

REAL ESTATE PURCHASE AND DEVELOPMENT AGREEMENT

THIS REAL ESTATE PURCHASE AND DEVELOPMENT AGREEMENT ("Agreement") is entered into and effective as of the _____ day of February, 2019, by and between the **CITY OF AURORA**, a municipal corporation (referred to herein as "Seller" or "City"), and _____, an Illinois limited liability company (referred to herein as "Purchaser" or "Developer"). (The foregoing parties may individually be referred to as a "Party" and collectively as the "Parties").

WHEREAS, the City is a home-rule municipality duly incorporated and situated in DuPage, Kane and Will Counties, Illinois; and

WHEREAS, the City is the owner in fee simple of certain property improved with a commercial structure, commonly described as [street address], Parcel No. _____ located on the Water Street Mall, and legally described on Exhibit "A" attached hereto (the "Property"), the legal description of which may be amended at a later date by Seller upon delivery of the survey; and

WHEREAS, the Property has been vacant for a significant period of time and the City has determined that the same will not develop without some assistance and incentive from the City with respect to the purchase price; and

WHEREAS, Purchaser has agreed to acquire and develop the Property as a restaurant in accordance with the terms and provisions hereof; and

WHEREAS, the City finds that as a direct result of the agreement, the City will benefit through the retention or creation of jobs; the strengthening of the commercial environment within the City and the enhancement of its tax base, and that the Project will serve as a catalyst for the commercial development of adjacent areas;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are material to this Agreement, and are incorporated and made a part of this Agreement as if fully set forth herein.

2. Purchase. The Purchaser agrees to purchase and the Seller agrees to sell the Property, together with all structures and improvements thereon, on the terms and conditions as contained herein for the purchase price of One Dollar. The Property shall be conveyed by a good and sufficient warranty deed running to Purchaser or Purchaser's nominee.

3. **“AS IS” Condition.** This Agreement is for the sale and purchase of the Property in its “As Is” and “Where Is” condition “**With All Faults**” as of the date hereof. Purchaser shall have a period of [sixty (60)] days (the “Due Diligence Period”) to conduct such inspections, evaluations and any other assessments as Purchaser shall deem necessary, at Purchaser’s sole cost and expense and in Purchaser’s sole and absolute discretion, to determine that the Property is satisfactory and appropriate for Purchaser’s use. Purchaser shall be entitled to procure (at its sole cost and expense and in its sole but reasonable discretion) environmental site assessments of the Property from its own consultants to afford Purchaser an independent assessment of the environmental condition of the Property, and all such reports, inspection results and plans shall be satisfactory to Purchaser, in its sole but reasonable discretion; provided, however, that Seller shall have the opportunity to review such site assessments and that Purchaser shall not authorize or undertake any testing or assessments of the Property of an invasive or intrusive nature without the prior written consent of Seller and without complying with Seller’s requirements in connection therewith. Purchaser acknowledges that no representations, warranties or guarantees, either express or implied, of any kind, nature or type whatsoever, with respect to the condition of the Property and personal property, if any, have been made by Seller and **Purchaser specifically waives any implied warranty of habitability. Purchaser acknowledges and agrees that Seller has not made any representations, warranties, promises or guarantees of any kind, express or implied, and Purchaser shall rely only on its own inspection of the Property with respect to the condition of the Property, including, but not limited to, the suitability of the Property for all activities and uses which the Purchaser may conduct thereon. Purchaser represents that it will, during the due diligence period, conduct such investigations of the Property, including environmental conditions, as Purchaser deems necessary to satisfy itself.** If Purchaser is dissatisfied with the results of Purchaser’s inspection of the Property or any discovered defect adversely affects would prevent its use as a restaurant or if Purchaser is otherwise not willing to proceed for any reason discovered during the Due Diligence Period, then Purchaser may, by written notice delivered to Seller within the time stated above terminate this Agreement. In the event this Agreement is terminated pursuant to this provision, neither party shall have any further rights or obligations hereunder and this Agreement shall be null and void. In the event Purchaser determines that it will proceed to purchase the Property prior to the expiration of the Due Diligence Period, Purchaser can send notice to Seller of its intention to do so and any said notice shall terminate the Due Diligence Period.

4. **Title and Survey.**

(a) Purchaser shall obtain, at Purchaser’s cost, a commitment for title insurance on the current ALTA form (the “Commitment”) for the Property, issued by a title insurance company licensed to do business in Illinois (the “Title Company”) bearing a date subsequent to the date of this Agreement. The Commitment must show marketable and insurable title of the Property in the Seller subject only to: (1) building and use restrictions and easements of record which do not, in Purchaser’s judgment, interfere with Purchaser’s intended use and development of the Property,

(2) conditions and stipulations and standard or general exceptions contained in the owner's policy issued by that company, (3) general real estate taxes accrued, but not yet payable at the time of closing, (4) covenants, conditions and restrictions of record provided they are not violated nor contain a reverter or the right of re-entry, (5) zoning laws, (6) applicable ordinances, (7) easements of record, including easements for public utilities, provided they do not underlie existing improvements, (8) liens of a definite or ascertainable amount which Seller has the right to remove and will cause to be removed at the closing, (the "Permitted Exceptions") and (9) acts done or suffered by or judgments against Purchaser. On conveyance of title to the Purchaser, Purchaser shall cause a policy of title insurance to be issued to Purchaser pursuant to the Commitment, insuring Purchaser's interest in the Property, which policy of title insurance may include such additional endorsements as Purchaser will reasonably request at Purchaser's cost. Any title commitment furnished by Purchaser hereunder shall be conclusive evidence of good title as therein shown, subject only to exceptions as therein stated.

(b) Purchaser may obtain, at Purchaser's cost, a current survey (the "Survey") of the Property, prepared by a licensed surveyor or engineer, certified to Purchaser and the Title Company.

5. Objections to Title or Survey. If the Commitment discloses exceptions other than the Permitted Exceptions or Removable Liens, or the Survey is not acceptable to Purchaser, Purchaser, within 5 days of receipt, must notify Seller in writing of its objections to the Commitment and/or Survey (the "Defects"). Seller must use its best efforts to cause these Defects to be removed from the Commitment and/or Survey, as the case may be. If the Seller fails to have the Defects removed or cured within thirty (30) days after receipt of notice from Purchaser, or such time as may be extended by Purchaser, Purchaser may elect to take title subject to the Defects, or may terminate this Agreement, in which event neither party shall have any further obligation to the other. The closing must occur within five (5) days after the Defects are discharged and cured or waived by Purchaser, as the case may be, or on the closing date set forth in this Agreement, whichever is later.

6. Real Estate Taxes. Real estate taxes are currently shown as exempt.

7. Representations and Warranties of Seller. Seller represents to Purchaser with respect to the Property as of the date of this Agreement and the closing date, as follows:

(a) To the best of Seller's knowledge, the Property complies in all respects with all Permitted Exceptions.

(b) Seller has no knowledge of any assessments, charges, pay backs, or obligations requiring payment of any nature or description against the Property that remain unpaid.

(c) Seller is the lawful owner of the Property and holds insurable and marketable title to the Property free and clear of all liens and encumbrances other than the Permitted Exceptions and Removable Liens. The Seller has and will have on the date of this Agreement and the closing date the power and authority to sell the Property to Purchaser and perform its obligations in accordance with the terms of this Agreement, and each person who executes this Agreement and all other instruments and documents in connection with it, has or will have due power and authority to so act. Seller will have complied with all applicable statutes,

laws, ordinances and regulations in order to effectively convey and transfer all of Seller's right, title and interest in the Property to Purchaser.

(d) Seller has not contracted for the furnishing of labor or materials to the Property which will not be paid for in full.

(e) As of the date of this Agreement, Seller has no knowledge of any suit, action or other legal proceeding arising out of or related to any environmental laws with respect to the Property which is pending or threatened before any court, agency or governmental authority. Seller has not received any notice that the Property is in violation of the environmental laws. Seller makes no other representations or warranties with respect to the environmental condition of the Property.

(f) Seller is not a "foreign person" within the meaning of 26 U.S.C.A. ' 1445(f)(3).

(g) Seller shall indemnify and hold Purchaser, its officers, employees, owners, shareholders/members and their respective successors and assigns (the "Purchaser Indemnified Parties") harmless from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, investigation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties, and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs, and all other out-of-pocket expenses (collectively "Claims"), which Purchaser may incur or pay out by reason of any injuries to person or damage to property caused in whole or in part by any acts or omissions of Seller, its partners, contractors, agents, employees, invitees, guests or patrons or by reason of any breach or default by Seller hereunder. Without limiting the foregoing, Seller agrees to defend, indemnify and hold Purchaser and the Purchaser's Indemnified Parties harmless from any and all Claims as a consequence of any incident which arises or accrues prior the Closing Date. Notwithstanding anything to the contrary contained herein, the indemnification obligation created hereunder shall not apply to any loss, claim, damage, liability, or obligation where the conduct of the Party seeking indemnification, whether negligent or otherwise, caused, in whole or in part, such loss, claim, damage, liability, or obligation. Neither Party shall be liable for special, consequential, or exemplary damages.

8. Representations and Warranties of Purchaser. Purchaser represents to Seller with respect to the Property as of the date of this Agreement and the closing date, as follows:

(a) Purchaser is duly organized and validly existing as an Illinois limited liability company and is authorized to transact business in Illinois, and has full power, authority and legal right to enter into this Agreement; and the party signing this Agreement on behalf of Purchaser has full power and authority to bind Purchaser. The execution, delivery or performance of this Agreement by Purchaser (or of any instrument or document to be executed or delivered pursuant to the terms hereof) will not result in the (1) violation of its Articles of Organization or any other corporate governing document affecting Purchaser; (2) violation of, or default under, any contractual obligation of Purchaser to any third party; or (3) violation of, or default under, the provisions of any agreement or other instrument to which Purchaser is a party or by which its properties or assets are bound, or of any applicable law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or any determination or award of any arbitrator.

(b) Purchaser shall indemnify and hold Seller, its officers, aldermen, employees, and their respective successors and assigns (the "Seller Indemnified Parties") harmless from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, investigation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties, and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs, and all other out-of-pocket expenses (collectively "Claims"), which Seller may incur or pay out by reason of any injuries to person or damage to property caused in whole or in part by any acts or omissions of Purchaser, its partners, contractors, agents, employees, invitees, guests or patrons or by reason of any breach or default by Purchaser hereunder. Without limiting the foregoing, Purchaser agrees to defend, indemnify and hold Seller and the Seller's Indemnified Parties harmless from any and all Claims as a consequence of any incident resulting in the contamination or pollution of air, water, land and/or ground water arising from or in connection with Purchaser's access to the Property or Purchaser's or Purchaser's employees, agents, contractors, invitees, guests and patrons, use or occupation of, or acts or omissions relating to, the Property, including any claim or liability arising under any Environmental Law or from Purchaser's failure to comply with any requirements hereunder. Notwithstanding anything to the contrary contained herein, the indemnification obligation created hereunder shall not apply to any loss, claim, damage, liability, or obligation where the conduct of the Party seeking indemnification, whether negligent or otherwise, caused, in whole or in part, such loss, claim, damage, liability, or obligation. Neither Party shall be liable for special, consequential, or exemplary damages.

9. Closing. The closing (the "Closing") on the sale will take place at the offices of the Title Company on within 28 days of the close of the Due Diligence Period, or on such other date, time or place as Seller and Purchaser agree. At Closing, Seller shall deliver to Purchaser possession of the Property, and a recordable warranty deed conveying good, marketable and merchantable title to the Property, subject only to the Permitted Exceptions and taxes accrued but not yet payable, along with such other documents or instruments as will reasonably be required by the Title Company to consummate the transaction contemplated herein or to issue the policy of title insurance contemplated herein. Seller shall pay the recording costs of releases, if any, and Purchaser shall pay the recording costs for the Deed and any mortgage obtained by Purchaser. Each party shall be responsible for their own attorneys' fees. The parties shall each pay one-half of the title company's fees associated with acting as closing and escrow agent except that Purchaser shall pay any such costs resulting from any requirement of Purchaser's lender.

10. Development Obligations. (a) Purchaser agrees to promptly undertake the development and renovation of the Property as a MORA Asian Fusion, or similar, restaurant, the same to be open in calendar year 2019. The Property is currently zoned for a restaurant and the same shall be developed in accordance with the City's applicable building codes, and shall meet the requirements for a [class ??liquor license] in accordance with the City's liquor control ordinance. However, Purchaser shall not be deemed to be in breach of this Agreement if the restaurant is not opened during the 2019 calendar year if Purchaser made a good-faith effort to do so and if delays or other hinderances result which are outside of the Purchaser's control.

(b) The City agrees to take such action as needed to allow outdoor seasonal seating on the Water Street Mall in a mutually agreed area provided, however, that the same does not obstruct public pedestrian access and egress on the Water Street Mall, that Developer agrees to maintain such area, and timely assure its upkeep, in a manner consistent with the current condition of the Water Street Mall.

(c) Developer shall be responsible for all trash collection generated by the restaurant and the City will allow the placement of a dumpster in the City's designated area on the east side of Water Street.

(d) This Agreement shall be contingent upon the ability of Developer to secure financing for the project on or before sixty (60) days after execution of this Agreement. If Developer is unable to secure such financing within said period, Developer shall notify Seller and the Agreement shall become null and void. Once obtained, Developer shall, as a condition of closing, provide adequate assurances that Developer has sufficient financing to complete the first phase of the intended renovation (being the "Mora" restaurant on the first floor) and opening of the restaurant. Developer shall post with the City a performance bond, in the form of a letter of credit, surety bond, or other security acceptable to the City, to insure the estimated costs of construction and renovation of the project until the same is accepted by the City. Developer may request a partial security reduction for completed improvements and defined milestones by submitting such request, in writing, along with a certificate attesting that the improvements have been completed in substantial compliance with the City approved improvement plans and specifications and that the contractors, subcontractors, and material suppliers have been paid accordingly. Upon receipt and review of such request the City Engineer shall authorize such release if the improvements meet the aforementioned criteria.

11. Performance, Default. (a) If either Party shall default under this Agreement or fail to perform or keep any material term or condition required to be performed or kept by such Party (an "Event of Default), such Party shall, upon written notice from the other Party, proceed to cure or remedy such default or breach within thirty (30) days after receipt of such notice, provided, however, that in the event such default is incapable of being cured within said thirty (30) day period and the defaulting Party commences to cure the default within said thirty (30) day period and proceeds with due diligence to cure the same, such Party shall not be deemed to be in default under this Agreement. Any delay by any Party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way (it being the intent of this provision that such Party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided by law, equity or this Agreement because of the default involved). A waiver made by any Party with respect to any specific default by any other Party under this Agreement must be expressly and specifically made in writing and shall not be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent expressly and specifically waived in writing.

(b) In the event that Developer fails to open the restaurant December 31, 2019 (for reasons related to the fault of the Purchaser), or fails to keep the restaurant in continuous operation for a period of six months, the City will have the option for a period of one year following the date of closure, upon written notice to Developer, to reacquire the Property for its appraised value less the amount of the appraised value of the Property on the Closing Date hereunder, in accordance with the provisions as described on Exhibit B hereof.

(c) In the event, during the period of 15 years following the Closing Date hereunder, the City approves a larger redevelopment of an area of the City downtown that includes the Property, the City will have the option to reacquire the Property, with the purchase price being determined in accordance with the formula described in Exhibit B hereof, the same generally being: The appraised value of the Property, less the appraised value of the Property on the Closing Date hereunder; provided, however, that in the event the City exercises this option in the first five years following the Closing Date, such value shall also include 100% of Developer's unamortized non-structural capital costs (*i.e.* restaurant equipment and furnishings), and, beginning in year 6, the unamortized non-structural capital costs will be reduced at 10% each year up to year 15. Developer's non-structural capital costs would include not only the initial first floor restaurant renovation, but also any additional restaurant costs during the first five years and previously approved by the City, *e.g.* second floor expansion, basement, or roof top. In such event the City would use its best efforts to relocate Developer into any retail space in such redevelopment area, or another mutually acceptable site owned or controlled by the City, on terms that are no less favorable to any other tenant in such redevelopment area or site plus an additional 10% discount.

12. Controlling Law. This Agreement will be controlled, construed and enforced in accordance with the laws of the State of Illinois. In the event of any dispute concerning or arising out of this Agreement, the prevailing party shall be entitled to recover from the other its costs of litigation, including reasonable attorneys' fees and expenses.

13. Entire Agreement, Severability. This instrument and the exhibit attached to it constitute the entire agreement between the parties with respect to the transaction contemplated herein and the matters set forth herein. Any modification or amendment to this Agreement will be effective only if writing and executed by each of the parties hereto. If any phrase, sentence, or paragraph of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining phrases, sentences, or paragraphs of this Agreement. In the event any action taken hereunder is held invalid or unenforceable, each Party shall take such actions (including the holding of such public hearings and the adoption of any necessary ordinances or resolutions) to give effect to the spirit and intent of this Agreement and the objectives of the Parties.

14. Notices. Any notice, election, demand, request, consent, approval, concurrence or other communication given or made under any provision of this Agreement or required by law will be deemed duly served if a) personally served, b) deposited in the U.S. Certified Mail, return receipt requested, c) sent via overnight courier service, addressed to each party as follows:

SELLER:
City of Aurora

PURCHASER:

WITH COPY TO:
John E. Newton
JOHN E. NEWTON, P.C.

18400 Maple Creek Drive, Suite 500
Tinley Park, IL 60477

Any party may change the name and address of the designee to which notice will be sent by giving written notice of such change to the other parties herein as provided. Notices may be signed by the Seller or Purchaser, as the case may be, or their attorney.

15. Binding. The terms herein will be binding on and will inure to the benefit of the parties hereto, their successors and assigns.

16. Time is of the Essence. Time is of the essence in this Agreement.

17. Miscellaneous.

(a) The Parties shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as stated herein. Such actions shall include, but not be limited to, giving of such notices, holding public hearings, enactment by the City of such resolutions, ordinances, or other measures as may be necessary to enable the Parties' compliance with the provisions of this Agreement.

(b) The Parties' rights and remedies hereunder shall be cumulative, and the exercise of any rights or remedies shall neither preclude enforcement of other rights and remedies nor waive other rights and remedies. The failure of either party to exercise any rights or remedies shall neither preclude enforcement of any rights or remedies, nor constitute a waiver of any rights or remedies.

(c) This Agreement has been negotiated by the Parties hereto and their respective attorneys. The language in this Agreement shall not be construed for or against either Party, based on any rule of construction favoring the non-drafting party, but shall be interpreted liberally to effect the intent of the Parties. Words used in the masculine, feminine, or neuter shall apply to either gender or neuter, as appropriate.

(d) The Developer, and any contractors hired by Developer, to construct the improvements contemplated by this Agreement, shall maintain a general commercial liability insurance policy (including automobile and umbrella) of not less than two million dollars (\$2,000,000.00), and worker's compensation coverage, and naming the City as additional insured. The policies shall be effective during the entirety of any work performed by the Developer. Prior to undertaking any work on the Property under this Agreement, the Developer shall provide the City copies of certificates of insurance evidencing compliance with this sub-paragraph.

(e) This Agreement may be executed in counterparts, and all counterparts taken together shall constitute one and the same Agreement. Signature pages from one executed counterpart may be attached to another executed counterpart to constitute the fully executed Agreement. Any party may deliver its executed counterpart to the other party or the Title Company by electronic transmission of said executed counterpart to the other party according to the notice

provisions hereof, and an execution original of the same shall be promptly delivered by said party to the other party upon request.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year first above written.

SELLER:

PURCHASER:

By: _____
Title:

By: _____
Title:

DRAFT