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**REDEVELOPMENT AGREEMENT
[309 N. River Street – “Windfall Phase I”]**

THIS REDEVELOPMENT AGREEMENT (the “**Agreement**”) is made and entered into this _____ day of _____, 2022 (the “**Effective Date**”), by and between the CITY OF AURORA, an Illinois municipal corporation (the “**City**”) and WINDFALL AURORA, LLC, an Illinois limited liability company (the “**Developer**”); the City and Developer may be referred to herein individually as a “**Party**” and collectively as the “**Parties**”).

PREAMBLES

WHEREAS, the City has a population of more than 25,000 persons and as such is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; 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 “**TIF Act**”), the Mayor and Aldermen of the City (collectively, the “**Corporate Authorities**”) 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 or blighted area,” as such terms are defined in the TIF Act; and

WHEREAS, the City is pursuing various economic development strategies to encourage development within and around the City’s riverfront area (the “**Riverfront Area**”); and

WHEREAS, the Corporate Authorities have determined that blighting factors in the Riverfront Area are detrimental to the public and impair development and growth in the Riverfront Area, with the result that it is necessary to incur extraordinary costs in order to redevelop the Riverfront Area; and

WHEREAS, the blighting factors in the Riverfront Area will continue to impair growth and development but for the use of tax increment allocation financing to pay Redevelopment Project Costs, as that term is defined in **Section 2(f)(i)** of this Agreement; and

WHEREAS, the Developer has proposed a development for certain real estate, currently owned by the City, located within the Riverfront Area at the common street address of 309 North River Street, Aurora, Illinois 60506, which said real estate is depicted on **Exhibit A** and legally described on **Exhibit B** (the “**Property**”); and

WHEREAS, the Property is currently an unimproved lot consisting of approximately three (3 +/-) acres, and the Property is located on the northerly third of an approximately nine-acre parcel that is wholly owned and controlled by the City (the “**City Parcel**”); and

WHEREAS, Developer seeks to redevelop the Property by constructing multi-story building(s) consisting of 140 - 160 market rate residential units with a mix of townhomes, studios and one (1), two (2) and three (3) bedroom apartments, a central recreational amenity, and including parking, and finally, the building(s) may also potentially include retail/restaurant uses on the first floor (generally, the “**Project**”); and

WHEREAS, the proposal of the Developer is to undertake the following in connection with the Project: (i) undertake and pay for the costs of all plans and specifications, professional fees and apply for all required plan review approvals and permits; and (ii) commence, undertake and complete the Project in compliance with the approved plans and permits; (iii) comply with and contribute impact fees and/or land-cash dedications as required for both the affected School Districts and Park District, as further set forth in the City Code; and (iv) comply with all other City codes and other applicable legal requirements (*e.g.*, including sound attenuation); and

WHEREAS, the Developer, in order to provide the City with details of the Project, submitted to the City a conceptual project plan, which includes conceptual construction drawings, a proforma contractor estimate of the construction costs (completed by a union or prevailing wage contractor), a proforma project budget and general description of the scope of the Project (collectively, the “**Conceptual Project Plan**”), a copy of which is attached hereto as **Exhibit C**; and

WHEREAS, the Conceptual Project Plan is consistent with the mutual goals of the Developer and the City; and

WHEREAS, upon substantial completion, the Project shall represent a total capital investment on the part of the Developer of approximately **\$54,100,000** as set forth in the Conceptual Project Plan; and

WHEREAS, in order to provide sufficient assurances to the City that the Project will be successfully completed as described in this Agreement, EDDIE NI has provided the City a personal Guaranty, a copy of which is attached hereto as **Exhibit D** and incorporated herein as if fully set forth; and

WHEREAS, the Developer will be sharing its current financial statements with the City Chief Financial Officer, or his designee, for *in camera* review, indicating that Developer has the financial resources, including net liquid assets, necessary to fulfill Developer's obligations set forth in this Agreement, all as to be reasonably determined by the City through its review of such documents; and

WHEREAS, the Project is currently located within an existing TIF district no. 5; and

WHEREAS, the City intends to provide incentives to the Developer which will likely necessitate the creation of a new TIF District ("**TIF District**") that will include the Property; and

WHEREAS, the City is authorized under its home rule authority and the TIF Act to enter into redevelopment agreements and to reimburse developers who incur redevelopment project costs authorized by a redevelopment agreement, including those which are further designated by law as eligible costs as defined by the TIF Act; and

WHEREAS, the Parties acknowledge that this Agreement is conditioned on the City establishing a new TIF District, that if one is not established, then the Agreement shall terminate, and any expenses incurred by Developer prior to the adoption of the new TIF District except for the Soft Costs reimbursement described in **Section 2(i)** below are incurred at Developer's sole risk and may not be reimbursable from any other City sources; and

WHEREAS, the City has also determined that it is in the best of the City to provide the Developer a total of **\$8,600,000** in upfront financing and incentives, consisting of a forgivable loan in the amount of **\$6,600,000** (of which up to **\$500,000** may be applied to Soft Costs), and the donation of the Property (in an "AS IS" condition) to Developer for a deemed value of **\$2,000,000** in accordance with the terms set forth hereinbelow; and

WHEREAS, the City has further authorized expenditures and disbursements as further set forth in the Agreement in order to induce the Developer to complete the Project; and

WHEREAS, the Corporate Authorities have determined that the rights and obligations of the City and Developer as described herein and the completion of the Project by the Developer pursuant to this Agreement are in the best interests of the City and the health, safety, morals and welfare of its residents and taxpayers, thereby providing for economic development, enhancing the tax base of the City and other taxing districts and adding to the welfare and prosperity of the City and its inhabitants;

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Section 1. Incorporation of Recitals.

The recitals contained in the Preambles to this Agreement are true and correct and are hereby incorporated into this Agreement as though they were fully set forth in this **Section 1**.

Section 2. Development of the Project and Disbursements from the City to Developer.

(a) The Developer agrees to and shall commence, undertake, and complete the Project substantially in accordance with the Conceptual Project Plan and Project Timeline (as Project Timeline is defined hereinbelow). Subject to the prior consent and approval of the City, which shall not be unreasonably conditioned, delayed, or denied, the Developer may: (i) modify the Conceptual Project Plan to the extent such amendments do not constitute material changes to the scope, design, or overall nature or intent of the Project; and (ii) adjust the Project Timeline to the extent that delays occur due to Force Majeure or as otherwise addressed in the Agreement.

(b) The Developer has an opportunity to revitalize the Riverfront Area by developing 140 - 160 market rate residential units with a mix of townhomes, studios and one (1), two (2) and three (3) bedroom apartments, a central recreational amenity, including parking and potential retail/restaurant uses on the first floor of the building(s). The cost of the Project is estimated to be approximately **\$54,100,000**. Such costs shall be funded in their entirety by Developer equity, the Forgivable Loan as defined herein, and third-party lender financing. The third-party lender financing will be made by a construction loan or loans (the “**Construction Loan**”) from an approved construction lender or lenders (the “**Construction Lender**”). An overall summary of these costs is shown in **Exhibit E (Figure 1)**, attached hereto and incorporated herein.

(c) Prior to commencing construction, the Developer shall apply to the City for necessary building permits for the improvements to be made imminently by the Developer by submitting all plans and specifications required pursuant to applicable provisions of the City Code of Ordinances (the “**City Code**”). The Developer shall be responsible for and promptly pay when due all impact fees and building permit fees, which fees are not considered Soft Costs (as Soft Costs are defined in **Section 2(i)**). The City shall review the building permit application as provided in the City Code. The plans and specifications and all other required submissions shall also comply with all applicable federal, state, county, municipal or administrative laws, ordinances, rules, regulations, codes and orders relating in any way to the development of the Project (collectively, the “**Legal Requirements**”). For instance, one highlighted example of a specific Legal Requirement regards the City’s Local Building Code Amendments for R-2 Apartment Uses as set forth in the City Code of Ordinances (as may be amended from time to time): sprinkler system modifications (chapter 09), accessibility modifications for in-unit laundry and dishwashers (chapter 11), STC rating increases for noise abatement (chapter 12), percentage of exterior masonry (chapter 14), fire stopping (chapter 17), separately metered utilities per unit (chapters 27, 28, & 29), elevator cab size (chapter 30).

(d) The Developer shall make all necessary petitions (including paying all required fees, costs and expenses, none of which are considered Soft Costs, as Soft Costs are defined in **Section 2(i)**) for any and all land use adjustments and/or entitlements required for the successful completion of the Project, including, without limitation, the land use and zoning entitlements described in **Section 7** of this Agreement (further defined hereinbelow collectively as the “**Petition**”). Upon receipt of any Land Use Petition, the City shall process and act on the same diligently, continuously, and in good faith, in accordance with the Legal Requirements, including and without limitation, including, *e.g.*, compliance with impact fee payments and land-cash dedications as required for both the affected School Districts and Park District, parking

requirements, sound attenuation. Nothing set forth herein provides the Developer with a guarantee of the successful approval of any Land Use Petition applied for regarding the Project.

(e) The Developer shall be authorized, upon the Effective Date, to apply for all applicable building permits and to submit all applicable Land Use Petitions pertaining to the Property. Prior to commencing construction on the Property, the Developer shall contract with a contractor that is approved by the City in the City's reasonable discretion. Upon the Developer contracting with a Contractor approved by the City, the City shall provide the Developer with written authorization to commence construction (only after Donation of the Property to Developer as described in **Section 2(f)(ii)**) on the Property.

(f) Subject to the terms and conditions of this Agreement being properly discharged by Developer and provided that Developer is not in default (uncured) of this Agreement, the City shall provide to Developer certain incentives, as described in further detail hereinbelow (*see* **§2(f)(i)** forgivable loan; **§2(f)(ii)** property donation; **§2(i)** reimbursement of soft costs):

(i) a forgivable loan from the City to the Developer in the maximum amount of **\$6,600,000** and the minimum amount of **\$6,100,000** (the "**Forgivable Loan**") to assist Developer in paying for Redevelopment Project Costs incurred by Developer in connection with the Project and as outlined in this Agreement. The amount of the Forgivable Loan ("**Forgivable Loan Amount**") is to be calculated as **\$6,600,000** LESS the City's reimbursement to Developer of Soft Costs (as Soft Costs are defined in **Section 2(i)**) (*i.e.*, the sum of the Forgivable Loan Amount and the Soft Costs provided by the City shall be **\$6,600,000**). Redevelopment Project Costs ("**Redevelopment Project Costs**") for purposes of this Agreement shall mean and include all costs defined as "redevelopment project costs" in Section 11-74.4-3(q) of the TIF Act which are eligible for reimbursement under the TIF Act and this Agreement.

Draws on the Forgivable Loan shall be disbursed through a joint-order escrow account (the "**Escrow Account**") established with Chicago Title Guaranty Company, or such other title company as agreed upon by the City and the Developer (the "**Escrowee**"), with no more than one (1) draw occurring in a single month. The Developer shall be eligible to receive the first draw of the Forgivable Loan upon and after the City's approval of the Petition and Final Plan, and after Developer has closed on the Construction Loan for the Project, whichever is later, as such are defined hereinbelow.

The amount of any Draw on the Forgivable Loan to Developer shall be in an amount proportionate to those amounts being provided by the City, the Developer and the Construction Lender as part of the overall Project cost (but not including land value of the City's donation of the Property or any Soft Costs), generally estimated as shown on **Exhibit E (Figure 2)**.

Stated another way, the City's obligation to make payment from the Forgivable Loan on any Draw request shall rank proportionately and ratably in priority with the payments being then made by Developer and the Construction Lender on each such Draw request (*i.e.*, *pari passu*) as set forth in **Exhibit E (Figure 2)**, attached hereto and

incorporated herein provided that the Draw on the Forgivable Loan qualifies as a Redevelopment Project Cost; if it is determined that a draw request is for non-TIF eligible costs the City will have the option to fund from other City sources or decline the Draw request. (As an example of payment amounts on an approved Draw request, see **Exhibit E (Figure 3)**). For Draw requests, Developer shall provide to the City the amount of total Draw requests and the total amount to be funded from the City, Developer Equity and Construction Lender for each Draw.

The City shall direct the Escrowee to disburse funds from the Escrow Account within thirty (30) days of the Developer providing sufficient proof, such as invoices, receipts, statements, executed proposals, and other customary records of the applicable Costs, as determined by the City in its reasonable judgment, of Costs actually incurred by the Developer. More specifically, with each Draw request, Developer shall provide such evidence as the City shall reasonably request to establish that the Developer has incurred the costs for the work identified in its request for reimbursement and has completed or caused to be completed the work in a lien free manner. Such evidence shall include but not be limited to bills, paid receipts, contracts, invoices, lien waivers, sworn statements, or other similar evidence. All bills and receipts shall contain the date of service, type of service, location of service, amount paid, name/address/telephone number of the service provider and other information as necessary to establish the identity of the provider, type of service and amount invoiced / paid. In the event the bills/receipts do not contain such information the City shall accept an affidavit from the Developer supplying such information.

The Developer shall provide such proof to the City by no later than the last day of each month preceding the requested Draw on the Forgivable Loan. To facilitate the Draws on the Forgivable Loan through the Escrow Account, the Parties shall execute escrow instructions consistent with the requirements set forth in this section. The Developer shall be responsible for covering any fees charged by Escrowee associated with the Escrow Account. The Forgivable Loan will bear interest at a rate of 5% annually, based on a 360-day year consisting of 12, 30-day months.

The City has the right to reject Developer's proposed Construction Lender if Construction Lender does not meet approved industry standards, namely, the proposed Construction Lender must be a qualified lender, i.e., a recognized third party institutional lender such as any federally insured commercial or savings bank, national banking association, savings and loan association, investment banking firm, commercial finance company or other similar lending institution that will be the holder of a secured loan. If the Construction Lender is so qualified, then the City has the right in its sole discretion to rely on Construction Lender's determinations as to approving Draws. If the Construction Lender is not so qualified, then the City has the right in its sole discretion to utilize an outside consultant of its own choosing, to be paid for wholly and directly by the Developer, for monitoring and analysis of the Escrow and approval of Draw requests.

The actual amount disbursed on the Forgivable Loan shall be forgiven only after Developer's receipt of a Certificate of Project Completion, as hereinafter defined, and

Developer's showing of at least 90% occupancy of all constructed units (each with no less than a six-month rental term) as to be reported to the City Treasurer through lease documentation.

(ii) Donation of the Property, estimated at an agreed-upon deemed value of **\$2,000,000**, from the City to Developer, in accordance with the following terms, to be memorialized by a separate Real Estate and Purchase Contract, using an industry-accepted standard form (e.g., from Chicago Title Guaranty Company, or similar). The Contract shall include, e.g., without limitation, the following terms: "as-is, where is, with all faults" no substantial earnest monies, any termination or default is tied to the RDA, City will provide whatever documents it currently has in its possession; Developer's due diligence can include generally whatever it seeks but Developer must provide copies to the City of all reports/studies generated; Developer to pay for survey, title, all closing costs, plat of subdivision; City's right of Reversionary Interest (set forth in **Section 22(c-5)**) to the Property.

- (A) Provided there is no pending default of this Agreement, the City shall transfer ownership of the Property from the City to Developer:
 - i. Simultaneously with Developer's closing on the Construction Loan for the Project;
 - ii. after the City Council approval of the Petition and Final Plan;
 - iii. after the recording of a Final Plat of Subdivision;
 - iv. after approval of the new proposed TIF for the Property; and
 - v. prior to any construction work occurring on the Property;
- (B) Transfer of ownership shall be by "Special Warranty Deed" and subject to the Construction Loan;
- (C) Developer agrees to accept the Property "AS IS" with no warranties of any kind by the City, specifically including the Environmental Disclaimer as described in **Section 11(c)**;
- (D) Transfer of ownership shall be subject to a reversion clause for ownership of the Property to revert to the City if Developer has defaulted on the Agreement, i.e., the Reversionary Interest as described in **Section 22(c-5)**, as to be further defined in the Special Warranty Deed.

Developer shall be responsible for the cost of any survey(s), environmental studies, owner's and lender's title insurance policies, transfer taxes and other customary costs and expenses normally paid by transferees and all standard and customary closing fees.

The City makes no representations as to the condition of the Property. The Parties agree and acknowledge that the Property is being conveyed from the City to the Developer in an "AS-IS, WHERE IS, WITH ALL FAULTS" manner. Developer is solely relying on its investigations and shall not rely upon information, documents or materials provided to it by the City in making its decision to acquire the City Property.

(g) Notwithstanding the foregoing provisions of this Section, and as a supplement to **Section 4** below, if either the TIF Redevelopment Plan is not approved or TIF District not established, the City shall not be in default of this Agreement for either not having occurred, and the City shall then have no obligation to (i) make any further payments from any source to Developer (whether for Redevelopment Project Costs, or any other purpose, whether from the Forgivable Loan or any other source), or (ii) transfer the Property to Developer. However, said failure shall not relieve the City of its obligations to reimburse the Developer for 50% of its Soft Costs pursuant to **Section 2(i)** herein.

(h) The scope of the incentives provided by the City to the Developer shall be limited to the express terms of this Agreement and the City shall have no obligations to complete or cause to be completed any improvements to, or remediation of, the Property. All payments made by the City from the Forgivable Loan to the Developer shall be used to pay for costs incurred towards completing the Project and all Draw and reimbursement requests must be accompanied by sufficient proof, as determined by the City, of the costs incurred by the Developer towards the completion of the Project.

(i) **City Reimbursement of Soft Costs.** The City agrees to reimburse the Developer for fifty per cent (50%) of the soft costs incurred by Developer that Developer expends in relation to seeking approval of the Entitlements, up to a maximum of **\$500,000** (a potential total of **\$1,000,000** being paid by both Developer and City). “**Soft Costs**” is defined to include, but is not limited to, negotiating this Redevelopment Agreement, architects, planners, engineers, other consulting and technical fees and attorney’s fees in connection with securing the Entitlements, and other design costs incurred by Developer prior to Developer breaking ground (but not including, *e.g.*, Closing Costs on the Property donation, building permit fees, impact fees).

Said reimbursement shall be paid by the City on a “dollar-for-dollar” matching basis after Developer submits to the City documentary evidence that it has incurred and paid in full the financial obligations described above, such documentary evidence being to the reasonable satisfaction of the City. Specifically, with each Soft Cost reimbursement request, Developer shall provide such evidence as the City shall reasonably request to establish that the Developer has incurred the costs for the work identified in its request for reimbursement and has completed or caused to be completed the work in a lien free manner. Such evidence shall include but not be limited to bills, paid receipts, contracts, invoices, lien waivers, sworn statements, or other similar evidence. All bills and receipts shall contain the date of service, type of service, location of service, amount paid, name/address/telephone number of the service provider and other information as necessary to establish the identity of the provider, type of service and amount invoiced / paid; in the event the bills/receipts do not contain such information the City shall accept an affidavit from the Developer supplying such information.

Said reimbursements shall be deducted from the City’s **\$6,600,000** contribution to the Developer and reduce the same to a minimum of **\$6,100,000**. To the extent that the Soft Costs reimbursed by the City are less than **\$500,000**, the difference shall be added to the Forgivable Loan and increase the amount of the Forgivable Loan above the minimum of **\$6,100,000** up to a maximum of **\$6,600,000**.

If for any reason the Agreement is terminated prior to the Property being transferred to Developer, the City shall immediately take sole ownership of and right to all plans, designs, reports, studies, reports (whether regarding, *e.g.*, architecture, construction, easements, design, landscaping, engineering, utilities, traffic, parking, economic feasibility), and other work product (including, for instance, those submittals and documents that are part of or related to the Petition, but excluding attorney work product and attorney-client privileged communications) created for or on behalf of Developer or for or on behalf of the City as related to the Property or Project. Developer is obligated to turn over to the City said documents within ten (10) business days of such termination.

Section 3. Certificate of Project Completion.

Within fifteen (15) business days after written request from the Developer, which shall minimally include a certificate of occupancy from the City, and provided that Developer has not received any notice of default under this Agreement or notice of non-compliance with the City Code with respect to Developer's construction obligations, any of which have not been cured, and after the City has confirmed that the proposed improvements on the Property have been constructed in compliance with the City Code and this Agreement, the City shall deliver a certificate of completion and satisfaction of all construction terms, covenants and conditions contained in this Agreement (the "**Certificate of Project Completion**") or, if not complete or satisfied, a written statement as to what deficiencies exist. The date the Certificate of Project Completion is issued shall be the "**Completion Date**." Upon Developer's receipt of a Certificate of Project Completion, the Reversionary Interest (defined in **Section 22(c-5)**) shall be released.

Section 4. Creation of a Redevelopment Plan and Redevelopment Project Area.

The City shall timely commence procedures to establish the TIF Redevelopment Plan and the TIF District and to approve tax increment financing for the purpose of implementing the TIF Redevelopment Plan for the TIF District in accordance with the requirements of the TIF Act and subject to the terms and conditions of this Agreement, and shall thereafter continuously and diligently pursue such procedures to establish and approve the foregoing. The City's obligations under this Agreement shall cease in the event the TIF Act is abolished, repealed or revoked. In the event the TIF Act is amended or modified (the "**Legislative Changes**"), provided such Legislative Changes would serve to modify the terms of this Agreement, the terms of this Agreement shall be amended or modified to be read in accordance with the Legislative Changes. In the event the TIF Redevelopment Plan and TIF District, despite the City's reasonable and good faith efforts, are not established by the date set forth in the Project Timeline (defined hereinbelow), (1) the City shall not be deemed to be in default of this Agreement and (2) this Agreement shall be deemed null and void and the Parties shall have no further obligations under this Agreement, with the exception of **Sections 11, 19, and 28**, which shall survive for a period of three hundred sixty-five (365) days, after which the entire Agreement shall be null and void.

Section 5. Term; Time of the Essence.

The term of this Agreement, unless earlier terminated pursuant to the terms of this Agreement, shall commence on the Effective Date and end upon the Developer's receipt of a

Certificate of Project Completion. Time is of the essence in the performance of all the terms of this Agreement. The Parties agree to hold monthly meetings to discuss the status of the Project.

Section 6. Timing of Project.

The Project shall be completed in accordance with the milestones set forth in this Agreement and in the Project Timeline attached to this Agreement as **Exhibit F** (the “**Project Timeline**”). Failure by the Developer to satisfy the Project milestones set forth in the Project Timeline, subject only to Force Majeure, as hereinafter defined, shall be an event of default of this Agreement. Notwithstanding any other provision of this Agreement, in the event that: (a) the Corporate Authorities approve the Petition after the date set forth in the Project Timeline, or the Final Plan after the date set forth in the Project Timeline (and, in the case of the Final Plan, if Developer does not elect to terminate this Agreement pursuant to **Section 7(d)**), Developer’s time to complete its subsequent Project milestones as set forth in the Project Timeline and elsewhere in this Agreement shall be extended by the number of days by which the City’s performance is delayed for any reason; and (b) Developer fails to complete a Project milestone set forth in the Project Timeline or elsewhere in this Agreement that is subject to a cure period, and Developer subsequently cures such failure before the expiration of the applicable cure period, the City’s time to complete its subsequent Project milestones as set forth in the Project Timeline and elsewhere in this Agreement shall be extended by the number of days by which the Developer’s performance is delayed. Developer shall diligently undertake the work to complete the Project in accordance with the Conceptual Project Plan, the City Code, all Legal Requirements and in an otherwise legal and lien free manner until completion. The “completion of the Project” or any derivative terms carrying equal means shall be evidenced by the City issuing the Developer a Certificate of Project Completion. The Parties may by mutual agreement accelerate the Project Timeline to complete the Project at an earlier date and may do so without either formally amending this Agreement or by approval of the Corporate Authorities; however, if a Party seeks to extend a deadline for any milestone(s) in the Project Timeline beyond the scope contemplated hereinabove, then approval by the Corporate Authorities is required.

Section 7. Land Use.

(a) Entitlements.

In accordance with all applicable provisions of the City Zoning Ordinance (the “**Zoning Ordinance**”) and the City Subdivision Control Ordinance, Developer shall submit all necessary applications and petitions, including a special use, conditional use, and/or planned development petition requesting any necessary rezoning, special uses, conditional uses, and variances, any associated preliminary plan, preliminary plat, and plat of subdivision for the Property (the “**Petition**”) and such shall be submitted to the City by no later than the date set forth in the Project Timeline. The City shall timely review, provide feedback and revisions on the Petition, and seek to obtain City Council approval regarding the same. If the Petition is approved by the City Council, the Developer shall provide the City with the final plans and final plats for the Property (the “**Final Plan**”) by no later than the date set forth in the Project Timeline. Provided the Developer is not then in default of this Agreement and submits the Final Plan in accordance with the Zoning Ordinance, the City Subdivision Control Ordinance, and all relevant Legal Requirements and

substantially consistent with the Petition approved by the City, the City, including all relevant departments and agencies, shall not file an objection to the Final Plan, failing which the Developer may terminate this Agreement. Notwithstanding the foregoing and subject to Developer's rights in **Section 7(d)**, in no event will the City Council's decision or failure to approve the Petition and Final Plan be deemed an event of default by the City.

(b) The Entitlements may initially include authorization to develop restaurant uses on the first floor of the building(s). In connection with restaurant uses, the City shall consider including, but shall not be obligated to include, in its approvals the reservation of public parking spaces in City Owned parking lots in the vicinity of the Development during the hours the restaurant is open and operating. In no event will development of restaurant uses on the first floor of the building increase the amount of monies that may be paid by the City to Developer.

Developer acknowledges that project budgets have been prepared after careful evaluation of the City's local ordinances and building code amendments. Unless a variation (or variance) from the City building codes is granted to Developer by the City as part of its approval of the Petition, Developer acknowledges and agrees to comply with all City building code requirements.

Further, and without limitation, Developer acknowledges and agrees to construct and install public infrastructure, including public fixtures, streetlights, sidewalks, streets, curbs, as part of the Project that are City-approved.

(c) Zoning Designation.

Developer anticipates requesting an F Downtown Fringe District with a Conditional Use Planned Development zoning classifications for the Property.

(d) Provided the Developer is not then in default of this Agreement and submits all necessary application materials, including the Final Plan, in compliance with all relevant Legal Requirements and substantially consistent with the Petition approved by the City, in the event that the City Council does not approve the Final Plan, subject to Force Majeure, then the Developer shall have the right to terminate this Agreement by providing written notice to the City, after which this Agreement shall be null and void with the exception of **Sections 11, 19, and 28**, which shall survive for a period of three hundred sixty-five (365) days, after which the entire Agreement shall be null and void.

Section 8. No Liability of City to Others for Developer's Expenses.

Other than the Soft Costs, the Forgivable Loan and the Property Donation, the City shall have no obligations to pay costs of the Project or to make any payments to any person other than the Developer, nor shall the City be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to the Developer for the development of the Project, nor shall the City be obligated to pay any architects, planners, engineers, other consulting and technical fees and attorney's fees for Soft Costs. If this RDA terminates for any reason, City shall not be obligated to reimburse or pay Developer for any costs it may have incurred, except for reimbursement of Soft Costs pursuant to **Section 2(i)**.

Section 9. Representations and Warranties.

(a) Developer's Representations and Warranties.

The Developer agrees, represents and warrants to the City as follows:

(i) Existence and Authority of the Developer.

The Developer is an entity authorized to do business under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. The Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.

(ii) No Conflict by Developer.

Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its managers, members or venturers is now a party or by which Developer or any of its managers, members or venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its managers, members or venturers under the terms of any instrument or agreement to which Developer, any related party or any of its managers, members or venturers is now a party or by which Developer, any related party or any of its managers, members or venturers is bound.

(iii) Adequate Resources of Developer.

The Developer has, and shall maintain throughout the course of the Project, sufficient financial and economic resources, including net liquid assets, to implement and complete the Developer's obligations contained in this Agreement, including, but not limited to, the repayment of the Forgivable Loan if such obligations become due. The Developer shall provide the City with annual audited financial statements and shall promptly inform the City if any material changes occur regarding the Developer's financial or economic resources.

(iv) Experience of Developer.

The Developer, and its respective principals, are skilled in the development of real property and have received input from other experts and consultants regarding the construction of this Project.

(v) Payment of Real Estate Taxes; Assessed Valuation Challenges.

Developer and successor owners agree to pay all general and special real estate taxes levied during their respective period of ownership against their respective interest in the Property and/or the Project on or prior to the date same is due and said taxes shall not become delinquent. Developer and successor owners shall deliver evidence of payment of such taxes to the City upon request. The obligations of the Developer under this subsection of the Agreement shall survive and remain in full force and effect after the issuance of the Certificate of Project Completion by the City to the Developer, and Developer's failure to adhere to the same shall be deemed an Event of Default under this Agreement. The Developer and/or its respective owners and successors shall not challenge, contest or seek a reduction in the assessed valuation of the Property during the term of this Agreement, while the Property remains within TIF District No. 5 or any other or successor TIF district, whichever is longer.

Further, Developer, and/or its respective owners and successors shall not assert a tax-exempt status during their respective periods of ownership of, or having an interest in, the Property or the Project. This prohibition shall run with the land and shall expire on the date the Redevelopment Project Area expires, the TIF District expires, or an earlier date if agreed to by the City and the Developer in writing. The Parties acknowledge that there is no tax- exempt debt being issued as an incentive under this Agreement.

(vi) Litigation.

To the best of Developer's knowledge, there is no litigation, proceeding or investigation pending or threatened against Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by Developer of the terms and provisions of this Agreement.

(vii) Developer is aware that the City has been utilizing an architecture, interior design and planning firm, which serves in part as a consultant to the City and which is engaged in drafting comprehensive redevelopment plans for the City including the Riverfront Area (sometimes referred to as a master development plan, still in a draft form). Developer acknowledges receipt of the draft master development plan for the City, agrees that it includes and pertains to the Property, and Developer warrants and agrees to develop the Property substantially in conformance with the same.

(viii) Developer acknowledges that as the Property consists of an approximate one-third portion of the City Parcel, Developer agrees to and shall cooperate fully with the City regarding potential future development of the remainder of the City Parcel, including such issues as, *e.g.*, public utilities, access and parking easements, public rights-of-way, and telecommunications access easements; Developer understands that no cost shall be incurred by Developer when such future development may take place unless a benefit in any fashion also accrues to Developer or the Property.

(ix) Compliance with Legal Requirements.

To the best of Developer's knowledge, Developer is in compliance in all material respects with the Legal Requirements.

(b) Representations and Warranties of the City.

The City represents, warrants and agrees to the Developer as follows:

(i) Existence.

The City is an Illinois home rule municipal corporation duly organized and validly existing under the laws of the State of Illinois and has all requisite corporate power and authority to enter into this Agreement.

(ii) Authority.

The execution, delivery and the performance of this Agreement and the consummation by the City of the transactions provided for herein and the compliance with the provisions of this Agreement (1) have been duly authorized by all necessary corporate action on the part of the City; (2) require no other consents, approvals or authorizations on the part of the City in connection with the City's execution and delivery of this Agreement; and (3) shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the City is subject.

Section 10. Developer's Financial Resources.

Notwithstanding anything to the contrary in this Agreement, the City shall not have any obligation to pay for Soft Costs, provide any portion of the Forgivable Loan Amount, or donate the Property until the City, in its sole discretion, is satisfied that Developer has provided the City with sufficient proof to the satisfaction of the City that the Developer has sufficient assets, including available liquid assets, to complete the Project and shall maintain such assets until the Completion Date.

Section 11. Indemnification, Hold Harmless and Release Provisions.

(a) Release.

The Developer releases the City and all of its current, former and future governing body members, elected or appointed officials, trustees, commissioners, officers, attorneys, counselors, consultants, administrators, fiduciaries, insurers, representatives, servants, volunteers, employees and agents, including their predecessors, successors, heirs and assigns, in their individual, personal, official, fiduciary and corporate capacities (collectively referred to as the “**Indemnified Parties**”) from liability for, and covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to defend, indemnify and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the Property or arising under this Agreement or actions in furtherance thereof, to the extent not attributable to the gross negligence or willful misconduct of the Indemnified Parties.

(b) Indemnification.

Developer agrees and shall to defend, protect, and indemnify the Indemnified Parties, agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney’s fees), actions or other proceedings whatsoever by any person or entity whatsoever to the extent arising or purportedly arising from the negligent actions or inactions of Developer (or other Persons acting on its behalf or under their direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to the extent that any such claims, demands, suits, costs, expenses (including reasonable attorneys’ fees), actions or other proceedings arise or purportedly arise from the gross negligence or willful misconduct of the Indemnified Parties.

(c) Environmental Disclaimer.

The City makes no warranties or representations regarding, nor does it indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Property of any toxic or hazardous substances of wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the “**Hazardous Substances**”). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Property, as well as any activity claimed to have been undertaken on or in the vicinity of the Property, that would cause or contribute to causing (1) the Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 (“**RCRA**”), 42 U.S.C. §6901 *et seq.*, or any similar State law or local

ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Property, within the meaning of, or otherwise bring the Property within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, or any similar State law or local ordinance. Further, the City makes no warranties or representations regarding, nor does the City indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Project, or anywhere within the Property, of any substances or conditions in or on the Property, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The City makes no representations or warranties regarding the existence of any above ground or underground tanks in or about the Property, or whether any above or underground tanks have been located under, in or about the Property have subsequently been removed or filled.

(d) Waiver.

The Developer waives any claims against the Indemnified Parties for indemnification, contribution, reimbursement or other payments arising under federal, State and common law or relating to the environmental condition of the land which is part of the Property.

(e) No Personal Liability.

No liability, right or claim at law or in equity shall attach to or shall be incurred by the Indemnified Parties in their individual or personal capacities, and any such rights or claims of the Developer against the Indemnified Parties in their individual or personal capacities are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the City.

(f) No City Liability Under Public Construction Bond Act.

Developer agrees to and shall defend, protect, and indemnify the Indemnified Parties, agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever to the extent arising or purportedly arising out of the City or any of the Indemnified Parties having violated the Illinois Public Construction Bond Act (30 ILCS 550/0.01, *et seq.*)

Section 12. Insurance.

Developer shall procure and maintain at Developer's sole cost and expense, or cause to be provided and maintained, until the termination or expiration of this Agreement, the types and limits of insurance specified below, covering all operations under the Agreement, whether performed by Developer or by Developer's agent:

(a) Policies required.

From the commencement of any construction of the Project until the termination of this Agreement, Developer shall procure and maintain:

(i) Worker's Compensation Insurance, in accordance with the laws of the State of Illinois, with statutory limits covering all employees providing services under this Agreement and Employer's Liability Insurance with limits not less than **\$1,000,000** for each accident or illness. The City is to be named as an additional insured on a primary, non-contributory basis with regard to the Employer's Liability Insurance.

(ii) Commercial General Liability Insurance with not less than **\$2,000,000** combined single limits per occurrence and aggregate for bodily injury, property damage, and personal injury, including, but not limited to, coverage for premises/operations, products/completed operations, broad form property damage, independent contractors, contractual liability, and explosion/collapse/underground hazards for occurrences on the Property. The City is to be named as an additional insured on a primary, noncontributory basis.

(iii) Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles, including the loading and unloading thereof, with limits not less than **\$1,000,000** combined single limit per occurrence for bodily injury and property damage for occurrences relating to the Property or the Project. The City is to be named as an additional insured on a primary, non-contributory basis.

(iv) When any architects, engineers, construction managers, or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than **\$1,000,000**, including contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Project.

(v) When Developer undertakes any construction on the Property, Developer must provide or cause to be provided All Risk/Builders Risk Insurance at replacement costs for materials, supplies, equipment, machinery and fixtures that are or will be part of the Project. The City is to be named as an additional insured and loss payee if applicable.

(vi) Developer shall require all independent contractors and subcontractors to procure and maintain insurance as required and submit documentation of the maintenance of such insurance from time to time as required herein.

(b) General Insurance Requirements.

Unless otherwise provided above, all insurance policies required pursuant to this Agreement shall:

(i) Provide that the insurance policy may not be suspended, voided, canceled, non-renewed, or reduced in coverage or in limits without thirty (30) days' prior written notice by certified mail, return receipt requested, to the City;

(ii) Be issued by a company or companies authorized to do business in the State of Illinois with a Best's rating of no less than A:VII;

(iii) Waive all rights of subrogation of insurers against the City, its employees, elected officials, and agents; and

(iv) Specifically name the City as a named insured.

(c) Certificates.

Within ten (10) days of the Effective Date and by December 31 of each calendar year thereafter until the Completion Date, Developer shall furnish the City with a certificate(s) of insurance effecting coverage as required under this Section. In addition, Developer shall annually furnish the City copies of receipts for payments of premiums regarding such policies. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the Agreement. The failure of the City to obtain certificates or other insurance evidence is not a waiver by the City of any requirements for Developer to obtain and maintain the specified coverages. Non-conforming insurance constitutes an event of default.

Section 13. No Discrimination.

The Developer for itself and its successors and assigns agrees that, in the construction and completion of the development of the Project, the Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Developer shall take affirmative action to require that applicants are employed and that employees are treated in compliance with law during employment, and without regard to their race, creed, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising and solicitations or advertisements for employees; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices, which may be provided by the City, setting forth the provisions of this nondiscrimination clause. Notwithstanding the foregoing, the Developer may employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions and shall comply with all Legal Requirements regarding the subject of this Section of this Agreement.

Section 14. First Class Operation of the Project; Third Party Property Manager.

The Developer shall maintain and operate the Property in a first-class manner. "First-Class" as used in the Agreement, shall mean safe, secure, sanitary and well maintained and operated; and will meet or exceed the requirements as set forth in applicable federal, local and state law. In order to ensure the Property is maintained and operated in a first-class manner, the

Developer, prior to allowing occupancy of the Property, shall enter into a property management agreement with an experienced and reputable property management company, which may be a third-party company or one affiliated with Developer, and shall maintain the use of said property management company to manage the Property for the remainder of the term of the Agreement.

Section 15. Prevailing Wage.

The Developer acknowledges the adoption of Public Act 96-0058, effective January 1, 2010 which provides that under the Prevailing Wage Act, 820 ILCS 130/.01 *et seq.* (the “PWA”), the term “public works” includes all projects funded in whole or in part through bonds, grants, loans or other funds made available by or through the State or any of its political subdivisions. To the extent improvements relative to the Project are constructed after the Effective Date, the PWA requires contractors and subcontractors hired by the Developer to pay laborers, workers and mechanics performing services on public works projects such as the Project no less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in the county where the work is performed. Information regarding current prevailing wage rates, is provided on the Illinois Department of Labor’s website. All contractors and subcontractors rendering services under this Agreement must comply with all requirements of the PWA, *including but not limited to*, all wage, notice and record keeping duties.

Section 16. Waiver.

Either party to this Agreement may elect to waive any remedy it may enjoy hereunder, provided that such waiver shall be in writing. No such waiver shall obligate such party to waive any right or remedy hereunder or shall be deemed to constitute a waiver of other rights and remedies provided said party under this Agreement.

Section 17. Assignment.

Except for Permitted Assigns, as defined below, this Agreement may not be assigned by the Developer without the prior written consent of the City, which shall be requested by the Developer (and any successor transferee) no less than thirty (30) days prior to the proposed date of assignment. Any such consideration or consent to an assignment shall be at the sole discretion of the City. No such assignment shall be deemed to release the Developer of its obligation to the City unless the City specifically consents to such release in writing, which it is under no obligation to do. In the event the terms of this Agreement are assigned or otherwise transferred, no such transfer shall be effective unless (a) such transfer is undertaken in accordance with the terms of this Agreement and (b) the transferor provides the City with the name, mailing and email addresses, and fax and telephone numbers of the (proposed) transferee prior to the transfer in a manner consistent with **Section 19** below. Notwithstanding the foregoing, no transfer shall be made hereunder to any proposed transferee that is prohibited from engaging in business with the City or any other body of government. Notwithstanding any other provision of this Agreement, the Developer may, without the prior written consent of the City: (a) assign this Agreement, including the Developer’s obligations under this Agreement, to any entity that is majority owned or controlled by, majority owns or controls, or is under common ownership and control with Developer (“**Affiliate**”), after which assignment the Developer shall be released from its obligations under this Agreement; and (b) collaterally assign its right to receive proceeds from the

Forgivable Loan under this Agreement to the Construction Lender (“**Lender**” and, together with any Affiliate, the “**Permitted Assigns**”). The Developer shall provide written notice to the City of any assignment to a Permitted Assign within five (5) business days after the assignment is effective.

Section 18. Severability.

If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of this Agreement or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

Section 19. Notices.

All notices, demands, requests, consents, approvals or other instruments required or permitted by 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 delivered personally, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

If to the Developer: Windfall Aurora, LLC
X
X
X
Attn: xx

With a copy to: Zanck, Coen, Wright & Saladin PC
Attn: Law Office of Thomas R. Burney, LLC
40 Brink Street
Crystal Lake, IL 60014

If to the City: Richard J. Veenstra, Esq.
Corporation Counsel
City of Aurora, Illinois
44 East Downer Place
Aurora, Illinois 60507

With a copy to: David Dibo
Executive Director, Economic Development
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

and Christopher Minick
Chief Financial Officer
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

and: Del Galdo Law Group, LLC
Attn: Eric T. Stach, Esq.
1441 South Harlem Ave.
Berwyn, Illinois 60402

Section 20. Successors and Assigns.

The terms, conditions and covenants, including the reversion clause, set forth in this Agreement shall extend to, be binding upon, and inure to the benefit of the respective successors and assigns of the City and the Developer and shall run with the land. Any person or entity now or hereafter owning legal title to all or any portion of the Property, including the Developer, shall be bound to this Agreement only during the period such person or entity is the legal titleholder of the Property or a portion thereof, however, that all such legal title holders shall remain liable after their ownership interest in the Property ceases as to those liabilities and obligations which accrued during their period of ownership but remain unsatisfied or unperformed. To the extent reasonable and applicable, the term “Developer” shall mean successors and assigns of the Developer. Within fifteen (15) calendar days after the Effective Date, Developer shall record a memorandum of this Agreement against the Property.

Section 21. No Joint Venture, Agency or Partnership Created.

Neither anything in this Agreement nor any acts of the Parties to this Agreement shall be construed by the Parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such Parties.

Section 22. Default; Remedies – Liability.

(a) If the Developer is in default of this Agreement, the City shall provide the Developer with a written statement setting forth the default of the Developer. Default is defined as Developer’s lack of fulfillment of any obligation under this Agreement, including but limited to the following:

(i) The Developer fails to perform (by act or omission) any obligation under this Agreement, including, and without limitation, constructing the Project in substantial accordance with the Conceptual Project Plan or the milestones set forth in the Project Timeline as set forth in this Agreement.

(ii) If any representation or warranty made by Developer in this Agreement, or in any certificate, notice, demand or request made by Developer, in writing and delivered

to the City pursuant to or in connection with this Agreement, shall prove to be untrue or incorrect in any material respect as of the date made.

(iii) 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, sequestrator (or similar official) of Developer, as the case may be, for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.

(iv) 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, as the case may be, to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer, as the case may be, or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer, as the case may be, generally to pay such entity's debts as such debts become due or the taking of action by Developer, as the case may be, in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.

(v) Failure to have funds to meet Developer's obligations when due.

(vi) A sale, assignment, or transfer of the Property, except in accordance with this Agreement; or the abandonment of the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than sixty (60) days for any reason other than Uncontrollable Circumstances.

(vii) Change in the Developer, except in accordance with this Agreement.

(viii) Developer fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the Project contemplated by this Agreement. The maintenance requirement of this provision shall not be covered by and shall survive any certificate of occupancy of any kind issued during the term of this Agreement.

(ix) Developer has failed, subject to Force Majeure as evidenced by written proof submitted to the City, to close on the Construction Loan for the Project by the deadline set forth in the Project Timeline.

Except as required to protect against further damages, the City may not exercise any remedies against the Developer in connection with a charged default unless Developer has failed to cure such default within sixty (60) days after receiving written notice from the City of the same. If such default cannot be cured within such sixty (60) day period, said sixty (60) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as the

Developer is diligently proceeding to cure such default, as determined by the City in its reasonable discretion. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the City in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(b) If the Developer shall fail to cure any default after the expiration of the cure period described in subparagraph (a), the City may elect to terminate this Agreement or exercise any other right or remedy it may have at law or in equity, including the right to specifically enforce the terms and conditions of this Agreement. If the City does elect to terminate this Agreement (or exercise any other right or remedy it may have at law or in equity, in addition to all other available remedies), the City shall take immediate ownership from Developer of all plans, designs, and other work product (excluding attorney work product and attorney-client privileged communications) related to the Project. If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy or insolvency act shall be filed by or against the Developer, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Developer insolvent or unable to pay the debts of the Developer, or the Developer makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Developer or for the major part of the Property, the City may elect, to the extent such election is permitted by law, but is not required, with or without notice of such election and with or without entry or other action by the City, to terminate this Agreement.

(c) In addition to any other rights or remedies, the City may institute legal action to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance.

(c-5) In addition to any other rights or remedies, if the Developer shall fail to cure any default after the expiration of the cure period described in subparagraph (a), the City may exercise its right to ownership of the Property as follows: Developer, upon the request of the City, shall take all necessary steps to convey and otherwise transfer ownership of the Property back to the City (the **“Reversionary Interest”**) including, but not limited to, directing the recordation of a deed transferring ownership back to the City, and (ii) the City may terminate this Agreement. The Developer shall be responsible for any and all associated costs in transferring ownership of the Property back to the City. At the time of transferring the Property to Developer, the City’s right to Reversionary Interest shall be recorded against the Property, and a deed transferring ownership back to the City shall be placed with Escrowee.

(d) The rights and remedies of the City are cumulative and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the Developer.

(e) If the City is in default of this Agreement, the Developer shall provide the City with a written statement setting forth the default. The following shall be events of default by the City with respect to this Agreement:

(i) If any material representation is made by the City in this Agreement, or in any certificate, notice, demand or request made by the City, in writing and delivered to Developer pursuant to or in connection with this Agreement, shall prove to be untrue or incorrect in any material respect as of the date made.

(ii) Failure by the City in the performance or breach of any material covenant contained in this Agreement.

(iii) The City fails to perform (by act or omission) any obligation under this Agreement, including, without limitation, any failure to pay, when due, any disbursements of the Forgivable Loan.

The Developer may not exercise any remedies against the City in connection with such default unless the City fails to cure such default within sixty (60) days after receiving notice of same. If such default cannot be cured within such sixty (60) day period, such sixty (60) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as the City is diligently proceeding to cure such default. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Developer in asserting its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach. Upon the occurrence of an uncured default of the City, the Developer shall have the available remedies of injunctive relief, specific performance, mandamus, and quo warranto. The Developer shall not be entitled to economic, consequential, incidental, preventative or punitive damages in the event of an uncured default.

(f) In the event of a breach of the terms of this Agreement or any occurrence related to the Project that constitutes a bona fide emergency to the property, health, safety or welfare of the City or its residents, the City shall be permitted to take any and all reasonable steps to mitigate such occurrence without being in default of the terms of this Agreement, but shall take reasonable steps to notify the Developer of the occurrence prior to the commencement of such steps to mitigate the outstanding occurrence.

(g) In the event any default is not cured within the applicable cure periods and a Party employs an attorney or attorneys or incurs other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement herein contained, the non-prevailing Party shall pay, on demand, the prevailing Party's, or Parties', reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action.

(h) Upon the termination of this Agreement by reason of default by either Party, **Sections 11, 19, and 28** of this Agreement shall survive for a period of three hundred sixty-five (365) days and at such time the entire Agreement shall be deemed null and void. Notwithstanding the foregoing, if this Agreement is terminated by the City before the issuance of a Certificate of Project Completion by reason of an uncured default by the Developer, the Developer's repayment obligations with regards to the Forgivable Loan set forth in **Section 2** shall survive the termination of this Agreement for a period of fifteen (15) years.

Section 23. Amendment.

This Agreement, and any exhibits attached to this Agreement, may be amended only in a writing signed by all the Parties and/or their successors in interest. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof.

Section 24. Exhibits.

Exhibits A through E attached to this Agreement are incorporated herein by this reference and are made part of this Agreement.

Section 25. Signs.

The City may erect a sign of reasonable size and style in a conspicuous location on the Property during the development of the Project indicating that the City provided funding to assist the Project.

Section 26. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement in Portable Document Format (PDF) or by facsimile transmission shall be effective as delivery of a manually executed original counterpart of this Agreement.

Section 27. Force Majeure.

A party shall not be deemed in default of this Agreement with respect to any obligation(s) of this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, pandemic, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("**Force Majeure**") related to the Project. If one of the foregoing events shall occur or either party shall notify the other party that such an event shall have occurred, the party to whom such notice is provided has the right, but not the obligation to investigate the notification and consult with the party making such claim of Force Majeure regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was caused or exacerbated by such Force Majeure.

Section 28. Choice of Law/Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois with venue lying in the Circuit Court for Kane County, Illinois.

Section 29. Cooperation and Further Assurances.

The Parties covenant and agree that each undertake, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts as may be reasonably required to carry out the terms, provisions and the intent of this Agreement. The City agrees to cooperate with the Developer in the Developer's attempts to obtain all necessary governmental approvals for the Project at no additional cost or expense. The City shall process and consider reasonable requests of the Developer for relief or variances from any City ordinances, applicable building permits, or other permits necessary for the construction of the Project in accordance with Legal Requirements. Notwithstanding the foregoing, the City shall have no obligation to approve, to be a party to, or to be associated in any way with any third-party financing of the Project by the Developer.

Section 30. No Gifts.

Developer covenants that no director, employee or agent of Developer, or any other person with Developer, has made, offered to give, 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 31. Repealer.

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

Section 32. Neutral Construction.

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any individual Party, regardless of who drafted the Agreement. Further, gender-specific language and singular/plural usages are to be interpreted in their most reasonable fashion for the Agreement; section or paragraph titles are irrelevant to interpretation of this Agreement.

Section 33. Open Book.

The Project shall be an open book project, and the Developer will ensure regular and continuing access, at all times, upon reasonable notice provided by the City, during construction and the making of any payments under this Agreement, by the City's Chief Financial Officer or his designee, for the purpose of reviewing and auditing the records *in camera* of the Developer

relating to determining the Developer's ability to complete the Project or any item necessary to determine the costs of the Project. To the extent allowable by Law, the Developer's financial records, under this open book provision, shall not be considered public or City records; the City's Chief Financial Officer, or his designee, will not retain possession of such records, as they are being shared solely for the purpose of the review. Notwithstanding the foregoing, the City is and will at all times remain subject to the Illinois and United States Freedom of Information Acts (collectively, "**FOIA**"). The City, when applicable, will contest disclosure of confidential information under FOIA, but will comply with all applicable requirements under FOIA.

< SIGNATURE PAGES FOLLOW >

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date.

WINDFALL AURORA, LLC,
An Illinois Limited Liability Company

By _____

Its: _____

CITY OF AURORA, ILLINOIS
A Municipal Corporation

By _____
Mayor

ATTEST:

City Clerk

ACKNOWLEDGMENT

State of _____)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of WINDFALL AURORA, LLC, an Illinois limited liability company authorized to do business in the State of Illinois (the “Company”), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that, as such _____, he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2022.

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

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

GIVEN under my hand and official seal, this _____ day of _____, 2022.

Notary Public

EXHIBIT LIST

- A - Property Depiction
- B - Property Legal Description
- C - Conceptual Project Plan
- D - Personal Guaranty of EDDI NI
- E - Breakout of Costs (Figures 1, 2, 3)
- F - Project Timeline

EXHIBIT A: PROPERTY DEPICTION





EXHIBIT B: Property Legal Description

LEGAL DESCRIPTION:

P.I.N. 15-22-178-010

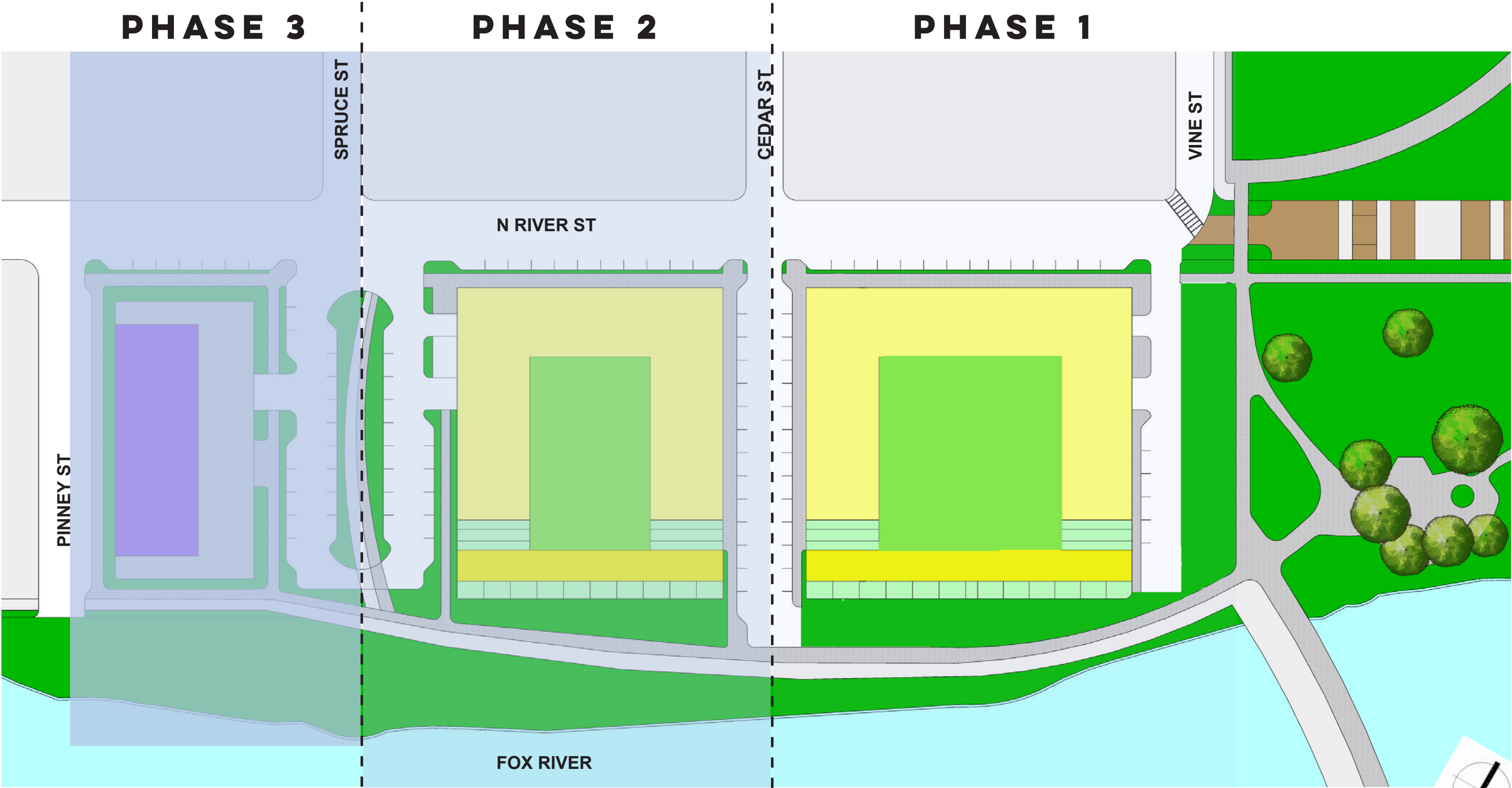
THAT PART OF BLOCKS 15 AND 16 IN WILDER'S AMENDED ADDITION TO WEST AURORA COMPLETED, RECORDED JULY 20, 1861 IN PLAT BOOK 2 PAGE 61; COMMENCING AT THE SOUTHWESTERLY CORNER OF BLOCK 7 IN SAID SUBDIVISION; THENCE NORTHEASTERLY, ALONG THE SOUTHEASTERLY LINE OF RIVER STREET, 618 FEET TO THE SOUTHWEST CORNER OF SAID BLOCK 15 FOR THE POINT OF BEGINNING; THENCE CONTINUING NORTHEASTERLY, ALONG THE NORTHWESTERLY LINE OF SAID BLOCKS 15 AND 16, A DISTANCE OF 372 FEET; THENCE SOUTHEASTERLY, PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID BLOCK 7, A DISTANCE OF 250.09 FEET; THENCE SOUTHERLY ALONG A LINE MAKING AN ANGLE OF 112 DEGREES 11 MINUTES 10 SECONDS, MEASURED COUNTER CLOCKWISE FROM THE LAST DESCRIBED LINE, 269.98 FEET; THENCE SOUTHWESTERLY, PARALLEL WITH THE SOUTHEASTERLY LINE OF SAID RIVER STREET, TO THE SOUTHWESTERLY LINE OF SAID BLOCK 15; THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE, TO THE POINT OF BEGINNING, IN THE CITY OF AURORA, KANE COUNTY, ILLINOIS.

COMMON STREET ADDRESS: 309 N. RIVER STREET, AURORA, ILLINOIS

EXHIBIT C: Conceptual Project Plan



PHASING PLAN



SITE PLAN

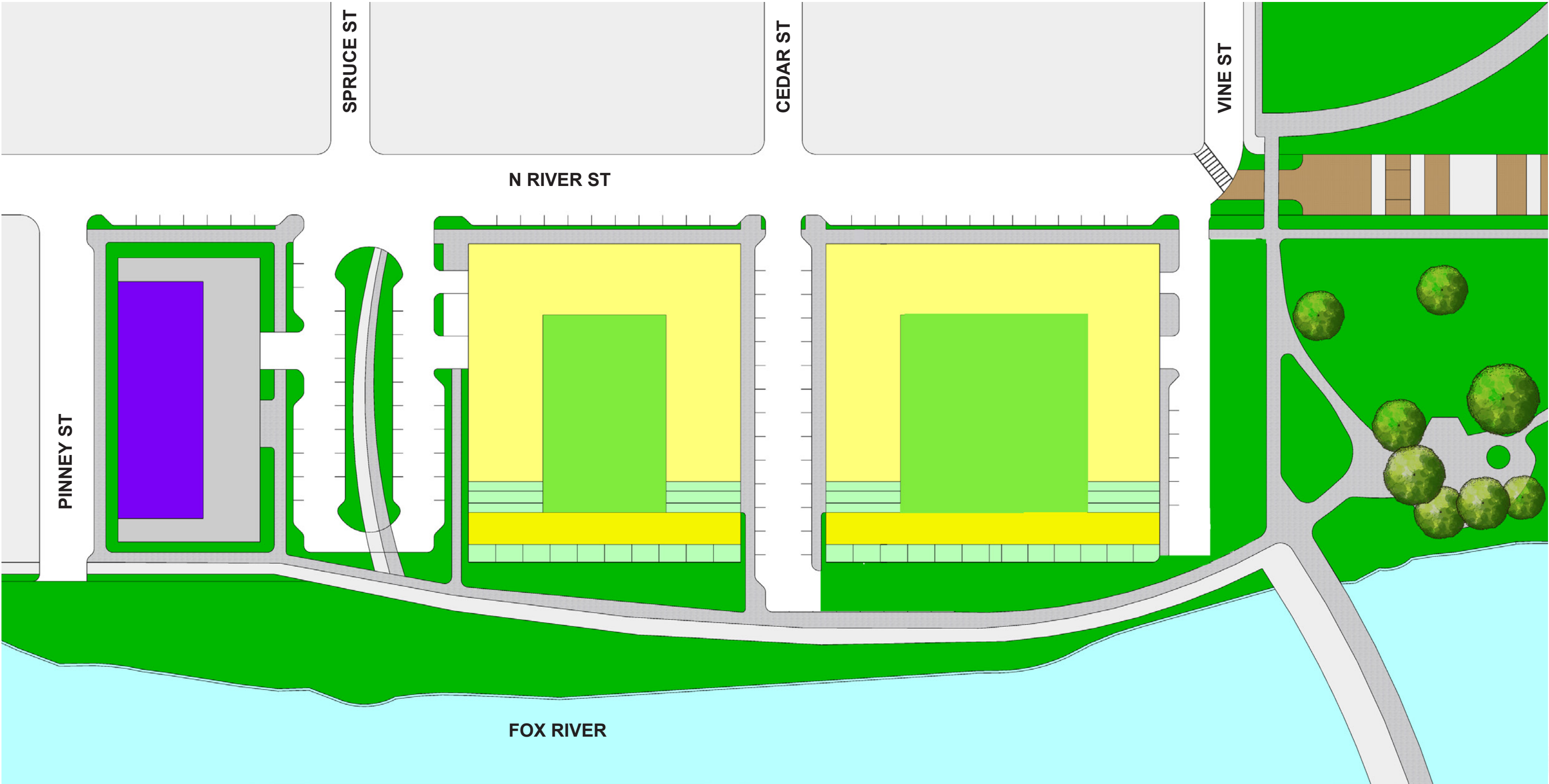


EXHIBIT D

Personal Guaranty of EDDIE NI

[The content of this section is illegible due to a diagonal line crossing through the page.]

THIS IS A DRAFT DOCUMENT; IT DOES NOT CONSTITUTE A LEGALLY-BINDING AGREEMENT AND REMAINS UNDER REVIEW AND SUBJECT TO FURTHER AND ONGOING AMENDMENT, INSERTIONS, DELETIONS BY THE CITY.

PERSONAL GUARANTY – EDDIE NI
[Re City of Aurora RDA, 309 N. River Street – “Windfall Phase I”]

THIS GUARANTY (“**Guaranty**”), dated as of _____, 2022, given by the undersigned, EDDIE NI (“**Guarantor**”), to the City of Aurora, an Illinois municipal corporation (“**City**”), has reference to the following facts and circumstances:

P R E A M B L E S

WHEREAS, Guarantor is financially interested, through some common ownership or control, in WINDFALL AURORA, LLC (“**Developer**”), an Illinois limited liability company; and

WHEREAS, the City has nearly-simultaneously entered into a certain Redevelopment Agreement (the “**Agreement**”) with Developer, and this Guaranty has been incorporated into said Agreement as an exhibit to the Agreement; and

WHEREAS, upon substantial completion of the Project described in the Agreement, there shall be a total capital investment on the part of the City and Developer in the approximate amount of \$54,100,000; and

WHEREAS, the City has solicited Guarantor’s execution and delivery of this Guaranty to City in part because of the Agreement; and

WHEREAS, City is unwilling to perform under the Agreement unless it receives this Guaranty; furthermore, any and all loans or other financial accommodations made to Developer by City are made with City’s full reliance on this Guaranty; and

WHEREAS, in order to provide sufficient assurances to the City that the Project described in the Agreement will be successfully completed as it is described in the Agreement, Guarantor is providing the City this Guaranty; and

WHEREAS, by virtue of the foregoing, it will be to Guarantor’s direct interest and financial advantage to provide this Guaranty; and

WHEREAS, by virtue of the foregoing, it will be to Guarantor’s direct interest and financial advantage to enable Developer to obtain loans, advances, and other financial accommodations from both the City and Construction Lender(s) as related to the Project;

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

Section 1. Incorporation of Recitals.

The recitals contained in the Preambles to this Guaranty are true and correct and are hereby incorporated into this Guaranty as though they were fully set forth in this Section 1.

Section 2. Definitions.

(a) Defined terms in this Guaranty shall have the same meaning as those terms are used and defined in the Agreement, unless otherwise stated herein.

(b) “**Developer’s Liabilities**” shall mean all obligations and liabilities of Developer to the City under the Agreement (including, without limitation all debts, claims, and indebtedness), whether primary, secondary, direct, contingent, fixed, or otherwise, heretofore, now, and/or from time to time hereafter owing, due, or payable, however evidenced, created, incurred, acquired, or owing and however arising, whether under the Agreement, or by oral agreement or operation of law, or otherwise, and all terms, conditions, agreements, representations, warranties, undertakings, covenants, guaranties, and provisions to be performed, observed, or discharged by Developer under the Agreement.

(c) “**Guarantor’s Liabilities**” shall mean all of Guarantor’s obligations and liabilities to City under this Guaranty.

Section 3. Guarantor’s Representations and Warranties.

The Guarantor agrees, represents and warrants to the City as follows:

(a) The statements in the preamble to this Guaranty are true and correct.

(b) Guarantor is authorized to do business under the laws of the State of Illinois, and is authorized to and has the right, power, and capacity to enter into, and by proper action has been duly authorized to execute, deliver, and perform this Guaranty.

(c) This Guaranty, when duly executed and delivered, will constitute a legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, subject to applicable bankruptcy laws or other laws affecting creditors’ rights generally or the equity powers of the courts.

(d) The execution, delivery, and/or performance by Guarantor of this Guaranty shall not, by the lapse of time, the giving of notice, or otherwise, constitute a violation or breach of (1) any applicable law; or (2) any provision contained in any agreement or document to which Guarantor is now or hereafter a party or by which it is or may become bound.

(e) Guarantor is now, and at all times hereafter shall be, solvent and generally able to pay its debts as such debts mature and become due; Guarantor now owns, and shall at all times hereafter own, property that, at a fair valuation, exceeds the sum of Guarantor's debts. Guarantor is now, and at all times hereafter shall be, financially able to perform all the terms of this Guaranty.

(f) Guarantor now has, and shall have at all times hereafter, capital sufficient to carry on all business transactions and all businesses and transactions in which Guarantor or Developer is about to engage. Guarantor does not intend to incur or believe that Guarantor will incur debts beyond Guarantor's ability to pay as such debts mature.

(g) To Guarantor's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Guarantor which might result in any material and adverse change to Guarantor's financial condition, or which might materially and adversely affect the level of Guarantor's assets as of the date of this Guaranty, or which might affect Guarantor's ability to perform Guarantor's Liabilities, or that would materially and adversely affect the ability of Guarantor to fully fund the construction and development of the Project, *e.g.*, if Developer defaults on the Agreement or if Construction Lender(s) default and fail to fund its portion of the Project.

(h) Guarantor has reviewed independently this Guaranty and the Agreement, and Guarantor has made an independent determination as to the validity and enforceability thereof on the advice of Guarantor's own counsel, and in executing and delivering the Guaranty to City, Guarantor is not in any manner relying on City as to the validity and/or enforceability of any security interests of any kind or nature by either Guarantor or Developer to City.

(i) Upon written request from City, Guarantor agrees to furnish to City all pertinent facts relating to the ability of Developer to pay and perform Developer's Liabilities, and all pertinent facts relating to Guarantor's ability to pay and perform Guarantor's Liabilities. Guarantor agrees to keep informed with respect to all such facts. Guarantor acknowledges and agrees that (1) City has relied and will continue to rely on the facts and information to be furnished to it by Guarantor; (2) in executing this Guaranty and at all times hereafter, Guarantor has relied and will continue to rely on Guarantor's own investigation and on sources other than City for all information and facts relating to the ability of Developer to pay and perform Developer's Liabilities, and Guarantor has not and will not hereafter rely on City for any such information or facts.

(j) Notwithstanding anything to the contrary in the Agreement or this Guaranty, the City shall not have any obligation to pay for Soft Costs, provide any portion of the Forgivable Loan Amount, or donate the Property until the City, in its sole and reasonable discretion, is satisfied that Guarantor has provided the City with sufficient proof that Guarantor has sufficient assets, including available liquid assets, to complete the Project and shall maintain such assets until the Completion Date. As such, Guarantor has, and shall maintain sufficient financial and economic resources, including net liquid assets, to implement and complete Developer's obligations contained in the Agreement, including, but not limited to, the repayment of the City's Forgivable Loan if such obligations become due. Guarantor shall provide the City with annual audited financial statements and shall promptly inform the City if any material changes occur regarding the Guarantor's financial or economic resources. Specifically, Guarantor agrees to share, at the

time of execution of this Guaranty and within ninety (90) days after the end of each calendar year, for *in camera* review by the City's Chief Financial Officer, or his designee, Guarantor's annual financial statements, state and federal tax returns and other such records for such year; such records will not remain in the possession of the City's Chief Financial Officer, or his designee. The obligations of Guarantor set forth in this paragraph shall continue for the life of this Guaranty.

Section 4. Guaranty.

(a) Guaranty. Guarantor hereby absolutely, irrevocably, unconditionally, and continuingly guaranties to the benefit of the City: (1) the full and prompt payment of each and all payments required by the Developer under the Agreement, when the same shall become due and payable in accordance with their terms, or when such payment is due or declared due by City; and (2) the full, timely and prompt performance and discharge of all Developer's Liabilities and obligations of the Developer under the Agreement, or when such performance and discharge is due or declared due by City.

In addition to the payment and performance of Developer's Liabilities specified in the preceding paragraph, Guarantor shall additionally be liable for (1) all interest accruing on Developer's Liabilities outstanding from time to time; and (2) all of the costs and expenses incurred by City as identified in Section 10 of this Guaranty. Guarantor agrees that Guarantor is directly and primarily liable, jointly and severally with Developer, for Developer's Liabilities.

(b) City's Right Against Guarantor. This Guaranty shall constitute a guaranty of payment and performance when due, and not of collection. Guarantor specifically agrees that, in the event of a failure by the Developer to timely pay or perform any of its obligations, and the failure by Developer to cure same after notice or demand has been given if required under the Agreement, the City shall have the right from time to time to proceed first and directly against Guarantor under this Guaranty, and without proceeding against the Developer or exhausting any other remedies against the Developer.

Without limiting the foregoing, Guarantor agrees that it shall not be necessary, and Guarantor shall not have the right, and specifically waives any right it may have, to require, as a condition of enforcing this Guaranty, that the City: (1) file suit or proceed to obtain a personal judgment against the Developer or any other person that may be liable for the obligations or any part of the obligations; (2) make any other effort to obtain payment or performance of the obligations from Developer other than providing Developer with any notice of such nonpayment or nonperformance as may be required under the terms of the Agreement; (3) foreclose against or seek to realize upon any security for the outstanding obligations; or (4) exercise any other right or remedy that the City is or may be entitled in connection with the outstanding obligations or any security therefor or any other guarantee thereof.

Notwithstanding the right of City to proceed immediately and directly against Guarantor, the City shall not be entitled to more than a single full performance of the obligations regarding any breach or non-performance by Developer of the Agreement thereof. Subject to the foregoing, at the City's election, which may be made in its sole judgement, the City may, following demand upon

Guarantor hereunder, perform or cause to be performed the outstanding obligations on the Developer's behalf. The City shall not be obligated to undertake any of the foregoing actions, and shall not incur any liability to Guarantor, the Developer or any other person because of taking or not taking any of the foregoing actions. No such actions or inactions by the City shall release or limit the liability of Guarantor hereunder, and shall not serve as a waiver of any of the rights of the City pursuant to the Agreement or this Guaranty.

The liability of Guarantor shall be effective, and the obligations shall immediately be paid and performed, only upon any failure by Developer in the timely payment or performance of any obligation and the giving of such notice or demand, if any, to Developer as may be required under the Agreement, and the failure to cure the same. The Guarantor shall maintain sufficient funds and remain free of any conflicting obligations that may prohibit Guarantor from discharging its obligations under this Guaranty.

(c) Guaranty Absolute and Unconditional. The obligations of Guarantor hereunder are absolute, irrevocable and unconditional and shall remain in full force and effect until the Developer's obligations have been fully discharged in accordance with their respective terms and not subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, the obligations or any other defense that Developer may have) based on any claim that Guarantor may have against the Developer, the City, or any other person. Without limiting the foregoing, the obligations of Guarantor hereunder shall not be released, discharged or in any way modified. Notwithstanding any provision to the contrary, nothing in this Guaranty limits or waives the City's rights under the Agreement or this Guaranty.

As a condition to payment or performance by Guarantor under this Guaranty, City shall not be required to, and Guarantor hereby waives any and all rights to require City to, (1) prosecute collection action or seek to enforce or resort to any remedies against Developer or any other party liable to City on account of Developer's Liabilities or any other guaranty thereof; or (2) seek to enforce or resort to any remedies with respect to any security interests, liens, or encumbrances granted to City by Developer or any other party to secure the repayment of Developer's Liabilities.

Guarantor's Liabilities shall in no way be impaired, affected, reduced, or released by reason of (1) City's failure or delay to do or take any of the actions or things described in this Guaranty; (2) the invalidity or unenforceability of Developer's Liabilities; (3) any loss of or change in priority or reduction in or loss of value of any security interest, lien, or encumbrances securing the repayment of Developer's Liabilities; (4) any discharge or release of Developer from Developer's Liabilities.

(d) Guarantor specifically reaffirms the representations and warranties of the Developer as set forth in Section 9 of the Agreement.

Representations and Warranties.

The Developer agrees, represents and warrants to the City as follows:

(i) *Existence and Authority of the Developer. The Developer is an entity authorized to do business under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. The Developer is*

solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.

(ii) No Conflict by Developer. Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its managers, members or venturers is now a party or by which Developer or any of its managers, members or venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its managers, members or venturers under the terms of any instrument or agreement to which Developer, any related party or any of its managers, members or venturers is now a party or by which Developer, any related party or any of its managers, members or venturers is bound.

(iii) Adequate Resources of Developer. The Developer has, and shall maintain throughout the course of the Project, sufficient financial and economic resources, including net liquid assets, to implement and complete the Developer's obligations contained in this Agreement, including, but not limited to, the repayment of the Forgivable Loan if such obligations become due. The Developer shall provide the City with annual audited financial statements and shall promptly inform the City if any material changes occur regarding the Developer's financial or economic resources.

(iv) Experience of Developer. The Developer, and its respective principals, are skilled in the development of real property and have received input from other experts and consultants regarding the construction of this Project.

(v) Payment of Real Estate Taxes; Assessed Valuation Challenges. Developer and successor owners agree to pay all general and special real estate taxes levied during their respective period of ownership against their respective interest in the Property and/or the Project on or prior to the date same is due and said taxes shall not become delinquent. Developer and successor owners shall deliver evidence of payment of such taxes to the City upon request. The obligations of the Developer under this subsection of the Agreement shall survive and remain in full force and effect after the issuance of the Certificate of Project Completion by the City to the Developer, and Developer's failure to adhere to the same shall be deemed an Event of Default under this Agreement. The Developer and/or its respective owners and successors shall not challenge, contest or seek a reduction

in the assessed valuation of the Property during the term of this Agreement, while the Property remains within TIF District No. 5 or any other or successor TIF district, whichever is longer. Further, Developer, and/or its respective owners and successors shall not assert a tax-exempt status during their respective periods of ownership of, or having an interest in, the Property or the Project. This prohibition shall run with the land and shall expire on the date the Redevelopment Project Area expires, the TIF District expires, or an earlier date if agreed to by the City and the Developer in writing. The Parties acknowledge that there is no tax- exempt debt being issued as an incentive under this Agreement.

(vi) Litigation. To the best of Developer's knowledge, there is no litigation, proceeding or investigation pending or threatened against Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by Developer of the terms and provisions of this Agreement.

(vii) Developer is aware that the City has been utilizing an architecture, interior design and planning firm, which serves in part as a consultant to the City and which is engaged in drafting comprehensive redevelopment plans for the City including the Riverfront Area (sometimes referred to as a master development plan, still in a draft form). Developer acknowledges receipt of the draft master development plan for the City, agrees that it includes and pertains to the Property, and Developer warrants and agrees to develop the Property substantially in conformance with the same.

(viii) Developer acknowledges that as the Property consists of an approximate one-third portion of the City Parcel, Developer agrees to and shall cooperate fully with the City regarding potential future development of the remainder of the City Parcel, including such issues as, e.g., public utilities, access and parking easements, public rights-of-way, and telecommunications access easements; Developer understands that no cost shall be incurred by Developer when such future development may take place unless a benefit in any fashion also accrues to Developer or the Property.

(ix) Compliance with Legal Requirements. To the best of Developer's knowledge, Developer is in compliance in all material respects with the Legal Requirements.

Section 5. Waivers.

(a) Guarantor waives any and all right to assert against City any claims or defenses based on any failure of City to furnish to Guarantor any information or facts relating to the ability of Developer to pay and perform Developer's Liabilities.

(b) To the extent permitted by law, Guarantor waives all other defenses, counterclaims, and offsets of any kind or nature in connection with the validity and/or enforceability of this Guaranty, including, without limitation, (1) those arising directly or indirectly from the perfection,

sufficiency, validity, and/or enforceability of any security interest granted by Developer to City or acquired by City from Developer; (2) those based on the failure or adequacy of consideration.

(c) Guarantor waives any and all right to assert against City any claim or defense based on any election of remedies by City, which, in any manner, impairs, affects, reduces, releases, or extinguishes Guarantor's subrogation rights or Guarantor's right to proceed against Developer for reimbursement, or any other rights of Guarantor against Developer, or against any other person or security, including, without limitation, any defense based on an election of remedies by City under any provision or law or regulation of any state, governmental entity, or country.

(d) Guarantor waives any right to assert against City as a defense, counterclaim, setoff, or cross-claim to the payment or performance of Guarantor's Liabilities, any defense (legal or equitable), setoff, counterclaim, or claim that Guarantor may now or at any time hereafter have against Developer or any other party liable to City in any way or manner.

(e) Guarantor hereby waives notice of the following events or occurrences and agrees that City may do any or all of the following in such manner, on such terms, and at such times as City, in its sole and absolute discretion, deems advisable without in any way impairing, affecting, reducing, or releasing Guarantor from Guarantor's Liabilities:

- (1) City's acceptance of this Guaranty;
- (2) presentment, demand, notices of default, nonpayment, partial payment, and protest, and all other notices or formalities to which Guarantor may be entitled;
- (3) Developer's heretofore, now, or from time to time hereafter granting to City security interests, liens, or encumbrances in any of Developer's assets;
- (4) City's heretofore, now, or from time to time hereafter doing any of the following:
 - (i) loaning moneys or extending credit to or for the benefit of Developer, whether pursuant to the Agreement or any amendments, modifications, additions, or substitutions thereto;
 - (ii) substituting for, releasing, waiving, or modifying any security interests, liens, or encumbrances in any of Developer's assets;
 - (iii) obtaining, releasing, waiving, or modifying any other party's guaranty of Developer's Liabilities or any security interest, lien, or encumbrance in any other party's assets given to City to secure such party's guaranty of Developer's Liabilities;
 - (iv) obtaining, amending, substituting for, releasing, waiving, or modifying the Agreement;
 - (v) granting to Developer (and any other party liable to City on account of Developer's Liabilities) of any indulgences or extensions of time of payment of Developer's Liabilities; and
 - (vi) accepting from Developer or any other party any partial payment or payments on account of Developer's Liabilities or any collateral securing the payment thereof or City's settling, subordinating, compromising, discharging, or releasing the same.

Section 6. Covenants and Agreements

Guarantor covenants and agrees with City that:

(a) All security interests, liens, and encumbrances heretofore, now, and at any time or times hereafter granted by Guarantor to City shall secure Guarantor's Liabilities.

(b) All indebtedness, liability, or liabilities now and at any time or times hereafter owing by Developer to Guarantor are hereby subordinated to Developer's Liabilities.

(c) All security interests, liens, and encumbrances that Guarantor now has and from time to time hereafter may have on any of Developer's assets are hereby subordinated to all security interests, liens, and encumbrances that City now has and from time to time hereafter may have thereon.

(d) All indebtedness, liability, or liabilities now and at any time or times hereafter owing to Guarantor by any party liable to City by reason of any security interests, liens, or encumbrances granted by Developer to City are hereby subordinated to all indebtedness, liability, or liabilities owed by such party to City.

Section 7. Security

To secure the prompt payment to City of, and the prompt, full, and faithful performance of, Guarantor's Liabilities, Guarantor grants to City a security interest in and lien on all of Guarantor's now existing and/or owned and hereafter arising and/or acquired money, reserves, deposits, deposit accounts, and interest or dividends thereon, cash, cash equivalents, and other property now or at any time or times in possession or under the control of City or its bailee for any purpose (individually and collectively, the "**Collateral**").

Guarantor shall execute and/or deliver to City, at any time and from time to time hereafter at the request of City, all agreements, instruments, documents, and other written matter that City reasonably may request, in a form and substance acceptable to City, to perfect and maintain perfected City's security interest in the Collateral or any other property pledged by Guarantor to secure Guarantor's Liabilities. City shall have no obligation to protect, secure, or insure any of the foregoing security interests, liens, or encumbrances or the properties or interests in properties subject thereto.

Guarantor warrants and represents to and covenants with City that (1) Guarantor has good, indefeasible, and merchantable title to the Collateral; (2) City's security interest in and lien on the Collateral is now, and at all times hereafter shall be, valid and perfected, and shall have a first priority; (3) Guarantor shall not grant a security interest in or permit a lien, claim, or encumbrance on any of the Collateral in favor of any third party; (4) the addresses specified herein include and designate Guarantor's principal residence and are Guarantor's sole residences:

3403 E Galloway Dr. Richfield, OH 44286

Guarantor, by written notice delivered to City at least thirty (30) days prior thereto, shall advise City of Guarantor's acquiring any new residence or selling any existing residence, and any new residence shall be within the continental United States of America.

Section 8. Default

The occurrence of any of the following events shall, at the election of City, be deemed a default by Guarantor ("**Event of Default**") under this Guaranty:

- (a) if Guarantor fails to pay any of Guarantor's Liabilities when due and payable or properly declared due and payable;
- (b) if Guarantor fails or neglects to perform, keep, or observe any term, provision, condition, covenant, warranty, or representation contained in this Guaranty, which is required to be performed, kept, or observed by Guarantor, and Guarantor shall fail to remedy such within thirty (30) days of being served with written notice from City;
- (c) if the Collateral or any other of Guarantor's assets are attached, seized, subjected to a writ of distress warrant, or levied upon, or become subject to any lien, or come within the possession of any receiver, conservator, trustee, custodian, or assignee for the benefit of creditors;
- (d) if Guarantor becomes insolvent or generally fails to pay, or admits its inability to pay, debts as they become due;
- (e) if a petition under Title 11 of the United States Code, or any similar law or regulation, shall be filed by Guarantor, or if Guarantor shall make an assignment for the benefit of its creditors, or if any case or proceeding is filed by Guarantor for its dissolution or liquidation;
- (f) if a petition under Title 11, United States Code, or any similar law or regulation shall be filed against Guarantor, or if a case or proceeding is filed against Guarantor for its dissolution or liquidation and such proceeding shall not be dismissed within forty-five (45) days of its filing, during which time Guarantor shall be diligently contesting such action or proceeding;
- (g) if Guarantor is enjoined, restrained, or in any way prevented by court order from conducting all or any material part of its business affairs, and such injunction or restraint shall not be voided, removed, or dismissed within thirty (30) days of the court's order, during which time Guarantor shall be diligently contesting such action or proceeding;
- (h) if a notice of lien, levy, or assessment is filed of record or given to Guarantor with respect to all or any of Guarantor's assets by any federal, state, or local government agency;
- (i) if Guarantor is in default in the payment or performance of any material obligation, indebtedness, or other liability to any third party, and such default is not cured within any cure period specified in any agreement or instrument governing the same;

(j) if any material statement, report, or certificate made or delivered to City by Guarantor is not true and correct;

(k) if any material adverse change in the financial condition, operations, business, or assets of Guarantor, and Guarantor shall fail to remedy such within ten (10) days of being served with written notice from City;

(l) the occurrence of a default or Event of Default under the Agreement or any other agreement, instrument, and/or document executed and delivered by Guarantor to City, which is not cured by Developer within any applicable cure period set forth in the Agreement or any such agreement, instrument, and/or document;

(m) the occurrence of a default or event of default by Developer under the Agreement;

(n) if Guarantor attempts to cancel, revoke, or disclaim this Guaranty; or

(o) the reasonable insecurity of City, and Guarantor shall fail to remedy such within ten (10) days of being served with written notice from City.

Section 9. Remedies

Upon the occurrence of an Event of Default, without notice thereof to Guarantor, Guarantor's Liabilities shall be due and payable and enforceable against Guarantor, forthwith, at City's principal place of business, and City may, in its sole and absolute discretion, exercise any one or more of the following remedies that are cumulative and nonexclusive:

(a) proceed to suit against Guarantor if Guarantor's Liabilities are not immediately paid by Guarantor to City at City's principal place of business; at City's election, one or more successive or concurrent suits may be brought hereunder by City against Guarantor, whether suit has been commenced against Developer, and in any such suit, Developer may be joined (but need not be joined) as a party with Guarantor; and/or

(b) reduce to cash or the like any of Guarantor's assets of any kind or nature in the possession, control, or custody of City, and, without notice to Guarantor, apply the same in reduction or payment of Guarantor's Liabilities; and/or

(c) exercise any one or more of the rights and remedies accruing to City under the Agreement, the Uniform Commercial Code of the relevant jurisdiction, and any other applicable law upon default by a debtor.

Guarantor recognizes that in the event Guarantor fails to perform, observe, or discharge any of its obligations or liabilities under this Guaranty, no remedy at law will provide adequate relief to City, and agrees that City shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damage.

Section 10. Costs, Fees, and Expenses

If at any time or times hereafter City employs counsel for advice or other representation with respect to this Guaranty or to represent City in any litigation, contest, dispute, suit, or proceeding relating to this Guaranty or City's rights thereunder, the reasonable costs, fees, and expenses incurred by City in any manner or way with respect to the foregoing shall be part of Guarantor's Liabilities, payable by Guarantor to City, on demand. Without limiting the generality of the foregoing, such costs, fees, and expenses include reasonable (a) attorneys' fees, costs, and expenses; (b) court costs and expenses; (c) court reporter fees, costs, and expenses; (d) long-distance telephone and facsimile charges; (e) expenses for travel, lodging, and food. Guarantor's liability for all reasonable expenses and fees under this Section 10 shall also extend to the collection of any judgment that shall result from City's enforcement of its rights and remedies hereunder. The obligation of Guarantor set forth in this agreement shall be continuing and shall not be merged into any judgment entered based on this Guaranty.

Section 11. Miscellaneous

(a) All payments received by City from any source on account of Developer's Liabilities shall be applied by City in its sole discretion, and this Guaranty shall apply to and secure any ultimate balance that may be owed to City on account of Developer's Liabilities after City's application. City's determination as to how to apply moneys so received shall be conclusive on the undersigned.

(b) If any provision of this Guaranty or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Guaranty and the application of such provision to other parties or circumstances will not be affected thereby, the provisions of this Guaranty being severable in any such instance. This Guaranty shall be binding on Guarantor and inure to the benefit of Guarantor and City and their respective heirs, personal representatives, successors, and assigns.

(c) Whenever a notice is required or permitted to be given under this Guaranty, it shall be in writing and either delivered personally, or sent via certified mail, return receipt requested. Notice sent via certified mail shall be deemed given three (3) days after such notice is sent. Notice served by hand delivery shall be deemed served on the day delivered. Any written notice to Guarantor shall be to the address or addresses specified below:

If to the Guarantor: EDDIE NI
3403 E Galloway Dr.
Richfield, OH 44286

With a copy to: Zanck, Coen, Wright & Saladin PC
Attn: Law Office of Thomas R. Burney, LLC
40 Brink Street
Crystal Lake, IL 60014

(d) This Guaranty shall continue in full force and effect until Developer's Liabilities are fully paid, performed, and discharged and City gives Guarantor written notice thereof, such notice to be promptly sent by City after full performance of Developer's Liabilities. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of any of Guarantor's Liabilities is rescinded or must otherwise be returned by City upon the insolvency, bankruptcy, or reorganization of Guarantor or otherwise, all as though such payment had not been made.

(e) This Guaranty is submitted to City at City's principal place of business and shall be deemed to have been made thereat. This Guaranty shall be governed and controlled as to interpretation, enforcement, validity, construction, effect, and in all other respects by the laws, statutes, and decisions of the State of Illinois. No modification, waiver, estoppel, amendment, discharge, or change of this Guaranty or any related instrument shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, estoppel, amendment, discharge, or change is sought.

(f) To the extent that City receives any payment on account of Developer's Liabilities, or any proceeds of Collateral are applied on account of Developer's Liabilities, and any such payment(s) and/or proceeds or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated, and/or required to be repaid to a trustee, receiver, or any other party under any bankruptcy act, state or federal law, common law, or equitable cause, then, to the extent of such payment(s) or proceeds received, Developer's Liabilities or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment(s) and/or proceeds had not been received by City and applied on account of Developer's Liabilities. Guarantor agrees that Guarantor's Liabilities hereunder shall be revived to the extent of such revival of Developer's Liabilities.

(g) Until expressly released in writing by City, this Guaranty shall be in addition to any other guaranties that Guarantor has previously given to City or that Guarantor may, from time to time, hereafter give to City relating to Developer's Liabilities.

(h) Any prior or contemporaneous oral agreements between the City and Guarantor are superseded by, merged into, and may not vary this Guaranty.

(i) Guarantor is presently informed of the financial condition of the Developer and of all other circumstances that a diligent inquiry would reveal and that bear on the risk of nonpayment of Developer's Liabilities or performance by Developer under the Agreement. Guarantor hereby covenants that it will continue to keep itself informed of Developer's financial condition, the status of other guarantors, if any, and of all other circumstances that bear on the risk of Developer's nonpayment or nonperformance under the Agreement.

(j) Guarantor hereby authorizes City, without notice or demand and without affecting its liability hereunder, to assign, without notice, this Guaranty in whole or in part and/or City's rights hereunder to anyone at any time. Guarantor agrees that City may do so in such manner, on such terms, and at such time as City, in its discretion, deemed advisable, without, in any way or

respect, impairing, affecting, reducing, or releasing Guarantor from its undertakings hereunder, and Guarantor hereby consents to such foregoing acts, events, and/or occurrences.

(k) This Guaranty shall not be deemed to supersede or terminate any previous guaranty of Guarantor, but shall be construed as an additional or supplemental Guaranty unless otherwise expressly provided herein; and in the event that Guarantor has given to City a previous guaranty or guaranties, this Guaranty shall be construed to be an additional or supplemental guaranty and not to be in lieu thereof or to terminate such previous guaranty or guaranties unless expressly so provided herein.

(l) If City receives any payment or payments on account of the liabilities guaranteed hereby, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, and/or required to be repaid to a trustee, receiver, or any other party under any bankruptcy act or code, state or federal law, common law, or equitable doctrine, then to the extent of any sum not finally retained by City, Guarantor's obligations to City shall be reinstated, and this Guaranty, and any security therefor, shall remain in full force and effect and/or be reinstated until payment shall have been made to City, which payment shall be due on demand. If any action or proceeding seeking such repayment is pending or, in City's sole judgment, threatened, this Guaranty and any security interest therefor shall remain in full force and effect notwithstanding that Developer may not then be obligated to City.

(m) Guarantor warrants and represents to City that Guarantor has read this Guaranty and understands the contents hereof and that this Guaranty is enforceable against Guarantor in accordance with its terms.

(n) GUARANTOR AND CITY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY, OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO, OR FROM THIS GUARANTY SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN THE COUNTY OF KANE, STATE OF ILLINOIS. GUARANTOR AND CITY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY LOCAL, STATE, OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE. GUARANTOR HEREBY WAIVES ANY RIGHT GUARANTOR MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST GUARANTOR IN ACCORDANCE WITH THIS PARAGRAPH.

(o) GUARANTOR AND CITY IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (A) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY AGREEMENT DELIVERED OR THAT MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith, OR (B) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS GUARANTY, OR ANY SUCH AGREEMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

< SIGNATURE PAGES FOLLOW >

IN WITNESS WHEREOF, Guarantor hereto has caused this Guaranty to be executed on the above date.

EDDIE NI

Alias(es) of EDDIE NI:

[A COPY OF GUARANTOR'S LEGAL IDENTIFICATION DOCUMENTS (LICENSE, PASSPORT, ETC.) SHOULD BE PROVIDED TO THE NOTARY AND COPIES MADE FOR THE CITY AS PART OF THIS GUARANTY.]

ACKNOWLEDGMENT

State of _____)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that EDDIE NI, an individual (the “Guarantor”), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of said Guarantor, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2022.

Notary Public

EXHIBIT E

Figure 1: Breakout of Project Costs Overall

Source	Category	Amount	Ttl Project Share [fn3]
Developer:	Soft Costs	[fn1] \$500,000	
	Other	\$7,000,000	
	Developer Total	\$7,500,000	(13.86%)
City:	Soft Costs	[fn1] \$500,000	
	Forgivable Loan	[fn2] \$6,100,000	
	City Land Value	\$2,000,000	
	City Total	\$8,600,000	(15.90%)
Construction Lender:		\$38,000,000	(70.24%)
TOTAL:		\$54,100,000	(100%)

fn1 – As total Soft Costs for the Project at the time of RDA execution approximate \$1,000,000, and as the City will reimburse Developer for 50% of Soft Costs up to \$500,000 maximum, Developer's Soft Costs (net, after 50% reimbursement by City) are estimated at \$500,000.

Fn2 – Not including Land Value, the City will be investing \$6,600,000 total; the Forgivable Loan Amount – being distinct from Soft Costs paid in by City – is calculated as \$6,600,000 LESS the final amount of the Soft Costs paid by City to reimburse Developer.

Fn3 – Pro rata **total** Project share from each of the three sources, regardless as to whether the investment/incentive is a Soft Cost, loan, or land donation.

Figure 2: Breakout to Determine Proportionate Share of Payment on Draw Requests
(To Be Calculated at approximate time of Property Donation)

Source		Amount	Share [fn3]
Developer	Non-Soft Costs	[fn1] \$7,000,000	(13.70%)
City	Forgivable Loan	[fn2] \$6,100,000	(11.94%)
Construction Lender		\$38,000,000	(74.36%)
TOTAL:		\$51,100,000	(100%)

fn1 – estimated at time of RDA execution.

fn2 – Forgivable Loan Amount is calculated as \$6,600,000 LESS the final amount of the Soft Costs paid by City to reimburse Developer (which is a maximum of \$500,000); so this will be \$6,100,000 minimum.

fn3 – Pro rata share from each of the three sources to calculate proportionate share for each Draw request.

Figure 3: Example Based Generally on Figure 2
Where an Approved Draw Request is \$3,000,000

Source	Amount	Percentage Share
Developer:	\$410,958.90	(13.70%)
City:	\$358,121.33	(11.94%)
Construction Lender:	\$2,230,919.77	(74.36%)
TOTAL:	\$3,000,000.00	(100%)

EXHIBIT F: Project Timeline

January 2022	Finance Meeting, Committee of the Whole, City Council Meeting		
March 2022	2nd DST Meeting		
May 2, 2022	Site Entitlement (Zoning) / Preliminary Plat and Plan Submittal		
March -July 2022		Micro TIF Approval Process	
June 8, 2022	Public Notice to Petitioner		
June 21, 2022	Public Notice in New Paper		
July 6, 2022	Planning and Zoning Commission		Public Hearing
July 13, 2022	Building, Zoning and Economic Development Committee		
July 19, 2022	Committee of Whole		
July 26, 2022	City Council		Final Decision
August 2022	Final Approval / Implementation of new TIF District		
September 1, 2022	Final Plat and Plan		
October 19, 2022	Planning and Zoning Commission		
October 26, 2022	Building, Zoning and Economic Development Committee		Final Decision
June 2022- December 2022	Construction Drawings		
March 2023	Permit Approval		

April 2023	Simultaneous Closing on Construction Loan and Transfer of Property		
May 2023	Breaking Ground		
May 2023 – Nov 2024		Forgivable Loan Disbursement	
November 2024	CO		
Nov 2024 – Nov 2034		Forgivable Loan Forgiveness Period	