

**REDEVELOPMENT AGREEMENT  
FOR REDEVELOPMENT OF 7 S. BROADWAY  
IN THE CITY OF AURORA, ILLINOIS**

This **REDEVELOPMENT AGREEMENT FOR REDEVELOPMENT OF 7 S. BROADWAY IN THE CITY OF AURORA , ILLINOIS** (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the "Effective Date") by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation (the "City"), \_\_\_\_\_, LLC, [*an Illinois*] limited liability company, its permitted successors and or assigns (the "Developer"), and Curt Hurst and Conrad Hurst, or their permitted successors and/or assigns, in their individual capacities (together the "Guarantors" or individually a "Guarantor"). The City and the Developer are sometimes referred to herein individually as a "Party," and collectively as the "Parties."

**WITNESSETH:**

**IN CONSIDERATION** of these preliminary statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereto agree as follows:

**I. PRELIMINARY STATEMENTS**

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The City is a home rule unit of government in accordance with Article VII, Section 6 of the Constitution of the State of Illinois, 1970.
- B. The City has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the City and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the City, to foster increased economic activity within the City, to increase employment opportunities within the City, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the City.
- C. The City is authorized under 65 ILCS 5/8-1-2.5 to appropriate and expend funds for economic development purposes, including making grants and loans to commercial enterprises that the City deems necessary or desirable for the promotion of economic development within the City.
- D. New restaurants in the City's downtown area (the "Downtown Area") have been a long-sought goal of the City, its consolidated population and the new residents attracted by recently approved residential developments in the Downtown Area; and the increasing number of visitors that have been

attracted to the City's more popular destinations within the Downtown Area, such as the Paramount, RiverEdge Park. Restaurants support a population living, working, or visiting a city that in turn adds to an environment that encourages more economic development.

- E. The City owns the vacant real property located within the Downtown Area at 7 S. Broadway, Aurora, Illinois, legally described and depicted in EXHIBITS A and B, respectively, attached hereto and made a part hereof (the "Property"). The Property has not generated substantial rental income or tax revenue for the City for a significant period of time. The Property requires substantial rehabilitation to make it suitable for a tax-generating business.
- F. The Developer desires to acquire the Property from the City and redevelop it with a restaurant use with a full service bar (the "Restaurant"), subject to approval in accordance with the City Code, all as depicted on the site plans and elevations attached hereto as EXHIBIT C, and made part hereof, and as described in further detail, including the *pro forma*, financial projections and timeline, in EXHIBIT D attached hereto and made part hereof (the "Project"), with total capital investment of approximately One Million Six Hundred Fifty-Four Thousand Nine Hundred Eleven and No/100 Dollars (\$1,654,911.00). The Project is to be financed as provided herein through:
  - 1. Developer equity and/or third-party financing in the amount Eight Hundred Twenty-Seven Thousand Four Hundred Fifty-Five and 50/100 Dollars (\$827,455.50)
  - 2. City Forgivable Loan (as defined below) in the amount of Four Hundred Thirteen Thousand Five Hundred Forty-Seven and No/100 Dollars (\$413,547.00)
  - 3. City Grant (as defined below) in the amount of Four Hundred Thirteen Thousand Five Hundred Forty-Seven and No/100 Dollars (\$413,547.00)
  - 4. Property to be purchased by Developer for the price of One Hundred Thousand and No/100 (\$100,000.00), to be paid by Developer to the City at the closing.
- G. The Developer is a single purpose development entity, owned and managed by Guarantors, and organized to own, operate, develop, construct, and manage the Project. Curt Hurst, through various development and management entities, has been developing, owning and/or operating residential, commercial and mixed-use developments in the Chicago area since 1992 and previously sold his homebuilding company, Summit Homes, to Lennar, one of the largest home building companies in the United States. Guarantors, through their various development and ownership entities, have also taken a major role in the redevelopment of downtown St. Charles including the purchase and renovation of the Arcada Theater, the renovation and construction of the Flagship on the Fox and Pollyanna

Brewing properties and the renovation of an historic building that now houses the extremely well received Graceful Ordinary restaurant as well as residential and commercial units.

- H. The concept of Developer for the Restaurant is Vicolo (Italian for Alley), a charming European café and Pasticceria set to become a delightful culinary destination for the downtown. Vicolo will offer a unique experience that seamlessly transitions from a laid-back European café during the day to an elevated dining destination in the evening. The Restaurant will have seating in Skinny Park through an opening in the building's southern façade as well as on Water Street mall through the Skinny Park/Water Street License Agreement (defined below). The City will assist in any site preparation in the park to facilitate this outdoor dining, as set forth in this Agreement and in the Skinny Park/Water Street License Agreement.
- I. The City recognizes the variety of Italian dining options available to residents and visitors, including options with formal, multi-course gourmet offerings and upscale atmosphere catering to a high-end dining experience, and options that provide a family-oriented environment with a focus on homemade pasta and pizzas suitable for groups; however, there is need for a distinctive dining option that combines casual dining with a sophisticated culinary approach. The Restaurant fulfills this niche by offering a unique bistro concept that includes a diverse menu of finely crafted salads, soups, panini, and pasta dishes, catering to individuals seeking quality, flavorful Italian cuisine in a relaxed yet refined setting;
- J. The City's Building and Permits Department has estimated that in order to lease the Property to an income-generating user, significant investment would be required to prepare the finished Restaurant space; specifically, an estimated amount beyond base development of the Property and the base building construction equal to (i) \$255,150.00 to complete interior improvements to a white box finish, and (ii) an additional \$510,300.00 to complete interior finishes, totaling approximately \$765,450.00; accordingly, the economic incentive provided in this Agreement is a prudent investment, facilitating rapid occupancy of the Restaurant, a desired amenity to the Downtown Area and generating long-term economic benefits for the City.
- K. This Agreement is in furtherance of the City's goals to eliminate blight, encourage growth and promote economic development and increased employment in the Downtown Area and to ensure that the Property is redeveloped in accordance with the City's desires and in a way that serves the public's health, safety and welfare.
- L. The redevelopment of the Property with the Project would significantly assist in the stabilization and revitalization of the Property, the Downtown Area, and the City as a whole.

- M. The City is desirous of having the Property rehabilitated, developed and redeveloped with the Project in accordance with the Agreement in order to serve the needs of the City, arrest physical decay and decline in the Downtown Area, increase employment opportunities, stimulate commercial growth and stabilize the tax base of the City. In furtherance thereof, the City is willing to undertake certain incentives, under the terms and conditions hereinafter set forth, to assist such redevelopment.
- N. It is necessary for the successful completion of the Project that the City enter into this Agreement with Developer to provide for the redevelopment of the Property.
- O. Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Property with the Project, but for certain incentives, to be provided by the City in accordance its statutory and home rule powers, which the City is willing to provide under the terms and conditions contained herein. The Parties acknowledge and agree that but for the incentives contained herein, to be provided by the City, Developer cannot successfully and economically develop the Property with the Project, in a manner satisfactory to the City. The City has determined that it is desirable and in the City's best interests to assist Developer in the manner set forth herein and as this Agreement may be supplemented and amended from time to time.
- P. The City, in order to stimulate and induce development of the Property with the Project, has agreed to finance certain development costs through and otherwise assist with the development of the Project, all in accordance with the terms and provisions of State law and the City's home rule authority, and this Agreement.
- Q. This Agreement has been submitted to the Corporate Authorities of the City (as defined below) for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the City according to the terms hereof, and any and all actions of the Corporate Authorities of the City precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.
- R. This Agreement has been submitted to the board of directors, corporate officers, shareholders, members and/or managers of the Developer for consideration and review, the Developer's board of directors, corporate officers, shareholders, members and/or managers have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Developer's board of directors, corporate

officers, shareholders, members and/or managers, as the case may be, precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

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

## II. DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, and as follows:

- A. **“Change in Law”** means the occurrence, after the Effective Date, of an event described below in this definition, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon:

Change in Law means any of the following: (1) the enactment, adoption, promulgation or modification of any federal, State or local law, ordinance, code, rule or regulation (other than by the City or with respect to those made by the City, only if they violate the terms of this Agreement); (2) the order or judgment of any federal or State court, administrative agency or other governmental body (other than the City); or (3) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the City, or, with respect to those made by the City, only if they violate the terms of this Agreement). Change in Law, for purposes of this Agreement, shall also include the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the actions to be performed under this Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the City, except as provided herein).

- B. **“City Code”** means the City of Aurora Municipal Code, as amended.
- C. **“Collateral Assignment”** means an assignment of this Agreement by Developer to a Mortgagee as collateral security for Project financing extended by such Mortgagee.
- D. **“Consent to Collateral Assignment”** means the Consent from the City to a Mortgagee acknowledging and consenting to the Collateral Assignment,

in form attached hereto as **EXHIBIT**, or as otherwise reasonably required by a Mortgagee.

- E. **“Corporate Authorities”** means the Mayor and City Council of the City of Aurora, Illinois.
- F. **“Day”** means a calendar day.
- G. **“Due Diligence Materials”** means the Environmental Reports and other documents and materials pertaining to the Property which are either delivered by City as set forth in Contract or obtained by Developer for review of the conditions existing at, and feasibility of redevelopment of, the Property with the Project and as a condition to the Developer’s obligation to acquire the Property as permitted in this Agreement.
- H. **“Due Diligence Notice”** means a notice delivered by Developer to the City not later than 5:00 PM central time (standard or daylight, as applicable) on the thirtieth (30<sup>th</sup>) day after the receipt of Due Diligence Materials.
- I. **“Due Diligence Period”** means a period of thirty (30) days after delivery of the Environment Reports and the other City Due Diligence Materials, followed by thirty (30) days to review any subsequent Due Diligence Materials which are required by Developer after delivering any Due Diligence Notice hereunder and which is permitted in this Agreement or the Contract.
- J. **“Effective Date”** means the day on which this Agreement is executed by the City and the Developer, with said date appearing on page 1 hereof.
- K. **“Governmental Approvals”** means the permits, licenses and approvals of the City and any other governmental or quasi-governmental body required for the acquisition and redevelopment of the Property with the Project.
- L. **“Party / Parties”** means the City, the Developer and/or the Developer, individually/collectively, and their respective successors and/or assigns as permitted herein, as the context requires.
- M. **“Mortgage”** means a mortgage lien recorded against the Property by a Mortgagee.
- N. **“Mortgagee”** means any financing source or bank which has provided financing to Developer for all or any portion of the Project and who has recorded a Mortgage in connection therewith.
- O. **“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or

political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

- P. **“Skinny Park/Water Street License Agreement”** means the license agreement between the City and Developer and any tenant of the Developer for the use of Skinny Park through an opening in the building’s southern façade as well as on Water Street mall for dining service and seating, for a license fee of not more than \$1/year and in the form attached as **[Exhibit \_\_\_\_]**.
- Q. **“State”** means the State of Illinois.
- R. **“Trash Enclosure License Agreement”** means the license agreement between the City and Developer and any tenant of the Developer for the use of the City’s property located behind 15 South Broadway, Aurora, Illinois to store and use a trash enclosure for the Property, for a license fee of not more than \$1/year and in the form attached as **[Exhibit \_\_\_\_]**.
- S. **“Uncontrollable Circumstance”** means any event which:
1. is beyond the reasonable control of and without the fault of the Party relying thereon; and
  2. is one or more of the following events:
    - a. a Change in Law;
    - b. insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;
    - c. epidemic, pandemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
    - d. governmental condemnation or taking (other than by the City with respect to the City’s obligations hereunder);
    - e. strikes or labor disputes, or work stoppages not initiated by the Developer or the City;
    - f. unreasonable delay in the issuance of building or other permits or approvals by the City or other governmental authorities having jurisdiction (other than the City with respect to the City’s obligations hereunder) including but not limited to IDOT, FWRD, and/or the IEPA;
    - g. shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;
    - h. unknown or unforeseeable geo-technical or environmental conditions;

- i. major environmental disturbances;
- j. vandalism; or
- k. terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in Subsection 2.g. above); or a failure of performance by a contractor (except, in each of the above cases, as caused by events which are Uncontrollable Circumstances).

For each day that the City or the Developer is delayed in its performance under this Agreement by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day without penalty or damages to either Party.

### **III. CONSTRUCTION OF TERMS**

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

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.
- C. The word "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation".
- D. Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the Agreement shall control.
- F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use. Likewise, any approvals or consents, except for Government Approvals, to be given hereunder or in connection with the Project shall not be unreasonably withheld or delayed and shall be given within a period of not less than ten (10) days from notice of request,



unless context or other issues or legal requirements reasonably require a longer period.

- G. The City Mayor, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the City and with the effect of binding the City as limited by and provided for in this Agreement. Developer is entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the City as having been properly and legally given by the City.
- H. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates Conrad Hurst as its authorized representative, who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of the Developer and with the effect of binding the Developer in that regard (such individual being designated as an “Authorized Developer Representative”). The Developer shall have the right to substitute Curt Hurst as the Authorized Developer Representative at any time upon written notice to the City, without further consent or authorization of the City. The Developer shall have the right, subject to approval by the City’s Director of the Mayor’s Office of Economic Development, to change its Authorized Developer Representative by providing the City with written notice of such change from both authorized representatives which notice shall be sent in accordance with Section XVI.C. of this Agreement. The new Authorized Developer Representative will be approved if the City’s Director of the Mayor’s Office of Economic Development determines the person to be a competent replacement with sufficient experience and expertise to serve as the Authorized Developer Representative.

#### **IV. COOPERATION OF THE PARTIES**

The City and the Developer agree to cooperate in implementing the Project in accordance with the Parties' respective obligations set forth in this Agreement. This cooperation shall not extend to the involvement of the City in any way in the acquiring of private financing by the Developer, including, but not limited to, the guaranty of any funds other than the commitment listed specifically in this Agreement.

#### **V. DEVELOPMENT OF THE PROPERTY**

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

A. **Property Conveyance.** The City is the owner of the Property and shall convey the Property to the Developer as set forth in this Agreement and the Contract (defined below). For the conveyance of the of the Property from the City to the Developer:

1. **Contract.** The City shall transfer title to the Property to the Developer pursuant to the "Real Estate Purchase and Sale Contract" attached hereto as EXHIBIT E, and made a part hereof (the "Contract"), which is hereby approved by the Parties, and which shall be executed by the Parties at the same time as this Agreement, with such changes to the Contract as are needed so that it complies with the terms of this Agreement and the terms below.
2. **Purchase Price:** One Hundred Thousand and zero/100 Dollars (\$100,000.00), to be paid at closing.
3. **Satisfaction of Funding and Lease Contingency.** As a condition precedent to the conveyance of the Property, the Developer shall satisfy the Developer Funding Contingency and Leasing Contingency as required by Section V.D. below and the Parties shall consummate the terms and agreements of the Contract, which terms and agreement shall govern in the event of a conflict between this Agreement and the Contract.
4. **Earnest money deposit:** none.
5. **Due Diligence:** per Contract.
6. **Governmental Approvals:** per Contract.
7. **Environmental Due Diligence:** As part of the Due Diligence Materials, and notwithstanding the provisions of the Contract regarding any other Due Diligence Period or Due Diligence Notice, The City shall obtain a Phase 1 environmental report on the Property at its expense from a consultant of the City's choice and provide the Phase 1 report to the Developer within thirty (30) days of the Effective Date of this Agreement. If within a Due Diligence Period the Developer delivers a Due Diligence Notice to the City that the Phase 1 report reveals any recognized environmental condition and/or recommends further testing through a Phase 2 analysis or other tests or analyses (the "Additional Environmental Due Diligence"), the Developer shall have the right to do one of the following: (1) terminate this Agreement; (2) conduct the Additional Environmental Due Diligence at Developer's expense; or (3)

proceed as set forth in the Contract. In the event that the Developer terminates this Agreement as permitted herein, then this Agreement and the Contract shall be null and void, except for covenants specifically surviving such termination. If the Developer elects to pursue the Additional Environmental Due Diligence, then the Developer shall have an additional Due Diligence Period from and after receipt of such Additional Environmental Due Diligence and shall deliver a Due Diligence Notice as set forth herein in connection with such review, electing to either (i) terminate this Agreement or (ii) proceed as set forth herein and in the Contract.

8. Warranties: as-is, where-is, with no warranties or representations of any kind whatsoever, including environmental, per Contract.
  9. Deed: Special Warranty Deed per Contract.
  10. Closing costs: per Contract.
  11. Closing: Closing of the sale of the Property shall occur within the time period set forth in the Contract after (i) the expiration of any Due Diligence Period and other feasibility or contingency periods provided for in the Contract, including those pertaining to Governmental Approvals and (ii) the satisfaction of conditions to closing in the Contract (the "Acquisition Date").
- B. **Application for Permits and Approvals.** The Developer shall, within thirty (30) days after the Due Diligence Period, subject to Uncontrollable Circumstances and at its sole cost and expense, present schematic designs for the Project to the City.
- C. **Application for Permits and Approvals.** The Developer shall, within forty-five (45) days after the Due Diligence Period, subject to Uncontrollable Circumstances and at its sole cost and expense, apply for all necessary Governmental Approvals. The City shall join in and consent to such applications, as required as the owner of the Property.
- D. **Funding and Lease Contingency.** This Agreement shall be null and void, and the Parties shall have no obligations hereunder, if the Developer does not submit to the City's Chief Financial Officer proof of funding, either through Developer equity, a third party source (including any Mortgagee), or both (the "Developer Funding"), to demonstrate the availability of the Developer Funding prior to the conveyance of the Property by the City to the Developer, or such later date as mutually agreed to by the Mayor and the Developer's Authorized Representative (the "Developer Funding Contingency").

This Agreement shall be null and void, and the Parties shall have no obligations hereunder, if the Developer does not provide the City with a copy of a binding lease agreement between the Developer and the operator of the Restaurant of sufficient lease term to allow Developer to repay the Forgivable Loan (the "Lease"), prior to the conveyance of the Property by the City to the Developer, or such later date as mutually agreed to by the Mayor and the Developer's Authorized Representative (the "Leasing Contingency"). The City acknowledges and agrees to Developer's right to enter into and bind the Property with the Lease as a part of the redevelopment and rehabilitation of the Property as contemplated herein.

- E. **Approval of Contractors.** Prior to contract award and no less than one week prior to the commencement of construction, the Developer shall name the general and major subcontractors for the Project for City review and written approval. These contractors' credentials, participation in a training program, references and use specific experience will be evaluated along with any City history of passing inspection percentage to determine each trades capacity to finish the Project.
- F. **Project Schedule and Reports.** Prior to commencement of construction of the Project the Developer and general contractor shall submit to the City a Project schedule of values and Project milestones broken down by trade in the form of a weekly "Gantt" chart. This Gantt chart shall be updated and presented to the city project contact weekly (by the end of the subsequent week) through the life cycle of the Project. The architect or design professional in charge shall prepare and countersign pay requests attesting to their concurrence of percentage of completion. City staff shall review and approve or raise specific objections to such reports within three (3) business days of receipt of the report or any correction thereof and such report or correction shall be deemed approved if not objected to within such period.
- G. **Commencement of Construction.** The Developer shall commence construction of the Project within the later of: sixty (60) days after receipt of Governmental Approvals or thirty (30) days after the Acquisition Date.
- H. **Completion of Project.** Within thirty (30) days after written request from the Developer and provided that Developer has not received any notice of default under this Agreement or notice of non-compliance with any City Code with respect to Developer's construction obligations, any of which have not been cured, and after the City has issued the final certificate of occupancy for the Project and has confirmed that the Lease is in place, and has confirmed that the related proposed improvements on the Property have been constructed in compliance with the City Code and this Agreement, the City shall deliver a certificate of completion and satisfaction of all construction terms, covenants and conditions contained in this Agreement (the "Certificate of Project Completion") or, if not complete or

satisfied, a written statement as to what deficiencies exist. The Developer shall, subject to Uncontrollable Circumstances, (i) submit its request to the City for a Certificate of Project Completion, (ii) complete the Project and (iii) obtain occupancy of the Project, with an open and operating Restaurant, materially within the timelines for each as set forth in Exhibit D.

- I. **Limited Covenant for No Tax-Exemptions.** The Developer and its respective successors shall not assert a property tax-exempt status for the Property during its respective periods of ownership of, or having an interest in, the Property or the Project. The prohibition on asserting a property tax-exempt status of the Property includes portions owned, leased or operated by not-for-profit entities. This prohibition shall run with the land.
- J. **Trash Enclosure and Skinny Park/Water Street Licenses.** Developer and the City shall enter into the Skinny/Water Street Park License Agreement and Trash Enclosure License Agreement.
- K. **Mayor's Authority to Extend Development Timeline.** The City's Mayor shall have the authority, within the Mayor's sole and unrestricted discretion, to grant extensions to the development timelines specified under this Agreement. Requests for extensions must be submitted in writing to the Mayor's office at least thirty (30) days prior to the expiration of the current deadline. The Mayor's authority to grant extensions under this Section shall be limited to extending the Project Completion Date to no later than November 1, 2026, although more than one extension may be granted. Any extension request seeking to extend the Project Completion Date beyond November 1, 2026, must be approved by City Council.

## VI. UNDERTAKINGS ON THE PART OF THE CITY

- A. **City Cooperation.** The City agrees to cooperate and join, as necessary, with the Developer in the Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the City and, upon request of Developer, will promptly execute any applications or other documents (upon their approval by the City) which the Developer intends to file with such other governmental or quasi-governmental entities in regard to the Project (excluding any such activities that would involve the private financing of the Project). The City shall further promptly respond to, and/or process, and consider reasonable requests of the Developer for applicable permits necessary for the construction and operation of the Project. Approval of any building permit applications and/or engineering plans shall be contingent on the Developer providing all required and requested documentation including but not limited to engineering reports, calculations, plans, engineering fees and security required to substantiate that said improvements fully conform with all applicable state statutes and all City ordinances and codes, as well as receipt of all required approvals from any federal, State, regional or county agencies

having applicable jurisdiction. Subject to providing all applications, and all required and requested related documentation, the City agrees to issue a liquor license to the Developer or its operator for the Restaurant, subject to the Local Liquor Control Commissioner's receipt, review and approval of a proper liquor license application by the operator of the Restaurant and a determination that the operator is qualified for a liquor license under the City Code. City Cooperation specifically excludes any commitment in the provision of Developer financing except as provided for in this Agreement for the City Funding.

**B. Incentives.**

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

- a. The Developer is in compliance with its material obligations in this Agreement.
- b. The Developer is in compliance with all federal, State, Kane County, City and other local laws, ordinances, codes, rules, regulations and directives relating to the acquisition, development, completion and operation of the Project.
- c. The Developer is not in default of its material obligations to any Mortgagee, subject to all applicable notice and cure rights with such Mortgagee.

2. **City Funding.**

- a. Subject to the terms and conditions of this Agreement, the City shall reimburse the Developer for Eligible Project Costs (defined below) from two (2) sources: (i) a Four Hundred Thirteen Thousand Five Hundred Forty-Seven and zero/100 Dollars (\$413,547.00) loan (the "Forgivable Loan"), which shall be repaid as set forth below, and (ii) a grant in the amount of Four Hundred Thirteen Thousand Five Hundred Forty-Seven and zero/100 Dollars (\$413,547.00) (the "City Grant"). The Forgivable Loan and the City Grant, shall be collectively referred to in this Agreement as the "City Funding." The City Funding shall be disbursed through a third-party escrow with Chicago Title & Trust Company, as escrow agent (the "City Funding Escrow"). The Developer shall be responsible for the costs associated with establishing and maintaining the City Funding Escrow. The City Funding shall be disbursed into the City Funding Escrow as set

forth herein and disbursed to or for the benefit of the Developer from the City Funding Escrow on a pari passu basis with the disbursement of the Developer Funding. The estimated total funding for this Project is \$1,654,191.00, excluding the \$100,000.00 cost of the acquisition cost of the Property. The total funding through the City Funding is \$827,094.00 and shall in no event exceed this amount. Therefore, pari passu is defined for purposes of this Agreement as not more than \$1.00 of City Funding for every \$1.00 of Developer funding shall be utilized for Eligible Project Costs and according to the below schedule:

- b. The City shall deposit the City Funding into the City Funding Escrow from time to time as follows:
  - i. Ten percent (10%), in the amount of Eighty-Two Thousand Six Hundred Ninety-One and 40/100 Dollars (\$82,691.40.00), when the Developer receives demolition permits for the Project;
  - ii. Twenty-Five percent (25%), in the amount of Two Hundred Six Thousand Seven Hundred Twenty-Eight and 50/100 Dollars (\$206,728.50), when the Developer has received building and construction permits for the entire Project;
  - iii. Twenty-Five percent (25%), in the amount of Two Hundred Six Thousand Seven Hundred Twenty-Eight and 50/100 Dollars (\$206,728.50), when the Project has received rough in inspection approval on at least fifty percent (50%) of the Project, as determined by the City;
  - iv. Ten percent (10%), in the amount of Eighty-Two Thousand Six Hundred Ninety-One and 40/100 Dollars (\$82,691.40.00), when the Project has received rough in inspection approval for the entire Project, as determined by the City; and
  - v. Thirty percent (30%), in the amount of Two Hundred Forty-Eight Thousand Seventy-Four and 20/100 Dollars (\$248,074.20), when the Project has passed final approved inspections from the City and received the Certificate of Project Completion as defined herein.
- c. Disbursement of City Funding from the City Funding Escrow by Chicago Title Insurance shall be done upon:
  - i. The provision of invoices, waivers of lien and proof of

payment of Eligible Project Costs by Developer for each draw request

- ii. The provision of certified payrolls submitted to the Illinois Department of Labor under the Illinois Prevailing Wage Act, if applicable and required;
  - iii. Satisfaction of the deliveries required in Section V.F. of this Agreement;
  - iv. Approval or specific rejection of said documentation and verification of other conditions to such draw by the City's Chief Financial Officer within three (3) days after receipt thereof or of any correction; and
  - v. Confirmation that sufficient funds are available in the Escrow per the above schedule in Section VI.B.2.b.
- d. For the purposes of accounting for and allocating the City Funding distributed from the City Funding Escrow, the Forgivable Loan shall be deposited into and distributed from the City Funding Escrow first and the City Grant shall thereafter be deposited into and distributed from the City Funding Escrow.
- e. If this Agreement is no longer in effect for any reason other than a default by the City, any City Funding remaining in the City Funding Escrow shall belong to, be owned by, and be released to, the City.

3. **Repayment/Amortization and Additional Terms of the Forgivable Loan and Value of the Property.** The Forgivable Loan shall be amortized over an eight (8) year period on an annual basis (the "Loan Forgiveness Period"), and assuming compliance with this Agreement, during such period all accrued interest and principal will be forgiven in accordance with the schedule in EXHIBIT F attached hereto and made a part hereof (the "Annual Forgiveness Amount"). The Loan Forgiveness Period shall begin on the date that the Restaurant begins operation, as required by Section VII.H. of this Agreement.

As set forth in EXHIBIT F, the Annual Forgiveness Amount is variable based on the combined amount of the following annual taxes actually received by the City related to the Property: (1) "Home Rule Sales Taxes" under Chapter 44, Article 44-XI of the City Code; (2) "Food and Beverage Taxes" under Chapter 44, Article 44-VII; and (3) "State Sales Taxes" pursuant to the Retail Occupation Tax Act, 35 ILCS 120/1, *et seq.*, as amended (the "Property Tax Revenues"). In the event that the Property Tax Revenues are insufficient to amortize the Forgivable Loan after year eight (8) of operation of the Restaurant, the Developer shall make a cash payment to the City to make up the



difference within thirty (30) days of a written demand therefor by the City.

The Forgivable Loan shall be unsecured, except that in the event of a Developer Event of Default (as defined below), the City shall have the authority and Developer hereby permits the City to record a subordinated mortgage lien against the Property, subject to the rights of any Mortgagee under a Mortgage as set forth herein, in the amount of any unamortized principal and interest at the time of the Event of Default, and said amount shall be immediately due and owing by Developer to City. In the event of a sale of the Property or any portion thereof prior to the Forgivable Loan being forgiven, the following shall apply:

- a. Assumption. If the City agrees to the sale, then the Forgivable Loan shall transfer to the new owner who will assume all responsibilities of this Agreement; or
- b. Repayment. If the City does not agree with the sale, and the Property is to be sold without such agreement, the Forgivable Loan shall be paid in full at the closing of such sale and this Agreement shall terminate and no longer be in force or effect. The Developer acknowledges that the City may withhold the City Property Transfer Stamp, pursuant to Section 44-223 of the City Code and other applicable provisions of Chapter 44, Article 44-X of the City Code, until the payment in full of the Forgivable Loan as set forth herein.

4. THE CITY'S OBLIGATION TO PAY THE DEVELOPER THE CITY FUNDING FROM THE CITY FUNDING ESCROW, IS A LIMITED OBLIGATION PAYABLE SOLELY FROM THE CITY FUNDING DEPOSITED IN THE CITY FUNDING ESCROW AND SHALL NOT BE A GENERAL OBLIGATION OF THE CITY OR SECURED BY THE FULL FAITH AND CREDIT OF THE CITY. NOTWITHSTANDING THE FOREGOING THE CITY AGREES THAT SO LONG AS THERE IS NO EVENT OF DEFAULT CAUSED BY DEVELOPER CONTINUING BEYOND APPLICABLE CURE PERIODS THAT THE CITY FUNDS SHALL BE DEPOSITED INTO THE CITY FUNDING ESCROW AS REQUIRED HEREIN AND SHAL BE DISBURSED FOR THE BENEFIT OF THE PROJECT AS SET FORTH HEREIN AND WILL NOT BE WITHDRAWN BY THE CITY FOR ANY OTHER PURPOSE.

5. **Site Preparation for Skinny Park/Water Street Licenses**. The City agrees to make the necessary site preparations for Skinny Park, at

its cost, to accommodate the Restaurant's outdoor dining plans, as set forth in EXHIBIT C, and enter into and deliver the Trash Enclosure License Agreement and the Skinny Park/Water Street License Agreement.

## **VII. DEVELOPER'S OBLIGATIONS**

The Developer shall have the obligations set forth below, in addition to those set forth elsewhere in this Agreement, for the development, construction, financing, completion and furtherance of the Project:

- A. **Use of Funds.** The Developer shall use the City Funding only for reimbursement of legitimate costs of the Project, as detailed in EXHIBIT D (the "Eligible Project Costs"). Disbursement of the City Funding shall be governed by the terms hereof and under the terms of the City Funding Escrow.
- B. **Construction in Accordance With Approvals and Laws.** The Developer shall construct the Project in material compliance with the Governmental Approvals therefor from the City. The Developer shall acquire, install, construct, operate and maintain the Project in material compliance with all applicable laws, rules, ordinances and regulations in force and effect at the time of the granting of the Governmental Approvals. All work with respect to the Project shall materially comply with all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the City, or any of its rules or regulations or amendments thereto which are in effect as of the date of the granting of the Governmental Approvals, or, with respect to property maintenance, in effect from time to time.
- C. **Construction Staging and Right-of-Way Work.** During the construction of the Project, the Developer shall exercise reasonable care to stage its construction of the Project to avoid to the fullest reasonable extent possible any material community disruption. During construction, the Developer shall also keep all public streets used by the Developer reasonably clean from construction debris on a daily basis, and for each day in which such construction debris on public streets is required to be cleaned by the City the Developer shall pay the City the sum of Two Hundred Fifty and No/100 Dollars (\$250.00) for each such violation. The Developer shall park and stage all construction equipment, materials and vehicles to be used in relation to the construction of the Project on the Property, provided however

the Developer shall be permitted to use a portion of Water Street Mall adjacent to the site, as determined in advance and from time to time within the sole but reasonable discretion of the City Engineer upon approval of a City right-of-way permit after submittal of the necessary application and meeting the requirements of the City in regard to right-of-way permit. The Developer shall provide the City with space to perform street and right-of-way improvements and construction at no cost to the City.

**Sufficient Funds.** The Developer shall submit such information as shall be necessary to demonstrate the Developer Funding requirement and to satisfy the Developer Funding Contingency. All or a portion of the Developer Funding may come from a Mortgagee, requiring a Mortgage and a Collateral Assignment from Developer. City shall deliver the Consent to Collateral Assignment to any such Mortgagee and, if applicable, recognize the Mortgagee as required in Article XV hereof.

- D. **Meetings With City.** The Developer shall meet with the Corporate Authorities and City staff and make presentations to the Corporate Authorities and City staff as reasonably requested by the City Mayor or his designees in order to keep the City apprised of the progress of the Project.
- E. **Requests For Information, Documents and Data.** The Developer shall timely provide the City, and the City's consultants, with all information, documents and data requested by the City, and the City's consultants, needed to complete the calculations called for in this Agreement.
- F. **Guaranty.** Guarantors, jointly and severally, hereby absolutely, irrevocably and unconditionally guaranty to the benefit of the City the full and prompt payment of each and all payments required by the Developer under this Agreement including, without limitation, in Section VI.B., when the same shall become due and payable in accordance with their terms (collectively, the "Guaranty"). This Guaranty shall constitute a guaranty of payment and performance when due, and not of collection. Guarantors specifically agree that within thirty (30) days after written notice from the City of the failure of the Developer to timely remit all or any portion of the Developer Funding as required herein, that Guarantors will pay such amount as required under this Agreement. Guarantors agree that such payment obligation is not reliant or contingent upon City proceeding against the Developer or exhausting any other remedies against the Developer. Without limiting the foregoing, Guarantors agree that it shall not be necessary, and Guarantors shall not have the right, and specifically waives any right it may have, to require, as a condition of enforcing this Guaranty, that the City: (a) file suit or proceed to obtain a personal judgment against the Developer or any other person that may be liable for the obligations or any part of the obligations; (b) make any other effort to obtain payment or performance of the obligations from Developer other than providing Developer with any

notice and demand regarding such nonpayment or nonperformance as may be required under the terms of the Agreement and permitting Developer any rights or cure or grace associated with such notice and demand; (c) foreclose against or seek to realize upon any security for the outstanding obligations; or (d) exercise any other right or remedy that the City is or may be entitled in connection with the outstanding obligations or any security therefor or any other guarantee thereof. Notwithstanding the right of City to proceed immediately and directly against Guarantors, after a fully matured Event of Default of the Developer exists hereunder, the City shall not be entitled to more than a single full performance of the obligations regarding any breach or non-performance thereof. Subject to the foregoing, at the City's election, which may be made in its sole judgment, the City may, following demand upon Guarantors hereunder and Guarantors failure to perform after applicable periods of notice and grace have expired, perform or cause to be performed the outstanding obligations on the Developer's behalf. No such actions or inactions by the City shall release or limit the liability of Guarantors hereunder and shall not serve as a waiver of any of the rights of the City pursuant to this Section of this Agreement. The liability of Guarantors shall be effective, and the obligations shall immediately be paid and performed, only upon any failure by Developer in the timely payment or performance of any obligation and the giving of such notice or demand, if any, to Developer as may be required under this Agreement, and the failure to cure the same. The obligations of Guarantors hereunder are absolute and irrevocable and shall remain in full force and effect until the Developer's obligations have been fully discharged in accordance with their respective terms and not subject to any counterclaim, set-off, deduction or defense based on any claim that Guarantors may have against the Developer or any other person. Without limiting the foregoing, the obligations of Guarantors hereunder shall not be released, discharged or in any way modified. Notwithstanding any provision to the contrary, nothing in this Section limits or waives the City's rights under this Agreement.

- G. **Operation of Restaurant.** During the term of this Agreement and until such time as the Forgivable Loan is repaid in full, unless forgiven under this Agreement, subject to Uncontrollable Circumstances, the Developer agrees that the Restaurant shall be continuously in operation once the Project is complete. For purposes of this Agreement, the Restaurant shall be considered continuously in operation if either the Restaurant or a substantially similar restaurant of comparable scale and quality that produces food and beverage and Property Tax Revenues at the same or similar to the Tax Revenue Projections, is open to the public and providing food service between 11:00 a.m. and 10:00 p.m. (Central Standard Time) at least six (6) days per calendar week, without any interruption in being so open for more than ten (10) consecutive calendar days. Notwithstanding the above schedule, subject to Uncontrollable Circumstances, the Restaurant must be open when the Paramount Theatre has scheduled performances,

but nothing herein shall require the Restaurant to operate on any nationally recognized holiday.

### VIII. ADDITIONAL COVENANTS OF DEVELOPER

- A. **Continued Existence.** The Developer and Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect their existence and standing as Illinois limited liability companies, so long as the Developer maintains an interest in the Property or has any other remaining obligation pursuant to the terms of this Agreement.
- B. **Further Assistance and Corrective Instruments.** The City and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the City's and the Developer's sound legal discretion.
- C. **No Gifts.** The Developer covenants that no shareholder, director, manager, member, employee or agent of Developer, or any other Person connected with Developer, has made, offered or given, either directly or indirectly, to any member of the Corporate Authorities, or any officer, employee or agent of the City, or any other Person connected with the City, any money or anything of value as a gift, or as a means of influencing his or her action in his or her capacity with the City, other than as provided for under 5 ILCS 430/10-10 through 10-40.
- D. **Disclosure.** Concurrently with the execution of this Agreement, Developer shall disclose to the City the names, addresses and ownership interests of all Persons that have an ownership interest in the Developer, together with such supporting documentation that may be requested by the City. Developer further agrees to notify the City throughout the term of this Agreement of the names, addresses and ownership interests of any new owners of the Developer.
- E. **Prevailing Wage.** The Project is subject to the Illinois Prevailing Wage Act (820 ILCS 130/0.01, *et seq.*) (the "Prevailing Wage Act"). Accordingly, Developer shall pay any applicable "Prevailing Wage Rates" to any of its workers on the Project, and comply with the Prevailing Wage Act. The Developer shall provide the City with the certified payrolls submitted to the Illinois Department of Labor (if any) with all draw requests related to City Funding under the Prevailing Wage Act.

- F. **Open Book Project.** The Project shall be an “open book” project, meaning that the Developer and the Guarantors will assure continuing access to the City’s agents for the purpose of reviewing and auditing their respective books and records relating to any Eligible Project Costs; provided, however, that all such access shall be limited to normal business hours upon reasonable prior notice and shall not occur more frequently than once per calendar quarter. The foregoing City review rights shall terminate one (1) year after the issuance of the Certificate of Project Completion with respect to costs for the Project, unless the Developer has failed to make available any such books and/or records requested in writing by the City. Developer shall provide to the City copies of any partnership agreements, limited liability company operating agreements, corporate by-laws or joint venture agreements pertaining to the Property to which the Developer is a party; provided that the Developer may, (if Developer has previously provided the City not less than thirty (30) days to review such confidential financial materials), remove from the copies of such agreements any confidential financial information previously disclosed to the City and not since changed in form or substance and the City shall keep such agreements confidential, to the maximum extent permitted by law. Failure to provide the documents or allow review of the books within thirty (30) days after request by the City shall be an Event of Default. Developer shall exercise prudence and good faith in attempting to contract with persons or entities that are reputable and experienced in their respective areas for the provision of services or material for the design and construction of Project at costs not in excess of market rates or Prevailing Wage Rates, if applicable. The general contractor (or general contractors) designated by Developer, if any, shall be experienced and reputable.

## **IX. ADHERENCE TO CITY CODES AND ORDINANCES**

All development and construction of the Project shall comply in all material respects with the provisions in the building, plumbing, mechanical, electrical, storm water management, fire prevention, property maintenance, zoning and subdivision codes of the City and all other germane codes and ordinances of the City in effect at the time of the granting of the Governmental Approvals. The Developer, by executing this Agreement, expressly warrants that it has examined and is familiar with all the covenants, conditions, restrictions, building regulations, zoning ordinances, property maintenance regulations, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, **[FoxWalk Design Guidelines]**, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter) and land use regulations, codes, ordinances, federal, State and local ordinances, and the like, currently in effect.

## **X. REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

The Developer represents and warrants to the City as follows:

- A. **Existence and Authority of Developer and Guarantor.** The Developer is a liability companies duly organized and existing under the laws of the state of formation, and are authorized to and have the power to enter into, and by proper action have been duly authorized to execute, deliver and perform, this Agreement. The Developer and Guarantors are solvent, able to pay their debts as they mature and financially able to perform all the terms of this Agreement. To Developer's and Guarantors' knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer and/or Guarantors which would result in any material and adverse change to Developer's or Guarantors' financial condition, or which would materially and adversely affect the level of Developer's or Guarantors' assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer or Guarantors to proceed with the construction and development of the Project.
- B. **No Conflict by Developer.** Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its managers, members or venturers is now a party or by which Developer or any of its managers, members or venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its managers, members or venturers under the terms of any instrument or agreement to which Developer, any related party or any of its managers, members or venturers is now a party or by which Developer, any related party or any of its managers, members or venturers is bound.
- C. **Adequate Resources of Developer and Guarantor.** The Developer and Guarantor have sufficient financial and economic resources to implement and complete the Developer's obligations contained in this Agreement.
- D. **No Adverse Notices to Developer.** The Developer has not received any notice from any local, State or federal official that the activities of the Developer with respect to the Property and/or the Project may or will be in violation of any environmental law or regulation. The Developer is not aware of any State or federal claim filed or planned to be filed by any person relating to the Property and any violation of any local, State or federal environmental law, regulation or review procedure, and the Developer is not aware of any violation of any local,

State or federal law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute relative to the Property.

E. **Experience of Developer.** The Developer, and its respective principals, are skilled in the development and operation of property similar to the uses in the Project and are able to provide the Project with the necessary skill, knowledge and expertise as well as input from other experts and consultants in the construction and operation of such a Project.

F. **Payment of Real Estate Taxes and Assessments.** Developer and successor owners agree to pay, or cause the Developer or successor owners to pay, all general and special real estate taxes levied during their respective period of ownership against their respective interest in the Property and/or the Project on or prior to the date same is due and said taxes shall not become delinquent. Developer and successor owners shall deliver, or cause Developer and successor owners to deliver, evidence of payment of such taxes to the City upon request.

Further, Developer and successor owners agree that no request for abatement, freeze, or exemption for, or an appeal of, the valuation of the assessed value of the Property by the assessor having jurisdiction shall be made; provided, however, nothing herein shall prohibit Developer or any successor from challenging or appealing real estate taxes and assessments where the equalized assessed value (EAV) of the Property exceeds the amount that would result in an annual tax bill in excess of \$21,000.00. The limitations imposed on Developer with respect to assessed valuation of the Property under this Section shall terminate upon the earlier of: December 31, 2036 or December 31 of the calendar year which marks the receipt of 10 full tax levy years after the opening of the Restaurant..

G. **Other Funds.** The Developer and Guarantors have adequate funds, from other sources, to construct and operate the Project in accordance with this Agreement.

H. **Figures and Data.** The documents, information, figures and data supplied regarding the operations and financing of the Project by the Developer, its principals and the Guarantors to the City regarding the Project are materially true, accurate and complete. The Developer and Guarantors have not withheld any documents, information, figures or data relevant to the operations and financing of the Project that would have a material adverse effect on the City's decision to enter into this Agreement and provide for the incentives herein.

I. **Liens and Encumbrances.** Except for financing from any Mortgagee which is secured by a Mortgage and for materials and labor of contractors which has been performed and not yet paid in the ordinary course, the Developer has not



and will not suffer or permit the creation (whether voluntary or involuntary) of, or any attempt to create, any mortgage, security interest or mechanic's lien or judgment lien upon the Property, including any fixtures now or hereafter attached thereto, or the making or any attempt to make any levy, seizure or attachment thereof. Developer may cure the attachment of any mechanic's lien or judgment lien by removing or bonding or insuring over such lien in an amount equal to the monetary claim of the lien within ninety (90) days of attachment.

## **XI. REPRESENTATIONS AND WARRANTIES OF THE CITY**

The City represents and warrants to the Developer as follows:

- A. **Existence.** The City is an Illinois home rule municipal corporation duly organized and validly existing under the laws of the State of Illinois, and has all requisite corporate power and authority to enter into this Agreement.
- B. **Authority.** The execution, delivery and the performance of this Agreement and the consummation by the City of the transactions provided for herein and the compliance with the provisions of this Agreement:
  - 1. have been duly authorized by all necessary corporate action on the part of the City; and
  - 2. require no other consents, approvals or authorizations on the part of the City in connection with the City's execution and delivery of this Agreement; and
  - 3. shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the City is subject.
- C. **Litigation.** To the best of the City's knowledge, there are no proceedings pending or threatened against or affecting the City in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the City to perform its obligations under this Agreement.

## **XII. INSURANCE**

- A. **Insurance Coverages.** The Developer, and any of its successors in interest, shall obtain and continuously maintain insurance on the Property and the Project and, from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and

continuously maintain, provided that the Developer shall obtain the insurance described in Subsection 1. below prior to the commencement of construction of any portion of the Project:

1. Builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis", in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy. Builder's risk insurance shall only be required through the completion of construction of the Project.
2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Developer's/Contractor's Policy naming the City and its officers, agents and employees as additional insureds, with limits against bodily injury and property damage of not less than [\$5,000,000.00] for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
3. Workers compensation insurance, with statutory coverage.

- B. **Continuity of Insurance.** All insurance required in this Section XII. shall be obtained and continuously maintained through responsible insurance companies selected by the Developer, or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Section XII., cancellation relative to each policy shall be as provided by the policy; however, the City must be named as a cancellation notice recipient. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successors or assigns, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section XII. In lieu of separate policies, the Developer, or its successors or assigns, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

### **XIII. INDEMNIFICATION, HOLD HARMLESS AND RELEASE PROVISIONS**

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

- A. **Release.** The Developer releases the City, its governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") from, and covenant and agree that the Indemnified Parties shall not be liable to Developer for any

loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the Property or arising under this Agreement or actions in furtherance thereof, to the extent not attributable to the gross negligence or willful misconduct of the Indemnified Parties.

- B. **Indemnification.** Except for fraud, gross negligence or willful misconduct of the Indemnified Parties, Developer agrees to indemnify the Indemnified Parties, now and forever, and further agree to defend and hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Developer (or if other Persons acting on its behalf or under either of their direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement.
- C. **Environmental Disclaimer.** Unless otherwise agreed to in writing, the City makes no warranties or representations regarding, nor does it indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Property, or anywhere within the vicinity of the Property of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "Hazardous Substances"), unless deposited, stored or maintain by the City, its agents or employees upon or in the vicinity of the Property. The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Property, or within the vicinity of the Property, as well as any activity claimed to have been undertaken on or in the vicinity of the Property, that would cause or contribute to causing (1) the Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901 *et seq.*, or any similar State law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Property, within the meaning of, or otherwise bring the Property within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into

the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, or any similar State law or local ordinance, unless caused by City or any agent or employee of the City. Further, the City makes no warranties or representations regarding, nor does the City indemnify the Developer with respect to the existence or nonexistence on or in the vicinity of the Project, or anywhere within the Property or the vicinity of the Property, of any substances or conditions in or on the Property, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements, unless caused by City or any agent or employee of the City. The City makes no representations or warranties regarding the existence of any above ground or underground tanks in or about the Property, or whether any above or underground tanks have been located under, in or about the Property have subsequently been removed or filled.

- D. **Waiver.** The Developer waive any claims against the Indemnified Parties for indemnification, contribution, reimbursement or other payments arising under federal, State and common law or relating to the environmental condition of the land which is part of the Property and not resulting from the acts or omissions of the City, its agents or employees.
- E. **No Personal Liability.** No liability, right or claim at law or inequity shall attach to or shall be incurred by the City's Mayor, Aldermen, officers, officials, attorneys, agents and/or employees, and any such rights or claims of the Developer against the City's Mayor, Aldermen, officers, officials, attorneys, agents, employees, contractors and/or consultants are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the City.

#### **XIV. EVENTS OF DEFAULT AND REMEDIES**

- A. **Developer and Guarantor Events of Default.** Each of the following shall be an "Event of Default" with respect to this Agreement:
  - 1. If any representation made by Developer or Guarantor in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made and has a material and adverse effect upon the performance of any material obligation hereunder; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy or render ineffective as to performance the default, within ninety (90) after written notice from the City.

2. Default by Developer or Guarantor for a period of thirty (30) days after written notice thereof in the performance or breach of any covenant contained in this Agreement concerning the existence, structure or financial condition of Developer or Guarantors, as the case may be; provided, however, that: such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and Developer and/or Guarantors within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within ninety (90) days after such notice, unless the failure to cure has no immediate and material effect upon the performance of the Agreement, in which event such default shall be cured within a reasonable time (the "Permitted Cure Terms")
3. Default by Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any covenant, warranty or obligation contained in this Agreement, subject to the Permitted Cure Terms.
4. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer or Guarantor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer or Guarantor for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days.
5. The commencement by Developer or Guarantors of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or the consent by Developer or Guarantor to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer, or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or an involuntary petition is filed in bankruptcy by others which is not dismissed within ninety (90) days.
6. Failure to advance the Developer Funding; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default, within thirty (30) days after written notice from the City.

7. A sale, assignment, or transfer of the Project in violation of this Agreement.
8. If both Guarantors shall no longer have ownership and management of the Developer, except in accordance with this Agreement. A change in the ownership or management of the Developer shall not occur if a member leaves or if a member dies. A new member may be added to the Developer without the City's written consent, so long as there is continuity in the control of finances and/or management of the Developer.
9. Developer abandons construction of the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than sixty (60) consecutive days for any reason other than Uncontrollable Circumstances.
10. Developer fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the Project contemplated by this Agreement and such failure continues for more than thirty (30) days after written notice thereof from the City, subject to Permitted Cure Terms.

12. ~~[delete: duplication]~~

B. **City Events of Default.** Each of the following shall be an "Event of Default" by the City with respect to this Agreement:

1. If any material representation made by the City in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the City does not remedy the default, within thirty (90) days.
2. Default by the City in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the City; provided, however, that such default or breach shall constitute an Event of Default if the City does not, within thirty (30) days and subject to Permitted Cure Terms.
6. Failure to advance the City Funding or approve permitted disbursement from the City Funding Escrow; provided, however, that such default shall constitute an Event of Default only if City does not remedy the default, within thirty (30) days after written notice from the Developer.

7. Default by the City in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the City, commences cure within thirty (30) days, subject to Permitted Cure Terms.

C. **Remedies for Default.**

1. Upon the occurrence of an Event of Default by Developer, the City may terminate this Agreement and any other agreements to which the City and Developer are parties or shall be parties, suspend disbursement of City Funding, place a lien on the Project (subordinate to the first lien and priority under any Mortgage) in the amount of City Funding advanced and not recoverable from the City Funding Escrow, plus any other amounts due from or chargeable to Developer or Guarantors hereunder.
2. Upon occurrence of an Event of Default by the City, the Developer shall have all rights at law and in equity to enforce performance of this Agreement, including the right of specific performance.

D. **Agreement to Pay Attorneys' Fees and Expenses.** In the event an Event of Default occurs and a Party employs an attorney or attorneys or incurs other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement herein contained, the non-prevailing Party shall pay, on demand, the prevailing Party's, or Parties', reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action. This Section XIV.D. shall survive the termination of this Agreement.

E. **No Waiver by Delay or Otherwise.** Any delay by any Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that any Party should not be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

- F. **Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.
- G. **Reimbursement of City for Legal and Other Fees and Expenses.** In the event that any third party or parties institute any legal proceedings against the Developer and/or the City, which relate to the terms of this Agreement, then, in that event, the Parties shall cooperate in the defense of any such lawsuit, with each Party assuming, fully and vigorously, its own defense of such lawsuit, and the City's costs and expenses of its defense, of whatever nature (including attorney's fees), shall be paid by the Developer if the action commenced is as a result of the acts or omissions of the Developer. This Section XIV.G. shall survive the termination of this Agreement.
- H. **Mortgagee Rights.** In the event that an Event of Default occurs under this Agreement, and if, as a result thereof, the City intends to exercise any right or remedy available to it that could result in the termination of this Agreement and all related agreements or the cancellation, suspension, reimbursement or reduction of City Funding, any Mortgagee providing financing to the Project which is secured by a Mortgage shall have the right (but not the obligation) to cure such an Event of Default under the following conditions:
1. if the Event of Default is a monetary default, Lender may cure within thirty (30) days after the later of: (a) the expiration of any cure period, if any, granted to the Developer with respect to such monetary default; or (b) receipt by the Mortgagee of such notice from the City; and
  2. if the Event of Default is of a non-monetary nature, Lender shall have the right to cure it within thirty (30) days after the later of: (a) the expiration of any cure period, if any, granted to the Developer with respect to such non-monetary default; or (b) receipt of such notice from the City; provided, however, that if such non-monetary default is not capable of being cured by such Lender within such thirty (30) day period, such period shall be extended for such period of time as may be necessary, in the City's reasonable discretion, to cure such default, provided that the party seeking such cure has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured and, if possession of the Project is necessary to effect such cure, the party seeking such cure must have instituted appropriate legal proceedings to obtain possession.



## **XV. MORTGAGING OF THE PROJECT**

Developer shall have the right to obtain financing for the Developer Funding and secure such funding with a Mortgage to such Mortgagee. Developer may collaterally assign its rights and interests hereunder to and for the benefit of such Mortgage pursuant to a Collateral Assignment and the City shall enter into and deliver the Consent to Collateral Assignment for the benefit of such Mortgagee. The terms of any Consent to Collateral Assignment shall compliment and not limit the rights set forth in this Article XV.

In addition to any right of cure set forth herein, If a Mortgagee or any other party shall succeed to Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under a Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest under this Agreement, the City hereby agrees to attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "Developer" under this Agreement; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of Developer Parties' interest under this Agreement, such party has no liability under this Agreement for any Event of Default of Developer which accrued before such party succeeded to the interest of Developer Parties under this Agreement, in which case Developer Parties shall be solely responsible. However, if such party claiming an interest through such Mortgagee does not expressly accept an assignment of Developer Parties' interest under this Agreement, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

## **XVI. EQUAL EMPLOYMENT OPPORTUNITY**

- A. **No Discrimination.** Developer shall comply with all federal, State and local laws relating to equal employment opportunity. To the extent permitted by law, Developer shall use reasonable efforts to employ qualified residents of the City.
- B. **Advertisements.** Developer shall, in all solicitations or advertisements for employees placed by or on behalf of Developer state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. **Contractors.** Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in Subsections A. and B. above.

## **XVI. MISCELLANEOUS PROVISIONS**

- A. **Employment Opportunities.** To the extent feasible, the Developer shall make reasonable efforts to notify City residents of employment opportunities that are available relative to the Project, and, to the extent permitted by law, make reasonable efforts to employ qualified residents of the City in relation to the Project.
- B. **Cancellation.** In the event the City shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, by the order of any court of competent jurisdiction, or in the event that any ordinance adopted by the City in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Project or the covenants and agreements or rights and privileges of the City, then and in any such event, the either Party may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other Party within sixty (60) days after such final decision or amendment. Provided however, prior to such termination the City and Developer shall meet and use good faith best efforts to negotiate and effect amendments and modifications to this Agreement to comply with the applicable order, ordinance or other law while attempting to preserve the parties rights and obligations hereunder to the greatest extent possible. If this Agreement is terminated as permitted under this subsection, to the extent it is then appropriate, each Party may also terminate, at its option, its duties, obligation and liability under all or any related documents and agreements provided. Further, the cancellation or termination of this Agreement shall have no effect on the authorizations granted to Developer for the Project, permitted and under construction, to the extent permitted by said court order.
- C. **Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service, (2) electronic communications, whether by telex, telegram or telecopy or email, (3) overnight courier, or (4) registered or certified first class mail, postage prepaid, return receipt requested.

If to City:                      City of Aurora  
   44 E. Downer Place  
   Aurora, Illinois 60507  
   Attention: City Mayor

With a copy to:                City of Aurora  
   44 E. Downer Place

Aurora, Illinois 60507  
Attention: City Clerk

And: City of Aurora, Law Department  
1 S. Broadway Avenue, 3rd Floor  
Aurora, Illinois, 60507  
Attention: Corporation Counsel

And: Mayor's Office of Economic Development  
5 S. Broadway Avenue  
Aurora, Illinois, 60507  
Attention: Executive Director

If to Developer: c/o Conrad Hurst  
FD Fund II  
5 E. Main Street  
St. Charles, Illinois 60174

With a copy to: Meltzer, Purtill & Stelle LLC  
125 S. Wacker Drive, Suite 2900  
Chicago, Illinois 60606  
Attention: William J. Mitchell

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (1) or (2) hereof shall be deemed received upon such personal service or actual receipt by electronic means. If notice is sent by email under clause (2), then the sending party will send a copy of such notice by another permitted method unless the receiving party waives such requirement within forty-eight (48) hours of the original email. Any notice, demand or request sent pursuant to clause (3) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (4) shall be deemed received forty-eight (48) hours following deposit in the mail.

- D. **Time is of the Essence.** Time is of the essence of this Agreement.
- E. **Integration.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
- F. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and each of which shall constitute but one and the same Agreement.

- G. **Recordation of Agreement.** The Parties agree to record this Agreement with the Kane County Recorder's Office against title to the Property. The City shall pay the recording charges. The obligations of Developer in this Agreement shall run with title to the land of the Property and be binding on future owners of the Property and any portion thereof, subject to the rights of any Mortgagee as set forth herein.
- H. **Severability.** If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.
- I. **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.
- J. **Entire Contract and Amendments.** This Agreement (together with the exhibits attached hereto) is the entire contract between the City, the Developer, and the Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City, the Developer, and the Developer, and may not be modified or amended except by a written instrument executed by the Parties hereto. The Parties agree to cooperate and amend this Agreement to add new entities as needed to complete or effectuate the Project.
- K. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other Person other than the City and the Developer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.
- L. **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.

- M. **Cooperation and Further Assurances.** The City and the Developer each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City and the Developer or other appropriate Persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.
- N. **No Joint Venture, Agency or Partnership Created.** Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third party to create the relationship of a partnership, agency or joint venture between or among such Parties.
- O. **Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances, or any part thereof, or any exhibit to this Agreement, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.
- P. **Term.** This Agreement shall remain in full force and effect until the later of: (i) the date on which the Forgivable Loan is repaid in full (or forgiven in the case of the Forgivable Loan in accordance with its terms); and (ii) December 31, 2036.
- Q. **Estoppel Certificates/Mortgagee Subordination.** Each of the Parties hereto agrees to provide the other, upon not less than fifteen (15) days prior request, (i) a certificate ("Estoppel Certificate") certifying that this Agreement is in full force and effect (unless such is not the case, in which case such Party/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 provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party and (ii) an acknowledgment of subordination of this agreement to the rights of any Mortgagee as set forth herein. If any 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.
- R. **Assignment.** Except as set forth herein, this Agreement, and the rights and obligations hereunder, may not be assigned by the Developer unless the City, in the exercise of its sole and absolute discretion, consents in a writing signed by the City Mayor to such assignment.

- S. **Municipal Limitations.** All City commitments hereunder are limited to the extent required by law.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

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

**CITY OF AURORA,**  
an Illinois home rule municipal corporation

**ATTEST:**

By: \_\_\_\_\_  
Richard C. Irvin, Mayor

By: \_\_\_\_\_  
Jennifer Stallings, City Clerk

**DEVELOPER:**

\_\_\_\_\_, **LLC,**  
an Illinois limited liability company

**ATTEST:**

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

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

**GUARANTOR:**

**ATTEST:**

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

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

**GUARANTOR:**

**ATTEST:**

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

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

## ACKNOWLEDGMENT

State of Illinois       )  
                                  ) SS  
County of Kane       )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Richard C. Irvin and \_\_\_\_\_, personally known to me to be the Mayor and City Clerk of the City of Aurora, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the City Council of said Illinois home rule municipal corporation, as their free and voluntary acts, and as the free and voluntary act and deed of said Illinois home rule municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

---

Notary Public



## ACKNOWLEDGMENT

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

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_ and \_\_\_\_\_,  
personally known to me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively,  
of \_\_\_\_\_ ("\_\_\_\_\_"), and personally known to  
me to be the same persons whose names are subscribed to the foregoing instrument,  
appeared before me this day in person and severally acknowledged that, as such  
\_\_\_\_\_ and \_\_\_\_\_, they each signed and delivered the said  
instrument as their free and voluntary acts, and as the free and voluntary act and deed of  
said \_\_\_\_\_, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_,  
2024.

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

## ACKNOWLEDGMENT

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

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_ and \_\_\_\_\_,  
personally known to me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively,  
of \_\_\_\_\_ ("\_\_\_\_\_"), and personally known to  
me to be the same persons whose names are subscribed to the foregoing instrument,  
appeared before me this day in person and severally acknowledged that, as such  
\_\_\_\_\_ and \_\_\_\_\_, they each signed and delivered the said  
instrument as their free and voluntary acts, and as the free and voluntary act and deed of  
said \_\_\_\_\_, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_,  
2024.

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

## **EXHIBIT A**

### **Legal Description of the Property**

#### **Legal Description:**

THAT PART OF LOT 1 IN BLOCK 12 OF THE ORIGINAL TOWN OF AURORA, ON THE EAST SIDE OF FOX RIVER, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WESTERLY LINE OF SAID LOT 1 AT A POINT 60 FEET 10 INCHES SOUTHERLY FROM THE NORTHWEST CORNER OF SAID LOT; THENCE EASTERLY PARALLEL WITH MAIN STREET, TO THE EASTERLY LINE OF SAID LOT; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 20 FEET 10 INCHES; THENCE WESTERLY PARALLEL WITH THE MAIN STREET TO THE WESTERLY LINE OF SAID LOT; THENCE NORTHERLY 20 FEET 10 INCHES TO THE POINT OF BEGINNING, IN THE CITY OF AURORA, ILLINOIS.

#### **PINs:**

15-22-336-004

#### **Common Addresses:**

7 S. BROADWAY AVE, AURORA, IL 60505

## EXHIBIT B

### Depiction of the Property

#### Location Map



## **EXHIBIT C**

### **Site Plans and Elevations for the Project**

The Site Plans and Elevations for the Project are attached, and consist of:





*Interior: Old World, Warm, Inviting, Romantic, Timeless*



*Exterior: Idyllic, Picturesque, Community-driven*



*Rustic,  
Handmade,  
Italian fare*

## **EXHIBIT D**

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

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

## Aurora Prospective Restaurant

1/2/2023

**Project Description:** ~3200 SF (street level) restaurant with a basement and small interior mezzanine located between Broadway & the Water Street Mall in downtown Aurora. There is also an opportunity to create a robust outdoor experience. While the dining scene and target demographic within the area are still in early stages of development, the project is well located within close proximity to established attractions such as Two Brothers, Rivers Edge Park & the Paramount Theatre. Public transit & close proximity to major highways make this an easily accessible site, and add to the opportunity to draw from neighboring sub markets. Substantial investment is required to repurpose the building to meet proposed use, the City has indicated there is an opportunity to pursue incentives for redevelopment.

### Stacking Plan (SF)

Site

Building

**Total:**

### Total SF

0

3,625

0

### Project Budget

Acquisition

(Conveyed to developer)

Impact fees & Permits

1%

Demo & Site Improvements

Hard Cost - LL Improvements

\$ 152

Hard Cost - Tenant Improvements/Opening Co

\$ 198

Hard Cost - Contingency

5.00% of hard cost

Construction Management Fees

2% of hard cost

Architectural & Engineering Fees

\$ 7.25 /sf

Other Consultants

Interior Design Fee

\$ - /sf

Development Fee

3.0% of hard cost

Project Admin & Management

9 Months @

\$ 3,500

C.P. Interest Reserve, Title, Lender Fees

2 years

C.P. Insurance

ACTUAL

C.P. Real Estate Taxes

ACTUAL

Marketing & Models/Pre-opening

Soft Cost Contingency

1% of soft cost

**Total Project Budget:**

### Total

\$ -

\$ 13,973

\$ 65,000

\$ 551,347

\$ 717,500

\$ 63,442

\$ 25,377

\$ 26,281

\$ 38,065

\$ 31,500

\$ 75,300

\$ 23,000

\$ 21,000

\$ 2,405

\$ 1,654,191

### Project Capitalization

Developer Investment

Incentives/Subsidies

**Total Capitalization:**

(Loan Amount)

\$ 454,191

(In form of loan repayable through Sales tax)

\$ 1,200,000

\$ 1,654,191



# Aurora Project

## 5 Year Operating Projections

	Year 1		Year 2		Year 3		Year 4		Year 5	
<b>Sales:</b>										
Food	\$ 973,687	48.2%	\$ 1,022,371	47.7%	\$ 1,073,490	47.7%	\$ 1,127,164	48.2%	\$ 1,183,523	48.7%
Beverage	1,048,008	51.8%	1,121,369	52.3%	1,177,437	52.3%	1,212,760	51.8%	1,249,143	51.3%
TOTAL SALES	2,021,695	100.0%	2,143,740	100.0%	2,250,927	100.0%	2,339,925	100.0%	2,432,666	100.0%
<b>Cost of Sales:</b>										
Food	292,106	30.0%	306,711	30.0%	322,047	30.0%	338,149	30.0%	355,057	30.0%
Beverage	225,691	21.5%	280,342	25.0%	294,359	25.0%	303,190	25.0%	312,286	25.0%
TOTAL COST OF SALES	517,798	25.6%	587,054	27.4%	616,406	27.4%	641,339	27.4%	667,343	27.4%
<b>Gross Profit</b>	1,503,897	74.4%	1,556,686	72.6%	1,634,521	72.6%	1,698,585	72.6%	1,765,323	72.6%

# EXHIBIT D

## Target dates

- Due Diligence Period: April through the end of May 2024
- Phase I Environmental Site Assessment commissioned: April 19, 2024
- Phase I Environmental Site Assessment: May 7, 2024
- Phase I Environmental Site Assessment Completion: May 14, 2024
- Finance Committee: May 16, 2024
- Committee of the Whole: May 21, 2024
- City Council: May 28, 2024
- **Real Estate Closing targeted by end of June 2024**
- **Schematic Designs submittal by end of June 2024**
- **Building Permits submittal targeted by the end of July 2024**
- **Building Permits Approval targeted by the end of September 2024**
- Sinny Park redesign targeted between September 2024 and February 2025
- Construction Commencement no later than the end of November 2024
- Project End of Construction targeted by the end of February 2025
- Grand opening by the end of March 2025

**EXHIBIT E**

**Real Estate Contract  
(attached)**

**EXHIBIT F**

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

## EXHIBIT F

City of Aurora  
Vicolo  
Forgivable Loan Amortization Analysis  
May, 2024

Loan Principal	413,547
Building Purchase	- Purchase Price due at closing
Forgivable Loan	413,547
Interest Rate	5%
Term	8 years
Annual Payment Required	\$63,984.74

Year	Sales Anticipated	Note 1 Tax Rate	Consumption Tax Revenue Generated	Forgivable Loan			
				Beginning Balance	Principal Reduction	Interest Allocation	Ending Balance
1	2,021,695	4.00%	80,868	413,547	60,190	20,677	353,357
2	2,143,740	4.00%	85,750	353,357	68,082	17,668	285,275
3	2,250,927	4.00%	90,037	285,275	75,773	14,264	209,501
4	2,339,925	4.00%	93,597	209,501	83,122	10,475	126,380
5	2,432,666	4.00%	97,307	126,380	90,988	6,319	35,392
6	2,432,666	4.00%	97,307	35,392	35,392	1,770	-
7	2,432,666	4.00%	97,307	-	-	-	-
8	2,432,666	4.00%	97,307	-	-	-	-
Totals	18,486,951		739,478		413,547	71,173	

*Note 1: Taxes pledged to amortization of loan include State Sales Tax (1%), City's Home Rule Sales Tax (1.25%), and City's Food and Beverage Tax (1.75%)*

*Developer provided the amounts for years 1-5 in the "Sales Anticipated" column. Analysis assumes stabilized revenues thereafter for conservatism.*