

## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT ("Agreement")**, dated this \_\_\_\_ day of May \_\_\_, 2016, is made by and between the **CITY OF AURORA**, Kane, Kendall, Will and DuPage Counties, Illinois, an Illinois municipal corporation and home rule unit of local government (the "**City**"), and **Sandri Properties, LLC**, an Illinois Limited Liability Company ("**Developer**").

### RECITALS

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

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

**WHEREAS**, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois (65 ILCS 5/11-74.4-1, *et. seq.*), as from time to time amended (the "**Act**"), the Mayor and City Council of the City are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a "conservation area" as defined in Section 11.74.4-3(b) of the Act; and

**WHEREAS**, in accordance with the requirements of the Act, the Mayor and City Council of the City, pursuant to Ordinance No. 000-121 on September 26, 2000, adopted by the Mayor and City Council of the City, approved a redevelopment plan and project for the River City Tax Increment Financing Project (also referred to herein, as appropriate, the "**TIF Plan**"); and have designated a redevelopment project area as required by the Act by the passage of Ordinance No. 000-122 on September 26, 2000, adopted by the Mayor and City Council of the City (also referred to herein as appropriate as the "**Redevelopment Project Area**"); and have adopted TIF Financing for the River City Redevelopment Project Area as required by the Act by the passage of Ordinance No. 000-123 on September 26, 2000 (also referred to herein as appropriate as the "**TIF Financing**") for the purposes of implementing the TIF Plan for the Redevelopment Project Area; and

**WHEREAS**, in furtherance of its commitment to redevelop depressed areas of the City, create and maintain jobs, and improve the tax base, the City has from time to time invited proposals for redevelopment of certain land within the City to encourage its revitalization, create and maintain jobs, and improve the tax base of the City; and

**WHEREAS**, Developer is the owner of the property located at 115 W. Indian Trail Road, Aurora, Illinois, PIN No: 15-10-352-043, (the "**Property**", which is legally described on **Exhibit "A"** to this Agreement); along with certain improvements including: an approximately 160,000 square foot, irregularly shaped, one (1) story, wood, metal, brick and masonry building, and a two (2) story wood framed and sided building; all as described in more detail in this Agreement (collectively, the "**Buildings**"), all of which is located within the City; and

**WHEREAS**, the Buildings are vacant, blighted, dilapidated, in serious disrepair, preventing redevelopment of this area, and are a threat to the health, safety and welfare of the residents of the City; and

**WHEREAS**, the City and the Developer desire the Buildings be demolished, thereby making the Property and surrounding area available for redevelopment that will serve the needs of the City and the community, produce increased employment opportunities for area residents and increase tax revenues for the various taxing districts authorized to levy taxes within the City; and

**WHEREAS**, in order to induce the Developer to demolish the Buildings thereby making the Property available for redevelopment (the "**Demolition Project**"), the Developer has submitted plans to the City for the Demolition Project (the "**Redevelopment Plans**"), attached hereto and incorporated herein as **Exhibit "B"** and made a part hereof, and the Mayor and City Council of the City have determined it is in the best interest of the City to incentivize the Developer in the amount not to exceed TWO HUNDRED EIGHTY FIVE THOUSAND and no/100 Dollars (\$285,000.00) ("**City Incentive**") of actual, documented, eligible Redevelopment Project Costs as further described herein, for the Demolition Project; and

**WHEREAS**, but for the City making these funds available, Developer could not successfully complete the Demolition Project in the manner provided within this Agreement; and

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

**WHEREAS**, the Mayor and City Council of the City, after due and careful consideration, have determined the Project by Developer and the provision by the City of the City Incentives, in each case pursuant to this Agreement, will thereby make the Property and surrounding area available for redevelopment that will serve the needs of the City and the community, increase employment opportunities, improve the environment of the City, increase the assessed valuation of the real estate situated within the City, increase the tax revenues realized by the City, foster increased economic activity within the City, and otherwise be in the best interests of the City and the health, safety, morals and welfare of its residents and taxpayers.

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

**ARTICLE I  
INCORPORATION OF RECITALS**

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

**ARTICLE II  
AGREEMENT CONTINGENCY, OWNERSHIP and MUTUAL ASSISTANCE**

**Section 2.01. Ownership.** Developer shall provide to the City a copy of the deed, title policy and /or such other documentation and information as the City may reasonably require establishing Developer's ownership of the Property. Developer shall also provide to the City such documentation, including Court Orders, establishing Developer's legal authority pursuant to that pending probate case for the Estate of Paul W. Soderstrom, deceased, in the Circuit Court of Kane County No. 2012 P 600. Failure to comply with this requirement shall result in the reimbursement to the City by Developer of any and all funds paid pursuant to this Agreement in accordance with Section 4.03 contained herein.

**Section 2.02. Mutual Assistance.** Whenever any Party is required to take any action pursuant to the terms of this Agreement, such action shall not be unreasonably withheld or delayed. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent. This Section shall not require the City to approve any specific ordinance(s), as all ordinances approved or rejected by the City are based upon the merits and requirements of each ordinance as provided by law.

**ARTICLE III  
REDEVELOPMENT PROJECT**

**Section 3.01. Redevelopment Plan.**

(A) The Developer agrees and covenants the Demolition Project and construction of the Redevelopment Plans will consist of the demolition of the Buildings which are vacant, blighted, dilapidated, in serious disrepair, making the Property and surrounding area available for redevelopment and will serve the needs of the City and the community, produce increased employment opportunities for area residents and increase tax revenues for the various taxing districts authorized to levy taxes within the City.

(B) Developer will submit the Redevelopment Plans within thirty (30) days of the execution of this Agreement for the various components of the Demolition Project in accordance with the provisions of this Agreement. Developer also has, or will within approximately sixty (60) days of the execution of this Agreement, submit to the City the proposed, estimated construction budget and construction schedule for the Demolition Project, copies of which are attached, or are to be attached, and incorporated herein as **Exhibit "C" (Construction Budget and Construction Schedule Report)**).

(C) Within approximately sixty (60) days of the approval of the Construction Budget and Construction Schedule Report by the City, Developer will prepare and submit the final plans for the Demolition Project (the **"Construction Plans"**) to the City for approval in accordance with the rules regulations and ordinances of the City, and consistent with the Redevelopment Plans. Upon approval, the Construction Plans shall be incorporated herein as **Exhibit "D"**. The Redevelopment Plans and the Construction Plans when approved shall constitute the **"Final Project Documents"**.

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

(E) Before construction begins in accordance with the Final Project Documents and as described in this Agreement, Developer shall, at its expense, secure or cause to be secured all permits required for the Work by City ordinances or policy existing as of the date of this Agreement, and any other governmental agencies having jurisdiction over such Work, or such portion of the Work performed, including, without limitation, any applications and permits required to be obtained from any local, federal or state environmental protection agency, or from any other agency which may have or exercise any jurisdiction of any type whatsoever which may affect the Property. The parties acknowledge and agree the cost of said permits shall be a TIF reimbursable expense as provided for in the Act. Developer shall be responsible for all bonds and/or other types of assurances required by City ordinance or code for any repairs to City property when obtaining the permits required herein.

(F) The Parties agree and acknowledge development of the Demolition Project and City Improvements are, and must be, in compliance with the TIF Plan and all other requirements of the Act.

(G) The Parties agree and acknowledge the Final Project Documents shall comply with all applicable federal, state, county, municipal or administrative laws, ordinances, rules, regulations, codes and orders (collectively, the **"Legal Requirements"**) relating in any manner to the Work, including, without limitation, all environmental laws, regulations and requirements.

(H) Developer shall carry out the Work in conformity with all applicable Legal Requirements as set forth above.

**ARTICLE IV  
ELIGIBLE REIMBURSEMENT COSTS**

**Section 4.01. Type and Amount of Eligible Reimbursement Costs.** The eligible reimbursement costs to Developer shall consist of reimbursement of the City Incentive in an amount not to exceed TWO HUNDRED EIGHTY FIVE THOUSAND and no/100 DOLLARS (\$285,000.00) (“City Incentive”) for the Demolition Project.

**Section 4.02. Reimbursement for TIF Eligible Costs.**

(A) Developer shall advance all funds and costs necessary to (i) complete the Work; and (ii) undertake other matters eligible for reimbursement pursuant to this Agreement in connection with the Work.

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

(C) To establish a right to reimbursement of specific Redevelopment Project Costs under this Agreement, Developer shall submit to the City such documentation, including lien waivers and releases, as may be reasonably required by the City showing the actual Total Costs expended by the Developer to complete the Work as set forth in the Final Project Documents.

(D) The City shall have sixty (60) days after receipt of any request for reimbursement from Developer to approve or disapprove any of the expenditures for which reimbursement is sought in such request and, if disapproved, to provide Developer in writing and in detail with an explanation as to why such request was disapproved; provided, the only reasons for disapproval of any expenditure for which reimbursement is sought shall be such expenditure is not an eligible Redevelopment Project Cost or the documentation therefore is insufficient.

**Section 4.03. Reimbursement to City.** Any amounts paid to Developer pursuant to this Agreement and later determined to be based upon ineligible Redevelopment Project Costs, or any misrepresentation by Developer and/or its agents or designated representatives, shall be reimbursed to the City by Developer within sixty (60) days of the City giving notice to Developer. The City shall provide Developer in writing and in detail with an explanation as to why such payment amounts were found to be based upon ineligible Redevelopment Project Costs or misrepresentation.

**Section 4.04. No Individual or Personal Liability.** Notwithstanding any other statement in this Agreement, the Parties agree the representations made by the City in this Agreement and funding offered in this Article IV are made on behalf of the City. The City Staff, Mayor, City Council and agents of the City are not making such representations personally, are not parties to this Agreement, and shall incur no personal liability in conjunction with this Agreement.

**Section 4.05. Project Costs Exceeding Incentive.** Any Project Costs for the Demolition Project exceeding the City Incentive shall be paid by the Developer without reimbursement from the City.

**ARTICLE V  
CITY INCENTIVE – LIEN ON PROPERTY**

**Section 5.01. Mortgage Lien on Property.** The City shall place an interest free, no payment mortgage lien on the Property in the amount of the eligible Redevelopment Project Costs reimbursed to the Developer for the Demolition Project. The mortgage and note evidencing Developer’s obligation is attached hereto, and incorporated herein, as **Exhibit “E” (“Mortgage” and “Note”)**.

**Section 5.02. Release of Lien – New Development.** The City will release the Mortgage and Note on the Property upon the City being fully reimbursed the City Incentives, or upon Developer’s Commencing Construction of a Building on the Property within five (5) years of the date Developer is first reimbursed by the City for eligible Redevelopment Project Costs for the Demolition Project. The building shall have a Minimum Construction Value of TWO MILLION FIVE HUNDRED THOUSAND and No/100 Dollars (\$2,500,000.00).

**Section 5.03. Definition of Terms in Section 5.02.**

- A. The term “commencing construction” as used in Section 5.02 shall be defined as Developer having obtained all necessary building permits for construction, and completing all below grade work including, but not limited to, installation of all utilities and foundations.
- B. The term “building” as used in Section 5.02, shall be defined as a structure that can be used for any purpose allowed under the zoning ordinances for the zoning district in which the Property is located.
- C. The term “minimum construction value” as used in Section 5.02 shall be calculated as the actual documented costs paid, or under contractual obligation of the Developer to be paid, to third parties for the construction of the building.

**Section 5.04. Repayment to City.** Developer shall repay to the City the full amount of the City Incentive upon Developer’s failure to Commence Construction of the Building on the Property pursuant to Section 5.02 above.

**Section 5.05. Failure to Repay City.** Developer’s failure to repay the City pursuant to Section 5.04 above shall constitute a default under this Agreement and the Mortgage and Note. Upon such default, the City may prosecute foreclosure proceedings under the Mortgage and Note as provided for by law, or prosecute any other legal actions or proceedings available, or otherwise assert its rights under this Agreement.

**ARTICLE VI**  
**SPECIAL COVENANTS, REPRESENTATIONS AND WARRANTIES**

**Section 6.01. Real Estate Taxes.**

(A) Developer agrees any and all real estate taxes and special assessments on the Property will be paid by Developer directly to the Kane County Treasurer, when due. Failure to timely pay said taxes and/or special assessments shall constitute a breach of this Agreement.

(B) Developer acknowledges the Work is a part of the TIF Plan and all TIF eligible reimbursements for Project Costs provided herein shall be paid from the tax increment generated within the entire Redevelopment Project Area. Therefore, Developer agrees that for the term of this Agreement, Developer shall not contest, or cause to be contested, the validity or amount of the real estate property tax assessment of the Property, except in the case of a material error in real estate property tax assessment.

(C) For purposes of this Agreement, "Governmental Charges" shall mean all federal, state, county, City or other governmental (or instrumentality, division, agency or department, thereof) taxes, levies, assessments, charges, liens, fines, claims or encumbrances relating to Developer, the Property or the Work, including, but not limited to, sales taxes. Developer agrees to pay or cause to be paid when due all reasonable City Charges and all Governmental Charges which are assessed or imposed upon Developer, the Property or any portion of the Work controlled by Developer, or which become due and payable.

**Section 6.02. Compliance with Laws.** Developer represents and warrants to the City, both as of the date of execution and delivery of this Agreement and for the term of the Agreement, as follows:

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

(B) Developer shall comply with all applicable federal laws, state laws and regulations including without limitation, such laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors, payment of wages due employees, and health and safety of employees. Developer agrees to pay its employees, if any, all rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes, and further agrees to make all required withholdings and deposits therefore. Developer agrees to maintain full compliance with changing government requirements that govern or apply to the construction of the Work. Developer understands and agrees the most recent of such federal, county, state, and local laws and regulations will govern the administration of this Agreement at any particular time. Likewise, new federal, county, state and local laws, regulations, policies and administrative practices may be established after the date of the Agreement has been executed and may apply to this Agreement and the Work. Any lawsuit or complaint of violation of laws received by Developer relative to this Agreement or the Project shall be immediately forwarded to City.

(C) Developer shall not discriminate against any employee or application for employment because of race, color, national origin, creed, sex or sexual orientation. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applications will receive proper consideration for employment without regard to race, color, national origin, creed, sex or sexual orientation of the applicant.

**Section 6.03. Indemnification.** Developer, its successors and assigns shall defend, indemnify and hold harmless the City and its elected or appointed officers and officials, mayor, aldermen, agents, representatives and/or employees, from and against any and all civil liabilities, actions, responsibilities, obligations, losses, damages and claims, and all costs and expenses, including but not limited to attorney's fees and expenses (collectively, "**Losses**") pursuant to any federal, state and local laws (including common law), statutes, ordinances, rules, regulations and other requirements relating to or which the City and/or its elected or appointed officers and officials, trustees, mayor, aldermen, agents, volunteers, representatives and/or employees may incur from Developer's use and development of the Property, any tests or surveys conducted by Developer, and the construction of the Work, including but not limited to any Losses incurred which are based on tort law, wrongful death and/or a personal injury claim, suit or action and/or any Losses relating to environmental investigation, cleanup, or abatement, whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, arisen or to arise, and in any manner whatsoever incurred by reason of Developer's or worker's activities at the Property or the Work. It is expressly understood, agreed upon and the specific intent of this Agreement that the City and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees will not assume responsibility or liability for the actions of Developer or any workers or other persons on the Property. As between the City, its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees, and Developer, Developer shall at all times be held solely responsible to all persons on the Property present there because of the Work thereon. Developer and its successors and assigns hereby agree to release, waive, covenant not to sue and forever discharge the City and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees, from any claim, suit or action, whether or not well founded in fact or in law, which Developer and the workers have, or may have, arising out of the Work

**Section 6.04. Insurance.**

(A) Developer, and any successor in interest to Developer, shall obtain and continuously maintain insurance on the Work and 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 Developer must continuously maintain:

- (1) Prior to and during construction of the Work, 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 Work at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
- (2) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual



liability insurance) together with an Owner's/Contractor's Policy naming the City primary non-contributory additional insured, with limits against bodily injury and property damage of not less than Two Million and no/100 Dollars (\$2,000,000) for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis. Developer shall provide a certificate of insurance evidencing such insurance prior to the commencement of the Work.

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

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

**Section 6.05. Assignment.** Developer agrees it will not transfer all or any interest in this Agreement without the prior written consent of the City, which approval shall not be unreasonably withheld; provided, however, nothing in this Agreement shall preclude the granting of easements, licenses or rights of way to utility companies that are consistent with this Agreement.

**Section 6.06. Environmental Matters.** Developer shall not store, dispose of, or release, or allow the storage, disposal or release, of any hazardous substance, material, contaminant, or pollutant, as defined by any federal or state environmental laws, in, under, on or about the Property. Developer, at its cost, shall remediate any hazardous substance, contaminant or pollution or other dangerous environmental condition it (or its lessees, employees, agents or contractors) creates or causes with respect to the Property in accordance with all federal, state, county and local applicable laws and regulations. In accordance with Section 6.03, Developer shall indemnify and hold the City, and its Covered Persons, harmless against any claim, suit, loss, liability or damage, including, attorney's fees and expenses incurred by the City, and/or its Covered Persons, in defending itself or complying with applicable laws and regulations, arising out of or relating to the Developer storing, disposing or releasing any hazardous substance, material, contaminant, or pollutant in, under, on or about the Property.

## ARTICLE VII REMEDIES FOR BREACH OF AGREEMENT

**Section 7.01. Developer Events of Default.** The following shall be Events of Default with respect to this Agreement:

(A) If any material representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, that Developer shall have the right to remedy the default within sixty (60) days after written notice from the City.

(B) Default by Developer for a period of sixty (60) days after written notice thereof in the performance or breach of any material covenant contained in this Agreement, or any other agreement, financing or otherwise, concerning the existence, structure or financial condition of Developer and/or the Work and Property.

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

(D) The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, (or similar official) of Developer for any part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within sixty (60) consecutive days.

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

(F) Except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any action for foreclosure, any lien or other encumbrance 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 which is not dismissed or for which adequate security is otherwise provided, within sixty (60) days after written notice from Developer.

(G) The dissolution, whether voluntary or involuntary, of Developer or the death of any natural person who owns a controlling interest in Developer, unless, in the case of the death of such natural person, Developer, within sixty (60) days of such death, establishes to the satisfaction of the Mayor and the City Council, that it is able to fulfill its obligations under this Agreement, notwithstanding such death.

(H) The conviction for a felony in any court of a criminal proceeding against the Developer or any natural person who owns a controlling interest in Developer.

(I) Developer materially fails to comply with applicable governmental codes and/or regulations in relation to the Work contemplated by this Agreement; provided, however, such default shall constitute an Event of Default only if Developer does not, within sixty (60) days after written notice from the city, remedy the default.

**Section 7.02. City Events of Default.** The following shall be Events of Default with respect to this Agreement:

(A) If any representation made by the City in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, such default shall constitute an Event of Default only if the City does not remedy the default within sixty (60) days after written notice from Developer.

(B) Default by the City in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the City; provided, however, such default shall constitute an Event of Default only if the City does not remedy the default within sixty (60) days after written notice from Developer.

(C) Default by the City in the performance or breach of any material covenant or obligation contained in this Agreement; provided, however, such default shall constitute an Event of Default only if the City does not remedy the default within sixty (60) days after written notice from Developer.

**Section 7.03. Remedies for Default.** In the case of an Event of Default hereunder:

(A) The defaulting Party shall, upon written notice from the non-defaulting Party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured within sixty (60) days, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than sixty (60) additional days after receipt of such notice, unless extended by mutual agreement, the non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement.

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

Developer shall reimburse the City all amounts previously paid to Developer within sixty (60) days of such Event of Default.

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

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

**Section 7.04. No Waiver by Delay or Otherwise.** Any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither Party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

**Section 7.05. Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

## **ARTICLE VIII REPRESENTATIONS AND WARRANTIES**

**Section 8.01. Developer's Representations and Warranties.** Developer represents and warrants to its best knowledge and belief:

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

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

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

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

(E) Developer has filed all federal, state and other income tax returns which, to the knowledge of the Developer, are required to be filed, and has paid all taxes as shown on such returns and on all assessments received by it to the extent such taxes have become due, except taxes being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with generally accepted accounting principles. Developer knows of no proposed additional tax or assessment against it by any governmental authority that would be reasonably likely to have a material adverse effect on the business, condition (financial or otherwise) or operations of Developer.

(F) Developer represents and warrants that, to the best of its knowledge, no official, agent, or employee of the City has any direct or indirect financial interest in this Agreement or the Project. Further, to the best of its knowledge, none of the above has participated in any decision relating to this Agreement that is prohibited by law or violates any provision of the Act. Developer represents and warrants that no officer, agent, employee or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Developer. Developer represents and warrants that it has not been paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement, other than normal costs of conducting the Operations, and costs of professional services such as architects, engineers and attorneys. Developer acknowledges that the City is relying upon the foregoing representations and warranties in entering into this Agreement, and would not enter into this Agreement absent the same.

(G) Developer represents and warrants that it will not enter into any transaction that would materially and adversely affect its ability to perform its obligations under this Agreement. Developer will immediately notify the City of any and all events or actions, including, but not limited to, commencement of any administrative or judicial actions, which may materially and

adversely affect Developer's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements related to this Agreement or Project.

(H) Developer represents that the Work is and shall be in compliance with the terms of the City's Redevelopment Plans and all statutory and regulatory provisions of the Act.

(I) Developer represents and warrants it has provided to City a copy of any and all Phase 1 and/or Phase 2 Environmental Reports prepared for Developer, received by Developer, or in the possession of Developer, for the Property.

(J) Developer has funds in an amount not less than that required to complete the Work.

(K) Developer covenants that no officer, member, manager, stockholder, employee or agent of Developer, or any other person connected with Developer, has made, offered or given, either directly or indirectly, to any 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 bribe or other means of influencing his or her action in his or her capacity with the City.

**Section 8.02. City Representations and Warranties.** The City represents and warrants:

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

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

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

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

**Section 8.03. Disclosure.** In accordance with Illinois law, 50 ILCS 105/3.1, simultaneously with the execution of this Agreement by the Parties, Developer shall submit a sworn affidavit to the City disclosing the identity of every owner and beneficiary who shall obtain any interest, real or personal, in the Project, and every person entitled to receive more than 7½% of the total distributable income of any entity after having obtained such an interest in the Project or, alternatively, if a corporation's stock is publicly traded, a sworn affidavit by an officer of Developer or its managing agent that there is no readily known individual who shall obtain a greater than 7½% percent interest, real or personal, in Developer or the Project. The sworn

affidavit shall be substantially similar to the one described in **EXHIBIT "E"** attached hereto and made a part of this Agreement. Said affidavit shall be updated, as necessary.

## **ARTICLE IX GENERAL PROVISIONS**

**Section 9.01. Entire Agreement; Successors and Assigns; Amendments.** This Agreement, and the Exhibits attached to it contain the entire agreement between the Parties in connection with these transactions, and there are no oral or parole agreements, representations or inducements existing between the Parties relating to these transactions which are not expressly set forth in this Agreement and covered by this Agreement. This Agreement may not be modified except by a written agreement signed by all of the Parties or their successors in interest, and in the case of the City, shall require the adoption of an ordinance or resolution by the Mayor and City Council of the City approving such amendment. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement, their respective heirs, legal representatives, administrators, successors, successors in interest and assigns.

**Section 9.02. Governing Law; Interpretation; Partial Invalidity.** This Agreement shall be governed by the laws of the State of Illinois, and it is agreed jurisdiction for the enforcement of this Agreement shall be in the Circuit Court of Kane County, Illinois. The captions, section numbers and article numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope or intent of such paragraphs or articles of this Agreement nor in any way affect this Agreement. The invalidity of any provision of this Agreement or portion of a provision shall not affect the validity of any other provision of this Agreement or the remaining portions of the applicable provision.

**Section 9.03 Notices.** All notices, demands, approvals or other instruments required or permitted to be given under this Agreement shall be in writing and shall be executed by the Party or an officer, agent or attorney of the Party, and shall be deemed to have been effective as of the date of actual delivery, if by messenger delivery, on the date of transmission if transmitted via facsimile during normal business hours (9:00 a.m. to 5:00 p.m.), or as of the third (3rd) day from and including the date of posting, if deposited in the United States mail, postage prepaid, registered or certified mail, addressed as follows (or to such other address as may be designated from time to time by either Party by written notice to the other):

Developer: Sandri Properties, LLC  
Karna L. Sandri, Manager  
1223 Violet Lane  
Batavia, Illinois 60510

Copy to: Gary G. Piccony, Executor  
Estate of Soderstrom  
Piccony & Patankar, PC  
1700 N. Farnsworth, Suite 28  
Aurora, Illinois 60505

City: City of Aurora  
44 E. Downer Place  
Aurora, Illinois 60507-2607  
Attn: Office of the Mayor

Copy to: Seize the Future  
Development Foundation  
43 W. Galena Boulevard  
Aurora, Illinois 60506  
Attn: President / CEO

**Section 9.04. Conflict of Interest: City's Representative Not Individually Liable.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement; nor shall any such member, official or employee participate in any decision relating to this Agreement which affects such person's interests or the interests of any corporation, partnership, or association in which such person is directly or indirectly interested. No member or employee of the City has acquired any interest direct, or indirect, in the Property. No member, official, or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement, except as such shall be found to be caused by a violation of Section 4(n) of the Act.

**Section 9.05. Municipal Limitation.** All City commitments or obligations undertaken pursuant to this Agreement shall be limited to the extent such obligations are within its municipal corporation powers.

**Section 9.06. No Joint Venture.** Nothing contained in this Agreement is intended by the Parties to create a joint venture, agency or partnership between the Parties. It is understood and agreed this Agreement does not provide for the joint exercise by the Parties of any activity, function or service, nor does it create a joint enterprise, nor does it constitute either Party as an agent of the other for any purpose whatsoever.

**Section 9.07. Counterparts.** This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute but one and the same instrument.

**Section 9.08. Exhibits.** The attached exhibits are incorporated herein by reference and made a part hereof.

**Section 9.09. 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.

**Section 9.10. Authority to Execute.** Each signatory on behalf of a Party to this Agreement warrants and represents he or she is a duly authorized representative of that Party, with full power and authority to agree to this Agreement, and all terms herein, on behalf of that Party.

**Section 9.11. Severability.** If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstances 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.

**Section 9.12. Term of Agreement.** The parties understand time is of the essence. Accordingly, this Agreement shall be deemed dated and become effective on the date the last signatory signs this Agreement and shall remain in effect until the termination of the



Redevelopment Project Area, and the mortgage and note provisions set forth in Article V herein shall survive the termination of the Agreement.

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

**CITY OF AURORA**

**SANDRI PROPERTIES, LLC,**  
An Illinois Limited Liability Company

By: \_\_\_\_\_  
Name: THOMAS J. WEISNER  
Title: Mayor

\_\_\_\_\_  
Karna L. Sandri, Manager

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Name: WENDY McCAMBRIDGE  
Title: City Clerk

\_\_\_\_\_  
Gary G. Piccony, Esq.

**ACKNOWLEDGMENT BY CITY**

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF Kane        )

On May \_\_\_\_, 2016, Thomas J. Weisner, as City Mayor, and Wendy McCambridge, as City Clerk, of the City of Aurora, Illinois, a municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person, and acknowledged they signed, sealed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of the City of Aurora, for the uses and purposes therein set forth.

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

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

**ACKNOWLEDGMENT BY DEVELOPER**

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF Kane        )

On May \_\_\_\_, 2016, Karna L. Sandri and Gary G. Piccony, Esq., and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person, and acknowledged they signed, sealed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

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

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

# Exhibit A

**Common Address:** 115 W. Indian Trail Road, Aurora, IL

**Square Footage:** 160,000 for Buildings

**PIN Number:** PIN No: 15-10-352-043

**Legally Described:** (See attached)

# **Exhibit B**

## **Redevelopment Plans**

**Exhibit C**  
**Construction Budget**  
**And**  
**Construction Schedule**

# **Exhibit D**

## **Construction Plans**

**Exhibit E**  
**Mortgage and Note**

Prepared by and Return to:

James D. Healy  
Goldstine & Skrodzki...,Ltd.  
835 McClintock Drive  
Burr Ridge, Illinois 60527

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**COMMERCIAL, INTEREST AND PAYMENT FREE  
MORTGAGE**

**DEFINITIONS**

(A) **“Security Instrument”** means this Mortgage, which is dated May \_\_\_\_\_, 2016, together with all Riders, if any, to this document.

(B) **“Borrower”** is: Sandri Properties, L.L.C., an Illinois limited liability company.

Borrower’s address: 1223 Violet Street, Batavia, Illinois 60510

Borrower is the Mortgagor under this Security Agreement.

(C) **“Lender”** is: The City of Aurora, an Illinois municipal corporation and home rule unit of government.

Lender’s address is: 44 East Downer Place, Aurora, IL 60507-2067

Lender is the Mortgagee under this Security Agreement.

(D) **“Note”** means the Promissory Note signed by Borrower of even date herewith. The Promissory Note provides that the Borrower owes Lender an amount up to but not to exceed Two Hundred and Eighty Five Thousand and No/100 Dollars (\$285,000.00) based upon the Redevelopment Project Costs reimbursed to Borrower for the Demolition Project as those terms are defined in the Redevelopment Agreement, with no payments due and no interest charged.



(E) **“Property”** means the property that is legally described on Exhibit “A” attached hereto and incorporated herein by reference, and commonly known as 115 West Indian Trail Road, Aurora, Illinois.

(F) **“Loan”** means the amount of all eligible Redevelopment Project Costs as that term is defined in the Redevelopment Agreement.

(G) **“Redevelopment Agreement”** means that certain Redevelopment Agreement dated the \_\_\_\_ day of May, 2016, by and between the Borrower and the Lender.

(H) **“Riders”** means all Riders to this Security Instrument that are executed by Borrower.

(I) **“Applicable Law”** shall be the laws of the State of Illinois, and it is agreed jurisdiction for the enforcement of this Security Instrument shall be in the Circuit Court of Kane County, Illinois.

(J) **“Successor in Interest of Borrower”** means any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Note and/or this Security Instrument.

(K) **“Commencement of Construction”** or **“Commence Construction”** means the date Borrower or Borrower’s agent for purposes of construction has obtained all necessary building permits for construction of a Building with a Minimum Construction Value as those terms are defined in the Redevelopment Agreement, and has completed all below grade work including, but not limited to, installation of all utilities and foundations reasonably required by City.

This Security Instrument secures to Lender: (i) the repayment of those eligible Redevelopment Project Costs paid to the Borrower if, and only if, Borrower fails to Commence Construction on or before the \_\_\_\_ day of May, 2021; and (ii) the performance of Borrower’s covenants and agreements under this Security Instrument and the Promissory Note. Solely for this purpose, Borrower does hereby mortgage, grant and convey to Lender, the following described property located in the County of Kane:

**LEGAL DESCRIPTION:** See Exhibit “A” attached hereto and incorporated herein. commonly known as: 115 W. Indian Trail Road, Aurora, IL.

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the “Property.”

BORROWER REPRESENTS, WARRANTS AND COVENANTS that Borrower lawfully has the authority to mortgage the Property and that the Property is currently unencumbered.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

1. **Payment.** No payment shall be due from Borrower, provided Borrower Commences Construction within the time set forth in the Redevelopment Agreement. In the event Borrower fails to Commence Construction as required, all eligible Redevelopment Project Costs paid to Borrower by Lender shall be due and payable upon demand.
2. **Charges; Liens.** Borrower shall pay, when due, all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument. Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, and fully and vigorously defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Security Instrument.
3. **Property Insurance.** Borrower shall maintain such insurance as is required in the Redevelopment Agreement.
4. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; (c) incurring reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including protecting and/or assessing the value of the Property, securing and/or repairing the Property and including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off.

Although Lender may take action under this Section 7, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 7.

Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

5. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower, unless set forth in writing. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.
6. **Notices.** All notices shall be given pursuant to the terms of the Redevelopment Agreement.
7. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by the laws of the State of Illinois, and it is agreed jurisdiction for enforcement shall be in the Circuit Court of Kane County, Illinois. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.
8. **Borrower's Copy.** Borrower shall be given one copy of the Note and Security Instrument.
9. **Transfer of the Property or a Beneficial Interest by Borrower.** As used in this Section 9, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title in the Property. In the event any interest in the

Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance herewith within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

10. **Release.** Lender will release the Mortgage upon payment of all sums secured by this Security Instrument or upon Commencement of Construction, whichever comes first. Borrower shall pay any recordation costs.
11. **Attorneys' Fees.** As used in this Security Instrument and the Note, attorneys' fees shall include those awarded pursuant to the terms of the Redevelopment Agreement, and any attorneys' fees incurred by Lender in a bankruptcy proceeding.
12. **Jury Trial Waiver.** The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.
13. **Rights and Remedies on Default.** If Borrower fails within the time allowed to Commence Construction of a Building of Minimum Construction Value (as such terms are defined in the Redevelopment Agreement), or upon the occurrence of any default under this Security Instrument, the Note and/or the Redevelopment Agreement, at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:
  - (A) Lender shall have the right at its option without notice to Borrower (except as otherwise expressly provided herein or in the Note) to (i) declare all amounts due under the Note and/or this Security Instrument immediately due and payable, (ii) take possession of the Property and collect rents, if any, and apply the net proceeds, over and above Lender's costs, against the amounts due under the Note and/or this Security Instrument, and (iii) be placed, without bond if permitted by law, as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the rents, if any, from the Property and apply the proceeds, over and above the cost of the receivership, against the amounts due under the Note and/or this Security Instrument. Employment by Lender shall not disqualify a person from serving as a receiver. With respect to personal property, if any, attached or affixed to the Property, Lender

shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

(B) Lender may obtain a judicial decree foreclosing Borrower's interest in all or any part of the Property. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section. Lender shall have all other rights and remedies provided in this Security Instrument or the Note or available at law or in equity. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy.

14. **Waivers.** To the extent permitted by applicable law, Borrower hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Borrower waives the benefit of and shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement of foreclosure of this Security Instrument.
15. **Attorneys' Fees; Expenses.** In any action to enforce any provisions of this Security Instrument, Lender shall be entitled to recover all reasonable expenses incurred by Lender for the protection of its interest or the enforcement of its rights, including, without limitation, reasonable attorneys' fees, court costs and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law.
16. **Additional Indebtedness; Future Advances.** This Security Instrument is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of Lender, to the same extent as if such further advances are made on the date of the execution of this Security Instrument. The total unpaid balance so secured at one time shall not exceed twice the face amount of the Note, and any disbursement made for the payment of taxes, levies or insurance on the Property.
17. **Indemnity.** Borrower shall indemnify and hold Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including reasonable attorneys' fees and court costs incurred by Lender in the exercise or enforcement of the rights and powers granted to Lender in this Security



**COMMERCIAL**  
**INTEREST AND PAYMENT FREE**  
**PROMISSORY NOTE**

\$0 - \$285,000.00

Address: 115 W. Indian Trail Road, Aurora, Illinois  
(See Exhibit A for legal description and PIN Numbers)

**1. BORROWER'S PROMISE TO PAY**

In return for a loan to be received, Sandri Properties, L.L.C., an Illinois limited liability company, (hereinafter the "Borrower"), promises to pay to the order of the Lender (if, and only if, Borrower has failed within the time allowed to Commence Construction, of a Building of Minimum Construction Value as those terms are defined in the Redevelopment Agreement of even date herewith by and between the Borrower and Lender) all eligible Redevelopment Project Costs, as that term is defined in the Redevelopment Agreement of even date herewith, as may have been paid to Borrower by Lender. The Lender is The City of Aurora, an Illinois municipal corporation (hereinafter "Lender" or "Note Holder"). All required payments, if any, under this Note shall be in the form of certified check or wire transfer.

**2. INTEREST**

It is expressly understood and agreed that no interest will be charged hereunder.

**3. PAYMENTS**

**Time and Place of Payments**

If Borrower does not, within the time allowed, Commence Construction of a Building of Minimum Construction Value, as those terms are defined in the Redevelopment Agreement of even date herewith, payment shall be due on or before May \_\_\_\_, 2021, Payment shall be made in the Office of the Mayor of the City of Aurora, 44 East Downer Place, Aurora, Illinois, 60507-2067, by cashiers or certified check made payable to the City of Aurora.

If Borrower Commences Construction of a Building of Minimum Construction Value, as those terms are defined in the Redevelopment Agreement of even date herewith, within the time allowed, this Note and the accompanying Mortgage shall be released.

**4. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Default**

If Borrower does not within the time allowed Commence Construction of a Building of Minimum Construction Value, as those terms are defined in the Redevelopment Agreement of even date herewith, and thereafter does not promptly pay the full amount of the eligible Redevelopment Project Costs on the date due, Borrower will be in default.

**(B) Notice of Default**

If Borrower is in default, the Note Holder may send Borrower a written notice to pay immediately the full amount of the loan which has not been paid.

**(C) No Waiver By Note Holder**

Even if, at a time when Borrower is in default, the Note Holder does not require Borrower to pay immediately in full as described above, the Note Holder will still have the right to do so at a later time.

**(D) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required Borrower to pay upon default and demand as described above, the Note Holder will have the right to be paid back by Borrower for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, but are not limited to, reasonable attorneys' fees and costs incurred in connection with the enforcement of this Note or Security Instrument as hereinafter defined.

**5. GIVING OF NOTICE**

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it certified mail to Sandri Properties, LLC, Karni L. Sandri, Manager, 1223 Violet Lane, Batavia, Illinois 60510

Any notice that must be given to the Note Holder under this Note will be given by personally delivering it or by mailing it certified mail to the Note Holder at 44 East Downer Place, Aurora, Illinois 60507-2067, Attention: Office of the Mayor.

**6. WAIVERS**

Borrower hereby waives the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**7. SECURED NOTE**

Borrower acknowledges and agrees this Note is a secured instrument. In addition to the protections given to the Note Holder under this Note, a Mortgage (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if Borrower does not keep the promises which are made in this Note. The Security Instrument describes how and under what conditions Borrower will be required to make payment of all amounts due, if any, under this Note. Some of those conditions are described as follows:

**If all or any part of the Property or any Interest in the Property is sold or transferred (or if a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument.**

**If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date of the notice within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may**



invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**8. BINDING EFFECT**

This Note will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of Borrower and Lender.

WITNESS THE HANDS AND SEALS OF THE UNDERSIGNED.

**“BORROWER”:**

**Sandri Properties, LLC,  
an Illinois limited liability company**

\_\_\_\_\_  
Karni L. Sandri, Manager

STATE OF ILLINOIS )

) SS

COUNTY OF Kane )

On May \_\_\_\_, 2016, Karni L. Sandri personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person, and acknowledged they signed, sealed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

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

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

# **Exhibit F**

## *Sworn Affidavit of Ownership Interest of Parcel*

**AFFIDAVIT OF KARNA I. SANDRI**  
**In Connection With City Contribution of**  
**\$285,000.00 to Sandri Properties, L.L.C.**

The affiant below, Karna L. Sandri (hereinafter "Affiant") for herself under penalty of perjury, state that I have personal knowledge of the following facts and the following is true and correct and that if called as a witness, I could competently testify to my own personal knowledge of the following facts regarding the request to the City for the contribution of up to Two Hundred Eighty Five Thousand and no/100 Dollars (\$285,000.00) pursuant to the terms of the Redevelopment Agreement dated May \_\_, 2016 (the "Agreement") by and between the City of Aurora, an Illinois municipal corporation (hereafter the "City") and **Sandri Properties, L.L.C., an Illinois limited liability company**, (hereinafter the "Owner").

Affiant is an authorized representative of Owner, its successors and assigns. As authorized representative, Affiant has the knowledge, experience and authority to develop and make decisions regarding the operation and development of the Property and the Project, as those terms are defined in the Agreement, and the authority to make the statements, covenants and representations contained in this Affidavit. All of the affirmations and representations below are true to the best of Affiant's knowledge and are being relied upon by the City in connection with the Agreement. For purposes of this Affidavit, the effective date shall be the date on which the Agreement is fully executed pursuant to a duly enacted City Ordinance authorizing execution of and adoption of the Agreement (the Effective Date").

1. Owner, pursuant to the Agreement, holds title to that certain property commonly known as 115 Indian Trail Road, Aurora, Illinois (the "Property").
2. Pursuant to the Agreement, Owner was authorized to and had the power to enter into, and by proper action is duly authorized to execute, deliver and perform the Agreement.
3. Owner, pursuant to the Agreement intends to authorize and contract for the demolition of the Property.
4. Pursuant to the Agreement, prior to commencing demolition, Owner shall provide the City with all required certificates of insurance, naming the City as an additional primary, non-contributory insured, issued by such companies and in such amounts as shall be determined by the Parties.
5. Pursuant to the Agreement: (i) all property taxes due and owing from the Owner for 2014 have been paid in full; (ii) Owner has submitted to the City Treasurer a true and accurate disbursement request and an accurate proof of payment of the property taxes for 2014; (iii) Owner is not in default under the Agreement after expiration of all applicable cure periods; and (iv) the Owner is not in violation of any applicable laws, rules, ordinances, regulations or any other applicable codes and ordinances of the

City, including but not limited to all building and property standards and maintenance codes.

6. Pursuant to the Agreement, Owner has applied or will apply for all requisite building permits and all other necessary land use and construction approvals necessary or appropriate for demolition of the Property and those permits and approvals shall be in full force and effect as of the date of demolition.
7. Pursuant to the Agreement, the Owner has, or will within the time allowed in the Agreement, submitted its Construction Budget and Construction Schedule Report which requires approval by the City. Further, Owner has agreed to demolish the Property with due diligence, in good faith and without delay and shall continue to do so.
8. Pursuant to the Agreement, the Owner has paid and shall continue to pay to City the customary permit, inspection review and tap-on fees, if any, for the Project in effect at the date of execution of this Agreement, unless fees are subsequently reduced or waived by the City, in which case the Owner shall only be required to pay the amount of such reduced fees.
9. Pursuant to the Agreement, the Owner has named and shall continue to name the City as a beneficiary on all performance, labor, and material bonds for public improvements and completion guarantees required by Owner's Lender or any other entity providing labor and/or material relative to the Project. Duplicate originals of said bonds and/or completion guarantees naming the City as a beneficiary will have been provided no later than the date that a building permit is issued and the maintenance and continuance of the same shall remain a condition to the issuance of a building permit.
10. Pursuant to the Agreement, Affiant represents, covenants and warrants to the best of her knowledge that no officer, manager, stockholder, employee or agent of Owner, or any other person connected with Owner, 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 bribe or other means of influencing his or her action in his or her capacity with the City.
11. Pursuant to the Agreement, the disclosure provided to the City concurrently with execution of this Agreement, accurately disclosed to the City the names, addresses and ownership interests of all persons that comprise the Owner, if any. No change was made in the persons comprising Owner or in each persons' ownership interests prior to Closing. As of the date of this Affidavit no change has been made in the persons comprising Owner or in each persons' ownership interests.

12. Pursuant to the Agreement, Owner will comply with all federal, state and local laws relating to equal employment opportunity. To the extent permitted by law, Owner has used and will continue to use reasonable efforts to employ qualified residents of the City; Owner has placed and will continue to place in all solicitations or advertisements for employees placed by or on behalf of Owner, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin; and any contracts made by Owner with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project has contained and shall continue to contain language similar to that recited in the Agreement.
13. To the best of Affiant's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Owner which would result in any material and adverse change to Owner's financial condition, or which would materially and adversely affect the ability of Owner to actively maintain and operate the Project on the Property or the ability of Owner to perform its obligations under the Agreement.
14. Neither the execution and delivery of this Affidavit by Owner, the consummation of the transactions contemplated hereby by Owner, nor the fulfillment of, or compliance with, the terms and conditions of the Agreement by Owner 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 Owner (with Owner's prior written approval), any organizational documents, any restriction, agreement or instrument to which Owner, any related party or any of its partners or venturers is now a party or by which Owner or any of its related parties, partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Owner, any related party, or any of its partners or any of its venturers under the terms of any instrument or agreement to which Owner, any related party or any of its partners or venturers is now a party or by which Owner, any related party, any of its partners or any of its venturers is bound.
15. Owner certifies that it is otherwise in substantial compliance with the material covenants contained in the Agreement and has satisfied any other preconditions to disbursement and that Owner is not in default of any material provision of the Agreement.
16. The documents provided by the Owner to the City pursuant to the terms of the Agreement are true and correct copies. Owner acknowledges that the City has relied on the accuracy and completeness of those documents in determining to reimburse the Owner.
17. The Owner covenants that the requested disbursement, submitted to the City, does not contain items for which payment requested has been the basis for a previous payment.

18. Owner acknowledges that the affidavit it supplies to the City as a condition to and in connection with the request for distribution of the City Incentive shall be in a form acceptable to the City's Chief Financial Officer/City Treasurer.

19. Owner has not assigned the Agreement.

FURTHER AFFIANT SAYETH NOT:

By: \_\_\_\_\_  
Karna L. Sandri

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF KANE     )

On May \_\_\_\_, 2016, Karna L. Sandri personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person, and acknowledged she signed, sealed and delivered the said instrument as her free and voluntary act and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

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

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

**Exhibit "A" - Ownership**

Karna L. Sandri