the compliance by the Developer and the City with their respective obligations hereunder, (ii) review and approval by ACCA and its counsel of all proposed Commercial Closing Documents.

### **3. Rehabilitation of Properties.**

- a. ACCA shall, within thirty (30) business days of receipt of a Rehabilitation Plan for the Aurora Arts Centre Commercial Project:
  - (i). Review the Rehabilitation Plan, and the attachments thereto, and determine whether the Rehabilitation Plan, and the attachments thereto, meet the requirements of this Agreement.
  - (ii). If any Rehabilitation Plan delivered to ACCA hereunder, or the attachments thereto, does not meet the requirements of this Agreement for any reason, ACCA must notify the Developer in writing of the deficiencies in the Rehabilitation Plan, or the attachments thereto, and permit the Developer to submit an amended Rehabilitation Plan that meets the requirements of this Agreement within an additional thirty (30) days of ACCA giving notice of the deficiencies.

- 4. **Payment and Disbursement Requirements.** Once ACCA has made the Leverage Loan to the Investment Fund, ACCA will have no further control over the disbursement of such funds pursuant to the terms of this Agreement, and any control of such disbursement will be under the terms of the Commercial Closing Documents.

### **5. Further Assistance and Corrective Instruments.**

- a. ACCA shall timely provide the City and Developer with such additional documentation and/or information in its possession which the City or the Developer determines, in its sole discretion, is necessary to determine whether ACCA is in compliance with this Agreement.

- b. ACCA shall, upon request from the City or the Developer, 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, in all cases consistent with the Commercial Closing Documents.

**6. Limitations on Funding.** ACCA's obligation to provide funds for the Project is limited to its obligations hereunder, and ACCA is not responsible for any construction cost overruns or Project development budget shortfalls, or for the delivery of any guaranty or indemnification agreement to any Party, any affiliate of any Party, or any other person or entity with respect to the Aurora Arts Centre Project or the Coulter Court Project.

**7. Existence; Authority.** ACCA is a political subdivision, body politic and municipal corporation in the State of Illinois. ACCA is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement.

### **III. City's Obligations and Commitments.**

The City shall have the obligations and commitments set forth below, in addition to those set forth elsewhere in this Agreement regarding the Project:

**A. Financing Sources.** The City shall, at the Closing Date for the Project, or at such time otherwise specified below, and subject to the preconditions set forth herein, make the following sources of funding available in full to the Project (individually, each of the sources below is an "Identified Funding Source" and collectively, the Identified Funding Sources shall be referred to as the "City NMTC Funding"). Except as otherwise set forth herein, the purpose of the City NMTC Funding is for use as part of the Leverage Loan being made to the Investment Fund (as described on the NMTC Chart) on the Closing date (the "Leverage Loan"):

1. Community Development Block Grant Funds ("CDBG Funds") in the amount of up to \$700,000, made available directly to the Developer, ACCA or Invest Aurora in amounts and on conditions determined by the Parties so that the CDBG Funds can be used directly or indirectly to provide a portion of the funds used to make the Leverage Loan. To the

extent the CDBG Funds are used prior to Closing and the funding of the Leverage Loan, such funds would be used directly for the purpose of paying for demolition with the Aurora Arts Centre Commercial Project space, or for the holding costs of with respect to such space, or for other Project pre-development costs, subject to the following.

- a. Disbursement of the CDBG Funds shall be made by the City within thirty (30) days of the applicable preconditions in subsection III.A.4 below having been met, and the Parties agree that the CDBG Funds will likely be used for pre-development expenses prior to the NMTC Closing;
- b. The Developer and the City agree that, if the CDBG Funds are disbursed to the Developer (or Invest Aurora or ACCA) prior to the Closing of the financing for the Project, and such financing does not occur within the time frames set forth herein, then the City may require that the Developer (or Invest Aurora) convey to the City the Developer's interest in the AAC Commercial Condo in exchange for a release by the City of any Developer and Invest Aurora obligations with respect to the CDBG Funds. The Parties acknowledge and agree that ACCA shall not have any indemnification or reimbursement obligations with regard to any CDBG Funds paid to ACCA, either as a conduit for use by the Developer or an affiliate of the Developer prior to the Closing of the financing for the Project, or as part of the funds to be used by ACCA to make the Leverage Loan.
- c. Any acquisition of the AAC Commercial Condo by Developer will not occur prior to the completion of the environmental review process set forth in Section II(A)(2)(f) above. The Developer acknowledges that Invest Aurora does not currently intend to convey any portion of the Aurora Arts Centre pursuant to the Purchase Options without conveying all of the Aurora Arts Centre. The Developer does not intend to acquire the AAC Commercial Condo prior to being satisfied, in its determination, that there will be sufficient financing sources to develop and operate the Project or to otherwise develop and operate the AAC Commercial Condo.

2. Tax Increment Financing funds ("TIF Funds") up to \$500,000 in the form of a grant made available to ACCA to be used to fund part of the Leverage Loan, for use solely on activities that are authorized for use of such funds under the TIF Act, subject to the following:

- a. Disbursement of the TIF Funds shall be made by the City at the Closing, within thirty (30) days of the preconditions in subsection III.A.4 below having been met.
  - b. The Commercial Development Agreement shall provide that the Developer shall be responsible for providing the City with all reasonable and customary documentation required by the City to evidence the expenditure by the QALICB in an amount equal to the TIF Funds for purposes authorized for use of such funds under the TIF Act (“Eligible Costs”), such records to include, but not be limited to, all invoices for the claimed Eligible Costs, all contracts with the Developer’s Contractors, contractors affidavits, lien waivers with invoices, copies of checks and any other documentation reasonable requested by the City and/or in the possession of Developer or the Aurora Arts Centre Commercial Project Entity.
  - c. If any portion of the TIF Funds are not spent on Eligible Costs by the Developer or the QALICB, or Developer fails to provide proof of expenditure of the TIF Funds on Eligible Costs as required hereunder, the City shall be entitled to reimbursement of the TIF Funds in the non-conforming amount. Reimbursement shall be made by the Developer in the full non-conforming amount within thirty (30) days of receipt of written notice of a violation of subsection III.A.2.b. above (but subject to the cure provisions of Section VIII(C) herein). The unpaid balance of non-conforming amounts not repaid within thirty (30) days shall be subject to accrual of interest at a rate of 2%/month. The Parties acknowledge and agree that ACCA shall not have any indemnification or reimbursement obligations with regard to any TIF Funds paid to ACCA and used by ACCA to make the Leverage Loan.
3. Section 108 Loan Funds in the amount up to \$3,000,000, loaned by HUD to the City and, in turn, made available to ACCA, as the Leverage Lender, for the purpose of making the Leverage Loan, subject to the following .
- a. Disbursement of the Section 108 Loan Funds shall be made by the City at Closing, subject to the preconditions in subsection III.A.4 below having been met.
  - b. the Parties acknowledge their common understanding that HUD will not require any collateral from ACCA, the Developer

or the QALICB with respect to the Section 108 Funds.

4. The obligation of the City to provide any of the City NMTC Funding for the Aurora Arts Centre Commercial Centre Project is further subject to the following preconditions:

- a. in the case of the Section 108 Loan Funds, CDBG Funds and the TIF Funds (but not the CDBG Funds, if provided prior to Closing), receipt from the Developer of the Commercial Project Financing Commitments;
- b. in the case of the Section 108 Loan Funds, CDBG Funds and the TIF Funds (but not the CDBG Funds, if provided prior to Closing), the collective receipt by the Developer, ACCA, the City and the QALICB of sufficient financing sources to develop the Project;
- c. the compliance by the Developer and ACCA, as of the Closing (or, with respect to the funding of CDBG Funds prior to Closing, at the time of funding), with their respective obligations hereunder and the laws and regulations of the City.
- d. in the case of the Section 108 Loan Funds, CDBG Funds and the TIF Funds (but not the CDBG Funds, if provided prior to Closing), execution of such agreements and other documents as are necessary to facilitate the disbursement of the City NMTC Funding (the Parties hereby acknowledging that any such agreements are subject to the review and approval of any Party requested to execute any such agreement). Such agreements and documents include, but are not limited to, those set forth below.
- e. in the case of the Section 108 Loan Funds, CDBG Funds and the TIF Funds (but not the CDBG Funds, if provided prior to Closing), receipt by the Developer of Parts 1 and 2 Approval from the National Park Service;
- f. in the case of the Section 108 Loan Funds, CDBG Funds and the TIF Funds (but not the CDBG Funds, if provided prior to Closing), City review and approval of the construction contract with the general contractor for the Project, as well as the architect agreement;
- g. in the case of the Section 108 Loan Funds, CDBG Funds and the TIF Funds (but not the CDBG Funds, if provided prior to Closing), City approval of plans and specifications for the Project;
- h. in the case of the CDBG Funds, receipt of the CDBG Funds from HUD in the necessary amount for the City to extend the

- funds;
- i. in the case of the CDBG Funds, execution of a Sub-Recipient Agreement by ACCA, Invest Aurora and the Developer (as applicable), consistent with the terms and conditions of this Agreement, and including such other terms and conditions typically included in such a Sub-Recipient Agreement as mutually agreed to by the Parties (the Parties hereby acknowledging that the only obligation of ACCA under any such Sub-Recipient Agreement shall be to use such CDBG Funds to fund a portion of the Leverage Loan);
  - j. in the case of the Section 108 Loan Funds, CDBG Funds and the TIF Funds (but not the CDBG Funds, if provided prior to Closing), the receipt of any governmental approvals (other than the City) necessary for the City to obtain the NMTC Funding;
  - k. in the case of the TIF Funds, the amount of the TIF Funds being present in the applicable City TIF Fund and available for disbursement;
  - l. in the case of the Section 108 Loan, HUD authorization of the City's Section 108 Loan Program application;
  - m. in the case of the Section 108 Loan, the City's receipt of the proceeds of the Section 108 Loan in an amount sufficient to provide the funding contemplated hereunder following HUD Program approval;
  - n. in the case of the Section 108 Loan, execution of a Section 108 Loan Agreement (or agreements) between the City, ACCA, and, the Developer. While it is understood that the Section 108 Loan is ultimately guaranteed by the City from the City's annual allocation of CDBG funding from HUD, the Section 108 Loan Agreement shall provide for repayment of a portion of the Section 108 Loan amount by ACCA and the Developer, through the following mechanisms as currently contemplated: (i) (i) an amount not to exceed \$1,000,000 from ACCA (\$490,000 over the course of seven (7) years, at \$70,000 per year, and an additional amount not to exceed \$510,000 to be funded in years eight (8) through fifteen (15) through an alternative structure to be identified and mutually agreed upon at a later date). The City acknowledges that should River Edge tax credits be secured (a) calculated based upon the full construction cost of the Project, the amount ACCA will need to repay shall be reduced to an amount not to exceed \$490,000, or (b) calculated based upon a portion of, but not the full, construction cost of the project, the amount ACCA will need to repay shall be



reduced to an amount to be determined based upon the percentage of the construction cost covered by the River Edge tax credits; (ii) repayment of up to \$1,000,000 through lease payments from the Restaurant; (iii) with respect to the Developer, its repayment obligations will be limited to paying to the City, for a ten year period (beginning in the first calendar year of full operations of the Rental Housing Project), an annual amount equal to the lesser of \$50,000 or eighty percent (80%) of the available annual net cash flow of the Aurora Arts Centre Residential Project; and (iv) the real estate tax payments generated by the Project.

- o. in the case of the TIF Funds and Section 108 Loan Funds, the Developer having obtained all necessary zoning approvals and building permits, and any other governmental approvals necessary for commencement of the Project.

5. Notwithstanding anything else contained within this Agreement, the City agrees and understands that in connection with providing the City NMTC Funding or otherwise the City (1) may not require ACCA, the Developer or QALICB to provide collateral for the benefit of the City, HUD or any other parties, including but not limited, any restriction on the use of the Property or Project and (2) shall provide funds that are capable of being provided to ACCA to make the Leverage Loan.

6. The total amount of City NMTC Funding contemplated under this Agreement is up to \$4,200,000. That amount may decrease should alternative funding sources that are mutually agreeable to both the City and Developer be identified prior to Closing. The City may, in its discretion, revise the amounts among the Identified Funding Sources detailed above, or identify alternative Funding Sources. To the extent the financing of the Project requires additional funds from the City, the City agrees to use its good faith efforts to identify additional sources of financing and to seek required approval from the applicable City authorities for such increased funding. Prior to Closing, the Parties further agree to work together from time to time to adjust the scope of the Project to reflect the financing sources then available.

7. The City has conferred extensively with HUD relative to establishment of a Section 108 Loan Program. HUD has not only encouraged the City to apply for the establishment of such a Program, but has and continues to provide technical assistance to the City relative to the application process. The City has submitted its application for establishment of the Program, which describes the Aurora Arts Center project extensively. Furthermore, City staff has discussed this project in great detail with HUD

officials who committed to expediting the Section 108 Loan application process in order to facilitate the use of Section 108 Loan proceeds for use specifically as contemplated in this development project. The City will continue to pursue all steps necessary for the establishment of a Section 108 Loan Program and to obtain the Section 108 Loan.

8. The terms and repayment terms of the City NMTC Funding will be set forth in the Commercial Closing Documents, consistent with the Commercial Project Financing Commitments.

9. On the Closing Date, the City may be required to execute additional documents, in addition to documents regarding the City NMTC Funding, which documents are subject to the approval of the City and its counsel.

**B. Rehabilitation of Properties.**

1. The City shall, within thirty (30) business days of receipt of a Rehabilitation Plan for the Aurora Arts Centre Commercial Project:

- a. Review the Rehabilitation Plan, and the attachments thereto, and determine whether the Rehabilitation Plan, and the attachments thereto, meet the requirements of this Agreement.
- b. If any Rehabilitation Plan delivered to the City hereunder, or the attachments thereto, does not meet the requirements of this Agreement for any reason, the City must notify the Developer in writing of the deficiencies in the Rehabilitation Plan, or the attachments thereto, and permit the Developer to submit an amended Rehabilitation Plan that meets the requirements of this Agreement within thirty days (30) days of the City giving notice of the deficiencies.

**C. Representations and Warranties of the City.** The City represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

1. The City is a municipal corporation duly organized and validly existing under the law of the State of Illinois, is a home rule unit of government, and has all requisite corporate power and authority to enter into this Agreement.

2. 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 (i) have been duly authorized by all necessary corporate action on the part of the City, (ii) require no other consents, approvals or authorizations on the part of the City in connection with the City's execution and delivery of this Agreement, and (iii) shall not, by lapse of time, giving of notice or otherwise, result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the City is subject.

#### **IV. OTHER PROJECT REQUIREMENTS.**

In addition to the Developer's obligation to perform this Agreement in accordance with all Federal, State, and City laws, ordinances, and regulations:

- A. **Federal Law.** The Project and this Agreement shall be conducted and administered by the Developer in compliance with applicable Federal civil rights and fair housing laws and regulations, including, but not limited to:
1. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, *et seq.*, and implementing regulations issued at 24 C.F.R. Part 1;
  2. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 2000d *et seq.*, as amended, and the Developer shall administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
  3. The Fair Housing Act, 42 U.S.C. § 3601, *et seq.*;
  4. The Architectural Barriers Act, 42 U.S.C. § 4151, *et seq.*;
  5. The Americans with Disabilities Act, 42 U.S.C. § 12111, *et seq.*;
  6. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.*;
  7. Executive Order 11063, as amended by Executive Order 12259, and implementing regulations in 24 C.F.R. Part 107; and
  8. The Age Discrimination Act of 1975, 42 U.S.C. § 6101, *et seq.*, and implementing regulations in 24 CFR Part 146.
- B. **No Discrimination.** The Project shall be conducted and administered by the Developer in compliance with Section 109 of the Housing and

Community Development Act of 1974 (the “HCDA”) which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available to the HCDA.

- C. **Environmental Hazard Prevention.** Developer shall comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851-4856, and implementing regulations at 24 C.F.R. Part 35, subparts A, B, J, K, and R.
- D. **Eligible Contractors and Subcontractors Only.** The Developer shall not use contractors or subcontractors debarred, suspended or ineligible from working on behalf of the United States Government, the State of Illinois, or the City in carrying out the Project.
- E. **No Prohibited Political Activities.** The Developer agrees that to the best of its knowledge, neither the Project nor the personnel employed by the Developer shall be in any way or to any extent engaged in the conduct of political activities in contravention of the Hatch Act, 5 U.S.C. § 1501, *et seq.*, the State Employees and Officials Ethics Act, 5 ILCS 430/1, *et. seq.*, and City Ordinances.
- F. **No Bribes or Undue Influence.** The Developer certifies, to the best of its knowledge and belief, pursuant to 31 U.S.C. § 1352, that:
  - 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Developer, to any person for influencing or attempting to influence an officer or employee of an agency of the United States, a member of the United States Congress, an officer or employee of the United States Congress, or an employee of a member of the United States Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and
  - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States, a member of the United States Congress, an officer or employee of the United States Congress, or an employee of a member of the United States

Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standards Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

- G. **Materiality.** The promises of the Developer in this Agreement are a material representation of fact upon which reliance was placed when this transaction was made or entered into. The Developer’s agreement with these certifications is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.
  
- H. **Drug Free Workplace.** The Developer certifies that it will provide a drug-free workplace in compliance with the Drug Free Workplace Act of 1988, 41 USC § 701, *et seq.* and 24 CFR § 24.600, *et seq.*, and the Developer shall, simultaneous with execution of this Agreement, execute the drug free workplace certification attached hereto as **Exhibit F** and made a part hereof.
  
- I. **Project to Remain Taxable.** The Parties agree that the Property is, and shall remain at all times during the Term of this Agreement, subject to real estate property taxes, and that the City agreement to provide the City NMTC Funding is conditioned on the continued taxable status of the Property and the timely payment by the Developer, the Residential Project Entity or the Aurora Arts Centre Commercial Project Entity, as applicable, of all real estate property taxes assessed against the Property. Any failure to pay real estate property taxes in a timely manner shall be a material breach of this Agreement. However, nothing in this Agreement shall prohibit ACCA from obtaining an exemption, if applicable, on the portion of the Project utilized as a school for performing arts, or prohibit any owner of the Property from challenging its real estate taxes in the ordinary course of business.

**V. INTENTIONALLY OMITTED.**

**VI. RECORDS, REPORTS, AND NOTICES.**

- A. **Inspection.** The Developer authorizes the City, HUD, and the Comptroller General of the United States to conduct on-site reviews, to examine, inspect, and audit the Developer's records relating to the Project and to conduct any other procedures or practices to assure compliance with the provisions of this Agreement upon demand, including inspections of the Project at any reasonable time.

- B. **Annual Reports.** While the Developer is a member of the QALICB, the Developer shall submit its annual financial statement to the City within thirty (30) days of the completion of the annual financial statement, which annual financial statement shall include statements of all receipts of Developer's income with respect to the Project.
- C. **Notification of Sale.** While the Developer is a member of the QALICB, the Developer shall give the City and ACCA notice at least thirty (30) days before any controlling membership interest in the QALICB is sold or transferred. Unless otherwise consented to by the City and ACCA, prior to Closing all membership interests in the Developer shall be owned by, and all rights to manage the Developer shall be controlled by, TCB, either directly or indirectly.

## **VII. SUSPENSION AND TERMINATION.**

- A. **Suspension or Termination for Material Failure.** Any party may suspend or terminate this Agreement if another party materially fails to comply with any term of this Agreement.
- B. **Termination for Breach, Abandonment or Impossibility.** Any Party may terminate this Agreement in the event of a breach by another Party of a material obligation under this Agreement, abandonment of the Aurora Arts Centre Commercial Project, or occurrence rendering impossible the performance by a Party of its obligations under this Agreement.
- C. **Notice of Termination.** In the event a Party elects to suspend and/or terminate this Agreement, for any reason stated in Subsection VII.A., and/or Subsection VII.B., the Party electing to terminate or suspend shall notify the other Parties in writing of such action, specifying the particular deficiency. The Party who is alleged to be in breach shall have a period of thirty (30) days after such notice is given within which to cure the default prior to exercise of remedies by another Party under this Agreement, and if the default is one that cannot reasonably be expected to be cured in thirty (30) days, the Party affecting a cure shall have an additional time period (not to exceed sixty (60) days) to cure as long as it is diligently pursuing a cure.

## **VIII. REMEDIES.**

- A. **Indemnification for Project Commitment Repayment.** In the event of

any violation or breach of this Agreement by Developer, misuse or misapplication of funds derived from this Agreement by Developer, or any violation of any of the Federal, State, or City laws, regulations, or ordinances, directly or indirectly, by the Developer, or any of its employees, agents, or representatives, then Developer, to the fullest extent permitted by law, agrees to indemnify, and hold the City harmless from any requirement to repay to HUD any portion of the City funds hereunder which the City received from HUD for this Project or penalties and expenses, including attorneys' fees and other costs of litigation, resulting from such action or omission by the Developer.

- B. **Notice of Claim.** In the event HUD, or any other Federal agency, makes any claim which would give rise to invoking the remedy provisions set forth in this Section VIII., the City or the Developer shall immediately notify the other Parties, in writing, providing the full details of the alleged violation. The Developer shall have the right to contest the claim, in its own name or in the name of the City, with its consent, through all levels of any administrative proceedings or in any court of competent jurisdiction without any cost to the City. Upon any final adjudication, or upon any settlement agreed to between the Developer and the Federal agency, the Developer shall promptly pay any funds found due and owing.
- C. **Compromise of Claim.** If the City is subject to a claim set forth in Subsections .A. and/or B. above, and if the City is not subject to loss of any Federal funding subject to this Agreement, the Developer shall have the authority to settle or compromise any claim and to pay any judgment to the Federal government.
- D. **Indemnification and Hold Harmless.** To the fullest extent allowed by law, the each Party shall assume the defense of and shall pay, indemnify, and hold harmless the other Parties and their respective designees, officers, employees, and agents from all suits, actions, claims, mechanics' liens, demands, damages, losses, expenses, and costs of every kind and description to which the other Parties and their respective designees, and its employees may be subject by reason of any act or omission of such indemnifying Party, its agents or employees, in undertaking and performing under this Agreement. The indemnification obligations hereunder shall include the payment of the indemnified Party's reasonable attorney's fees, expert witness fees, litigation costs and court costs. Each indemnified Party shall have its choice of counsel, and the authority to direct its own defense.
- E. **No Waiver by Delay or Otherwise.** Any delay by a 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 such 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 default of a Party be considered or treated as a waiver of the rights by the waiving Party of any future 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 any Party under this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies by a Party shall not preclude the exercise by any Party, at that time or different times, of any other such remedies. For the termination of this Agreement based on a breach by the Developer, the remedies of the City may include pursuing a return of unspent City NMTC Funding.
- G. **Agreement to Pay Attorneys' Fees and Expenses.** In the event a Party breaches this Agreement and any of the other Parties employs an attorney or attorneys or incur 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 breaching Party shall pay, on demand, the other Parties' reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action.
- H. **No Environmental Representations or Warranties by City.** No Party makes any warranties or representations regarding, nor does it indemnify the other Parties with respect to, the existence or nonexistence on or in the vicinity of the Project of any toxic or hazardous substances of wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "Hazardous Substances"). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited



in or located on or in the vicinity of the Project as well as any activity claimed to have been undertaken on or in the vicinity of the Project, that would cause or contribute to causing (1) a property in the Project to become a treatment, storage or disposal facility within the meaning of, or otherwise bring a property within the ambit of, the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. § 6901 *et seq.*, or any similar State law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from a property in the Project, within the meaning of, or otherwise bring a property in the Project within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, or any similar State law or local ordinance. Further, no Party makes any warranties or representations regarding, nor does any Party indemnify the other Parties with respect to, the existence or nonexistence on or in the vicinity of the Project, or anywhere within or in the vicinity of a property the Project, of any substances or conditions in or on a property the Project, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. No Party makes any representations or warranties regarding the existence of any above ground or underground tanks in the Project, or whether any above or underground tanks have been located under, in the Project have subsequently been removed or filled.

I. **Waiver.** Each Party waives any claims against the other Parties, and their respective designees, officers, employees and agents, for indemnification, contribution, reimbursement or other payments arising under Federal, State and common law relating to the environmental condition of the land comprising the Project.

J. **Right to Cure by Lender or Limited Partner.** In the event that Developer or its Affiliate (which may include the Aurora Arts Centre Commercial Project Entity) fails to perform a covenant as set forth in this Agreement, the City and ACCA (as applicable) shall, prior to exercising any right or remedy hereunder, send notice of such failure by Developer (or its Affiliate) to any investor or lender to the Project identified by the Developer to the City and ACCA, and each such investor or lender shall have the right (but not the obligation) to cure such failure to perform by the Developer or Affiliate in the same manner and time period as the Developer or Affiliate provided however that each lender and investor shall have such additional cure rights as follows:

(a) Notwithstanding the provisions of this Agreement regarding cure periods, if Developer's or its Affiliate's failure to perform is for a non-monetary covenant or other failure to perform by the Developer or Affiliate that is not reasonably capable of being cured within the applicable time period afforded to the Developer or its Affiliate to cure (each such failure being a "Personal Developer Default"), the lender or investor shall provide written notice to the City within 30 days of receipt of notice of such Personal Developer Default stating that it shall cure such Personal Developer Default by exercising its rights to take over management of the Developer or its Affiliate or foreclose or accept a deed in lieu of foreclosure on the applicable portion of the Project. Upon receipt by the City or ACCA of such notice from the lender or investor, as applicable, the cure period shall be extended for 90 days.

(b) If Developer's or its Affiliate's failure to perform involves any non-monetary covenant and such non-monetary default is not reasonably capable of being cured by the lender or investor within the 90 day cure period provided above, such period shall be extended, if possession of the applicable portion of the Project is necessary to effect such cure, provided that the party seeking such cure must (i) have begun to cure such default within the applicable cure period and continues diligently to pursue such cure and (ii) the party seeking such cure must have instituted appropriate legal proceedings to obtain possession. In addition, upon such party obtaining possession of the Project, the City and ACCA shall waive any event of default that cannot reasonably be cured.

K. **Loss of Federal Funds.** If the City has lost, or been prevented from receiving, any Federal funds, other than the funds for the Project, as a result of any violation by Developer, and subject to the remedy, and notice and cure, provisions in this Agreement, the Developer shall repay, upon demand by the City, such amount of funding due, as a result of the breach by Developer.

## **IX. MISCELLANEOUS PROVISIONS.**

A. **Amendments.** No modifications, additions, deletions, or the like, to this Agreement shall be effective unless and until such changes are executed in writing by the authorized officers of each Party.

B. **Subject to Financial Assistance.** The City's obligations under this Agreement are made subject to the terms of financial assistance agreements between the City and HUD, and in the event of a conflict

between the terms of this Agreement and the financial assistance agreements between the City and HUD, the terms of the financial assistance agreements shall supersede and control. Once a Closing Date has occurred, the Commercial Closing Documents shall control if any provisions therein are in conflict with the terms of this Agreement.

- C. **Assignment.** No Party may assign this Agreement or any part thereof without the written approval of the other Parties having first been obtained, which may be withheld in the other Parties' sole discretion, but no consent is required for the Developer to assign any rights or obligations under this Agreement with respect to the Aurora Arts Centre Commercial Project to the Aurora Arts Centre Commercial Project Entity.
- D. **Attorney's Opinion.** Each Party shall provide, at Closing, an opinion of its attorney, in a form reasonably satisfactory to the other Parties, that all steps necessary to adopt this Agreement, in a manner binding upon such Party, have been taken by such Party.
- E. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- F. **Term.** Unless terminated pursuant to its terms, this Agreement shall remain in effect until the earlier of the termination of this Agreement pursuant to its terms, or the completion of the Project. The Parties' indemnification obligations in Section VI. shall survive the termination, or expiration, of this Agreement.
- G. **No Partnership.** Nothing contained in this Agreement, any mortgage, note or any other document or instrument related to this Project shall be deemed to create a joint venture, partnership relationship, or employer/employee relationship between the City, ACCA and the Developer. The Developer shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement.
- H. **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: (a) personal service, (b) facsimile, (c) overnight courier, or (d) registered or certified first class mail, postage prepaid, return receipt requested.

If to City:

City of Aurora  
44 E. Downer Place

Aurora, Illinois 60507-2067  
Attention: City Mayor

With a copy to: City of Aurora  
44 E. Downer Place  
Aurora, Illinois 60507-2067  
Attention: City Clerk

And: City of Aurora, Law Department  
5 E. Downer Place, Suite F  
Aurora, Illinois, 60507  
Attention: Corporation Counsel

And: Klein, Thorpe & Jenkins, Ltd.  
20 N. Wacker Drive, Suite 1660  
Chicago, Illinois 60606  
Attention: Michael A. Marrs/Gregory T. Smith

If to ACCA: Aurora Metropolitan Exposition, Auditorium and  
Office Building Authority  
8 Galena Boulevard, Suite 230  
Aurora, Illinois 60506  
Attention: Tim Rater

And: Dykema Gossett PLLC  
4200 Commerce Street, Suite 300  
Chicago, Illinois 60606  
Attention: Bruce L. Goldsmith

If to Developer: Aurora Arts Center Developer LLC  
c/o The Community Builders, Inc.  
135 South LaSalle Street, Suite 3350  
Chicago, IL 60603  
Attention: \_\_\_\_\_

The Community Builders, Inc.  
185 Dartmouth Street  
Boston, MA 02116  
Attention: General Counsel

With a copy to: Applegate & Thorne-Thomsen, P.C.  
440 South LaSalle Street, Suite 1900  
Chicago, IL 60605

Attention: Ben Applegate

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. Specifically, the Developer may provide the City with the notice addresses of any investor or lender to the Project. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch, and proof or receipt, by facsimile. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received upon deposit with the United States Postal Service.

- I. **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.
- J. **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.
- K. **No Personal Liability.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any elected official, officer, partner, member, shareholder, manager, director, agent, employee or attorney of any Party, in his or her individual capacity, and no elected official, officer, agent, employee or attorney of any Party shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.
- L. **Municipal Limitations.** All City and ACCA commitments hereunder are limited to the extent required by law.
- M. **Effective Date.** With respect to the City, the Effective Date for this Agreement shall be the day on which the City Mayor affixes his signature hereto.

184428v12

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the dates recited below to be effective on the date first written above.

**City of Aurora,**  
an Illinois home rule municipal corporation.

By: \_\_\_\_\_

Its:

\_\_\_\_Mayor\_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

**Aurora Metropolitan Exposition, Auditorium and Office Building Authority,** a political subdivision, body politic and municipal corporation of the State of Illinois

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Aurora Arts Center Developer, LLC,** an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**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 Robert J. O'Connor and Wendy McCambridge, personally known to me to be the Acting 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 Acting 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 act, 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 \_\_\_\_\_, 2016.

\_\_\_\_\_ Notary Public



**ACKNOWLEDGEMENT**

State of Illinois        )  
                                  ) SS  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of the Aurora Metropolitan Exposition, Auditorium and Office Building Authority, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such \_\_\_\_\_, he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_

Notary Public

**ACKNOWLEDGEMENT**

State of Illinois        )  
                                  ) SS  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of Aurora Arts Center Developer, LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such \_\_\_\_\_, he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_

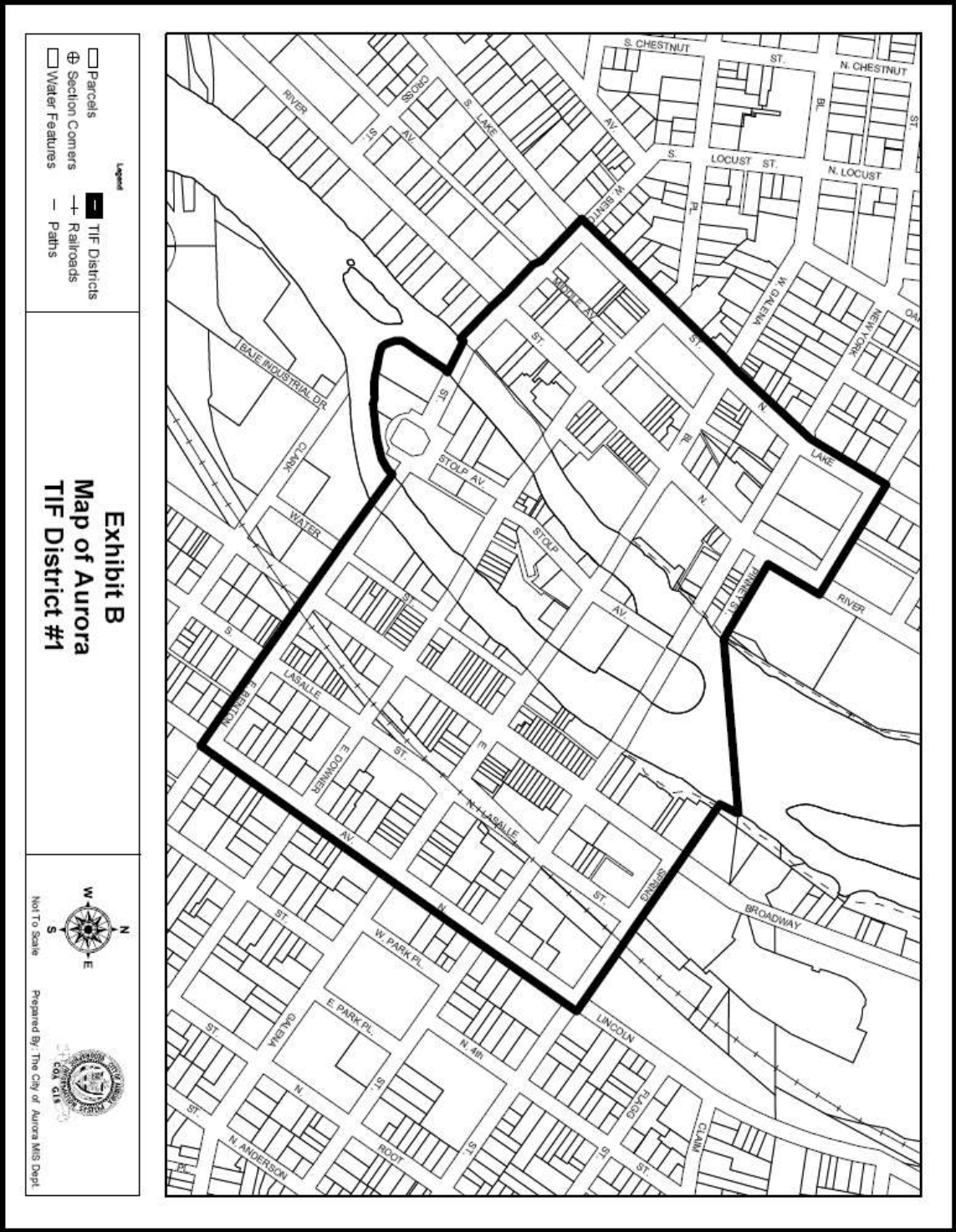
Notary Public

## **Exhibit A**

### **Legal Description – TIF Area**

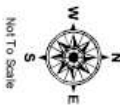
That part of Section 22, Township 38 North, Range 8 East of the Third Principal Meridian in the City of Aurora, Kane County, Illinois, described as follows: Beginning at the Southeasterly comer of Lincoln Avenue and Benton Street; thence Northwesterly along the Southerly line of Benton Street to the Southeasterly comer of Lot F of Library Subdivision; thence Westerly along the Southerly lines of Lots F, E and D in said subdivision and Westerly, Northerly and Northeasterly along the Southerly and Westerly lot line of Lot C in said subdivision to the Northwesterly comer of said lot C; thence Northwesterly along the southerly line of Benton Street; to the southwesterly comer of Lake Street and Benton Street; thence Northeasterly along the Westerly line of Lake Street to the Northwesterly comer of Lake Street and Spruce Street; thence Southeasterly along the Northerly line of Spruce Street to the Easterly line of River Street; thence Southwesterly along the Easterly line of River Street to the Northeasterly corner of River Street and Pinney Street; thence Southeasterly, along the Northerly line of Pinney Street to the Westerly Bank of the Fox River; thence Easterly to the Northwest comer of Lot 3 in Block 29 of the Original Town of Aurora; thence Southerly along the West lines of Lots 3 and 4 of said Original Town of Aurora to the Southerly line of said Lot 4; thence Southeasterly along said Southerly line and Northerly line of Spring Street to the Northeasterly comer of Spring Street and Lincoln Avenue; thence Southwesterly along the Easterly line of Lincoln Avenue to the point of beginning.

**Exhibit B – Depiction of TIF Area  
Attached**



- Legend**
- Parcels
  - ⊕ Section Corners
  - ▭ Water Features
  - ▭ TIF Districts
  - Railroads
  - Paths

**Exhibit B**  
**Map of Aurora**  
**TIF District #1**



Not To Scale

Prepared By The City of Aurora GIS Dept.



**Exhibit C**

**Aurora Arts Centre Property Legal Description**

**(Attached)**

**Exhibit D**

**NMTC Chart  
(with Glossary of Terms)**

**(Attached)**

**Exhibit E**

**Unwind Process**



**Exhibit F**

**Drug Free Workplace Certification**

**(Attached)**

[Project Entity] certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing a drug-free awareness program to inform employees about
  - i. The dangers of drug abuse in the workplace;
  - ii. The Developer's policy of maintaining a drug-free workplace;
  - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);
4. Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will:
  - i. Abide by the terms of the statement; and
  - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
5. Notifying the City within ten (10) days after receiving notice under subparagraph (4)(ii) from an employee or otherwise receiving actual notice of such conviction;
6. Taking one of the following actions, within thirty (30) days of receiving notice under subparagraph (4)(ii), with respect to any employee who is so convicted:
  - i. Taking appropriate personnel action against such an employee, up to and including termination; or
  - ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (1) through (6).

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Signature

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Name

---

Title

---

Date