

**REDEVELOPMENT/FORGIVABLE LOAN AGREEMENT
FOR REDEVELOPMENT OF 2134 WEST GALENA
IN THE CITY OF AURORA, ILLINOIS**

This **REDEVELOPMENT AGREEMENT FOR REDEVELOPMENT OF 2134 WEST GALENA IN THE CITY OF AURORA , ILLINOIS** ("Agreement") is made and entered into as of the _____ day of July, 2024 ("Effective Date") by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation ("City") and Carniceria El Paso Grande Corp., an Illinois business corporation ("Grocer"), Polo Rodriguez and Celia Rodriguez, (each a "Guarantor" and collectively the "Guarantors"). The City and the Grocer 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. Caniceria El Paso Grande Corp. (the "Grocer") is the owner of real property located at 2134 W. Galena Blvd. in the City of Aurora, Illinois (the "Property"), which is legally described and depicted in Exhibit A attached hereto and made a part hereof.

- E. The Grocer intends to open a grocery store at the former Aldi's store location at 2134 West Galena, Illinois Aurora (the "Grocery Store"), which has been long shuttered.
- F. The Grocer has faced unforeseen setbacks including a fire at an east side location, uninsured hail damage, and the failure of a vendor to deliver key equipment, leading to significant delays and additional costs in opinion the Grocery Store.
- G. Consequently, the Grocer needs financial assistance to open the Grocery Store. Specifically, the Grocer needs \$325,000 in order to open the Grocery Store for the following expenses:
- \$115,000.00 to payoff of loan related to replacement of the Grocery Store's roof
 - \$30,000.00 to purchase two new kitchen exhaust hoods for the Grocery Store
 - \$180,000.00 to purchase merchandise to stock the Grocery Store

Paying off the loan for the roof replacement, purchasing the two new kitchen exhaust hoods and stocking the Grocery Store shall be referred to herein as the "Project" and said expenses shall be referred to herein as "Eligible Project Costs."

- H. The opening of the Grocery Store is anticipated to employ over 60 Aurora residents and generate significant new revenue for the City, estimated at \$110,000 annually.
- I. The City has determined that it is in the best interest of the City and its residents to support the Grocer in opening the new Grocery Store by providing financial assistance.
- J. The redevelopment of the Property with the Project would significantly assist in the stabilization and revitalization of the Property, the area in the vicinity of the Property and the City as a whole.
- K. The City is desirous of having the Property rehabilitated, developed and redeveloped in accordance with the Agreement, and particularly the Project as a part thereof, in order to serve the needs of the City, arrest physical decay and decline in the area of the Property, increase employment opportunities, stimulate commercial growth and stabilize the tax base of the City and, in furtherance thereof, the City is willing to undertake certain incentives, under the terms and conditions hereinafter set forth, to assist such development.

- L. It is necessary for the successful completion of the Project that the City enter into this Agreement with Grocer to provide for the redevelopment of the Property.
- M. Grocer is unable to undertake the redevelopment of the Property with the Project, but for certain incentives, to be provided by the City in accordance with 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, Grocer 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 Grocer in the manner set forth herein and as this Agreement may be supplemented and amended from time to time.
- N. 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.
- O. 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.
- P. This Agreement has been submitted to the board of directors, corporate officers, shareholders, members and/or managers of the Grocer for consideration and review, the Grocer'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 Grocer according to the terms hereof, and any and all action of the Grocer'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.
- Q. The City Council finds that the Project will promote economic development, create jobs, and enhance the public welfare of the City and its residents.
- R. The City finds that this Agreement is in the best interests of the City, its residents and the public.

II. DEFINITIONS

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

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

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

- B. **“City Code”** means the City of Aurora Municipal Code, as amended.
- C. **“Corporate Authorities”** means the Mayor and City Council of the City of Aurora, Illinois.
- D. **“Day”** means a calendar day.
- E. **“Effective Date”** means the day on which this Agreement is executed by the City and the Grocer, with said date appearing on page 1 hereof.
- F. **“Party / Parties”** means the City, the Grocer and/or the Grocer, individually/collectively, and their respective successors and/or assigns as permitted herein, as the context requires.
- G. **Sales Taxes** mean the taxes generated from the Grocery Store and actually received by the City pursuant to Article 44-XI of the City Code (Home Rule

Municipal Occupation Taxes) and Article 44-VII of the City Code (Privilege Tax on the Service of Food or Alcoholic Liquor or the Sale of Alcoholic Liquor at Retail).

- H. **“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.
- I. **“State”** means the State of Illinois.
- J. **“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 Grocer or the City;
 - f. unreasonable delay in the issuance of building or other permits or approvals by the City or other governmental authorities having jurisdiction (other than the City with respect to the City’s obligations hereunder) including but not limited to IDOT, FWRD, and/or the IEPA;
 - g. shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;
 - h. unknown or unforeseeable geo-technical or environmental conditions;
 - i. major environmental disturbances;
 - j. vandalism; or
 - k. terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in Subsection 2.g. above);

or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

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

III. CONSTRUCTION OF TERMS

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

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.
- C. The word "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation".
- D. Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the Agreement shall control.
- F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- G. The City Mayor, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the City and with the effect of binding the City as limited by and provided for in this Agreement. Grocer 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 Grocer in a different manner, Grocer hereby designates [REDACTED] 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 Grocer and with the effect of binding the Grocer in that regard (such individual being designated as an “Authorized Grocer Representative”). The Grocer shall have the right, subject to approval by the City’s Director of the Mayor’s Office of Economic Development, to change its Authorized Grocer 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 Grocer 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 Grocer Representative.

IV. COOPERATION OF THE PARTIES

The City and the Grocer 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 Grocer, 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 Grocer shall develop the Project per the schedule in EXHIBIT B and as set forth in this Agreement.

- A. **Application for Permits and Approvals.** The Grocer has applied for and obtained, as of the Effective Date, at its sole cost and expense, all necessary permits and approvals from all governmental agencies having jurisdiction over the Project as may be required to commence construction of the Project (“Permit Approvals”).
- B. **Funding Contingency.** The City’s obligation to fund the Funding Escrow (as defined below) is contingent on the Grocer satisfying all the following conditions (the “Funding Contingency”):

1. The Grocer has executed this Agreement.
2. The Grocer has provided the City with a budget for the Project in a form satisfactory to the City's Chief Financial Officer.
3. The Grocer has established the Funding Escrow (as defined below), which shall be done at the Grocer's sole cost and expense.

This Agreement shall be null and void, and the Parties shall have no obligations hereunder, if the Grocer fails to satisfy the Funding Contingency by no later than [REDACTED], 2024, subject to the default and cure provisions of Section XIV of this Agreement.

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

- C. **Commencement of Construction.** The Grocer has commenced the construction of the Grocery Store.
- D. **Completion of Project.** Within thirty (30) days after written request from the Grocer, and provided that Grocer has not received any notice of default under this Agreement or notice of non-compliance with any City codes with respect to Grocer'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 related proposed improvements on the Property have been constructed in compliance with all City Codes and this Agreement, the City shall deliver a certificate of completion and satisfaction of all construction terms, covenants and conditions contained in this Agreement ("Certificate of Project Completion") or, if not complete or satisfied, a written statement as to what deficiencies exist. The Grocer shall submit its request to the City for a Certificate of Project Completion, subject to Uncontrollable Circumstances by no later than [REDACTED], 2024, with the Grocery Store thereafter operating on the Property by no later than [REDACTED], 2024.
- E. **Limited Covenant for No Tax-Exemptions.** The Grocer and its respective successors shall not assert a property tax-exempt status for the Property during its respective periods of ownership of, or having an interest in, the Property or the Project. The prohibition on asserting a property tax-exempt status of the Property includes portions owned, leased or operated by not-for-profit entities. This prohibition shall run with the land.

VI. UNDERTAKINGS ON THE PART OF THE CITY

- A. **City Cooperation.** The City agrees to cooperate with the Grocer in the Grocer's

attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the City and, upon request of Grocer, will promptly execute any applications or other documents (upon their approval by the City) which the Grocer 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 Grocer 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 Grocer 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 Grocer or its operator for the Grocery Store, subject to the Local Liquor Control Commissioner's receipt, review and approval of a proper liquor license application by the operator of the Grocery Store 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 Grocer financing except as provided for in this Agreement for the Forgivable Loan.

B. Incentives.

1. **Conditions for Economic Incentives.** The Grocer's right to receive the Forgivable Loan under this Agreement is conditioned on the Grocer's ongoing compliance with the following conditions, in addition to the conditions elsewhere in this Agreement:
 - a. The Grocer is in compliance with its obligations in this Agreement and all timelines required in this Agreement.
 - b. The Grocer is in compliance with all federal, State, Kane County, City and other local laws, ordinances, codes, rules, regulations and directives.
 - c. The Grocer is in compliance with its obligations to its lenders, subject to all applicable notice and cure rights with such lenders.
 - d. The Grocer has no debt due and owing the City.
2. **Forgivable Loan.**

- a. Subject to the terms and conditions of this Agreement, the City shall reimburse the Grocer or pay the costs directly to a contractor/vendor for Eligible Project Costs from one source: (i) a Three Hundred Twenty-Five Thousand and No/100 Dollars (\$325,000.00) forgivable loan ("Forgivable Loan"). The City shall fund the Forgivable Loan through a third-party escrow with Chicago Title & Trust Company (the "Funding Escrow"). The cost of establishing and maintaining the Funding Escrow shall be at the sole cost and expense of the Grocer. The City shall deposit the Forgivable Loan into the Funding Escrow within twenty-one (21) days of the Funding Contingency being satisfied by the Grocer.

Immediately upon the Grocer satisfying the Funding Contingency, the Parties shall cause a strict joint order construction escrow for the Project ("Funding Escrow"), with instructions approved by the Parties, with the Chicago Title Insurance Company ("Escrow Agent") to be created. The Grocer shall pay the costs and fees of the Escrow Agent for the Funding Escrow.

- b. The Forgivable Loan shall be used solely to pay for the costs of the Project as follows:
 - i. \$115,000.00 to repay a loan owed by the Grocer for repair of the roof of the Grocery Store.
 - ii. \$30,000.00 for installation of two new kitchen exhaust hoods.
 - iii. \$180,000.00 for stocking the Grocery Store with merchandise.
- c. Disbursement of the Forgivable Loan by the Escrow Agent shall be done upon satisfaction of all the following:
 - i. The provision of invoices, waivers of lien of Eligible Project Costs by Grocer for each draw request and other documents necessary for the City's Chief Financial Officer to approve a draw request under this Agreement, as applicable.
 - ii. Approval of said documentation by the City's Chief Financial Officer.
 - iii. Confirmation that sufficient funds are available in the Funding Escrow.
 - iv. Proof of compliance with provisions of the Illinois Prevailing Wage Act, as applicable

- d. If this Agreement is no longer in effect for any reason, any amount of the Forgivable Loan remaining in the Funding Escrow shall belong to, be owned by, and be released to, the City.

- 3. **Repayment/Amortization and Additional Terms of the Forgivable Loan.** The Forgivable Loan, shall be subject to simple interest accruing at the rate of five and one half percent (5.5%) per annum beginning on the date that the City deposits the Forgivable Loan into the Funding Escrow and shall be amortized over an six (6) year period on an annual basis ("Loan Forgiveness Period"), and assuming compliance with this Agreement, during such period all accrued interest and principal will be forgiven at the rate of fifty percent (50%) of the Sales Taxes actually received by the City related to the Grocery Store. The Loan Forgiveness Period shall begin on the date that the Grocery Store begins operation, as required by this Agreement. The annual forgiveness amount is variable based on annual sales and food and beverage taxes received by the City related to the Grocery Store. If there is a balance of unpaid principal and/or interest at the end of the Loan Forgiveness Period, then the unpaid balance shall become immediately due and owing the City. In the event of a sale of the Property or the Grocery Store, or any portion thereof, prior to the six (6) year amortization period elapsing the following shall apply:
 - a. If the City agrees to the sale, then the Forgivable Loan shall transfer to the new owner who will assume all responsibilities of this Agreement; or
 - b. If the City does not agree with the sale, then the Forgivable Loan shall be due immediately with any unamortized principal and interest payable at the closing.
- 4. THE CITY'S OBLIGATION TO PAY THE GROCER THE FORGIVABLE LOAN FROM THE FORGIVABLE LOAN ESCROW, IS A LIMITED OBLIGATION PAYABLE SOLELY FROM THE FORGIVABLE LOAN DEPOSITED IN THE FUNDING ESCROW AND SHALL NOT BE A GENERAL OBLIGATION OF THE CITY OR SECURED BY THE FULL FAITH AND CREDIT OF THE CITY. INSUFFICIENCY OF THE FUNDING ESCROW TO PAY WHEN DUE SHALL NOT BE AN EVENT OF DEFAULT, AND THE GROCER SHALL HAVE NO RECOURSE WHATSOEVER AGAINST THE CITY IN THE EVENT THAT THERE IS AN INSUFFICIENT AMOUNT OF CITY FUNDS IN THE FUNDING ESCROW.

5. Acceleration. Upon the occurrence of an Event of Default City may, at its option, without notice, declare the balance of unforgiven principal and interest on the Forgivable Loan immediately due and payable in full.
6. **Repayment of Forgivable Loan Upon Recovery on Claim for Non-Delivered Equipment.**
- a. **Non-Delivered Equipment.** The Grocer represents and warrants that on or about _____, 202_, the Grocer advanced \$500,000 to _____ (the "Vendor") for the purchase of equipment for the Grocer's grocery business (the "Equipment"), as detailed in Exhibit C attached hereto and made a part thereof, but the Equipment was not delivered. The Grocer is pursuing a claim for damages against the Vendor (the "Claim").
- b. **Priority of Other Lender:** It is recognized that the Grocer has another lender, _____ (the "Primary Lender") with a prior claim to the recovery proceeds of the Claim. The City's right to the recovery proceeds is subordinate to the rights of the Primary Lender. The City shall only be entitled to share in the recovery if there are excess proceeds after the Primary Lender has been fully paid off.
- c. **Recovery from Vendor:** In the event that the Grocer, or any party acting on behalf of the Grocer, recovers, whether through settlement, litigation, mediation, arbitration or otherwise, any funds or receives any form of compensation from Vendor or any related party, due to the non-delivery of the Equipment, such recovery or compensation shall be subject to the terms set forth in this Section VI.B.6.
- d. **Assignment of Recovery Proceeds:** The Grocer hereby assigns to the City any and all rights to the recovery proceeds from any legal action, settlement, insurance claim, or any other form of compensation or recovery related to the Claim.
- e. **Application of Recovery Proceeds:**
- i. If the recovery proceeds, after satisfying the Primary Lender, are equal to or greater than the balance of the Forgivable Loan, the Grocer shall pay the entire balance of the Forgivable Loan to the City, and any excess recovery shall be retained by the Grocer.

- ii. If the recovery proceeds, after satisfying the Primary Lender, are less than the balance of the Forgivable Loan, the Grocer shall pay the recovery proceeds to the City, and the remaining balance of the Forgivable Loan shall then be forgiven or repaid as set forth in the Agreement.
- f. **Notification and Cooperation:** The Grocer agrees to notify the City promptly upon the initiation of any legal action or upon receipt of any recovery related to the Claim. The Grocer further agrees to cooperate fully with the City in facilitating the prompt payment of any recovery proceeds to the City.
- g. **Continuing Obligation:** This provision shall survive the termination or expiration of this Agreement until the Forgivable Loan is fully repaid to the City or forgiven as provided herein.

VII. GROCER'S OBLIGATIONS

The Grocer 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 Grocer shall use the Forgivable Loan only for payment or reimbursement of Eligible Project Costs. As part of the Funding Contingency, the Grocer shall provide the City with the Project budget, which shall detail the Eligible Project Costs. Further, the Forgivable Loan shall not be used to pay down any other third-party financing of the Grocer related to the Project. Distribution of the Forgivable Loan to the Grocer shall be governed through the Funding Escrow.
- B. **Construction in Accordance With Approvals and Laws.** The Grocer shall construct the Project in full conformance with the approvals therefor from the City. The Grocer shall at all times acquire, install, construct, operate and maintain the Project in substantial conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the City, or any of its rules or regulations or amendments thereto which are in effect from time to time during the construction and maintenance of the Project and/or during the term of this Agreement.

- C. **City Tax Returns:** Grocer shall promptly file tax returns for all Sales Taxes related to the Project with the appropriate agencies and shall pay the amount of taxes due in accordance with the applicable due dates
- D. **Construction Staging and Right-of-Way Work.** During the construction of the Project, the Grocer shall stage its construction of the Project to avoid to the fullest extent possible any community disruption. During construction, the Grocer shall also keep all public streets used by the Grocer clean from construction debris on a daily basis, and for each day in which such construction debris on public streets is not properly clean, the Grocer shall pay the City the sum of Two Hundred Fifty and No/100 Dollars (\$250.00) for each such violation. The Grocer shall park and stage all construction equipment, materials and vehicles to be used in relation to the construction of the Project on the Property. The Grocer shall provide the City with space to perform street and right-of-way improvements and construction at no cost to the City.
- E. **Sufficient Funds.** The Grocer represents that it has adequate funds to operate the Grocery Store.
- F. **Meetings With City.** The Grocer 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.
- G. **Requests For Information, Documents and Data.** The Grocer 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.
- H. **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 Grocer under this Agreement, when the same shall become due and payable in accordance with their terms (collectively, the "Guaranty"). This Guaranty shall constitute a guaranty of payment and performance when due, and not of collection. Guarantors specifically agree that, in the event of a failure by the Grocer to timely pay or perform any of its obligations, the City shall have the right from time to time to proceed first and directly against Guarantors under this Guaranty, and without proceeding against the Grocer or exhausting any other remedies against the Grocer. 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 Grocer 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 Grocer other than providing Grocer with any notice of such nonpayment or nonperformance as may be required under the terms of the Agreement; (c) foreclose against or seek to realize upon any security for the outstanding obligations; or (d) exercise any other right or remedy that the City is or may be entitled in connection with the outstanding obligations or any security therefor or any other guarantee thereof. Notwithstanding the right of City to proceed immediately and directly against Guarantors, the City shall not be entitled to more than a single full performance of the obligations regarding any breach or non-performance thereof. Subject to the foregoing, at the City's election, which may be made in its sole judgment, the City may, following demand upon Guarantors hereunder, perform or cause to be performed any and all outstanding obligations on the Grocer's behalf. The City shall not be obligated to undertake any of the foregoing actions, and shall not incur any liability to Guarantors, the Grocer or any other person because of taking or not taking any of the foregoing actions. No such actions or inactions by the City shall release or limit the liability of Guarantors hereunder, and shall not serve as a waiver of any of the rights of the City pursuant to this Section of this Agreement. The liability of Guarantors shall be effective, and the obligations shall immediately be paid and performed, only upon any failure by Grocer in the timely payment or performance of any obligation and the giving of such notice or demand, if any, to Grocer as may be required under this Agreement, and the failure to cure the same. Guarantors specifically reaffirm the representations and warranties of the Grocer as set forth in this Section. The obligations of Guarantors hereunder are absolute, irrevocable and unconditional and shall remain in full force and effect until the Grocer's obligations have been fully discharged in accordance with their respective terms and not subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, the obligations or any other defense that Grocer may have) based on any claim that Guarantors may have against the Grocer, the City, or any other person. Without limiting the foregoing, the obligations of Guarantors hereunder shall not be released, discharged or in any way modified. Notwithstanding any provision to the contrary, nothing in this Section limits or waives the City's rights under this Agreement.

- I. **Operation of Grocery Store.** During the term of this Agreement and until such time as the Forgivable Loan is repaid in full, unless forgiven under this Agreement, the Grocer agrees that the Grocery Store shall be continuously in operation once the Project is complete. For purposes of this Agreement, the Grocery Store shall be considered continuously in operation if the Grocery Store or another Grocery Store of the same or similar quality and character as the Grocery Store is open to the public seven (7) days per week from [REDACTED] a.m. to [REDACTED] p.m., without any interruption in being so open for more than two (2) consecutive calendar days. The hours of

operation of the Grocery Store as required by this Section may be modified at the request of the Grocer with the prior written consent of the Mayor of the City of Aurora, which may be granted or withheld within the sole and absolute discretion the Mayor of the City of Aurora.

VIII. ADDITIONAL COVENANTS OF GROCER

- A. **Continued Existence.** The Grocer and Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect their existence and standing as Illinois corporations, so long as the Grocer 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 Grocer 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 Grocer's sound legal discretion.
- C. **No Gifts.** The Grocer covenants that no shareholder, director, manager, member, employee or agent of Grocer, or any other Person connected with Grocer, 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, Grocer shall disclose to the City the names, addresses and ownership interests of all Persons that have an ownership interest in the Grocer, together with such supporting documentation that may be requested by the City. Grocer 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 Grocer.
- E. **Prevailing Wage.** The Project is subject to the Illinois Prevailing Wage Act (820 ILCS 130/0.01, *et seq.*) ("Prevailing Wage Act"). Accordingly, Grocer shall pay any applicable "Prevailing Wage Rates" to any of its workers on the Project, and comply with the Prevailing Wage Act.

- F. **Open Book Project.** The Project shall be an “open book” project, meaning that the Grocer and the Guarantor will assure continuing access to the City’s agents for the purpose of reviewing and auditing their respective books and records relating to any item necessary to determine the costs of the Project; provided, however, that all such access shall be limited to normal business hours upon reasonable prior notice and shall not occur more frequently than once per calendar quarter. The foregoing City review rights shall terminate one (1) year after the issuance of the Certificate of Project Completion with respect to costs for the Project, unless the Grocer has failed to make available any such books and/or records requested in writing by the City. Grocer shall provide to the City copies of any partnership agreements, corporation operating agreements, corporate by-laws or joint venture agreements pertaining to the Property to which the Grocer is a party; provided that the Grocer may, (if Grocer 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. Grocer shall exercise prudence and good faith in attempting to contract with persons or entities that are reputable and experienced in their respective areas for the provision of services or material for the design and construction of Project at costs not in excess of market rates. The general contractor (or general contractors) designated by Grocer shall be experienced and reputable.
- F. If an Event of Default occurs under this Agreement or any Related Agreement, Grocer and the Guarantors shall not be entitled to collect any rent from the Grocery Store or collect any deferred developer fees until such time as the Event of Default is cured, as said rent and/or deferred developer fees shall be allocated to curing the Event of Default.

IX. ADHERENCE TO CITY CODES AND ORDINANCES

All development and construction of the Project shall comply in all respects with the provisions in the building, plumbing, mechanical, electrical, storm water management, fire prevention, property maintenance, zoning and subdivision codes of the City and all other germane codes and ordinances of the City in effect from time to time during the course of construction of the Project. The Grocer, 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, 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 GRO CER

The Grocer represents and warrants to the City as follows:

- A. **Existence and Authority of Grocer** The Grocer is an Illinois Corporation duly organized and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action have been duly authorized to execute, deliver and perform, this Agreement. The Grocer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Grocer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Grocer and/or Guarantors which would result in any material and adverse change to Grocer's or Guarantors' financial condition, or which would materially and adversely affect the level of Grocer's or Guarantors' assets as of the date of this Agreement or that would materially and adversely affect the ability of Grocer or Guarantors to proceed with the construction and development of the Project.
- B. **No Conflict by Grocer.** Neither the execution and delivery of this Agreement by Grocer, the consummation of the transactions contemplated hereby by Grocer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Grocer 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 Grocer (with Grocer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Grocer or any of its managers, members or venturers is now a party or by which Grocer 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 Grocer, any related party or any of its managers, members or venturers under the terms of any instrument or agreement to which Grocer, any related party or any of its managers, members or venturers is now a party or by which Grocer, any related party or any of its managers, members or venturers is bound.
- C. **Adequate Resources of Grocer and Guarantor.** The Grocer and Guarantor have sufficient financial and economic resources to implement and complete the Grocer's obligations contained in this Agreement.
- D. **No Adverse Notices to Grocer.** The Grocer has not received any notice from any local, State or federal official that the activities of the Grocer with respect to the Property and/or the Project may or will be in violation of any environmental law or regulation. The Grocer 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 Grocer 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 Grocer.** The Grocer, 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. **Other Funds.** The Grocer and Guarantor have adequate funds, from other sources, to construct and operate the Project in accordance with this Agreement.
- G. **Figures and Data.** The documents, information, figures and data supplied regarding the operations and financing of the Project by the Grocer, its principals and the Guarantor to the City regarding the Project are true, accurate and complete. The Grocer and Guarantor have not withheld any documents, information, figures or data relevant to the operations and financing of the Project that would have a material adverse effect on the City's decision to enter into this Agreement and provide for the incentives herein.
- H. **Liens and Encumbrances.** The Grocer has not and will not suffer or permit the creation (whether voluntary or involuntary) of, or any attempt to create, any mortgage, security interest or mechanic's lien or judgment lien upon the Property, except as expressly authorized herein, including any fixtures now or hereafter attached thereto, or the making or any attempt to make any levy, seizure or attachment thereof. Grocer may cure the attachment of any mechanic's lien or judgment lien by removing or bonding or insuring over such lien in an amount equal to the monetary claim of the lien within thirty (30) days of attachment.

XI. REPRESENTATIONS AND WARRANTIES OF THE CITY

The City represents and warrants to the Grocer 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 Grocer, 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 Grocer must obtain and continuously maintain, provided that the Grocer 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 a Grocer's/Contractor's Policy naming the City and its officers, agents and employees as additional insureds, with limits against bodily injury and property damage of not less than \$ 2,000,000.00 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.

3. Workers compensation insurance, with statutory coverage.
4. Property Insurance.
 - a. Grocer shall maintain comprehensive property insurance under one or more insurance policies insuring against the perils of, without limitation, fire, water, burglary, theft, malicious mischief, riot, civil commotion, vandalism, and any other peril now or hereafter covered under a "causes of loss-special form" policy.
 - b. Such policies or policies shall insure the Property and all related personal property in an amount equal to 100% of full replacement cost, without taking into account depreciation.
 - c. No policy shall exclude coverage for windstorm damage.
 - d. No policy shall permit Grocer or City from becoming a co-insurer within the terms of the applicable policy. Each policy shall maintain coverage amounts that at all times equal full replacement cost, as reasonably determined by City from time to time. City may, at any time and from time to time, increase the coverage requirements under this Section to reflect increases to the full replacement cost of the Property and related personal property as determined by City. In making its determination, City may rely on its own appraiser or engineer.
 - e. The City and its officers, agents and employees shall be named as additional insureds.

B. **Continuity of Insurance.** All insurance required in this Section XII. shall be obtained and continuously maintained through responsible insurance companies selected by the Grocer, 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 Grocer, 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 Grocer, or its successors or assigns, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

C. **Evidence of Insurance.** Grocer shall deliver to City evidence of the insurance coverages required under this Section, together with proof of payment for the first years' premiums, on or before the Effective Date of this Agreement and thereafter, not less than sixty (60) days before the expiration

date of each policy. All evidence of insurance coverage shall be in form and substance satisfactory to City in its sole discretion. Evidence of insurance shall be made by delivery to City of the original policy or a copy thereof, certified as true by the insurance agent, which shall include certificates of insurance issued. Any certificates of insurance submitted as evidence of insurance shall also include written verification (which can be made by electronic mail) from the insurance agent confirming that the coverage required hereunder is in place and fully paid as of the Effective Date. All evidence of insurance shall accurately reflect the coverages available under each such policy and shall satisfy all requirements of this Section. City shall have the right at any time and from time to time to require further assurances from the insurer or its agent regarding the effectiveness of any policy and the coverages provided therein.

XIII. INDEMNIFICATION, HOLD HARMLESS AND RELEASE PROVISIONS

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

- A. **Release.** The Grocer 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 Grocer 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, Grocer 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 Grocer (or if other Persons acting on its behalf or under either of their direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement.
- C. **Waiver.** The Grocer waive any claims against the Indemnified Parties for indemnification, contribution, reimbursement or other payments arising under federal, State and common law or relating to the environmental condition of the land which is part of the Property.

- D. **No Personal Liability.** No liability, right or claim at law or inequity shall attach to or shall be incurred by the City's Mayor, Aldermen, officers, officials, attorneys, agents and/or employees, and any such rights or claims of the Grocer 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. **Grocer 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 Grocer or Guarantor in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Grocer does not remedy the default, within thirty (30) days after written notice from the City.
 2. Default by Grocer or Guarantor for a period of fifteen (15) days after written notice thereof in the performance or breach of any covenant contained in this Agreement concerning the existence, structure or financial condition of Grocer or Guarantor, as the case may be; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and Grocer and/or Guarantor within said fifteen (15) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice.
 3. Default by Grocer in the performance or breach of any covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and the Grocer within said fifteen (15) days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice.
 4. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Grocer 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 Grocer or Guarantor for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.

5. The commencement by Grocer or Guarantor of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or the consent by Grocer or Guarantor to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Grocer, or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or Grocer generally declares it is unable to pay its debts as such debts become due or the taking of action by Grocer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.
6. Failure to have funds to meet Grocer's or Guarantor's obligation; provided, however, that such default shall constitute an Event of Default only if Grocer does not remedy the default, within thirty (30) days after written notice from the City.
7. A sale, assignment, or transfer of the Project, except in accordance with this Agreement.
8. Change in the Grocer, except in accordance with this Agreement. A change in the Grocer shall not occur if a member leaves or if a member dies. A new member may be added to the Grocer without the City's written consent, so long as there is no change in the control of finances and/or management of the Grocer.
9. Grocer abandons construction of the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than sixty (60) days for any reason other than Uncontrollable Circumstances.
10. Grocer fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the Project contemplated by this Agreement and such failure continues for more than fifteen (15) days after written notice thereof from the City; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and Grocer within said fifteen (15) days, initiates and diligently pursues appropriate measures to remedy the

default and in any event cures such default within ninety (90) days after such notice. The maintenance requirement of this provision shall not be covered by and shall survive any Certificate of Project Completion or Estoppel Certificate of any kind issued during the term of this Agreement.

11. A representation or warranty of Grocer or Guarantor is not true for a period of fifteen (15) days after written notice from the City; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said fifteen (15) days and Grocer within said fifteen (15) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within sixty (60) days after such notice.
12. Failure of Grocer to file Sales Tax Returns with the City and/or State and to remit the amount of taxes due as required.

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 Grocer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the City does not remedy the default, within fifteen (15) days after written notice from Grocer.
2. Default by the City in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the City; provided, however, that such default or breach shall constitute an Event of Default if the City does not, within fifteen (15) days after written notice from Grocer, initiate and diligently pursue appropriate measures to remedy the default.
3. Default by the City in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the City, commences cure within fifteen (15) days after written notice from Grocer, and in any event cures such default within sixty (60) days after such notice, subject to Uncontrollable Circumstances.

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

1. The defaulting Party shall, upon written notice from the non-defaulting Party/Parties, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than fifteen (15) additional days, unless extended by mutual agreement, the non-defaulting Party/Parties may institute such proceedings as may be necessary or desirable in its/their opinion to cure or remedy such Event of Default, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement.
 2. In case the City shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, the Grocer and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Grocer and the City shall continue as though no such proceedings had been taken.
 3. In the case of an Event of Default by the Grocer or Guarantor, in addition to any other remedies at law or in equity, the City shall be relieved of its obligations under this Agreement unless and until such time as the Event of Default is cured by the Grocer or Guarantor in accordance with this Agreement.
- D. **Agreement to Pay Attorneys' Fees and Expenses.** In the event an Event of Default is not cured within the applicable cure periods and a Party employs an attorney or attorneys or incurs other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement herein contained, the non-prevailing Party shall pay, on demand, the prevailing Party's, or Parties', reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action. This Section XIV.D. shall survive the termination of this Agreement.
- E. **No Waiver by Delay or Otherwise.** Any delay by any Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that any Party should not be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any

specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

- F. **Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.
- G. **Reimbursement of City for Legal and Other Fees and Expenses.** In the event that any third party or parties institute any legal proceedings against the Grocer 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 Grocer. This Section XIV.G. shall survive the termination of this Agreement.

XV. EQUAL EMPLOYMENT OPPORTUNITY

- A. **No Discrimination.** Grocer shall comply with all federal, State and local laws relating to equal employment opportunity. To the extent permitted by law, Grocer shall use reasonable efforts to employ qualified residents of the City.
- B. **Advertisements.** Grocer shall, in all solicitations or advertisements for employees placed by or on behalf of Grocer 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 Grocer 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 Grocer shall make reasonable efforts to notify City residents of employment opportunities that are available relative to the Project, and, to the extent permitted by law, make reasonable efforts to employ qualified residents of the City in relation to the Project.

- B. **Cancellation.** In the event the City shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, by the order of any court of competent jurisdiction, or in the event that any ordinance adopted by the City in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Project or the covenants and agreements or rights and privileges of the City, then and in any such event, the City may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the Grocer within sixty (60) days after such final decision or amendment. Provided however, prior to such termination the City agrees to meet with the Grocer and negotiate in good faith amendments and modifications to this Agreement to comply with the applicable order, ordinance or other law while attempting to preserve the parties rights and obligations hereunder to the greatest extent possible. If the City terminates this Agreement pursuant to this Subsection B., to the extent it is then appropriate, the City, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided. Further, the cancellation or termination of this Agreement shall have no effect on the authorizations granted to Grocer 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 60505
 Attention: City Mayor

With a copy to: City of Aurora
 44 E. Downer Place
 Aurora, Illinois 60505
 Attention: City Clerk

And: City of Aurora, Law Department
 1 S. Broadway Avenue, 3rd Floor
 Aurora, Illinois, 60505

Attention: Corporation Counsel

And: Mayor's Office of Economic Development
77 S. Broadway Avenue
Aurora, Illinois, 60505
Attention: Executive Director

If to Grocer:

With a copy to:

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

- D. **Time is of the Essence.** Time is of the essence of this Agreement.
- E. **Integration.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
- F. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and each of which shall constitute but one and the same Agreement.
- G. **Severability.** If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.
- H. **Choice of Law / Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois, and any court proceedings between the Parties hereto shall be brought in Kane County, Illinois.

- I. **Entire Contract and Amendments.** This Agreement (together with the exhibits attached hereto) is the entire contract between the City, the Grocer, and the Grocer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City, the Grocer, and the Grocer, and may not be modified or amended except by a written instrument executed by the Parties hereto. The Parties agree to cooperate and amend this Agreement to add new entities as needed to complete or effectuate the Project.
- J. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other Person other than the City and the Grocer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to the City or the Grocer, nor shall any provision give any third parties any rights of subrogation or action over or against the City or the Grocer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.
- K. **Waiver.** Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.
- L. **Cooperation and Further Assurances.** The City and the Grocer 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 Grocer or other appropriate Persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.
- M. **No Joint Venture, Agency or Partnership Created.** Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third party to create the relationship of a partnership, agency or joint venture between or among such Parties.
- N. **Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances, or any part thereof, or any exhibit to this Agreement, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

- O. **Term.** This Agreement shall remain in full force and effect until the Forgivable Loan is repaid in full or forgiven in accordance with the terms of this Agreement.
- P. **Assignment.** Except as set forth in this Section P, this Agreement, and the rights and obligations hereunder, may not be assigned by the Grocer unless the City, in the exercise of its sole and absolute discretion, consents in a writing signed by the City Mayor to such assignment.
- Q. **Municipal Limitations.** All City commitments hereunder are limited to the extent required by law.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

CITY OF AURORA,
an Illinois home rule municipal corporation

ATTEST:

By: _____
Richard C. Irvin, Mayor

By: _____
Jennifer Stallings, City Clerk

GROCER:

_____,
an Illinois Corporation

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

GUARANTOR:

_____ **Date:** _____

GUARANTOR:

_____ **Date:** _____

OWNERS:

_____ **Date:** _____

_____ **Date:** _____

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 Jennifer Stallings, 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 July, 2023.

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

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

GIVEN under my hand and official seal, this _____ day of _____, 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 and Depiction of the Property

Legal Description:

PINs:

Common Addresses:

EXHIBIT B

**Construction Schedule
(attached)**

EXHIBIT C

**Detailed list of “Equipment”
(attached)**