

AGREEMENT

THIS AGREEMENT (hereinafter "**Agreement**") is made and entered into as of the ____ day of February, 2016 ("**Agreement Date**") by and between the CITY OF AURORA, ILLINOIS, an Illinois Municipal home rule corporation, (the "**City**"), the WEST AURORA SCHOOL DISTRICT NO. 129, an Illinois public school district, (the "School District"), and DREYER CLINIC, INC., an Illinois Corporation, ("**Dreyer**").

RECITALS

WHEREAS, the School District is the owner of certain property located at 80 South River Street, Aurora, Illinois (hereinafter "80 South River"); and

WHEREAS, Dreyer is the owner of certain property located at 1870 West Galena Boulevard, Aurora, Illinois (hereinafter "1870 West Galena") and is responsible for the property tax liability associated therewith; and

WHEREAS, the School District, simultaneous with this Agreement, entered into an Agreement for Bargain Sale and Donation of Real Estate to acquire 1870 West Galena from Dreyer; and

WHEREAS, Dreyer is the owner of certain property currently under construction at 2285 Sequoia Drive, Aurora, Illinois (hereinafter "2285 Sequoia") and is responsible for the property tax liability associated therewith; and

WHEREAS, Dreyer occupies certain property located at 1221 North Highland Avenue, Aurora, Illinois (hereinafter "1221 North Highland") and is responsible for the property tax liability associated therewith; and

WHEREAS, the School District has determined by a 2/3 majority vote of its governing board that 80 South River has become unnecessary and unsuitable for the uses of the School District; and

WHEREAS, the School District's boundaries are, in part, within the City; 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 tax revenues realized by the City, to foster increased economic activity within the City, to increase employment opportunities within the City, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the City; and

WHEREAS, the City authorized the preparation of reports, entitled "Downtown Aurora Redevelopment Project Report" ("**Original Plan**") prepared by Teska Associates, Inc., dated September 11, 1986, and the "First Amendment to the Downtown Redevelopment Plan and Project", prepared by Kane, McKenna and Associates, Inc. dated November 2003 ("**Redevelopment Plan**") concerning the redevelopment of the central Aurora downtown area, including 80 South River; and

WHEREAS, in accordance with the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et. seq.* (the "**Act**"), the City conducted a public hearing with respect to the Original Plan and a public hearing with respect to the Redevelopment Plan at meetings of the City Mayor and the City Council ("**Corporate Authorities**") held on October 14, 1986 and October 14, 2003, respectively; and

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

WHEREAS, to stimulate and induce redevelopment in the TIF District pursuant to the Act, the City has adopted the following ordinances, after giving all notices required and after conducting public hearings as required by law ("**Enabling Ordinances**"):

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

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

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

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

5. Ordinance No. 003-147, adopted November 4, 2003, titled "An Ordinance Supplementing and Affirming Ordinance No. 086-5597 entitled

'An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois Designating the Downtown Aurora Redevelopment Project Area of Said City a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Project Act"; and

6. Ordinance No. 003-148, adopted November 4, 2003, titled "An Ordinance Supplementing Ordinance No. 86-5598 Entitled 'An Ordinance of the City of Aurora, Kane and DuPage Counties, Illinois Adopting Tax Increment Allocation Financing for Downtown Aurora Redevelopment Project Area"; and

WHEREAS, the Downtown TIF District authorization was nearing expiration and the City received an extension of such authorization from the State of Illinois, and the City has implemented the extension of the Downtown TIF District; and

WHEREAS, the City is authorized under the provisions of the Act, to acquire by purchase or donation land and other property within the Downtown Aurora Redevelopment Project Area; and

WHEREAS, 80 South River lies within the Downtown Aurora Redevelopment Project Area; and

WHEREAS, the City has declared by ordinance that it is necessary or convenient for it to use, occupy or improve 80 South River for the public purpose of promoting the health, safety and welfare of the City and its inhabitants, preventing the presence of blight, encouraging private development in order to enhance the local tax base, increasing tax revenues realized by the City, fostering increased economic activity within the City, and increasing employment opportunities within the City, all of which are in the best interests of the City; and

WHEREAS, this Agreement has been submitted to the Corporate Authorities of the City for consideration and review; the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the Agreement binding upon the City; and any and all actions of the Corporate Authorities of the City precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

WHEREAS, this Agreement has been submitted to the Board of Education of the School District for consideration and review; the Board of Education has taken all actions required to be taken prior to the execution of this Agreement in order to make the Agreement binding upon the School District; and any and all actions of the Board of Education of the School District precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

WHEREAS, this Agreement has been submitted to Dreyer for consideration and review; Dreyer has taken all actions required to be taken prior to execution of this Agreement in order to make the same binding upon the Dreyer; and any and all actions of Dreyer precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE
INCORPORATION OF RECITALS

1.1 **Recitals**. The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out *verbatim* in this **Article One**, and constitute findings, representations and agreements of the City, the School District and Dreyer.

ARTICLE TWO
DEFINITIONS

2.1 **Definitions**. For purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement including those in the recitals hereto shall have the following meaning:

“80 South River” means 80 South River Street, Aurora, Illinois and legally described on ***Exhibit A***.

“1870 West Galena” means 1870 West Galena Boulevard, Aurora, Illinois and legally described on ***Exhibit B***.

“2285 Sequoia” means 2285 Sequoia Drive, Aurora, Illinois and legally described on ***Exhibit C***.

“1221 North Highland” means 1221 North Highland Avenue, Aurora, Illinois and legally described on ***Exhibit D***.

“Agreement” means this agreement.

“City” means the City of Aurora, Illinois, an Illinois home rule municipal corporation.

“Corporate Authorities” means the Mayor and City Council of the City of Aurora, Illinois.

“Dreyer” means Dreyer Clinic, Inc. an Illinois corporation or any successors in interest thereof.

“1870 West Galena Aurora Property Taxes” means the amount of “Real Property Taxes Extended” against 1870 West Galena by the Kane County Clerk as a result of the levy of taxes by the City. For purposes of this Agreement, the term “Real Property Taxes Extended” shall mean taxes extended as a result of the City’s levy of taxes for general corporate purposes, bond and interest, Illinois Municipal Retirement Fund (I.M.R.F.), Firefighter’s Pension and Police Pension purposes but shall not include taxes extended as a result of the levy of taxes for the Aurora City Library. .

“2285 Sequoia Drive Aurora Property Taxes” means the amount of “Real Property Taxes Extended” against 2285 Sequoia by the Kane County Clerk as a result of the levy of taxes by the City. For purposes of this Agreement, the term “Real Property Taxes Extended” shall mean taxes extended as a result of the City’s levy of taxes for general corporate purposes, bond and interest, Illinois Municipal Retirement Fund (I.M.R.F.), Firefighter’s Pension and Police Pension purposes but shall not include taxes extended as a result of the levy of taxes for the Aurora City Library. .

“1221 North Highland Aurora Property Taxes” means the amount of “Real Property Taxes Extended” against 1221 North Highland by the Kane County Clerk as a result of the levy of taxes by the City. For purposes of this Agreement, the term “Real Property Taxes Extended” shall mean taxes extended as a result of the City’s levy of taxes for general corporate purposes, bond and interest, Illinois Municipal Retirement Fund (I.M.R.F.), Firefighter’s Pension and Police Pension purposes but shall not include taxes extended as a result of the levy of taxes for the Aurora City Library. .

“Party” means the City, School District and/or Dreyer and their successors and/or assigns as permitted herein.

“Person” means an individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof.

“Property Tax Rebate Cap” is the total aggregate amount of “Real Property Taxes Extended” against 1870 West Galena, 2285 Sequoia, and 1221 North Highland by the Kane County Clerk as a result of the levy of taxes by the City that the City is required to rebate to Dreyer. For purposes of this Agreement, the Aurora Property Tax Rebate Cap is equal to One Hundred Fifty Thousand Dollars (\$150,000.00).

“School District” means the West Aurora School District No. 129, an Illinois public school district.

“State” means the State of Illinois.

“TIF District” means the Downtown Redevelopment Project Area of the City.

ARTICLE THREE **CONSTRUCTION**

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

(a) Definitions include both singular and plural.

(b) Pronouns include both singular and plural and cover all genders.

(c) The word “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

(d) Headings of articles and sections herein are solely for convenience or reference and do not constitute a part hereof and shall not affect the meaning, construction or effect of the text of this Agreement.

(e) All exhibits attached to this Agreement shall be and are operative provisions of this Agreement 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.

(f) Any certificate, letter, or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like shall be in writing whether or not a writing is specifically mentioned.

(g) The City Mayor, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make, 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 School District and Dreyer are 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 such authority by the City.

(h) The School District's Superintendent, unless applicable law requires action by the Board of Education, shall have the power and authority to make, 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 School District and with the effect of binding the School District as limited by and provided for in this Agreement. The City and Dreyer are entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the School District as having been properly and legally given such authority by the School District.

(i) In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable law or contract require action by Dreyer in a different manner, Dreyer hereby designates its President as its authorized representative who shall individually have the power and authority to do all things required or described in this Agreement for and on behalf of Dreyer and with the effect of binding Dreyer (such individual being an "Authorized Representative"). Dreyer shall have the right to change its Authorized Representative by providing the City and School District with written notice of such change which notice shall be sent in accordance with **Section 7.2**.

ARTICLE FOUR
PURCHASE AND SALE OF 80 SOUTH RIVER

4.1 Sale and Purchase of 80 South River. On the Closing Date, as hereinafter defined, and subject to the terms and conditions of this Agreement, School District hereby agrees to sell and convey 80 South River to the City, and the City hereby agrees to purchase 80 South River from the School District, upon the terms and conditions set forth herein, such property to be conveyed with all rights, title and interest of the School District in and to all easements, rights, privileges, appurtenances and other rights and improvements to all the property.

4.2 Purchase Price. The aggregate purchase price for 80 South River shall be One Hundred Fifty Thousand Dollars (\$150,000.00).

4.3 Terms of Payment. The City shall pay the purchase price for 80 South River with real property tax rebates to be provided to Dreyer as provided for in **Article 5** below.

4.4 Studies and Evaluations. The City's obligation to purchase 80 South River is not contingent upon the City conducting, or having conducted, any studies

or evaluations. Any studies or evaluations the School District has already conducted on 80 South River will be made available to the City at no expense to the City.

4.5 The Deed. The School District shall convey or cause to be conveyed to the City by recordable, stamped deed, title to 80 South River subject only to the following "permitted exceptions", if any:

- (a) General real estate taxes not due and payable at the time of closing;
- (b) Special assessments confirmed after the date of this contract;
- (c) Building, building line and use or occupancy restrictions, conditions and covenants of record;
- (d) Zoning laws and ordinances;
- (e) Easements for public utilities;
- (f) Public road and highways and easements pertaining thereto and rights therein; and
- (g) Right-of-way for drainage tiles, ditches, laterals and feeders.

4.6 Title. The School District covenants that it has full legal, beneficial and equitable ownership of 80 South River, and that it has the right and power to convey 80 South River to the City. 80 South River is to be sold and conveyed free of liens, and title is to be good of record, merchantable and insurable. Within thirty (30) days from the date of execution of this Agreement, but prior to closing, the School District shall provide the City a preliminary title commitment for 80 South River showing coverage in the full amount of the purchase price. Within ten (10) days of receipt of the title commitment, the City shall advise the School District in writing (hereinafter referred to as the "Title Notices") of any item revealed in the title examination (other than the "permitted exceptions" as defined in **Section 4.5** that, in City's sole discretion, will impede, hinder the use of, or unreasonably interfere with the City's intended use of 80 South River (hereinafter referred to as "Objections"). The School District shall advise the City in writing within five (5) days of receipt of the Objections of all Objections which the School District determines it will be unable to so cure at or prior to Closing; all other Objections shall be cured by the School District at or prior to Closing. In the event the School District advises the City of its inability to cure one or more Objections, the City may, at its option, within five (5) days from receipt of the School District's response, elect to either (1) waive such Objections and proceed to settlement, without any right of action against the School District; or (2) terminate this Agreement in its entirety without any right of action against the School District. Any of the aforesaid courses of action by the City shall be communicated to the School District in writing. Notwithstanding anything to the contrary above, any Deed of Trust, judgments,

unpaid state or federal taxes, inheritance taxes, unpaid real estate taxes, or any other liens against 80 South River that can be cured by the payment of money, shall be first paid and released of record by the School District at settlement (if not sooner paid and released of record by the School District). Title shall be fully insurable under a full coverage owner's title policy issued by Fidelity National Title Insurance Company, including extended coverage over Schedule B General Exceptions in the amount of the purchase price, at standard rates and without requirement or exception, subject only to: (1) the permitted exceptions as set forth in **Section 4.5**; (2) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount, which may be approved by the payment of money at the time of Closing; and (3) acts done or suffered by, or judgments against the City, or those claiming by, through or under the City. Any title commitment which conforms with this Section shall be conclusive evidence of good title as therein shown, as to all matters insured by the policy, subject only to special exceptions therein stated.

4.7 Affidavit of Title. The School District shall furnish the City at closing an Affidavit of Title, covering the date of closing, subject only to those permitted special exceptions set forth in **Section 4.5**, and unpermitted exceptions, if any, as to which the title insurer commits to extend insurance in the manner specified by **Section 4.6**.

4.8 Closing. Subject to the provisions set forth below, the Closing shall be on a date mutually agreed upon by the City and School District. The Closing shall be subject to the following conditions precedent:

(a) The School District shall not be in default under this Agreement beyond any applicable notice and cure periods provided hereunder.

(b) Each of the School District's representations and warranties set forth in **Section 4.9** herein shall be true as of the Closing.

(c) The condition of 80 South River shall be in the same condition in all material respects as it was at the time of the School District and the City signing this contract.

(d) Closing of the sale of 80 South River shall be held at the office of the title company designated by the School District and at a time designated by the School District. The Deed and/or such other papers as are required by either party under the terms of this Agreement, all properly executed, shall be considered good and sufficient tender of performance thereof.

4.9 School District's Representations, Warranties and Covenants. The School District hereby represents and covenants to the City that:

(a) The School District has good and marketable title to 80 South River insurable at regular rates by reputable insurance companies and without exceptions, and will convey the same at closing.

(b) At closing, the City will be entitled to immediate, exclusive and unconditional possession of 80 South River and 80 South River will be free and clear of all tenants, and there shall be no claims of possession against or affecting 80 South River.

(c) Except as provided for in this Agreement, the School District has made no written commitments or representations to the applicable governmental authorities or any adjoining or surrounding property owners, and to the best of the School District's knowledge has made no such oral commitments or representations, which would in any manner be binding upon the City or interfere with City's ability to use or redevelop 80 South River. The School District covenants and agrees that the School District will not make any such commitment or representation after the date of this Agreement except as specifically requested by City in writing.

(d) All contractors, sub-contractors, laborers and material men performing work upon or furnishing labor or materials to improve or benefit 80 South River at the School District's request have been paid or will be paid in full by the School District. Accordingly, the School District hereby agrees to indemnify and hold the City harmless from any claims, liabilities, damages, or expenses which the City, its successors and assigns, may incur by reason of any mechanic's or material men's liens filed against 80 South River or claims against the City for work performed or materials furnished by or at the request of the School District. The School District will promptly execute the necessary affidavits, indemnification agreements and other documents required by title insurance companies to eliminate from its title policies (including owner's policies) any exception to filed or unfiled mechanics' liens and will supply the City or the City's title insurance company with copies of all such documents affecting 80 South River or any portion thereof along with final lien waivers.

(e) The School District will not further encumber 80 South River or negotiate for, or agree to, its sale.

(f) In all other respects, 80 South River is being sold "as is" and the School District makes no warranties as to the condition of 80 South River.

(g) The School District is a public school district duly organized and validly existing under the laws of the State of Illinois and has all requisite power and authority to enter into this Agreement. The execution, delivery and performance of this Agreement and the consummation by the School District 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 School District; (ii) require no other consents, approvals or authorizations on the part of the School District in connection with the School District's execution and delivery of this Agreement; (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 School District is subject; and (iv) will not violate any provision of any legal requirement to which the School District or 80 South River is subject, or violate any judgment, order, writ, injunction or decree of any court applicable to the School District or 80 South River.

(h) To the best of the School District's knowledge, there are no proceedings pending or threatened against or affecting the School District in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the School District to perform its obligations under this Agreement.

4.10 Insurance. Prior to entering onto 80 South River for any purpose, the City shall execute a standard form of license agreement for the benefit of the School District, and City and City's consultants shall provide the School District with certificates of insurance, naming the School District as an additional primary, non-contributory insured, issued by such companies and in such amounts as shall be determined by the School District in the exercise of its discretion.

4.11 Compliance with Governmental Orders. The City and School District shall provide, and consent to the reporting of all information regarding this sale required by any act, regulation or statute, including all amendments thereto, of the United States of America, the State of Illinois (or any agency of subdivision thereof). In addition, all notes and notices of violation of county, state, federal or other governmental orders, directives, statutes, ordinances or other requirements noted or issued by any governmental department, or action in any court on account hereof or affecting 80 South River on the effective date of the Agreement shall be complied with prior to closing and 80 South River shall be conveyed free of the same. Any such notices received subsequent to the date hereof but prior to the closing shall be the responsibility of the School District unless precipitated solely by an act or omission of the City including, but not limited to, all notices which may be received as a result of any required notice to governmental officials which must be given as a result of City's investigations. The School District agrees to advise the City promptly upon receipt of any such notice and of any information adversely affecting 80 South River.

4.12 Transfer Tax Stamps. This transaction is exempt from the payment of State of Illinois, County of Kane, and City of Aurora transfer tax stamps.

4.13 Closing Costs. The City will bear any and all closing costs customarily charged to the buyer in real estate transactions in Kane County, Illinois. The School District will bear any and all closing costs customarily charged to the seller in real estate transactions in Kane County, Illinois.

4.14 Survey. At least fifteen (15) days prior to closing, the School District shall provide to the City a current survey of 80 South River, prepared by an Illinois licensed surveyor showing all corners staked, all easements of record and all road rights-of-way.

4.15 Commission Fees. The School District and the City each warrant to the other that neither has dealt with any agent, broker or finder with respect to the transaction contemplated by this Agreement.

4.16 Possession and Occupancy. The School District shall give the City sole and exclusive possession and occupancy of 80 South River at closing.

ARTICLE FIVE
CITY PROPERTY TAX REBATE

5.1 1870 West Galena Property Tax Rebate. Commencing with tax year 2015 and continuing until such time as the Property Tax Rebate Cap is reached, the City shall annually reimburse Dreyer an amount equal to the 1870 West Galena Aurora Property Taxes as defined above. Such reimbursement payment shall be made annually, starting in calendar year 2016 and ending when the Property Tax Rebate Cap is reached. The property tax rebate for the 2015 tax year paid by the City in calendar year 2016 shall be made within 45 days of the later to occur: (1) Dreyer's transfer of 1870 West Galena to the School District; or (2) receipt by the City of the second distribution of property taxes from the Kane County Collector. For all subsequent tax years, the property tax rebate payment shall be made within 45 days of receipt by the City of the second distribution of property taxes from the Kane County Collector.

5.2 2285 Sequoia Property Tax Rebate. Commencing with tax year 2015 and continuing until such time as the Property Tax Rebate Cap is reached, the City shall annually reimburse Dreyer an amount equal to the 2285 Sequoia Aurora Property Taxes as defined above. Such reimbursement payment shall be made annually, starting in calendar year 2016 and ending when the Property Tax Rebate Cap is reached. The property tax rebate for the 2015 tax year paid by the City in calendar year 2016 shall be made within 45 days of the later to occur: (1) Dreyer's transfer of 1870 West Galena to the School District; or (2) receipt by the City of the second distribution of property taxes from the Kane County Collector. For all subsequent tax years, the property tax rebate payment shall be made within 45 days of receipt by the City of the second distribution of property taxes from the Kane County Collector.

5.3 1221 North Highland Property Tax Rebate. Commencing with tax year 2015 and continuing until such time as the Property Tax Rebate Cap is reached, the City shall annually reimburse Dreyer an amount equal to the 1221 North Highland Aurora Property Taxes as defined above. Such reimbursement payment shall be made annually, starting in calendar year 2016 and ending when the Property Tax Rebate Cap is reached. The property tax rebate for the 2015 tax year paid by the City in calendar year 2016 shall be made within 45 days of the later to occur: (1) Dreyer's transfer of 1870 West Galena to the School District; or (2) receipt by the City of the second distribution of property taxes from the Kane County Collector. For all subsequent tax years, the property tax rebate payment shall be made within 45 days of receipt by the City of the second distribution of property taxes from the Kane County Collector.

5.4 Property Tax Rebate Cap. It is understood that the Property Tax Rebate Cap is the total aggregate amount the City will be required to reimburse Dreyer for the School District's transfer of 80 South River to the City and Dreyer's transfer of 1870 West Galena to the School District. In no event shall the total amount reimbursed to Dreyer under **Sections 5.1, 5.2 and 5.3** be more or less than the Property Tax Rebate Cap. When the total amount of the reimbursement provided in **Sections 5.1, 5.2 and 5.3** (taken as a whole) exceeds the Property Tax Rebate Cap, then the City shall reimburse the City's Real Property Taxes Extended on a prorated basis bringing the total amount of reimbursement to the Property Tax Rebate Cap of One Hundred and Fifty Thousand Dollars (\$150,000.00).

5.5 Conditions to Reimbursement. The City shall authorize the distribution of the property tax rebates under **Sections 5.1, 5.2 and 5.3** upon satisfaction of the following conditions:

- (a) Dreyer has transferred ownership of 1870 West Galena to the School District;
- (b) All property taxes then due and owing from Dreyer for 1870 West Galena, 2285 Sequoia, and 1221 North Highland have been paid in full;
- (c) Dreyer has submitted to the City Treasurer a letter requesting disbursement of the property tax rebate and proof of payment of the property taxes for 1870 West Galena, 2285 Sequoia, and 1221 North Highland; and
- (d) Dreyer is not in default under this Agreement after expiration of all applicable cure periods.

ARTICLE SIX
EVENTS OF DEFAULT

6.1 City's Default. If the City has failed to comply with the agreements, covenants and warranties hereof, the School District and/or Dreyer may (a) terminate this Contract, or (b) pursue an action at law for damages or an action in equity for specific performance.

6.2 School District's Default. If the School District has failed to comply with the agreements, covenants and warranties hereof, the City and/or Dreyer may (a) terminate this Contract, or (b) pursue an action at law for damages or an action in equity for specific performance.

6.3 Dreyer's Default. If Dreyer has failed to comply with the agreements, covenants and warranties hereof, the City and/or School District may (a) terminate this Contract, or (b) pursue an action at law for damages or an action in equity for specific performance.

ARTICLE SEVEN
MISCELLANEOUS PROVISIONS

7.1 Authority to Contract. Each individual executing this Agreement respectively represents and warrants in his or her individual and official capacities that such person has been duly authorized to execute this Agreement on behalf of the Party in whose name the Agreement is executed, and that no further approvals, authorizations or signatories are required for a binding agreement, and that this Agreement is a valid and binding obligation of such Party.

7.2 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing by any of the following means: (a) personal service, (b) electronic communications, (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested at the following addresses:

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
Corporation Counsel
44 E. Downer Place
Aurora, Illinois 60507-2067

If to School District:

West Aurora School District No. 129
80 S. River Street
Aurora, Illinois 60506
Attention: Superintendent

With a copy to:

Whitt Law LLC
70 S. Constitution Drive
Aurora, Illinois 60506
Attention: Stuart L. Whitt

If to Dreyer:

Dreyer Clinic Inc.
2357 Sequoia Drive
Aurora, Illinois 60506
Attention: President

With a copy to:

Advocate Health Care
3075 Highland Parkway
Downers Grove, Illinois 60515
Attention: General Counsel

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. 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 when received by addressee.

7.3 Time is of Essence. Time is of the essence of this Agreement.

7.4 Integration. Except as otherwise 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.

7.5 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

7.6 Severability. If any provision of this Agreement is held invalid the remainder of the Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

7.7 Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and venue for any litigation shall lie solely in the Circuit Court of Kane County, Illinois.

7.8 Entire Contract and Amendments. This Agreement (together with the Exhibits attached hereto) is the entire contract between the City, School District and Dreyer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between, the City, School District and Dreyer and may not be modified or amended except by written instrument executed by the Parties hereto.

7.9 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the City, School District and Dreyer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the City, School District and Dreyer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City, School District or Dreyer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

7.10 Waiver. Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

7.11 Cooperation and Further Assurances. The City, School District and Dreyer each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and

transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City, School District or Dreyer or other appropriate persons all the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

7.12 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective authorized successors and assigns.

7.13 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

7.14 No Personal Liability of Officials of City, School District or Dreyer. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, partner, shareholder, director, agent, employee or attorney of the City, School District or Dreyer, in his or her individual capacity, and no official, officer, partner, shareholder, director, agent, employee, or attorney of the City, School District or Dreyer 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.

7.15 Repealer. To the extent that any ordinance, resolution, rule, order or provision of the City's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

7.16 Term. The Parties agree that this Agreement shall not merge with the conveyance of the deed to the City for 80 South River and shall expressly survive the Closing. This Agreement shall remain in full force and effect until such time as 80 South River has been transferred to the City as provided for in **Article 4** and the Property Tax Rebate Cap has been reached as provided for in **Article 5**.

7.17 Estoppel Certificates. Each of the Parties hereto agrees to provide the other, upon not less than ten (10) business days prior notice, a certificate ("Estoppel Certificate") certifying that this Agreement is in full force and effect (unless such is not the case, in which case such Parties shall specify the basis for such claim), that the requesting Party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provisions (or specify each such claimed default) and certifying such other matters reasonably requested by the requesting Party. If either Party fails to comply with this provision within the time limit specified, it shall be deemed to have appointed the other as its attorney-in-fact for execution of same on its behalf as to that specific request only.

ARTICLE EIGHT
EFFECTIVENESS

8.1 Effective Date. The Effective Date for this Agreement shall be the day on which this Agreement is fully executed pursuant to duly enacted City ordinance and School District resolution authorizing the execution of and adoption of this Agreement.

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

CITY OF AURORA, an Illinois municipal corporation,

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

WEST AURORA SCHOOL DISTRICT NO. 129, an Illinois public school district,

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

DREYER CLINIC, INC., an Illinois corporation,

By: Denise Skopec

Its: President

ATTEST:

By: _____

Its: _____